

Chapter 9 CABLE TV

ARTICLE I. CABLE TELEVISION COMMISSION

Sec. 9-1. Created; purposes.

There is hereby created and established the Oelwein Cable TV Commission. The purpose of the commission shall be as follows:

1. To advise the council on the drafting and adoption of the ordinance granting Oelwein Cablevision, Inc., a nonexclusive franchise, containing the privileges and authority to construct, operate, maintain, repair, replace, renew, reconstruct and remove a cable television system across public property within the city limits, and the term thereof.
2. To advise the council of satisfactory performance and programming of TV cablevision for every subscriber with rates and policies which are fair to both the subscriber and cable company.
3. To develop community access programming through the use of, but not limited to, the community access programming funds collected under the terms of the franchise agreement or any other agreement within the city and the provider of cable TV services.
4. To act as trustee for the funds referred to in subsection 3.
5. To act as official body to receive, process and report to the city council upon complaints of subscribers of cable TV services.
6. To investigate and compile information at the request of the city council pertaining to cable TV services, and where appropriate to engage professional consultants for guidance and advise and pay the costs thereof from community access funds only.

(Ord. No. 608, section 1, 11-27-78.)

Sec. 9-2. Funding.

Community access funds collected by the cable TV commission shall be administered by the commission and may be expended for the following purposes:

1. To provide air time, equipment (purchased, rented or otherwise), and materials for public access programming.
2. To secure expert advice on the development and operation of community access programming.
3. To provide for the day-to-day operation of the commission, including, but not limited to, reimbursement for expenses incurred in carrying out the purpose of the commission. The commission is authorized to expend all funds allocated to it for its operation. No community access funds so allocated shall be returned to the general fund.

(Ord. No. 608, section 2, 11-27-78.)

Sec. 9-3. Appointment of members.

Members of the cable TV commission shall be appointed in the following manner:

1. The commission shall consist of five commissioners, one appointed from each of the four wards in the city, and one commissioner-at-large. Two of the commissioners initially appointed shall serve for a period of two years from the date of their appointment, and three of the commissioners appointed shall serve for a term of four years. Thereafter, as the foregoing terms expire, such commissioners shall be appointed for a term of four years each. The commissioners shall be appointed by the mayor and approved by the city council at the first regular meeting of the council in November, 1978.
2. The commission shall elect a chairperson, secretary and treasurer from among its members at the first regular meeting of the commission in November, 1978.
3. The commission shall meet once a month at a time and place agreed upon by its members.
4. All action taken by the commission shall be upon an affirmative vote of the majority of the total number of members of the commission.

(Ord. No. 608, section 3, 11-27-78.)

Sec. 9-4. Limitation on community access.

The cable TV commission shall have the right to deny community access funds for any particular purposes. However, in no event shall access to the media be determined by the commission. Access to the media shall be determined only by the media.

Sec. 9-5. Annual report.

The cable TV commission shall provide the city council with an annual report, to be submitted at the end of each year and to contain the following information:

1. The report shall contain information on the income and expenditures of the commission from the funds received from the cable company for public access.
2. The report shall contain a listing of complaints handled by the commission.
3. The report shall contain progress throughout the year of programs shown over the public access channel.
4. The report shall list a summary of the activities, commentary on success and failures, and also suggestions for improvement.

(Ord. No. 608, section 5, 11-27-78.)

Secs. 9-6—9-10. Reserved.

ARTICLE II. FRANCHISE ORDINANCE

Sec. 9-11. Title.

The article of this chapter shall be known and may be cited as the "Oelwein Cable Television Regulatory and Franchising Ordinance of 1994."

Sec. 9-12. Definitions.

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

Act or *Cable Act* shall mean the Cable Communications Policy Act of 1984 (47 USC 521 et seq.) as amended by the Cable Television Consumer Protection and Competition Act of 1992.

Applicant shall mean a prospective grantee. The term Applicant as used in this chapter shall not be associated with the current franchise holder as defined herein under "grantee," nor shall it impose any additional requirements upon said grantee.

Basic cable service shall mean any service tier which includes the re-transmission of local television broadcast signals.

Cable communication system or *system*, also referred to as *cable television system* or *cable system*, shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide cable service, which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
2. A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility uses any public right-of-way;
3. A facility of a common carrier, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or
4. Any facilities of any electric utility used solely for operating its electric utility system.

Cable service shall mean the following:

1. The one-way transmission to subscribers of video programming or other programming services; and
2. Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

Channel or *cable channel* shall mean a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the Federal Communications Commission.

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

Commerce operation shall mean that time and date when operation of the cable communications system is considered to have commenced, which shall be when sufficient distribution facilities have been installed so as to permit the offering of full services to a dwelling unit located within the franchise area.

Commercial use channel(s) shall mean the channel capacity designated for commercial use as defined and required by federal law.

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

Control or controlling interest or cognizable interest shall mean actual working control or ownership of a Oelwein Cable System in whatever manner exercised.

Converter shall mean an electronic devise which converts signal carriers from one format to another.

Development parcel shall mean any area of the city where there are at least 40 occupied homes per mile to be served by either aerial cable plants or by cable underground plants as measured from the closest cable television distribution facility.

Dwelling unit shall mean any individual or multiple residential place of occupancy.

FCC shall mean the Federal Communications Commission and any legally appointed or elected successor.

Franchise shall mean an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to section 626 of the Cable Act), issued by the grantor, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise which authorized the construction or operation of a cable system.

Franchise agreement shall mean a contractual agreement entered into between the grantor and any grantee hereunder which is enforceable by grantor and said grantee and which sets forth the rights and obligations between grantor and said grantee in connection with the franchise.

Franchise fee shall mean any tax, fee, or assessment of any kind imposed hereunder by the grantor or other governmental entity of a grantee solely because of its status thereas. The term "franchise fee" does not include:

1. Any tax, fee or assessment of general applicability (including any such tax for or assessment imposed on both utilities and cable operators or their services) but not including a tax, fee or assessment which is unduly discriminatory against grantee;
2. Capital costs which are required by the franchise to be incurred by grantee for educational or governmental access facilities;
3. Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages;
4. Any fee imposed under section 17, United States Code.

