

**CHAPTER 113**  
**CABLE TELEVISION FRANCHISE AND**  
**REGULATIONS**

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

1. "Affiliate" means an entity which owns or controls, is owned or controlled by or is under common ownership with the Grantee.
2. "Basic cable service" means the tier of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.
3. "Basic revenues" means the monthly cable service revenues received by the Grantee from subscribers for basic cable service on an annual basis; provided, however, such phrase does not include: (i) revenues received from national advertising carried on the cable system; (ii) 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.
4. "Cable Act" means the Cable Communications Policy Act of 1984, as amended.
5. "Cable service" means: (i) the one-way transmission to subscribers of video programming or other programming service; and (ii) subscriber interaction, if any, which is required for the selection of such video programming or any other lawful communications service.
6. "Cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment or other communications equipment that is designed to provide cable service and other service to subscribers.
7. "FCC" means Federal Communications Commission or successor governmental entity thereto.
8. "Franchise" means the initial authorization or renewal thereof issued by the City whether such authorization is designated as a franchise, permit, license,

resolution, contract, certificate or otherwise, which authorizes construction and operation of the cable system for the purpose of offering cable service or other service to subscribers.

9. “Grantee” means Heritage Cablevision, Inc., d/b/a TCI OF CENTRAL IOWA, or the lawful successor, transferee or assignee thereof.

10. “Gross revenues” means the monthly cable service revenues received by the Grantee from subscribers of the cable system; provided, however, such phrase does not include: (i) revenues received from national advertising carried on the cable system; (ii) 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.

11. “Person” means an individual, partnership, association, joint stock company, trust corporation or governmental entity.

12. “Right-of-way” means the surface of, and the space above and below that portion of the City’s public street system that is not improved for vehicular or pedestrian travel.

13. “Service area” means the present municipal boundaries of the City and includes any additions thereto by annexation or other legal means.

14. “Service tier” means a category of cable service or other services provided by Grantee and for which a separate charge is made by the Grantee.

15. “Subscriber” means a person or user of the cable system who lawfully receives cable services or other service therefrom with the Grantee’s express permission.

16. “Video programming” means programming provided by or generally considered comparable to programming provided by a television broadcast station.

**113.02 GRANT.** The City hereby grants to the Grantee a nonexclusive franchise which authorizes the Grantee to construct and operate a cable system and offer cable service and other services in, along, among, upon, across, above, over, under or in any manner connected with right-of-ways within the service area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across or along any right-of-way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other related property or equipment as may be necessary or appurtenant to the cable system.

**113.03 TERM.** The franchise granted pursuant to the ordinance codified in this chapter shall be for an initial term of fifteen (15) years from the effective date of the franchise, unless otherwise lawfully terminated in accordance with the terms of this chapter.<sup>†</sup>

**113.04 EQUAL PROTECTION.** In the event the City 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 City’s streets and right-of-ways for the purpose of

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<sup>†</sup> **EDITOR’S NOTE:** Ordinance No. 450, adopting a cable television franchise for the City, was passed and adopted in 1994.

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.

**113.05 INTERGOVERNMENTAL AGREEMENT.** The City may enter into an intergovernmental agreement with one or more other municipalities for joint administration of the franchise with the Grantee. The Grantee shall not provide cable service in Metro Des Moines, Iowa, at a charge or rate less than to the City's service area and the cable service provided in such service area shall be comparable to that provided other service areas in Metro Des Moines.

**113.06 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 so located as to cause minimum interference with the proper use of rights-of-way, and with the rights and reasonable convenience of property owners who own property which adjoins any of said rights-of-way.

**113.07 RESTORATION OF RIGHTS-OF-WAY.** If during the course of Grantee's construction, operation or maintenance of the cable system there occurs a disturbance of any right-of-way by the Grantee, the Grantee shall, at its own expense, replace and restore such right-of-way to a condition reasonably comparable to the condition of the right-of-way existing immediately prior to such disturbance.

