

## CHAPTER 112

### CABLE FRANCHISE AND REGULATORY ORDINANCE

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112.01.1 **DEFINITIONS.** For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense shall include the future tense and words in the plural number shall include the singular number, and words in the singular number shall include the plural number:

1. "Basic Cable" is the lowest priced tier of service that includes the retransmission of local broadcast television signals.
2. "Cable Act" collectively means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, as amended.
3. "Cable Operator" shall be defined as the same definition used in the Cable Act, as amended.
4. "Cable Service" shall be defined as the the same definition used in the Cable Act, as amended
5. "Cable System" shall be defined as the the same definition used in the Cable Act, as amended.
6. City means the City of West Burlington and the geographical area within the corporate boundaries of the City.
7. "Franchise" shall mean the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System.
8. "Franchising Authority" or "Grantor" means the City Council of the City of West Burlington or the lawful successor, transferee, or assignee thereof.
9. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
10. "Grantee" means any person, firm, corporation, or other entity granted a franchise hereunder, or the lawful successor, transferee, or assignee thereof.
11. "Gross Revenues" mean any and all revenue received by the Grantee from the operation of the Cable System to provide cable service in the Service Area, provided, however, that such phrase shall not include any fees or franchise fees or taxes which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.
12. "Headend" shall mean the the land, electronic processing equipment, antennas, tower, building, and other appurtenances normally associated with and at the starting point of a cable system.
13. "House drop" means a cable that connects each building or home to the nearest feeder line of the cable network.
14. "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve subscribers. In all cases, "Normal Business Hours" shall include some evening hours at least one night per week and/or some weekend hours.
15. "Normal Operating Conditions" shall mean 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, strikes, civil disturbances, power outages of more than 2.5 hours, 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.
16. "Outlet" shall mean the point of connection of the cable or wire to a television.
17. "Person" means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.
18. "Private Property" means all property, real, personal or mixed, owned by a private person, including property owned by a public utility not owned or operated by the City.
19. "Property of the Grantee" means all property, real, personal or mixed, owned or used by the Grantee, however arising from or related to or connected with the franchise.
20. "Public Access Channel" means channel capacity designated for public use.

21. "Public Property" means all property, real, personal or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.
22. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way lane, public way, drive circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the service area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the system. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.
23. "Service Area" means the present municipal boundaries of the Franchising Authority.
24. "Service Interruption" means the loss of video or audio on one or more channels.
25. "Shall" and "will" are mandatory; "may" is permissive.
26. "Service tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.
27. "Subscriber" means a person or user of the system who lawfully receives communications and other services therefrom with the Grantee's express permission.
28. "Technically Feasible" shall mean cable applications that can be completed using current technical, engineering or installation practices or cable applications that are financially practical such as where costs do not exceed two hundred percent (200%) of a normal installation process.

112.01.2 FRANCHISE REQUIRED Subject to federal and state law, no person, firm, company, corporation or association shall construct, install, maintain or operate within any public street in the City, or within any other public property of the City, any equipment or facilities for the distribution of television signals over a Cable System to any subscriber, unless a franchise authorizing the use of the streets or properties or areas has first been obtained pursuant to the provisions of this Ordinance, and unless such franchise is in full force and effect.

112.02.1 PURPOSE. The purpose of this Ordinance is to specify requirements for the establishment, construction, operation, and maintenance of a cable System in the City pursuant to Chapter 364, Code of Iowa and applicable federal law. If a new applicant submits a proposal acceptable to the Grantor, meets the requirements of this Ordinance and those of the FCC, and receives a majority of the votes cast in a franchise election, the Grantor may then proceed to enter into a non-exclusive franchise agreement with such prospective Grantee, subject to the provisions of the Ordinance. If the incumbent operator submits a proposal acceptable under the terms of the Cable Act of 1992 as amended, and meets the requirements of the FCC, the City shall proceed to fulfill its obligations under section 626 of the Cable Act of 1992.

112.02.2 LENGTH OF FRANCHISE. The term of a franchise and all rights, privileges, obligations, and restrictions pertaining thereto shall be determined by the Grantor from the effective date of such franchise or the effective date of any transfer or assignment thereof in accordance with Section 5.5 of this Ordinance. The term of agreement will be specified in the Franchise Agreement. Such term shall not exceed ten (10) years. The Grantor shall award a non-exclusive franchise to construct, erect, operate, and maintain in, upon, along, across,

above, over and under the streets, alleys, public ways, and public places now laid out or dedicated, and all extensions thereof and additions thereto in the City, poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the operation and maintenance in the City of a Cable System, and to furnish and to sell service from such Cable System to the inhabitants of the City pursuant to the terms of this Ordinance.

#### 112.02.3 SIGNIFICANCE OF FRANCHISE.

1. Franchise Nonexclusive. Any franchise granted hereunder by the City shall not be exclusive and the City reserves the right to grant a similar franchise to any person at any time.
2. Privileges Must Be Specified. No privilege of exemption shall be inferred from the granting of any franchise, unless it is specifically prescribed.
3. Authority Granted. Any franchise granted hereunder shall give to the Grantee the right and privilege to construct, erect, operate, modify and maintain, in, upon, along, above, over and under streets, as defined in Section 1.1 herein, which have been or may hereafter be dedicated and open to public use in the City, towers, antennas, poles, cables, electronic equipment, and other network appurtenances necessary for the operation of a Cable System in the City, subject to the requirements of this Ordinance and subject to any current or future ordinances or statutes governing the same.
4. Subject to Other Regulatory Agencies Rules and Regulations. The Grantee shall at all times during the life of any franchise granted hereunder be subject to all lawful exercise of the police power by the Grantor and other duly authorized regulatory State and federal bodies and shall comply with any and all ordinances which the Grantor has adopted or shall adopt applying to the public generally and to other grantees.
5. Pole Use Agreements Required. Any franchise granted hereunder shall not relieve the Grantee of any obligation involved in obtaining pole or conduit-use agreements from the gas, electric and the telephone companies or others maintaining poles or conduits in the streets of the City.
6. Ordinance revisions. Any franchise granted under this Ordinance, is made subject to any revisions of this Ordinance and the general ordinances of the Grantor, provided that such revisions do not materially alter or impair the obligations of Grantee set forth in any Franchise Agreement.

#### 112.02.4 RIGHTS RESERVED TO THE GRANTOR

1. Right of Amendment Reserved to Grantor. The Grantor may from time to time add to, modify or delete provisions of this Ordinance as it shall deem necessary in the lawful exercise of its police powers. Such additions or revisions shall be made only after a public hearing for which the Grantee shall have received written notice at least thirty (30) days prior to such hearing.
2. No Impairment of City's Rights. Nothing herein shall be deemed or construed to impair or affect in any way to any extent any right of the Grantor pursuant to Iowa law.
3. Grantee Agrees to City's Rights. The Grantor reserves every right and power which is required to be reserved or provided by an ordinance of the Grantor, and the Grantee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action or requirements of the Grantor in its lawful exercise of such rights or powers which have been or will be enacted or established subject to the provisions of 2.04(1).
4. Police Powers of the Grantor. Neither the granting of any franchise nor any provision governing the franchise shall constitute a waiver or bar to the lawful exercise of any governmental right or power of the Grantor.