Grantee or applicant shall mean any person granted a franchise hereunder, or the lawful successor, transferee, or assignee thereof.

Grantor shall mean the City of Oelwein, Iowa.

Gross revenues shall mean all cash, credits, or other consideration derived directly by a grantee arising from or attributable to operation of the system, including, but not limited to:

1. Revenue from all charges for services provided to subscribers of entertainment and non-entertainment services including late fees, and downgrading services;
2. Revenue from all charges for the insertion of local commercial advertisements upon the system;
3. Revenues from all charges for leased access or use of studios;

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4. Revenue from all charges for the installation, connection and reinstatement of equipment for utilization of the system and provisions of subscriber and other services;
 5. Revenue from the sale, or use or cablecast of any programming developed on the system for community or institutional use;
 6. Revenue from home shopping channels.

Initial service area shall mean the area of the city which will receive service initially, as set forth in the franchise agreement.

Installation shall mean the connection of the system from feeder cable to subscribers, terminals and initial provision of service.

Leased access shall mean the use of the system by any business enterprise or other entity whether profit or non-profit, to render services to the citizens of the city, and shall include, without limitation, all use pursuant to the Cable Act.

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

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

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, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade of the cable system.

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

Public/education/government access facilities or *peg access facilities* shall mean the total of the following:

1. Channel capacity designated for public, educational or governmental use;
2. Facilities and equipment for the use of such channel capacity.

Resident shall mean any person residing in the city as otherwise defined by applicable law.

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

Service area or *franchise area* shall mean the entire geographic area which the city designated in a franchise agreement to receive cable service.

Service interruption shall mean the loss of picture or sound on one or more cable channels.

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

Subscriber shall mean any person who legally receives any one or more of the services provided by the system.

Sec. 9-13. Intent.

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

Sec. 9-14. Franchise territory.

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

1. Grantee shall offer service to residents and public buildings within the franchise territory, without regard to the race, religion, income, national origin, disability status, age or gender of the subscriber, provided that the grantee shall only offer service when it receives request for service from at least ten subscribers within 1,320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable. Grantee 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. Further, the grantee may offer services to commercial areas within the city.
2. Grantee shall offer service at equal rates, and on an equal basis with regard to deposits and service packages, to all residents. Grantee may, however, discontinue or refuse service to subscribers and potential subscribers who have not paid applicable charges. Further, the grantee may offer special services or rates to commercial subscribers at rates different from those charged residential subscribers, which shall include, but not be limited to, charges for installation on a time and material basis. The grantee may also enter into separate contracts with multiple dwelling unit buildings and may charge discounted rates for services based upon single point building or other contractual considerations. This section does not preclude the grantee from offering promotional rates for service introductions or temporary promotional discounts.
3. Grantee shall provide a drop and basic service, at no charge for the first outlet, to all current public buildings, including, but not limited to, city hall, fire stations, public works facilities, public library, and public schools. The outlets of basic 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 buildings where the drop line from the feeder cable to said buildings or premises exceeds 125 cable feet, unless it is technically feasible to do so, or unless the appropriate government entity agrees to pay the incremental cost of such drop line in excess of 125 cable feet. In the event that additional outlets of basic service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and material. Upon request of grantee, the building owner may also be required to pay any fees associated with the provision of the additional outlets relating thereto.

Sec. 9-15. Police powers.

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

Sec. 9-16. Grant of a subsequent franchise.

1. *Application.* All applicants for a franchise under this chapter shall prepare and file a written application with the grantor in such form as the grantor shall designate.
2. *Review of application.* Upon receipt of an application under this chapter, the grantor shall review the same and make the application available for public inspection at such places as the grantor shall designate. A decision shall be made on the application by the grantor after evaluation thereof. The grantor may grant one or more franchises, or may decline to grant any franchise.
3. *Franchise required.* Subject to federal and state law, no cable system shall be allowed to occupy or use the streets in the franchise area or be allowed to operate without a franchise granted in accordance with the provisions of this chapter.
4. *Franchise non-exclusive.* Any franchise granted under this chapter shall be revocable and non-exclusive.
5. *Franchise requirements.* Grantor may establish appropriate requirements for new franchises.
6. *Grant.* In the event the grantor shall grant to an applicant or renew a non-exclusive, revocable franchise to construct, operate, maintain and reconstruct a cable system within the franchise area, said franchise shall constitute both a right and an obligation to provide the service of a cable system as required by this chapter and the terms of the franchise agreement.
7. *Conflict with federal or state laws.* Any franchise granted under this chapter shall be consistent with federal laws and regulations and state general laws and regulations. In the event of a conflict between the terms and conditions of the franchise agreement and the terms and conditions of federal or state law under which grantor can grant a franchise, such federal or state law or requirements shall control.
8. *Term.* The term of any new or renewal franchise granted under this chapter shall be established in the franchise agreement, provided that in no event shall any franchise granted under this chapter exceed the term of 25 years.
9. *Other licenses or permits.* A franchise under this chapter shall not take the place of any other license or permit legally required of a grantee.

Sec. 9-17. Franchise accepted.

1. To accept a franchise granted under this chapter, a grantee must file any required bonds, funds and proof of insurance, as well as written notice of acceptance with the city clerk within 60 days of the offer of the effective date of the franchise agreement.
2. Such written notice shall include a certification that the grantee:
 - A. Will comply with this chapter, any franchise agreements made pursuant to this chapter, and all applicable federal regulations in regard to the construction, operation and maintenance of a cable system;
 - B. Accepts the franchise relying on its own investigation and understanding of the power and authority of the grantor to grant the franchise and the terms and conditions thereof.

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- C. Acknowledges that it has not been induced to enter into the franchise by any understanding or promise or by other statement, whether written or verbal, by or on behalf of the grantor or by any third person concerning any term or condition of the franchise or ordinance expressed thereon;
 - D. Agrees that, in the event of any conflict between the ordinance and the franchise agreement, the terms of the franchise agreement shall prevail.

Sec. 9-18. Transfer of ownership or control.