**113.08 RELOCATION AT REQUEST OF CITY.** Upon its receipt of reasonable advance notice, not to be less than five (5) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the right-of-way, or remove from the right-of-way any property of the Grantee when lawfully required by the City 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 City; but the Grantee shall in all cases have the right of abandonment of its underground property.

**113.09 RELOCATION AT REQUEST OF THIRD PARTY.** The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings, provided: (a) the expense of such temporary raising or lowering of the wires is paid by the person requesting the same, including, if required by the Grantee making such payment in advance; and (b) the Grantee is given not less than ten (10) business days' advance notice to arrange for such temporary wire changes.

**113.10 TRIMMING OF TREES AND SHRUBBERY.** The Grantee shall have the authority to trim trees and other natural growth overhanging any of its cable system in the service area so as to prevent the branches of the trees from coming in contact with the Grantee's wires, cables and other equipment.

**113.11 SAFETY REQUIREMENTS.** Construction, installation and maintenance of the cable 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. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the service area.

**113.12 AERIAL AND UNDERGROUND CONSTRUCTION.** In those areas of the service area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee shall likewise, if requested by the City, construct, operate and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the cable system's signal quality.

**113.13 REQUIRED EXTENSIONS OF SERVICE.** The Grantee states that its cable system is in good and proper condition as of the date of granting of the franchise. The Grantee is authorized to extend the cable system as necessary, as desirable or as required pursuant to the terms hereof within the service area. Whenever the Grantee receives a request for service from at least fifteen (15) subscribers within 1,320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its cable system to such subscribers at no cost to said subscribers for system extension, other than the usual connection fees for all subscribers, provided that such extension is technically feasible.

**113.14 SERVICE TO PUBLIC BUILDINGS.** The Grantee shall provide without charge one outlet of basic service to the City's office building(s), fire station(s), police station(s) and public school building(s) that are passed by its cable system. The outlets of basic cable service shall not be used to distribute or sell cable services in or throughout such buildings, nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold 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. Notwithstanding anything to the contrary set forth in this section, the Grantee shall not be required to provide an outlet to such public buildings where the drop line from the feeder cable to said buildings or premises exceeds 150 cable feet, unless it is technically feasible and so long as it will not adversely affect the operation, financial condition or market development of the cable system to do so, or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet. In the event that additional outlets of basic cable service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials.

**113.15 FRANCHISE FEE.** The Grantee shall pay to the City a franchise fee equal to one percent (1%) of basic revenues (as defined in Section 113.01 of this chapter) received by the Grantee from the operation of the cable system on a quarterly basis. Beginning January 1, 1995, the Grantee shall pay to the City a franchise fee equal to one percent of gross revenues (as defined in Section 113.01) received by the Grantee from the operation of the cable system on a quarterly basis. The franchise fee payment shall be due and payable sixty (60) days after the close of the preceding quarterly period. Each payment shall be accompanied by a brief report from a representative of the Grantee showing the basis for the computation. The City may request an adjustment of the franchise fee not more than once per calendar year; provided, however, such request shall be made in writing and received by the Grantee no later than July 31 of each calendar year. In the event that written notice is received by the Grantee on or before July 31, then the franchise fee adjustment shall commence January 1 of the following year. In no event shall the franchise fee payments required to be paid by Grantee exceed five percent of subscribers' gross revenues received by Grantee in any twelve-month period as permitted by the FCC.

**113.16 LIMITATION ON FRANCHISE FEE ACTIONS.** The period of limitation for recovery of any franchise fee payable hereunder shall be five years from the date on which

payment by the Grantee is due. Unless within five years from and after the payment due date the City initiates a lawsuit for recovery of such franchise fee in a court of competent jurisdiction, such recovery shall be barred and the City shall be estopped from asserting any claims whatsoever against the Grantee relating to any such alleged deficiencies.