5. Grantor Transfer of Functions. Any administrative right or power in or administrative duty imposed upon any elected official of the City shall be subject to transfer by the Grantor to any other elected official, officer, employee, department or board.
6. Grantor Right of Inspection. The Grantor reserves the right, during the life of any franchise granted hereunder, to inspect and oversee all construction or installation work performed in the public right-of-way.
7. Grantor Right of Network Installation. The Grantor reserves the right during the life of any franchise granted hereunder to install and maintain for a reasonable charge upon or in the poles and conduits of the Grantee and pole fixtures necessary for municipal networks on the condition that such installation and maintenance thereof does not interfere with the operation of the Grantee. Provided, however, that Grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement or other authorization relating to the service area.

112.02.5 APPLICATION FOR FRANCHISE. No new franchise may be granted unless the applicant has successfully completed the application procedure in accordance with filing instructions promulgated by the Grantor:

1. Filing Fee. Payment of a non refundable filing fee to the Grantor of one hundred dollars (\$100.00) which sum shall be due and payable at the time with the submission of the application.
2. Content. All applicants must complete an application which shall include, but not be limited, to the following:
  - A. Name and Address of Applicant. The name and business address of the applicant, date of application, and signature of applicant or appropriate corporate officer(s).
  - B. Description of Proposed Operation. A general description of the applicant's proposed operation, including but not limited to business hours, operating staff, maintenance procedures beyond those required in the chapter, management and marketing staff policies and procedures, and, if available, the rules of operation for public access.
  - C. Signal Carriage. A statement of the television and radio services to be provided, including both off-the-air and locally originated signals.
  - D. Special Services. A statement setting forth a description of the automated services proposed as well as a description of the production facilities to be made available by the Grantee for the public, governmental and educational channels required to be made available by the provisions of this chapter.
  - E. Corporate Organization. A statement detailing the corporation organization of the applicant, if any, including the names and addresses of its officers and directors and the number of shares held by each officer and director.
  - F. Stockholders. A statement identifying the number of authorized outstanding shares of applicant's stock including a current list of the names and current addresses of its shareholders holding five percent (5%) or more of the applicant's outstanding stock.
  - G. Inter-Company Relationships. A statement describing all inter-company relationships of the applicant, including parent, subsidiary or affiliated companies.
  - H. Agreements and Understandings. A statement setting forth all agreements and understandings, whether written or oral, existing between the applicant and any other person with respect to any franchise awarded hereunder and the conduct of the operation thereof existing at the time of proposal submittal.

- I. Financial Statement. A copy of the financial statements for the two (2) previous fiscal years.
- J. Financial Projection. A five (5) year operations pro forma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets, and annual levels of subscriber penetration. Costs and revenues anticipated for voluntary services shall, if presented, be incorporated in the pro forma as required in this chapter, but shall be separately identified in the pro forma.
- K. Financial Support. Suitable written evidence from a recognized financing institution, addressed to both applicant's financial ability and planned operation have been analyzed by the institution and that the financing institution is prepared to make the required funds available to applicant if it is awarded a franchise. If the planned operation is to be internally financed, a board resolution shall be supplied authorizing the obtainment and expenditure of such funds as are required to construct, install and operate the cable television system contemplated hereunder.
- L. Construction Timetable. A description of system construction including the timetable for provision and extension of service to different parts of the City.
- M. Technical Description. A technical description of the type of system proposed by the applicant, including but not limited to system configuration, (i.e. hub, dual cable), system capacity, two-way capability, etc.
- N. Existing Franchises. A statement of existing franchises held by the applicant indicating when the franchises were issued and when the Cable Systems were constructed and the present state(s) of the Cable System(s) in each respective governmental unit, together with the name and address and phone number of a responsible governmental official knowledgeable of the applicant.
- O. Convictions. A statement as to whether the applicant or any of its officers or directors or holders of five percent (5%) or more of its voting stock has in the past ten (10) years been convicted of or has any charges pending for any crime other than a routine traffic offense and the disposition of each such case.
- P. Operating Experience. A statement detailing the prior cable television experience of the applicant, including that of the applicant's officers, management and staff to be associated, where known, with the proposed franchise.
- Q. Supplementation to Applications. The Grantor reserves the right to require such supplementary, additional or other information that the Grantor deems reasonably necessary for its determinations. Such modifications, deletions, additions or amendments to the application shall be considered only if specifically requested by the Grantor.

#### 112.02.6 ACCEPTANCE AND EFFECTIVE DATE OF FRANCHISE.

1. Franchise Acceptance Procedures. Any franchise awarded hereunder and the rights, privileges and authority granted thereby shall take effect and be in force from and after the award thereof, provided that the Grantee shall file with the Grantor the following:
  - A. A statement by the Grantee of the acceptance of the franchise.
  - B. A certificate of insurance as set forth in Section 7.2.
  - C. Reimbursement to the Grantor for the costs of publication of the franchise ordinance and the holding of the election connected therewith, if such election is required by law.

2. Grantee To Have No Recourse. The Grantee shall have no monetary recourse whatsoever against the Grantor for any loss, cost, expense, or damage arising out of any provision or requirement of this ordinance or its regulation. This shall not include negligent acts of the Grantor, its agents or employees which are performed outside the regulatory or franchise awarding authority hereunder.

3. Acceptance of Power and Authority of Grantor. The Grantee expressly acknowledges that in accepting any franchise awarded hereunder, it has relied upon its own investigation and understanding of the power and authority of the Grantor to grant this franchise.

4. Inducements Not Offered. The Grantee, by acceptance of any franchise awarded hereunder, acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or in behalf of the Grantor concerning any term or condition of this franchise that is not included in this Ordinance.

5. Grantee Accepts Terms of Franchise. The Grantee acknowledges by the acceptance of the franchise and the terms herein and in this ordinance that it has carefully read said terms and conditions and it is willing to and does accept all other obligations of such terms and conditions and further agrees that it will not claim that any provision of any franchise granted hereunder, is unreasonable or arbitrary.

112.03.1 GEOGRAPHICAL COVERAGE. The Grantee shall provide a Cable System in such manner as to pass and provide adequate tap off facilities for every single family dwelling unit, multiple dwelling unit or other residential unit and commercial, and industrial establishment within the service area, subject to the provisions of the Franchise Agreement.

112.03.2 CONDITIONS OF STREET OCCUPANCY. All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways. A Grantee shall first obtain a permit from the Grantor prior to commencing construction on the streets, alleys, public grounds or places and shall be on a form provided by the Grantor. A Grantee shall not open or disturb the surface of any street, sidewalk, driveway or public place for any purpose without having first obtained a permit to do so in the manner provided by ordinance. All excavation shall be coordinated with other utility excavation or construction so as to minimize disruption to the public.

112.03.3 RESTORATION OF PUBLIC WAYS. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any public way by the Grantee, it shall, at its expense, replace and restore such public way to a condition which is substantially same or better than the condition of the public way existing immediately prior to such disturbance. The Grantee shall notify any adjacent owners along the public right-of-way at least two (2) days in advance of any planned construction or maintenance of the Cable System that will result in any disturbance of the public way. The Grantee shall notify the adjacent properties by placing a notice on the front door of the residences. The Grantee shall also attempt to contact the adjacent property owners by knocking on their front door on the day of the planned construction or maintenance and advise them of the planned construction or maintenance. In no event, however, shall notification be required if Grantee is performing non-preventive service maintenance on the Cable System necessary to correct service problems.