1. Transfer of franchise. Grantee shall not transfer or assign a controlling interest of this franchise without the prior consent of the city. For the purposes of this section, a "transfer" or "assignment" shall at all times refer to a "controlling" interest of the franchise or system. "Controlling Interest" is defined as a change in 50 percent or more of the voting stock of the grantee. No such consent shall be required, however, for a transfer in trust, by mortgage, or other hypothecation, or by assignment of any rights, title or interest of the grantee in the franchise or system in order to secure indebtedness. The transfer of ownership or other interests of the grantee in connection with an internal reorganization or internal merger to a direct or indirect parent, subsidiary or affiliated entity under common control with the grantee shall not be a transfer for the purpose of this section so long as:
 - A. The city is notified of the proposed transfer no later than 30 days prior to the transfer of ownership or other interest;
 - B. The transferee shall insure that insurance coverage and all other commitments under this franchise agreement continue in force and without interruption and provide evidence to the same of the city no later than 30 days prior to the proposed transfer; and
 - C. There is no increased risk of liability to the city for non-performance of the terms of the franchise agreement.
2. The consent or approval of the grantor to any transfer by the grantee shall not constitute a waiver or release of the rights of the grantor in and to the streets, and any transfer shall by its terms, be expressly subject to the terms and conditions of any franchise.
3. In the absence of extraordinary circumstances, the grantor shall not approve any transfer or assignment of the franchise prior to completion of initial construction of the cable system.
4. In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory of the franchise agreement.
5. When the grantor approves a transfer under this section, the new grantee shall indicate acceptance of the franchise as specified in subsection (8), including the filing of all necessary bonds, funds, proofs of insurance and certifications.
6. No grantee may sell, assign or otherwise transfer controlling ownership of a cable system within a three-year period following either the acquisition or initial construction of such cable system by such grantee without approval of the grantor and submission of the information required by the FCC Form 394 and this chapter regarding transfers.
7. For initially constructed cable systems the three-year holding period shall be measured from the date on which service is activated to the system's first subscriber through the proposed effective date of the closing of the transaction assigning or transferring control of the cable system. The holding period for acquired systems shall be measured from the effective date of the closing of the transaction in which control of the system was acquired through the proposed effective date of the closing of the transaction assigning or transferring control of such cable system.

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8. A grantee seeking to assign or transfer control of a cable system is required to certify to the grantor that the proposed assignment or transfer of control of such cable system will not violate the three-year holding requirement. Such certification shall be submitted to the grantor at the time a grantee submits a request for transfer approval to the grantor.
 - A. Receipt by the grantor of a certification containing a description of the transaction and indicating that the cable system has been owned for three-years, or that the transferor is seeking a waiver conditioned on grantee approval of a transfer from the commission, shall create a presumption that the proposed assignment or transfer of the cable system will comply with the three-year holding requirement.
 - B. The grantor questioning the accuracy of the certification regarding the three-year holding requirement must notify a grantee within 30 days from the filing of such certification or such certification shall be deemed accepted unless the grantee has failed to provide any additional information reasonably requested by the grantor within ten days of such request.
 9. If an assignment or transfer of control involves multiple systems and the terms of the transaction require the buyer to subsequently transfer or assign one or more such systems to one or more third parties, such subsequent transfer shall be considered part of the original transaction for purposes of measuring the three-year holding period.

In order to qualify as part of the original transaction, a request for approval of the subsequent transfer must be filed with the grantor within 90 days of the closing date of the original transfer and the date of the closing of the subsequent transaction must be no later than 90 days following a grant of transfer approval by grantor.
 10. Subsection (6) of this section shall not apply to:
 - A. Any assignment or transfer of control of cable system which is not subject to federal income tax liability under the Federal Income Tax Code;
 - B. Any assignment or transfer of control of a cable system required by operation of law or by any act, order or decree of any federal agency, any state or political subdivision thereof or any franchising authority;
 - C. Any assignment or transfer of control to one or more purchasers, assignees or transferees controlled by, controlling or under common control with the seller, assignor or transferor.
 11. Commission waivers from the three-year holding requirement will not become effective, however, unless Grantor approval of a transfer is obtained after submission of all information which is required by FCC Form 394.
 12. A grantee may seek commission review of grantor's decisions regarding the application of the three year holding period to a particular transaction: Pursuant to the special relief procedures set forth in C.F.R. section 76.7.

Sec. 9-19. Franchise renewal.

1. The grantor shall renew a franchise granted under this chapter if the grantee files a written request for such a renewal and meets the minimum standard as outlined in section 626 of the Cable Act. At the time of such request, the grantor and grantee may update this chapter and re-evaluate the needs of the community for cable service and the performance of the grantee.
2. Provided that grantee has timely invoked the renewal procedures of section 626, the Cable Act shall govern the procedures and standards for renewal of any franchise awarded pursuant to this chapter.

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3. To the extent that the Cable Act is not applicable, i.e., grantee fails to timely invoke section 626 procedures or in the unlikely event that the Cable Act is no longer law, the grantor in its sole discretion and judgment shall have the right to grant, deny or conditionally grant renewal of a franchise, provided that the grantor shall not unreasonably refuse to renew the franchise or unreasonably condition the renewal. The conditions the grantor may place on its approval shall include, but are not limited to: Updating the ordinance and surveying community cable needs, remedy of historical or existing violations of the franchise or ordinance; acceptance of any mutually agreed upon updated ordinance.
 4. When the grantor approves a franchise renewal, the grantee shall accept the renewed franchise under the procedures set out in section 9-17.

Sec. 9-20. Franchise fee.