**113.17 RENEWAL OF FRANCHISE.** The City and the Grantee agree that any proceedings undertaken by the City 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 such existed as of the effective date of the Cable Act), 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. In addition to the procedures set forth in said Section 626(a), the City agrees to notify the Grantee of its preliminary assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current franchise term. The City further agrees that such a preliminary assessment shall be provided to the Grantee prior to the time that the four-month period referred to in Subsection (c) of Section 626 is considered to begin. Notwithstanding anything to the contrary set forth in this section, the Grantee and the City agree that at any time during the term of the then current franchise, while affording the public appropriate notice and opportunity to comment, the City and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current franchise and the City may grant a renewal thereof. The Grantee and the City consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act.

**113.18 TRANSFER OF FRANCHISE.** The Grantee's right, title or interest in the franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an affiliate, without the prior consent of the City, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title or interest of the Grantee in the franchise or cable system in order to secure indebtedness.

**113.19 TESTING FOR COMPLIANCE.** The City may 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. Except in emergency circumstances, such tests may be undertaken only after giving the Grantee reasonable notice thereof, not to be less than two (2) business days, and providing a representative of the Grantee 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 Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the City. Except in emergency circumstances, the City agrees that such testing shall be undertaken no more than two (2) times per year in the aggregate, and that the results thereof shall be made available to the Grantee upon the Grantee's request.

**113.20 BOOKS AND RECORDS.** The Grantee agrees that the City may review such of its books and records, during normal business hours and on a non-disruptive basis. 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. Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The City

agrees to treat any information disclosed by the Grantee to it as confidential and only to disclose it to employees, representatives and agents thereof that have a need to know.

**113.21 INSURANCE REQUIREMENTS.** Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the franchise, Comprehensive General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage. Said insurance shall designate the City as an additional insured. Such insurance shall be non-cancelable except upon thirty (30) days' prior written notice to the City, which notice and cancellation of insurance coverage shall only be permitted in the event of termination of the franchise, provided the Grantee shall have the right to cancel and substitute.

**113.22 INDEMNIFICATION.** The Grantee agrees to indemnify, save and hold harmless the City, its officers, boards and employees, from any and all liability or responsibility for any claim, demand, suit or cause of action whether presented directly or by suit in law or equity, claiming damages of any kind or nature for personal injury, bodily injury, death and property damage which arise out of the Grantee's construction, operation or maintenance of its cable system. The Grantee, at its election, may appear and defend the City in any such claim, demand, suit or cause of action. If the Grantee declines, the indemnification shall then include reasonable attorney fees, investigative costs, witness fees and any other costs associated with the City's defense and disposition.

**113.23 NOTICE OF VIOLATION.** In the event that the City 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.

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

**113.25 PUBLIC HEARING.** In the event that the Grantee fails to respond to the notice as described in Section 113.23, pursuant to the procedures set forth in Section 113.24, or in the event that the alleged default is not remedied within sixty (60) days after the Grantee is notified of the alleged default, the City shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of the Council, which is scheduled at a time which is no less than five business days therefrom. The City shall notify the Grantee of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

**113.26 ENFORCEMENT.** Subject to applicable Federal and State law, in the event the City, after such meeting, determines that the Grantee is in default of any provision of the franchise, the City may:

1. Foreclose on all or any part of any security provided under the franchise, if any, including without limitation any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the City reasonably determines is necessary to remedy the default;
2. Commence an action at law for monetary damages or seek other equitable relief;

3. In the case of a substantial default of a material provision of the franchise, declare the franchise agreement to be revoked; or
4. Seek specific performance of any provision which reasonably lends itself to such remedy as an alternative to damages.

The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the franchise by reason of any failure of the City to enforce prompt compliance.

**113.27 EVENTS BEYOND CONTROL OF GRANTEE.** The Grantee shall not be held in default or noncompliance with the provisions of the franchise or suffer any enforcement or penalty relating thereto where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond its ability to control.

**113.28 ACTIONS BY THE CITY.** In any action by the City or representative thereof 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.

**113.29 NOTICE.** Unless expressly otherwise agreed between the parties, every notice or response to be served upon the City or 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 by certified or registered mail, postage prepaid, at a post office or branch thereof regularly maintained by the U.S. Postal Service.