112.03.4 RELOCATION AT REQUEST OF THE FRANCHISING AUTHORITY. Upon its receipt of reasonable advance notice, not to be less than twenty (20) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the public way, or remove from the public way, any property of the Grantee when lawfully required by the Grantor by reason of traffic conditions, public safety,

street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Grantor.

The Grantee may abandon its property with the approval of the Grantor. If the Grantee abandons its property, the public way shall be restored in accordance with Section 3.3.

If public funds are available to any person using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, the Grantor shall make applications for such funds on behalf of the Grantee.

112.03.5 SAFETY REQUIREMENTS. Construction, installation, and maintenance of the system shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the service area.

112.03.6 UNDERGROUND AND OVERGROUND INSTALLATION REQUIREMENTS.

1. Pole Agreements. 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 Grantor'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.
2. Grantee's Poles. The Grantee shall have the right to erect, install, and maintain its own towers, poles, guys, anchors, underground conduits, and manholes as may be necessary for the proper construction and maintenance of the antenna site, headend, and distribution system, providing that the Grantee has at the worksite the necessary Grantor permit(s) or copy thereof, for scheduled work, obtained in advance from the appropriate Department of the Grantor.
3. Rent of Grantee's Poles. The Grantee shall have the right to establish terms, conditions, and specifications governing the form, type, size, quantity, and location of equipment of others on its poles, and shall have the further right to charge a fair rental for attachment space or spaces occupied by the said equipment and plant of others except that no rent shall be paid by the Grantor for its attachment to Grantee's poles. The Grantor shall pay any costs incurred by the Grantee in providing space for the Grantor's attachments, including any necessary rearrangements of the Grantee's equipment and plant to provide room for Grantor's attachments. Upon expiration, termination or revocation of a franchise, or should a Grantee wish to dispose of any of its poles, conduit or manholes, being used by the Grantor, the Grantor shall have the option to purchase them in place for their fair market value.
4. Underground Facilities. In those areas of the City where transmission or distribution facilities of both telephone and power companies are underground or hereafter may be placed underground, the Grantee shall likewise construct, operate, and maintain all of its transmission and distribution facilities underground to the maximum extent the then existing technology permits, in accordance with the most recent National Electrical Code, and its successor document, as well as in conformance with all generally applicable state and municipal ordinances and codes. If and when necessary, amplifiers and/or transformers in the Grantee's transmission and distribution lines shall be in appropriate housings on the surface of the ground. The Grantee shall obtain a permit from the Grantor for such underground

construction of all work required or pursuant to this section. Even when not required, underground installation is preferable to the placing of additional poles.

5. Compliance To Codes. All transmission and distribution structures, lines, and equipment erected by the Grantee in the City shall be located so as not to endanger or interfere with the normal use of streets, alleys, or other public ways and places so as to cause minimum interference with the rights or reasonable convenience of the general public and adjoining property owners and so as not to interfere with existing public utility installations and so as to comply with the most recent National Electrical Code, as amended, as well as in conformance with all applicable state and municipal ordinances and codes of general applicability.

In the case of any disturbance by the Grantee or its equipment of pavement, sidewalks, driveway, lawn, or other surfacing the Grantee shall, at its expense and in the manner required by the Grantor, promptly replace and restore all such surfacing to its prior or better condition.

The construction, installation, operation, maintenance, and/or removal of the Cable Communications System shall meet all of the following safety, construction, and technical specifications and codes and standards:

- \* Occupational Safety and Health Administration Regulations (OSHA)
- \* National Electric Code
- \* National Electric Safety Code
- \* All Federal, State and Municipal Construction Requirements, including FCC Rules and Regulations
- \* All Building and Zoning Codes, and All Land Use Restrictions as the Same Exist or may be Amended Hereafter
- \* City Standard Specifications

6. Interference With Other Utilities. The Grantee shall not place poles, conduits, or other fixtures above or below ground where the same shall interfere with any prior placement of gas, electric, telephone fixtures, water hydrant, or other utilities, and all such poles, conduits, or other fixtures above or below ground shall be so placed as to comply with all the requirements of the Grantor.
7. Moving Permits. The Grantee shall, on request of any persons holding a moving permit issued by the Grantor, temporarily move its wires or fixtures to permit the moving of buildings. The expense of such temporary removal shall be paid in advance by the person requesting the same, and the Grantee shall be given not less than ten (10) working days advance notice to arrange for such temporary changes.
8. Authority To Trim Trees. The Grantee shall have the authority under the supervision and direction of the Grantor to trim trees or other natural growth overhanging any of its Cable System in the street or alley right-of-way so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. The Grantee shall reasonably compensate the Grantor for any damages caused by such trimming, or shall at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the system undertaken by the Grantee, with all compensation or replacement approved by the Grantor.
9. Underground Construction. Grantee shall provide location of underground lines and equipment to prevent damage of said lines and equipment upon request by all parties performing underground construction or excavation as required by state law. Grantee shall participate in and use Iowa One Call or any successor or alternate similar agency.
10. Temporary Drops. Temporary drops will be buried within forty-five (45) days of installation, weather permitting. In the event that the Grantee fails to bury said drops within forty-five (45) days, the Grantor shall notify the Grantee of violation of this section in accordance with the Enforcement and

Termination of Franchise section in the Franchise Agreement. All subscriber drops and house drops that are located underground shall comply with National Electrical Code (NEC) standards, six (6) inches or more. In the event that the Grantee fails to bury any cable drops, within the forty-five (45) day period, the Grantee shall provide basic and expanded basic cable service without charge to the affected cable subscriber from the last date that the drop was to have been buried to the actual date that it is buried.

11. Closing of Streets. The Grantee shall not be entitled to damages from the Grantor sustained by the virtue of the closing, vacation, or relocation of any streets or alleys.
12. Private Easements. No cable, line, wire, amplifier, converter or other piece of equipments owned by the Grantee shall be installed by the Grantee within private easements without first securing the written permission of the owner, lessee or tenant of the property involved.

#### 112.03.7 EXTENSION OF SERVICE.

1. Service Area. Grantee shall offer cable television service to all residents of the City which are located in the corporate limits of the City of West Burlington on the effective date of the Franchise, subject to the conditions outlined in parts B and C of Section 3.7. Grantee shall, at its expense and within one year of annexation, extend service to newly annexed areas to the City not then served by a Cable System where the average density is at least thirty (30) dwelling units per lineal mile of proposed trunk and feeder cable route. For purposes of this section of the ordinance, mile measurements shall originate from drop point of the last subscriber closest to the potential new subscriber area.
2. Extensions of Service. The Grantee shall, at its expense, promptly extend its system to have service available to all residents of:
  - A. The corporate limits of the City of West Burlington and newly annexed areas to the City, not then served by a Cable System, where the average density is at least eight (8) potential subscribers per lineal one quarter (1/4) mile of proposed trunk and feeder cable route.
  - B. Any new single family dwelling unit, multiple family dwelling unit, other residential unit, commercial establishment, or potential subscriber within two hundred (200) feet of existing distribution system in the City, upon request of the potential subscriber.
3. Customer Charges For Extensions of Service. No customer shall be refused service arbitrarily. However, for unusual circumstances, such as (1) a customer's request to locate their cable drop underground, (2) existence of more than 150 feet of distance from distribution cable to the connection point of service to the customers, or a (3) density of less than eight (8) residences per 1320 cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and the customers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals eight (8) residences. Customers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential customers be paid in advance.