1. *Semi-annual franchise payment.* A grantee shall pay to the grantor a fee in an amount as designated in the franchise agreement, which amount shall not be greater than five percent of the grantee's gross revenues. Such payment shall commence as of the effective date of the franchise or any renewal date. Upon written notice by the city, the grantee shall furnish a statement within 120 days of the close of the calendar year, either audited and certified by an independent certified public account or certified by a financial officer of the grantee, reflecting the total amount of the revenue and all payments, deductions and computations for the period covered by the payment. Upon ten days prior written notice, grantor shall have the right to conduct an independent audit of grantee's records, in accordance with generally accepted accounting procedures, and if such audit indicates a franchise fee underpayment of five percent or more, the grantee shall assume all reasonable costs of such an audit.
2. *Acceptance by grantor.* No acceptance of any payment by the grantor shall be construed as a release or as an accord and satisfaction of any claim the grantor may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligations of the grantee.
3. *Failure to make required payment.* In the event that any franchise payment or recomputed amount is not made on or before the dates specified herein, grantee shall pay an additional compensation:
 - A. An interest charge, computed from such due date, at an annual rate equal to the average rate of return on invested funds of the grantor during the period for which payment was due.
 - B. If the payment is late by 60 days or more, a sum of money equal to five percent of the amount due in order to defray those additional expenses and costs incurred by the grantor by reason of the delinquent payment.
 - C. Limitation on franchise fee actions. The period of limitation for recovery of any franchise fee payable hereunder shall be ten years from the date on which payment by the grantee is due.
4. *Payment schedule.* The franchise fee shall be paid on a semi-annual basis according to the following schedule: Revenues for January through June shall be reflected in an August 30th payment; and revenues for June through December in a March 1st payment.
5. *Pass through.* Any grantee "pass through" or itemization of franchise fee costs on subscriber's bills, shall be in accordance with federal law.

Sec. 9-21. Revocation.

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

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- A. If the grantee shall default in the performance of any of its material obligations under this chapter or under such documents, agreements or other terms and provisions entered into by and between the grantor and the grantee, subject to the provisions on cure.
 - B. If the grantee should fail to provide or maintain in full force and effect, the liability and indemnification coverages.
 - C. If the grantee ceases to provide service for a period exceeding 30 days for any reason within the control of the grantee over the cable system, or abandons the management and/or operation of the system.
 - D. If the grantee willfully violates any of the material provisions of this chapter or the franchise agreement or attempts to practice any fraud or deceit upon the grantor.
 - E. If the grantee becomes insolvent, or upon listing of an order for relief in favor of grantee in a bankruptcy proceedings.
 - F. If the grantee transfers or assigns the franchise without the prior approval or consent of the grantor as required in section 9-18.
2. *Procedure prior to revocation.*
 - A. The grantor may make a written demand that the grantee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. Such written demand shall detail the exact nature of the alleged non-compliance. In the event the stated violation is not reasonably curable within 30 days, the franchise shall not be terminated or revoked, or damage assessed, if the grantee provides within the said 30 days a plan, satisfactory to the grantor, to remedy the violation. If the failure, a refusal or neglect of the grantee continues for a period exceeding 30 days following receipt of such written demand by the grantee, the grantor may terminate the franchise in accordance with the procedures set forth in section 9-22.
 - B. The grantor shall hear any persons interested therein, and shall determine, within 90 days, based upon the preponderance of the evidence, whether the grantee has committed a material breach of this chapter or the franchise agreement, and if so, whether such breach was willful.
 - C. If the grantor determines that the grantee has willfully committed a material breach, then the grantor, may by resolution, declare that the franchise of such grantee shall be terminated, or the grantor may, at its option and if the material breach is capable of being cured by the grantee, direct the grantee to take appropriate remedial action within such time and manner and upon such terms and conditions as the grantor shall determine are reasonable under the circumstances.
 - D. The grantee shall not be held in default or non-compliance with the provisions of the franchise, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by strikes, acts of God, power outages, or any cause beyond its reasonable control.
 - E. If the grantor after notice is given and a full public proceeding is held, declares the franchise breached, the grantee may pursue its remedies pursuant to franchise or any other remedy, legal or equitable.

Sec. 9-22. Procedures on termination.

1. *Disposition of facilities.* Subject to federal, state and local laws, in the event a franchise expires, is revoked, or otherwise terminated, the grantor may order the removal of the above-ground system facilities from the franchise area within a reasonable period of time as determined by the grantor, but in all cases grantee shall have the right to abandon its underground plant.

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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 near as reasonably possible, its prior condition, without affecting the electrical or telephone cable wires, or attachments. The grantee's insurance and indemnity obligations required by this chapter and by the franchise agreement shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this section.
 3. *Extended operation.* Subject to federal, state and local law, upon either the expiration or revocation of a franchise, the grantor may require the grantee to continue to operate the cable system for a defined period of time not to exceed six months from the date of such expiration or revocation. The grantee shall, as trustee for its successor in interest, continue to operate the cable communications system under the terms and conditions of this chapter and franchise agreement and to provide the regular cable service and any of the other services that may be provided at that time.
 4. *Grantor's right not affected.* The termination and forfeiture of any franchise shall in no way affect any of the rights of the grantor under any provisions of law.

Sec. 9-23. Receivership, condemnation and foreclosure.

1. *Operations by receiver.* Any franchise granted shall, at the option of the grantor, cease and terminate 120 days after the appointment of a receiver or receivers or trustee or trustees designated to take over and conduct the business of the grantee, whether in a receivership, reorganization, condemnation, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days or unless:
 - A. Such receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivers or trustees within said 120 days shall have remedied all defaults under the franchise; and
 - B. Such receivers or trustees shall, within said 120 days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise agreement.
2. *Involuntary sale.* In the case of a foreclosure or other involuntary sale of the plant, property and equipment of the grantee, or any part thereof, the grantor may serve notice of termination upon the grantee and to the purchaser at such sale, in which event the franchise and rights and privileges of the grantee hereunder shall cease and terminate 30 days after service of such notice, unless:
 - A. The grantor shall have approved the transfer of the franchise, as and in the manner in this chapter provided; and
 - B. Such successful purchaser shall have covenanted and agreed with the grantor to assume and be bound by all the terms and conditions of the franchise agreement.

Sec. 9-24. Franchise processing costs.

1. *New franchises.* For a new franchise awarded to a successful applicant, the costs to be borne by the applicant shall include, but shall not be limited to, all costs of publication of notices to any public meeting, development and publication of relevant ordinances and franchise agreements, fees, and any costs not covered by the application fees, incurred by the grantor in its study, preparation of proposal solicitation documents, evaluation of all applications, including, but not limited to, consultant and attorney fees.