112.03.8 SERVICE TO PUBLIC BUILDINGS. The Grantee shall upon request, provide without charge, one outlet of basic service and expanded basic service to those public buildings which shall include, but are not limited to, the following locations:

1. West Burlington City Hall
2. West Burlington Fire Stations
3. West Burlington Police Station
4. West Burlington Public Works Building
5. West Burlington School Administration Building
6. West Burlington Arnold High School
7. West Burlington Elementary School

The outlets shall not be used to distribute or sell services in or throughout such buildings. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. If additional outlets are provided to such buildings, the building owner shall pay the usual installation fees and service costs associated there with, including, but not limited to, labor and materials.

112.03.9 CUSTOMER SERVICE STANDARDS - FCC MODEL. Grantee agrees to adhere to the FCC's customer service standards. A copy of such standards effective as of the date of the passage of this Ordinance is attached as Appendix "A."

112.03.10 DEPOSITS. The Grantee shall bear interest at the current lending rate on any subscriber deposit.

112.03.11 SUBSCRIBERS ANTENNAS. The Grantee shall not require the removal, or offer to remove or provide any inducements for removal of any potential or existing subscriber's antenna as a condition of provision of service. This provision shall not apply to satellite earth station antennas.

112.03.12 DISCONNECTION. There shall be no charge for a total disconnection of cable service. 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 ten (10) days advance written notice of the intention to disconnect. After disconnection, upon payment of any required delinquent fee or reconnection charge, the Grantee shall reinstate the subscriber's service. This section shall only apply to total disconnection of service and will not apply to a downgrade of the level of service.

112.03.13 RECONNECTIONS. Grantee shall restore service to customers wishing restoration of service provided customer shall first satisfy any previous obligations owed.

112.03.14 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 paid to the customer within thirty (30) days from the date of termination of service.

112.03.15 TERMINATION OF SERVICE. Within 30 days of termination of service to any subscriber for any reason, the Grantee may, upon the subscriber's written request, promptly remove all its aerial facilities and equipment from the subscriber's premises, pursuant to FCC rules and regulations.

112.03.16 NOTIFICATION TO GRANTOR OF SERVICE INTERRUPTIONS. Except for interruptions associated with an upgrade of the cable system, the Grantee shall promptly notify the Grantor, 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" shall mean any interruption of audio or video on four (4) or more channels a duration of at least one (1) hour to at least five (5) percent of the subscribers.

112.03.17 SUBSCRIBER CREDIT FOR SERVICE INTERRUPTIONS. Upon service interruption of subscriber's cable service, the following shall apply:

1. For service interruptions of over four (4) hours and up to seven (7) days, the Grantee shall provide, at the subscriber request, a credit of one-thirtieth (1/30) of one month's fees for affected services for each four (4) hour period service is interrupted.
2. For interruptions of one (1) or more channels of seven (7) days or more in one month, the Grantee shall provide, at the subscriber's request, a full month's credit for affected services.

112.03.18 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, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the Cable System. A written log capable of access and reproduction shall be maintained for all service interruptions and requests for cable service as required by this Ordinance.

112.03.19 REFUNDS TO SUBSCRIBERS

1. If the Grantee fails to provide any material service requested by a subscriber in accordance with the current FCC standards, the Grantee shall, after adequate notification and being afforded the opportunity to provide the service, promptly refund all deposits or advance charges paid for the service in question by the subscriber.
2. If any subscriber terminates for any other reason, the Grantee shall refund the unused portion of any prepaid subscriber service fee on a daily pro rata basis. The term commercial and bulk multiple dwelling unit agreements shall be excluded from this provision.
3. Any disputes arising under this section shall be finally resolved in accordance with Section 6.5 of this Ordinance.

112.03.20 CHANNEL CARD. The Grantee shall prepare and make available at no charge to the subscribers, an accurate and up-to-date channel card listing the cable channels and services available over the Cable System. The channel guide shall be distributed to every new subscriber, and within thirty (30) days after a change or addition in channels or services offered affecting two (2) or more channels, via a newspaper of record, direct mail, or bill stuffer.

112.03.21 CUSTOMER HANDBOOK. Grantee shall provide written customer policies or a handbook to all new subscribers and, thereafter, upon request. Grantee's written customer policies or handbook shall, at a minimum, comply with all notice requirements promulgated by the FCC. If Grantee's operating rules are changed, subscribers shall be notified in a timely manner.

112.03.22 SUBSCRIBER PRIVACY. The Grantee shall be constantly alert to possible abuses of the right of privacy or other legal rights of any subscriber, programmer, or general citizen resulting from any device or signal associated with the cable system.

The Grantee shall abide by current Federal law and FCC regulations and Section 631 of the Cable Act regarding protection of subscriber privacy.

112.03.23 DISCRIMINATORY OR PREFERENTIAL PRACTICES. The Grantee shall not, in making available the services or facilities of its Cable System, or in its rules or regulations, or in any other manner, make or grant preferences or advantages to any subscriber or potential subscriber, or to any user or potential user, and shall not subject any person to any prejudice or disadvantage, based on their race, color, national origin or gender. This provision shall not prohibit promotional campaigns to stimulate subscriptions to the Cable System or other legitimate uses thereof, nor the establishment of a graduated scale of charges and classified rate schedules to which any subscriber coming within such classification shall be entitled.

112.03.24 IDENTIFICATION OF EMPLOYEES. Every employee of the Grantee shall be clearly identified by an identification card, badge or uniform shirt. All employees of Grantee shall display proper identification upon request of a subscriber, provided that the Grantor requires all utilities operating in the City to do the same. Every vehicle of the Grantee shall be clearly marked by logo or decals.

112.03.25 SPECIAL PROVISIONS - BILLING PROCEDURES

1. The Grantee shall provide to the City a comprehensive list of commercial account rate schedules, the standard form commercial and bulk agreements, and all applicable phone numbers for complaints and contacts with Grantee. The cable operator shall seek the comments and suggestions of the City on such things as rates, service standards and programming for commercial accounts. Commercial accounts shall receive equal service standards as residential customers.
2. Subscribers shall be given no less than twenty (20) days to make payment without penalty from the date of the receipt of the invoice for cable service. Grantee shall charge a reasonable late fee on delinquent subscriber accounts based on Grantee costs. Such fees may be waived on an individual basis at the subscriber's request.

112.04.1 ALL CHANNELS EMERGENCY ALERT. The Grantee shall, in the case of any emergency or disaster, make its entire Cable System available without charge to the Grantor or to any other governmental or civil defense agency that the Grantor shall designate. The Cable System shall be engineered to provide an audio alert system to allow authorized officials to automatically override the audio signal on all channels and transmit and report emergency information pursuant to FCC regulations. 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 Franchising Authority, including, but not limited to, reasonable attorney's fees and costs, provided that the emergency alert system is in good repair and is operational as required by FCC regulations and the Franchise Agreement. The Grantee will install and maintain a back-up generator at its headend that will provide the needed power to generate the headend in the event of a power outage. The Grantor shall cooperate with the City of Burlington and all other Des Moines County officials to activate the emergency alert system.