Sec. 9-25. Authority for use of streets.

1. *Use of streets.* For the purposes of operating and maintaining a system in the city, grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, across and along the streets within the city, lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments or other property and equipment as are necessary and appurtenant to the operation of the system, provided that all applicable permits are applied for and granted, all fees paid and all other city codes and ordinances otherwise complied with. However, no rights hereunder may be transferred by grantee to any other entity except grantee's construction agents.
2. *Filing plans.* Prior to construction or alteration, grantee shall in each case file plans with all appropriate city departments and receive written approval of such plans, which approval shall not be unreasonably withheld.
3. *Non-interference.* Grantee shall construct and maintain the system so as not to interfere with other uses of streets. Grantee shall make use of existing poles and other facilities available to grantee whenever practicable.

Sec. 9-26. Conditions on use of streets.

1. *Limit interference.* All transmission and distribution, structures, lines and equipment erected by grantee within the city shall be so located as to cause minimum interference with the proper use of streets and other public places and the rights and reasonable convenience of property owners who adjoin such streets and other public places.
2. *Restoration of streets.* In case of disturbance of any street or public place, the grantee shall, at its own cost and expense and in a manner approved by the city, replace and restore such area to as near as reasonably possible, its prior condition.
3. *Tree trimming.* The grantee shall comply with the provisions of the Oelwein Code of Ordinances. Each grantee shall be responsible for, shall indemnify, defend and hold harmless the grantor and its officers, agents and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation of or injury to any tree or trees proximately caused by the grantee or its officers, agents, employees, contractors or subcontractors.

Sec. 9-27. Erection of poles.

1. *Consent to erection of poles.* No franchise shall be deemed to expressly or impliedly authorize the grantee to construct or install poles or wire-holding structures within streets for the purpose of placing cables, wires, lines or otherwise without the written consent of the grantor. Such consent shall be given upon such terms and conditions as the city may prescribe, which shall include a requirement that the grantee perform at its sole expense, all tree trimmings required to maintain the poles clear of obstructions.
2. *Access to poles.* With respect to any poles or wire holding structures which a grantee is authorized to construct and install within streets, a public utility serving the grantor may, if denied the privilege of utilizing such poles or wire-holding structures by the grantee, apply for permission to the city. If the city finds that such use would enhance the public convenience and would not unduly interfere with the grantee's operations, the city may authorize such use subject to such terms and conditions as the city deems appropriate. Such authorization shall include the condition that the public utility pay to the grantee any and all actual and necessary costs incurred by the grantee in permitting such use. Nothing herein shall be construed as a right for the grantee to utilize public utility property.

Sec. 9-28. Undergrounding.

1. *Underground installation required.* Except as hereinafter provided, in all areas of the city where the cable wires and other like facilities of a public utility are placed underground, each grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed aboveground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe. In any area of the city where there are certain cables, wires or other like facilities of a public utility underground and at least one operable cable, wire or like facility is suspended above the ground from poles, a grantee may construct and install its cables, wires and other facilities from the same pole with permission of the city and utility company which owns the pole.
2. *Relocation and underground.* With respect to any cables, wires and other like facilities constructed and installed by a grantee above ground, the grantee shall, at its sole expense, reconstruct and reinstall such cables, wires or other facilities underground pursuant to any project under which the cables, wires or other like facilities of all like utilities are placed underground within an area. Nothing contained in this section shall require grantee to construct, operate and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals or other related equipment. Notwithstanding anything to the contrary contained in this section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this chapter, grantee shall only be required to construct, operate and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

Sec. 9-29. Relocation.

If, during the term of a franchise, the grantor, a public utility, a sanitary district or other similar special district elects to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street or to replace, repair, install, maintain or otherwise alter any aboveground or underground cable, wire conduit, pipe, line pole, wiring-holding structure, or other facility utilized for the provisions of utility or other services or transportation of drainage, sewage or other liquids, the grantee, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and any other facilities which it has installed, provided that the expense of removing or relocating is paid by said entity electing to alter same, including, if required by the grantee, making such payment in advance. If such removal or relocation is required within the subdivision in which all utility lines, including those for the system, were installed at the same time, the entities may decide among themselves who is to bear the cost of relocating. Provided that the expense of removing or relocating are paid in advance or mutual terms for reimbursement are agreed upon, the grantee shall take action to remove or relocate at such time or times as are directed by the agency undertaking the work. A minimum of ten business days advance written notice shall be mailed to the grantee advising the grantee of the date or dates that the removal or relocation is to be undertaken.

Sec. 9-30. Placement of buildings.

Each grantee shall, upon request by any person holding a building moving permit or other approval issued by the grantor, temporarily remove, raise or lower its wires to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the persons requesting same, and a grantee shall be authorized to require such payment in advance. A grantee shall be given not less than 30 days written notice to arrange for such temporary wire changes.

Sec. 9-31. System design and construction.

1. *System design.* A cable system shall be a minimum of 450 MHZ bandwidth or its functional equivalent.
2. *Coverage.* Grantee shall design and construct the cable system in such a manner as to have the capability to pass and service every current resident, school or public agency within the franchise area. Service shall be provided to subscribers in accordance with the schedules and line extension policies specified in the franchise agreement. Cable system construction and provision of service shall be non-discriminatory, and grantee shall not delay or deter service to any section of the franchise area on the grounds of economic preference.
3. *System construction schedule.* Grantee shall comply with the requirements of the system construction or upgrade schedule contained in the franchise agreement.
4. *Provision of service.* After service has been established by activating trunk and distribution cables for any area, grantee shall provide service to any requesting subscriber within the area within 30 days from the date of the request, provided that grantee shall receive a request for service from at least ten subscribers within 1,320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable; provided further that such extension is technically feasible.

Sec. 9-32. Construction standards.