112.04.2 SWITCHING DEVICE. The Grantee, upon request from any subscriber, shall install at a reasonable charge a switching device to permit a subscriber to continue to utilize the subscriber's television antenna. The Grantee shall not require the removal, or offer to remove, any subscriber's antenna lead-in wire.

112.04.3 PARENTAL CONTROL DEVICES. Upon request, and within thirty (30) days, Grantee shall provide at a reasonable charge to subscribers, parental control devices that allow any channel or channels to be locked out. Such devices shall block both the video and the 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.

112.04.4 ACCESS EQUIPMENT AND FACILITIES FEES. If authorized by the Grantor, and after sixty (60) days notice from the Grantor to the Grantee, the Grantor shall provide ongoing support for public,

educational, and governmental access equipment and facilities in the amount of not to exceed fifty cents (\$.50) per subscriber per month for the entire term of this Franchise. The access equipment and facilities fee paid by the Grantee to the Grantor shall be payable in the same manner as the franchise fee payment pursuant to Section 5.1 hereof. The Grantor acknowledges that this amount shall not be considered gross revenues subject of the payment of franchise fees pursuant to Section 5.1 hereof. Furthermore, payments of this ongoing support shall not be deemed to be “franchise fees” within the meaning of Section 622 of the Cable Act and such payment shall not be deemed to be “payments-in-kind” or any involuntary payments chargeable against the compensation to be paid to the Grantor by Grantee pursuant to Section 5.1 hereof. The Grantee shall be allowed to collect such fee as a pass through to cable subscribers. The fee shall be revised on an annual basis in accordance with the consumer price index (CPI).

112.04.5 LEASED ACCESS CHANNELS. The Grantee shall make a portion of the remaining unused channels available for lease to any organization, group, or individual on a first-come, first-served basis as provided in this Ordinance and as required by Section 612 of the Cable Act, as amended. At least (1) channel must be available for lease on a part-time basis. The Grantee cannot exercise program controls over leased channels but may adopt rules governing the leasing of channel space which: (1) provides for access on a first-come, non-discriminatory basis; (b) prohibits the presentation of obscene or indecent matter; (c) requires sponsorship identification; (d) permits public inspection of the record of the names and addresses of all persons or groups requesting time, which record shall be retained for a period of at least two (2) years.

112.04.6 INTERFERENCE. The Grantee's system shall be designed, engineered, and maintained so as not to interfere with the television and radio reception of residents of the City who are not subscribers on the Cable System. Grantor's radio and communications systems shall be designed, engineered, and maintained so as not to intentionally interfere with the Grantee's subscribers on the Cable System.

112.04.7 ADDITIONAL SERVICES. The Grantee is encouraged to make available such additional video, audio, radio, digital, point-to-point service, and other services as are requested by subscribers and programmers who are willing to pay for such services, provided that such services are technologically and economically feasible. If no applicable rate exists when such a service is requested, the rate change procedures established in Section 5.2(1) shall be followed. Should a dispute arise over any matter regarding additional services, the dispute may be resolved in accordance with the provisions of this Ordinance relating to methods of resolving disputes. Nothing in this section shall preclude the offering of such new service on a temporary or experimental basis.

112.04.8 TECHNICAL STANDARDS. The Grantee shall provide, as part of its cable television service, the signal of all television broadcast signals consistent with the rules and regulations of the FCC and all other applicable laws, rules, or regulations of the FCC and all other applicable laws, rules or regulations.

1. Methods of construction, installation, and maintenance of the cable television system shall comply with the most recent National Electrical Code to the extent that such Code is consistent with local law affecting the construction, installation, maintenance of electric supply and communications lines. To the extent that such Code is inconsistent with other provisions of this franchise or with local law, the latter shall govern. The Grantee must obtain all necessary construction or excavation permits in advance from the Grantor.
2. Installation and physical dimensions of any tower constructed for use in the cable television system shall comply with all appropriate Federal Aviation Agency regulations.
3. Any antenna structure or tower used in the cable system shall comply with all appropriate local, state, and federal regulations.

4. All working facilities and conditions used during construction, installation, and maintenance of the cable system shall comply with the standards of the Occupational Safety and Health Administration.
5. Unless it is beyond the knowledge of the Grantee, the Grantee shall notify the Franchising Authority at least thirty (30) days prior to, or as soon as it is known by the Grantee, of any of the following changes:
  - A. Addition to, deletion of, or change in received channel.
  - B. Addition to, deletion of, or change in distributed channel or in channel conversion.
  - C. Change in location of headend or antenna sites.
  - D. Interconnection with other cable systems.
6. The Cable System permitted to be operated hereunder shall be maintained and operated in conformance with FCC rules and regulations as listed in Appendix B. Any FCC technical standards or guidelines related to the cable system and facilities shall be deemed to be regulations under this Franchise. At such time as the FCC does not regulate technical standards, Grantee will continue to comply with the FCC standards which were effective prior to such discontinuance of regulation by the FCC.

112.04.9 FILING OF MAPS. Upon request of the Grantor, the Grantee shall file with the Grantor strand maps, showing the location of all property and facilities of the Grantee within the City. All such maps shall be considered confidential and proprietary, if marked as such by the Grantee.

112.05.1 FRANCHISE FEE.

1. Franchise Fee Payment. In consideration for the use of the streets and public ways of the City for the construction, operation, maintenance, and reconstruction of a system within the City, the Grantee shall pay to the Grantor an annual amount equal to three (3) percent of the Grantee's Gross Revenues as defined in Section 1.1 of this Ordinance. This includes, but is not limited to, all subscriber payments, installation fees, converter boxes, local advertising, leased access channels, and pay-per-view.  
  
This amount shall not include any taxes on cable service which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency and which are collected by the Grantee on behalf of such governmental unit or agency.
2. Quarterly Payments. Payment due to the Grantor under this provision shall be made quarterly at the City Clerk's office not later than thirty (30) days following March 31, June 30, September 30 and December 31 of each year. Any fee not paid when due shall bear interest at a rate of one and one-half percent (1 ½%) per month from the date due. Each payment shall be accompanied with a detailed report, as shown in Exhibit C, showing the basis for the computation, specific income categories, and such other relevant facts as may be required by the Grantor necessary to determine the accuracy of the franchise payment as specified in Section 5.01-3 of this Ordinance. The acceptance of any payment shall not be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for additional sums payable by the Grantee. All amounts paid shall be subject to audit and recompilation by the Grantor.
3. Franchise Fee Audit. The Grantee will fully cooperate with a franchise fee audit performed by a professional firm that is chosen by the Grantor. The costs associated with the audit will be paid for by the Grantor, provided that the Grantee shall pay for the costs if the audit shows an underpayment of franchise fees in excess of five percent (5%) or more.
4. Franchise Fee Increases/Decreases. The Grantor may request an increase or decrease in franchise fees at any time during the term of the franchise, equal to the maximum allowed by federal law. However, such request shall be made in writing and the Grantee will not be liable for said increase until proper

notice, as defined by federal law, is given to its subscriber. Prior to making a final decision regarding an increase in franchise fees, the Grantor shall conduct a public hearing and shall grant an opportunity to the Grantee to discuss the proposed increase in franchise fee.

5. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be seven years from the date on which payment by the Grantee is due. Unless within seven years from and after such payment due date the Franchising Authority initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, such recovery shall be barred and the Franchising Authority shall be estopped from asserting any claims whatsoever against the Grantee relating to any such alleged deficiencies.
6. Review of Records. The Grantee agrees to permit the City, upon request and with reasonable notice, to review at Grantee's local office its Gross Revenue records, as may be necessary to monitor compliance with Section 5.1 of this Ordinance.

#### 112.05.2 RATES AND CHARGES.

1. The Franchising Authority may regulate rates for the provision of cable services and equipment as permitted by the Telecommunications Act of 1996, as amended, and applicable law.
2. Any rate adjustments shall be filed with the City Clerk not later than 30 days prior to the implementation of the adjustment.

112.05.3 FRANCHISE RENEWAL. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

112.05.4 CONDITIONS OF SALE If a renewal or extension of the Grantee's franchise is denied or the franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another person, any such acquisition or transfer shall be at a price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, at the Grantee's request, which shall be made in its sole discretion, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its system to a qualified third party. The Franchising Authority further agrees that during such a period of time, it shall authorize the Grantee to continue to operate pursuant to the terms of its prior Franchise, however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its System which is reasonable acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that the Grantee's continued operation of its System during the six month period shall not be deemed to be a waiver, not an extinguishment of any rights of either the Franchising Authority or the Grantee.

#### 112.05.5 TRANSFER OF FRANCHISE

1. Transfer of Franchise. This franchise shall be considered a privilege to be held for the benefit of the public. This franchise cannot, in any event, be sold, transferred, leased, assigned or disposed of,

including, but not limited to, by forced or voluntary sale, except to entity controlling, controlled by or under common control with the Grantee, without the prior written consent of the Franchising Authority. Such consent as required by the Franchising Authority, shall be given or denied no later than one hundred twenty (120) days following any request and shall not be unreasonably withheld. Prior consent shall not be required when transferring the franchise between wholly-owned subsidiaries of the same entity. Nor shall such consent be required for a transfer in trust, by mortgage, by other hypothecation, or assignment of any rights, title, or interest of the Grantee in the Cable System in order to secure indebtedness.

2. Ownership or control. In the event that the Grantee sells or otherwise transfers ownership in the Cable System, such sale or transfer shall conform with Section 617 of the Cable Act
3. Transfer to Mediacom Communications Corporation. The Grantee shall not be required to request consent to transfer this franchise to Mediacom Communications Corporation or a subsidiary thereof.

112.05.6 RIGHT OF INSPECTION OF CONSTRUCTION. The Grantor shall have the right to visually inspect all construction or installation work performed subject to the provisions of this Ordinance and to make such visual inspections as it shall find necessary to ensure compliance with the terms of this Ordinance and other pertinent provision of law.

112.05.7 NEW DEVELOPMENTS. The Grantee is encouraged to upgrade its facilities, equipment, and service so that its Cable System is as advanced as the current state of production technology will allow. Such new developments shall be a topic of discussion at all review sessions and shall be a factor to be considered in connection with requests for rate adjustments, pursuant to FCC rules and regulations.

112.06.1 TESTING FOR COMPLIANCE. The Grantee shall meet or exceed all FCC minimum performance and technical standards. The Grantor shall have the right to compel the Grantee to test, analyze, and report on the performance of the Cable System. The Grantor may also employ technically qualified personnel to perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Such tests may be undertaken only after giving the Grantee reasonable notice thereof, not to be less than ten business days, and providing a representative of the Grantee has an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Grantee. In the event that such testing demonstrates that the Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the Franchising Authority. Except in emergency circumstances, the Franchising Authority agrees that such testing shall be undertaken no more than once a year, and that the results thereof shall be made available to the Grantee.

Any special performance tests or measurements required by the Grantor shall be reported to the Grantor within fourteen (14) business days after such test or measurements are performed. Such report shall include the following information: the nature of the complaint which precipitated the special tests; what system component was tested, the equipment used, and procedures employed in said testing; the results of such tests; and the method in which such complaints were resolved. Any other information pertinent to the special test shall be recorded.

112.06.2 BOOKS AND RECORDS. The Franchising Authority or its certified public accountant upon reasonable notice to the Grantee may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be

kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature under state and federal rules of evidence. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide subscriber information in violation of Section 631 of the Cable Act.

112.06.3 COMMUNICATIONS WITH REGULATORY AGENCIES. Copies of all petitions, applications, communications, reports, and all other documents pertaining to the West Burlington Cable System and franchise submitted by the Grantee or its parent companies to the FCC, Securities Exchange Commission, or any other Federal or State regulatory commission or agency shall be made available to the Grantor upon written request to the Grantee.

112.06.4 COMPLAINT RECORDS. A written log or an equivalent stored in computer memory and capable of access and reproduction, shall be maintained for all service interruptions or complaints regarding system service problems. The Grantee shall maintain detailed logs setting forth the date and substance of each service interruption or written complaint regarding the system service problems received by mail or other means during the preceding calendar month, and the date and nature of action taken by the Grantee to respond to such complaints, or, if still pending, the status thereof. Such logs shall be available to the Grantor for review for two years thereafter. A copy of such logs shall be sent to the Grantor upon written request.

112.06.5 CITY ROLE IN COMPLAINTS. Unresolved complaints concerning the system or its operation or maintenance shall be directed to the City Administrator. The City Administrator shall forward the complaint to the Grantee or shall take the question up by correspondence with the Grantee.

The procedure to handle complaints and grievances with respect to subscriber complaints and the quality of services rendered by Grantee equipment malfunctions and other matters shall be as follows:

1. Within 30 days from the occurrence of the facts and circumstances giving rise to a complaint or grievance, the complainant shall state his complaint or grievance to the Grantee in writing. In the event such a complaint or grievance is received by the Grantor, the same shall be forwarded to Grantee in writing.
2. Within ten (10) days from the receipt of a complaint or grievance by Grantee, Grantee shall state to complainant its intentions with respect to the complaint or grievance in writing.
3. Unresolved complaints concerning the system or its operation or maintenance shall be directed to the City Administrator. The City Administrator shall forward the complaint to the Grantee or shall take the question up by correspondence with the Grantee. Within such time as may be prescribed by the City Administrator, the Grantee shall resolve the complaint or advise the City of its refusal or inability to do so. When the Grantee resolves the complaint, it shall so notify the City. If a complaint has not been resolved, the complainant may petition the City to take any appropriate action authorized by this Ordinance.
4. All subscribers shall be notified by provided a method of contacting the Grantor in writing by the Grantee at the time of their initial installation and on monthly bills.
5. Nothing herein shall limit or alter the requirement or requirements contained in this Ordinance for customer service standards as contained in Appendix A.
6. The Grantor shall be notified of action taken to resolve grievances or complaints.

112.06.6 PERFORMANCE TESTING Grantee shall perform all Cable System tests and maintenance procedures as required by the FCC and this Ordinance.