1. Each grantee shall construct, install and maintain its system in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements, and technical standards equivalent to those established by the FCC. Upon written request by the grantor, each grantee shall provide to the grantor written reports of the grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements.
2. Each grantee shall at all times comply with the National Electrical Safety Code (established by the National Bureau of Standards); National Electrical Code; National Bureau of Fire Underwriters; applicable FCC and other federal, state and local regulations; and codes and other ordinances of the city passed pursuant to the city's lawful police powers.
3. In any event, the system shall not endanger or interfere with the safety of persons or property within the city or other areas where the grantee may have equipment located.
4. All working facilities, conditions and procedures used or occurring during construction and maintenance of the system, shall comply with the standards of the occupational safety and health administration.
5. Construction, installation and maintenance of the system shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the city, following accepted construction procedures and practices.
6. All cable and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.
7. Any antenna structure used in the system shall comply with construction, marking and lighting of antenna structures required by the United States Department of Transportation.
8. RF leakage shall be checked at reception locations for emergency radio services so as to prove no interference signal combinations are possible.
9. Radiation shall be measured adjacent to any proposed aeronautical navigation or communication radio sites to prove no interference to air navigational reception.

Sec. 9-33. Technical standards.

1. **Standards.** The cable communications system shall meet all technical and performance standards as required by the FCC.
2. The franchising authority 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 law. Except in emergency circumstances, such tests may be undertaken only after giving grantee reasonable notice thereof, not to be less than two business days, and providing a representative of grantee an opportunity to be present during such tests. 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 franchising authority. Except in emergency circumstances, the franchising authority agrees that such testing shall be undertaken no more than two times a year in the aggregate, and that the results thereof shall be made available to the grantee upon the grantee's request.

Sec. 9-34. Interconnection.

The system is capable of being interconnected with other cable systems within the city and adjacent areas as may be specified in the franchise agreement.

Sec. 9-35. Services.

1. *Services provided.* The grantee shall provide, as a minimum, the initial services listed in the franchise agreement. Services shall not be reduced without prior notification to grantor.
2. *Basic cable service.* The "basic cable service" shall include any service tier which includes the re-transmission of local television signals. This service shall be provided to all subscribers at the established monthly subscription rates.
3. *Local origination channels.* If local origination programming is provided, the grantee shall operate any cable casting studios on a high-quality, professional basis for the purpose of providing cable cast programming responsive to local needs and interests.
4. *Public, educational and government (PEG) access facilities.* The grantee shall provide the PEG access facilities, including channel capability, necessary interface equipment and cabling to permit operation as specified in the franchise agreement.

Sec. 9-36. Consumer service standards.

During the term of the franchise, the grantee shall comply with the customer service obligations as set forth in section 76.309 of the Federal Communications Commission's Rules and Regulations as presently enacted or as may be amended from time to time.

1. For service interruptions of over 24 hours and up to 14 days, the grantee shall provide, at the subscriber's request, a credit of one-thirtieth of one month's fees for affected services for each 24-hour period service is interrupted for four or more hours for all affected subscribers.
2. For service interruptions of 14 days or more in one month, the grantee shall provide, at the subscriber's request, a full month's credit for affected services for all affected subscribers.

Sec. 9-37. Proof of compliance.

Compliance records—Upon reasonable notice. Grantee shall demonstrate compliance with any and all of the standards required by this chapter. Grantee shall provide sufficiently detailed information to permit grantor to readily verify the extent of compliance.

Sec. 9-38. Complaint procedure.

1. *Complaints to grantee.* Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without intervention by the grantor. The procedures shall prescribe the manner in which a subscriber may submit a complaint, either orally or in writing. At the conclusion of grantee's investigation of a subscriber complaint, but in no event more than ten days after receiving the complaint, grantee shall notify the subscriber of the results of the investigation and its proposed action or resolution, if any. The grantee shall also notify the subscriber of the subscriber's right to file a complaint with the grantor in the event the subscriber is dissatisfied with the grantee's decision.
2. *Complaints to grantor.* A subscriber who is dissatisfied with grantee's proposed decision, shall be entitled to have the complaint reviewed by the grantor. The subscriber shall initiate the review by filing a complaint, together with the grantee's decision, if any, with the grantor, and by the grantor notifying the grantee of the filing. The subscriber shall make such filing and notification within 20 days of receipt of grantee's decision or, if no grantee decision has been provided, within 30 days after filing the original complaint with grantee. The grantor may extend these time limits for reasonable cause.
3. *Review by the grantor.* The grantor shall determine, upon a review of a subscriber complaint and the grantee's decision, if any, whether further action is warranted. In the event the grantor does not initiate further proceedings within 15 days of the filing of the complaint, the grantee's proposed action or resolution shall be final. If the grantor decides to initiate further investigations, the grantor shall require the grantee and the subscriber to submit, within ten days of notice thereof, a statement of the facts and arguments in support of their respective positions. The grantor shall issue a written decision within 15 days of receipt of the statements or, if a hearing is requested, within 15 days of the conclusion of the hearing, setting forth the basis of the decision.
4. *Remedies for violations.* The grantor may, as a part of a subscriber complaint decision issued under the provisions of this chapter, impose damages on the grantee. Damages may be imposed only if the grantor finds that the grantee has arbitrarily refused or failed without justification, to comply with the provisions of this section.

Sec. 9-40. Subscriber notice.

During the term of the franchise, the grantee will comply with the Federal Communications Commission's Rules and Regulations regarding subscriber notice.

Sec. 9-41. Rights of individuals.

1. *Discrimination prohibited.* Grantee shall not deny service, deny access or otherwise discriminate against subscribers, PEG access channel users, or general citizens on the basis of income, race color, religion, national origin, age, gender, marital status or physical or mental disability. Grantee shall comply at all times with the Act and all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to non-discrimination which are hereby incorporated and made part of this chapter by reference.