112.06.7 REVIEW SESSIONS

1. Purpose of Review Sessions. In recognition of the fact that a great many technical, financial, marketing and legal uncertainties are associated with all aspects of cable communications at the present time, it is the intent of the City to provide for a maximum feasible degree of flexibility in this franchise throughout its term to achieve an advanced and modern cable system for the City. The principal means for accomplishing this flexibility will be the scheduled review sessions provided for in this Ordinance. It is intended that such review sessions will serve as a means of cooperatively working out solutions to problems that develop. Furthermore, such review sessions shall be two-way processes. For example, if either party has perceived that some major problem has developed, the session shall be devoted primarily to working out solutions acceptable to both parties. The Grantor and Grantee agree that such reviews may be completed with Review Sessions held between the Grantee and the City of Burlington.
2. Topics To Be Covered. The Grantor and the Grantee shall hold scheduled review sessions on the third, sixth, and ninth anniversary dates of the effective date of the franchise agreement. All such review sessions shall be open to the public and notice thereof shall be published once, not less than four (4) days or more than twenty (20) days before each review session, as provided by law. The published notice shall specify the topics to be discussed. The review sessions may be canceled by mutual agreement of the Grantor and Grantee. The following topics may be discussed at every scheduled review session:

Recent and Developing Judicial and Federal Communications Rulings  
 Service Rate Structures  
 Free and Discounted Services  
 Application of New Technology or New Developments  
 Cable System Performance  
 Cable System Extension Policy  
 Services Provided  
 Programming Offered  
 Customer Complaints Review  
 Community Development and Education  
 Interconnection  
 New Services  
 Subscriber privacy abuse issues  
 New developments  
 Franchise Fees

Other topics, in addition to those listed, may be added by either party. Members of the general public may also request additional topics.

3. Review of Current Capabilities During even years of the franchise term, the City may undertake a comparison of the system's then current capabilities with the capabilities of cable systems in communities with demographic and socioeconomic attributes similar to those of the City for the purpose of determining whether or not the existing cable system is technically and technologically adequate to serve the community considering the cost of providing for the cable related needs and interests of subscribers. Grantee shall participate in the review by providing relevant needs and interests of subscribers. Grantee shall participate in the review by providing relevant information on current

technology in the industry. City may undertake such independent inquiry as it deems appropriate, and Grantee shall cooperate fully in that process.

Grantee shall then determine, taking into consideration the present capabilities of the system, the remaining life of the franchise and the nature, extent and cost of additions to the system whether the company can reasonably recoup its investment with a reasonable rate of return. The City may utilize the services of a consultant to gain additional information for use during the review sessions, renewal process and/or rate hearings, mediation and arbitration sessions. The costs of such consultant shall be paid by the City.

112.06.8 REGULATORY RESPONSIBILITY. The Franchise Authority, acting alone or acting jointly with other Franchising Authorities, may exercise or delegate the following responsibilities:

1. Administering the provision of the Cable System franchise(s),
2. Coordinating the operation of Community 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 jointly with the Grantee, or as otherwise specified in the Franchise Agreement, procedures and standards for use of channels dedicated to public use and the sharing of public facilities, if provided for in any Franchise Agreement,
5. Planning the expansion and growth of public benefit cable services,
6. Analyzing the possibility of integrating cable systems with other local, regional or national telecommunications networks.
7. Formulating and recommending long-range telecommunications policy.

112.06.9 ANNUAL REPORT Upon written request from the Grantor and not later than ninety (90) days after the close of the Grantee's fiscal year, the Grantee shall submit a detailed written informative report to the City, including the following information pertaining only to the West Burlington franchise:

1. A summary of the previous year's activities in development of the Cable System, including, but not limited to, services begun or dropped.
2. A detailed revenue statement including a breakdown of all revenue sources upon which the City can verify franchise fee accuracy. The list of revenues shall include but not be limited to, a specific breakdown of the following items: basic tier service charges, expanded basic service charges, installation charges, reconnection fees, advertising revenues, premium channel revenues, shopping service revenue, revenue from other sources such as contracted or subleased video, audio and data transmission services, pay per view, and miscellaneous revenue.
3. A summary of complaints, identifying the number and specific nature of complaints and their disposition.
4. A list of key management for the West Burlington franchise along with their addresses and job titles.
5. The annual report of the parent company, if a public corporation.
6. A summary of types of communication signals and services provided without charge or provided under a barter arrangement along with their dollar equivalent.
7. A written confirmation that insurance coverages are maintained as required in Section 7.02.

The Grantee shall only be required to provide the information listed in this Section upon written request by the Grantor.

112.07.1 INDEMNIFICATION. The Grantee shall defend, indemnify, protect, and hold harmless the Grantor from and against any and all liability, losses, and damage to property or bodily injury or death to any person, including payments made under workmen's compensation laws, which may arise out of or be caused by the erection, construction, replacement, removal, maintenance, or operation of Grantee's Cable System and caused by any act or failure to act on the part of the Grantee, its agents, officers, servants, or employees. The Grantor shall give the Grantee written notice of its obligation to indemnify.

112.07.2 INSURANCE COVERAGE AND NOTIFICATIONS. The Grantee shall maintain insurance in such amounts and kinds of coverages as may be specified by the Grantor in the Franchise Agreement. Such coverages may be reasonably adjusted by the Grantor with ninety (90) day notification, provided that the Grantor demonstrates the need for increases in coverages. The Grantee shall maintain such insurance with insurance underwriters authorized to do business in the State of Iowa. All policies shall name the Grantor, its employees, servants, agents, and officers as additional insured parties. Each policy shall provide that it may not be canceled nor the amount of coverage altered until thirty (30) days after receipt by the City Clerk of a registered mail notice of such intent to cancel or alter coverage. The Grantee shall provide a certificate of insurance designating the Grantor as an additional insured.

The Grantee shall maintain and provide to the City Clerk proof of Public Liability Insurance for not less than the following amounts:

\$2,000,000 - Any 1 Occurrence, Bodily Injury or Property Damage  
 \$2,000,000 - Products/Completed Operations Annual Aggregate Liability  
 \$2,000,000 - General Aggregate

112.07.3 INSURANCE FOR CONTRACTORS AND SUBCONTRACTORS Grantee shall provide coverage for any contractor or subcontractor involved in the construction, installation, maintenance or operation of its Cable System by either obtaining the necessary endorsements to its insurance policies or requiring such contractor or subcontractor to obtain appropriate insurance coverage consistent with this section and appropriate to the extent of its involvement in the construction, installation, maintenance or operation of Grantee's Cable System.

112.07.4 FORECLOSURE A foreclosure or other judicial sale of all or part of the system shall be treated as a change in control of the Grantee and the provision of Section 8.9 of this Ordinance shall apply.

112.07.5 RECEIVERSHIP. The City shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceedings, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or less:

1. Within one hundred twenty (120) days after being elected or appointed, such receiver or trustee shall have fully complied with all provisions of this Ordinance and remedied all defaults thereunder; and
2. Shall have executed an agreement, approved by the court having jurisdiction, whereby such receiver or trustee agrees to be bound by this Ordinance and the franchise granted to the Grantee.

112.07.6 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 Cable System, or the Franchising Authority 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 for 6 months. In the event of a change of Grantee, or in the event a new operator acquires the Cable System, the original Grantee shall cooperate with the Franchising Authority, 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 Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

2. Right of Franchising Authority to operate Cable System. In the event Grantee fails to operate the system for seven (7) consecutive days without prior approval of the Franchising Authority or without just cause, the Franchising Authority 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 Franchising Authority or a permanent operator is selected. If the Franchising Authority is required to fulfill this obligation for the Grantee, then during such period as the Franchising Authority fulfills such obligation, the Franchising Authority shall be reimbursed by the Grantee for all reasonable costs or damages that are the result of the Grantee's failure to perform. The Grantee shall also pay the Grantor a reasonable management fee to operate the cable system during such time.

#### 112.07.7 FRANCHISE PROCESSING COSTS

1. New Franchises. For a new franchise awarded, the costs to be borne by the Grantee shall include, but shall not be limited to, all costs of publication of notices prior to any public meeting, publication of relevant ordinances and franchise agreements, incurred by the Franchising Authority.
2. Franchise Renewal. For a franchise renewal, the Grantee shall reimburse the Franchising Authority cost of publication of notices, publication of relevant ordinances and franchise agreements.
3. Franchise Transfer. For a franchise transfer, the transferee shall reimburse the Franchising Authority the cost of publication of notices, publication of relevant ordinances and franchise agreements. The Franchising Authority reserves the right to withhold approval of such transfer until all costs have been reimbursed by the transferee. The Grantee shall reimburse the City for city attorney fees incurred by the City for the franchise transfer process not to exceed \$2,500.00.
4. 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 Franchising Authority under any other ordinance of general applicability.

112.07.8 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.

112.08.1 NOTICE OF VIOLATION. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

112.08.2 GRANTEE'S RIGHT TO CURE OR RESPOND. The Grantee shall have 30 days from receipt of the notice described in Section 8.1: (a) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

112.08.3 PUBLIC HEARING. In the event that the Grantee fails to respond to the notice described in Section 8.1 pursuant to the procedures set forth in Section 8.2, or in the event that the alleged default is not remedied within 30 days or the date projected pursuant to 8.2 above, the Franchising Authority shall schedule a public hearing to investigate the default. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting no less than five business days in advance and provide the Grantee with an opportunity to be heard.

112.08.4 ENFORCEMENT. In the event the Franchising Authority, after such public hearing, determines that the Grantee is in default of any provision of the franchise, the Franchising Authority, subject to applicable Federal law, may:

1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;
2. Commence an action at law for monetary damages or seek other equitable relief; or
3. In the case of a substantial default of a material provision of the franchise, declare the Franchise Agreement to be revoked in accordance with the procedures outlined in this section.

The Franchising Authority shall give written notice to the Grantee of its intent to revoke the franchise on the basis of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have 30 days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response satisfactory from the Grantee, it may then seek termination of the franchise at a public meeting. The Franchising Authority shall cause to be served upon the Grantee, at least five (5) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to request such termination.

At the designated hearing, Grantee shall be a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultant of the Franchising Authority, to compel the testimony of other persons as permitted by law, and to question witness. A complete verbatim record and transcript shall be made of such hearings.

Following the hearing, the Franchising Authority shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination of the Franchising Authority to an appropriate court. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within thirty (30) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the franchise in lieu of revocation of the franchise.

112.08.5 RESERVATION OF RIGHTS. The Grantee shall not be relieved of its obligation to comply with this Ordinance by reason of the Grantor's failure to enforce prompt compliance.

112.08.6 IMPOSSIBILITY OF PERFORMANCE. The Grantee shall not be held in default or noncompliance with the provisions of the franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by the following circumstances if reasonably beyond its control:

- (1) Necessary utility rearrangements, pole change-outs or obtainment of easement rights,
- (2) Governmental or regulatory restrictions,
- (3) Lockouts,

- (4) War,
- (5) National emergencies,
- (6) Fire,
- (7) Acts of God,
- (8) Strikes.

#### 112.08.7 TERMINATION OF FRANCHISE

1. Grounds for Revocation. The Grantor reserves the right to revoke any franchise and rescind all rights and privileges associated with the franchise in the following circumstances:
  - \*If the Grantee should default in the performance of any of its material obligations under this Ordinance or the franchise and fails to cure the default within sixty (60) days after receipt of written notice of the default from the Grantor, or such longer time as specified by the Grantor.
  - \*If a petition is filed by or against the Grantee under the Bankruptcy Act or any other insolvency or creditors' rights law, state or federal, and the Grantee shall fail to have it dismissed.
  - \*If a receiver, trustee or liquidator of the Grantee is applied for or appointed for all or part of the Grantee's assets.
  - \*If the Grantee makes an assignment for the benefit of creditors.
  - \*If the Grantee violates any order or ruling of any State or Federal regulatory body having jurisdiction over the Grantee, unless the Grantee or any party similarly affected is lawfully contesting the legality or applicability of such order or ruling and has received a stay from a Court of appropriate jurisdiction.
  - \*If the Grantee evades any of the provisions of this Ordinance or the Franchise Agreement.
  - \*If the Grantee practices any intentional fraud or deceit upon the Grantor or cable subscribers.
  - \*If the Grantee materially misrepresents facts in the application for a franchise.
  - \*If the Grantee ceases to provide services over the cable system for seven (7) consecutive days for any reason within the control of the Grantee.
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 equipment and appliances, without affecting the electric or telephone cables, wires or attachments. The Grantor shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal. Liability insurance indemnity provided in Section 7.02 and the performance bond in Section 8.09 shall continue in full force and effect during the period of removal.
3. Reimbursement of Costs Pursuant to Subsections 1 and 2 of this Section. In the event of a failure by the Grantee to complete any work as required above or any work required by law or ordinance within the time established and to the satisfaction of the Grantor, the City may cause such work to be done and the Grantee shall reimburse the Grantor the costs thereof within thirty (30) days after receipt of an itemized list of such costs or the Grantor may recover such costs as provided in Section 8.08.

112.08.10 VIOLATIONS AND PENALTIES. If the Grantee fails to comply with the requirements of this cable franchise regulatory ordinance, and a cable franchise agreement, then the City may invoke and secure compliance in accordance to the extent expressly authorized by Section 364.22 of the Code of Iowa.

112.09.1 ACTIONS OF PARTIES. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

112.09.2 EQUAL PROTECTION. In the event the Franchising Authority enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than the Grantee to enter into the Franchising Authority's streets and public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

112.09.3 NOTICES. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party five business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by certified or registered mail, postage prepaid.

112.09.4 DESCRIPTIVE HEADINGS. The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

112.09.5 SEVERABILITY. If any section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the franchise, or any renewal or renewals thereof. In the event that the Federal Communications Commission declared any section invalid, then such section or sections may be renegotiated by the Franchising Authority and the Grantee.

112.09.6 WAIVER OR EXEMPTION. The Franchising Authority reserves the right to waive provisions of this ordinance or exempt all Grantees from meeting provisions of this ordinance, if the Franchising Authority determines such waiver or exemption is in the public interest.

112.09.7 EFFECTIVE DATE. This Ordinance shall be effective upon the passage, approval and publication as provided by law.

112.09.8 CONFLICTING ORDINANCES REPEALED. All ordinances or part of ordinances in conflict herewith, including, but not limited to, ordinances, are hereby repealed to the extent of any such conflict.