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2. *Equal employment.* Grantee shall strictly adhere to the equal employment opportunity requirements of federal, state and local law and regulations in effect on the date of the franchise grant, and as amended from time to time.
 3. *Personal information.* The grantee's policy with regard to personally identifiable information shall be consistent with federal law.
 4. *Discontinuation of service.*
 - A. If a subscriber fails to pay any proper fee or charge for any service, the grantee may discontinue said service, provided that the subscriber has been given no less than 15 day's prior written notice of the intent to discontinue and such notice was given not less than 30 days after the due date of said fee or charge.
 - B. If the grantee receives payment of all outstanding fees and charges, including any late charges, prior to the expiration of the 15th day after receipt transmittal of said notice from the grantee, then the grantee shall not discontinue said service. After any service has been discontinued, upon request of the subscriber accompanied by payment in full of all fees or charges due the grantee and the payment of an appropriate reconnection charge, if any, the grantee shall promptly reinstate said service.
 - C. Subscribers and users shall retain the right to deactivate their terminals, but shall continue to be responsible for charges until the grantee is notified to terminate service.

Sec. 9-42. Continuity of service.

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

Sec. 9-43. Records.

1. *Open books and records.* The grantor, upon reasonable notice, shall have the right to inspect at any time during normal business hours at the grantee's local office, all books, records, maps, plans, service complaint logs, performance tests results and other like materials of the grantee which relate to the enforcement of the franchise, provided that the grantor shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the grantee and provided further, that records shall be exempt from inspection pursuant to this section to the extent required by applicable law regarding subscriber privacy and to the extent such records are protected by law against discovery in civil litigation.
2. *Required records.* In any event, the grantee shall at all times maintain.
 - A. The complaint file required by sections 9-38 and 9-52 herein.
 - B. A full and complete set of plans, records and "strand maps" showing the exact location of all cable system equipment installed or in use in the franchise area, exclusive of subscriber service drops.

Sec. 9-44. Regulatory authority.

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

Sec. 9-45. Regulatory responsibility.

To the extent permitted by federal and state law, the grantor, acting alone or acting jointly with other grantors, may exercise or delegate the following regulatory responsibility:

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

Sec. 9-46. Public usage of the system.

If so specified in the franchise agreement, the grantor may utilize a portion of the cable communications system capacity, and associated facilities and resources, to develop and provide non-commercial cable services that will be in the public interest. In furtherance of this purpose, the grantor may establish a commission, public corporation, or other entity to receive and allocate PEG and institutional network facilities, support funds and other considerations provided by the grantor, the grantee, and/or others. Such an entity, if established, may be delegated the following responsibilities:

1. Receive and utilize or reallocate for utilization, channel capacity, facilities, funding and other support provided specifically for PEG and institutional network usage of the cable communications system.
2. Establish, jointly with the grantee, operational procedures and guidelines for PEG and institutional network usage.
3. Review the status of progress of each service developed for public benefit.
4. Reallocate resources jointly with the grantee on a periodic basis to conform with changing priorities and public needs.
5. Report to the grantor and the grantee annually on the utilization of resources, the new public services developed and the benefits achieved for the grantor and its residents.

Sec. 9-47. Rates.

The grantee shall establish rates for its services which shall be applied on a non-discriminatory basis in the franchise area, except for commercial and bulk account rates which are negotiated individually. Pursuant to federal law, the grantor reserves the right to assume regulation of basic rates paid by cable subscribers; such rate regulation shall be performed by the Oelwein Cable Commission as advisory to the city council in accordance with FCC rules and regulations. As specified by the FCC's rules, such rate regulation shall cover basic service rates and customer premises Installations and equipment rates (including charges for, but not limited to: Converter boxes, remote control units, and connections for additional television receivers).

Sec. 9-48. Performance review.

At grantor's sole option, within 90 days of the third anniversary of the effective date of each franchise, and each third year thereafter throughout the term of the franchise, the grantor may hold a public hearing at which the grantee shall be present and shall participate to review the performance and quality of service of the cable system. The report required in this chapter regarding customer complaints, the records of performance tests and the opinion survey reports shall be utilized as the basis for review. In addition, any subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

1. *Performance report.* Within 30 days after the conclusion of the public hearing, grantor shall issue a report with respect to the adequacy of system performance and quality of service. If inadequacies are found, grantor may direct grantee to correct the inadequacies within a reasonable period of time.
2. *Breach upon failure to cure.* Failure of grantee, after due notice, to correct the inadequacies, shall be considered a breach of the franchise, and grantor may, at its sole discretion, exercise any remedy within the scope of this chapter considered appropriate.

Sec. 9-50. System review.

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

1. At the grantor's sole option, the grantor may hold a public hearing on or about the third anniversary date of the franchise agreement at which the grantee shall be present and shall participate, to review the cable communications system and service. Subsequent system and services review hearing may be scheduled by the grantor each three years thereafter.
2. Sixty days prior to the scheduled system and service review hearing, grantee shall submit a report to grantor indicating the following: Any specific plan for provision of such new services by the grantee, or a justification indicating why grantee believes that such services are not feasible for the franchise area.
3. Topics for discussion and review at the system and service review hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, system performance, programming, subscriber complaints, user complaints, rights of privacy, amendments to the franchise, undergrounding processes, developments in the law, and regulatory constraints.
4. Either the grantor or the grantee may select additional topics for discussion at any review hearing.

Sec. 9-51. Annual reports.

Within 120 days after the close of the grantee's fiscal year, the grantee may be required to submit a written annual report, in form requested by the grantor, including, but not limited to, the following information:

1. A summary of the previous year's (or, in the case of the initial report year, the initial year's) activities in development of the cable system, including, but not limited to, services begun or discontinued during the reporting year, and the number of subscribers for each class of service.
2. A revenue statement audited by an independent certified public accountant, or certified by an officer of the grantee;
3. A statement of projected construction, if any, for the next two years;
4. A list of the grantee's officers, members of its council or directors, and other principals of grantee.

Sec. 9-52. Complaint file and reports.

An accurate and comprehensive file shall be kept by the grantee of any and all complaints regarding the cable system. A procedure shall be established by the grantee by the time of installation of cable system to remedy complaints quickly and reasonably to the satisfaction of the grantor. Complete records of grantee's actions in response to all complaints shall be kept.

1. A summary of service requests, identifying the number and nature of the requests and their disposition, upon grantor's request, shall be completed for each month and submitted to the grantor by the tenth day of the succeeding month.
2. A log and summary of all major service outages.

Sec. 9-53. Remedies for franchise violations.

Subject to an exact written notice of an alleged violation of the franchise as well as allowing the grantee a reasonable opportunity to cure, and subject further to any legal or equitable remedies that may be available to the grantee, the grantor may:

1. Assess against the grantee monetary damages up to the limits established in the franchise agreement for material franchise violations, said assessment to be levied against the corporate surety bond if such fund is required by the franchise agreement, as specified in section 9-54. The amount of the assessment shall be deemed to represent liquidated damages actually sustained by grantor by reason of grantee's failure to perform. Such assessment shall not constitute a waiver by the grantor of any other right or remedy it may have under the franchise or under applicable law, including without limitation, its right to recover from grantee such additional damages, losses, costs and expenses, including actual attorney fees, as may have been suffered or incurred by grantor by reason of or arising out of such breach of the franchise. This provision is intended to provide compensation to grantor for actual damages.
2. Terminate the franchise, for any of the causes stated in this chapter.
3. No remedy shall be imposed by grantor against grantee for any violation of the franchise without grantee being afforded due process of law, as provided for in section 9-54.
4. The fine for violations of the franchise shall not exceed \$100.00 per day.

Sec. 9-54. Procedure for remedying franchise violators.

In the event that the grantor determines that the grantee has violated any material provision of the franchise, the grantor may make a written demand on the grantee stating the exact nature of the alleged violation, and requesting that grantee remedy such violation. If the violation is not remedied, or is in the process of being remedied, to the satisfaction of the grantor within 30 days following such demand, the grantor shall determine whether or not such violation by the grantee was excusable, in accordance with the following procedures:

1. An administrative hearing shall be held to review the alleged violation. If this hearing does not result in a satisfactory resolution, and/or the grantee requests a public hearing, then a public hearing shall be held, and the grantee shall be provided with an opportunity to be heard upon 30 days written notice to the grantee of the time and the place of the hearing provided and the allegations of franchise violations.
2. If, after notice is given and, at the grantee's option, a full public proceeding is held, the grantor determines that such violation by the grantee was excusable as provided in section 9-55 below, the grantor shall direct the grantee to correct or remedy the same within such additional time, in such manner and on such terms and conditions as the grantor may reasonably direct.

Sec. 9-55. Excuse of non-performance.

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

Sec. 9-56. Work performed by others.

1. All provisions of a franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of the franchise.
2. Nothing in this section shall be construed as allowing the transfer of any rights or responsibilities of the grantee without the approval of the grantor in writing.

Sec. 9-57. Performance bond.

Within 120 days of the effective date of this franchise, the grantee shall furnish and file with the grantor a guarantee in lieu of bond from a parent company of the grantee. The guarantee in lieu of bond is conditioned upon the faithful performance of the grantee of all the terms and conditions of the franchise.

Sec. 9-58. Grantee insurance.

1. *Insurance required.* The grantee shall maintain throughout the terms of the franchise, insurance in amounts at least as follows:
 - A. *Worker's compensation.* Worker's compensation with Coverage A at statutory limits. Insurance shall cover the employees of the grantee in compliance with the State of Iowa and all other states having jurisdiction over each employee.

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- B. *Comprehensive general liability.* Comprehensive general liability including premises/operations; products/completed operations; broad form property damage; contractual liability; coverage for explosion, collapse and underground hazards and shall include limits of not less than \$1,000,000.00 for bodily injury (including death) and property damage for each occurrence and not less than \$1,000,000.00 in the aggregate.
 - C. *Comprehensive automobile liability.* Comprehensive automobile liability including owned, non-owned and hire vehicles with limits of not less than \$1,000,000.00 for bodily injury (including death) and property damage for each occurrence.
 - D. *Umbrella liability.* Umbrella liability with limits of not less than \$2,000,000.00.
- 2. *Certificates to grantor.* The grantee shall furnish the grantor with certificates of insurance within 60 days of the effective date of the franchise agreement. Certificates of insurance shall be furnished by the grantee to the grantor in the event of a material change in the terms or conditions of the policy.
 - 3. *Grantor as additional insured.* Such insurance policies provided for herein shall name the grantor, its officers, boards, commissions, agents and employees as additional insured.
 - 4. *No limitation on liability.* The minimum amounts set forth in the franchise agreement for such insurance shall not be construed to limit the liability of the grantee to the grantor under the franchise issued hereunder to the amount of such insurance.
 - 5. *Approved insurers.* All insurance carriers providing coverage under subsection (1) above, shall be duly licensed to operate in the State of Iowa.

Sec. 9-59. Indemnity.

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

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

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

- 2. *Defense of claims.* In the event any claims shall arise, the grantor or any other indemnified party shall tender the defense thereof to the grantee. Grantee or grantor shall not agree to any settlement of claims without either parties' approval.
- 3. *Grantor's negligence.* The grantee shall not be required to indemnify the grantor for negligence or willful misconduct on the part of the grantor's officials, boards, commissions, agents or employees.

Sec. 9-60. Alternative remedies.

No provision of this chapter shall be deemed to bar the right of the grantor to seek or obtain judicial relief from a violation of any provision of the franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this chapter, nor the exercise thereof, shall be deemed to bar or otherwise limit the right of the grantor to recover monetary damages (including all dispute related expenses such as attorneys' fees and except where liquidated damages are otherwise prescribed) for such

violation by the grantee, or judicial enforcement of the grantee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy available at law or in equity.

Sec. 9-61. Non-enforcement.

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

Sec. 9-62. Compliance with law.

Notwithstanding any other provisions of the franchise to the contrary, the grantee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof. Provided, however, if any such state or federal law or regulation shall require the grantee to perform any service, or shall permit the grantee to perform any service, or shall prohibit the grantee from performing any service, in conflict with the terms of the franchise or any law or regulation of the grantor, then as soon as possible following knowledge thereof, the grantee shall notify the grantor of the point of conflict believed to exist between such regulation or law and the laws or regulations of the grantor or the franchise.

Sec. 9-63. Unauthorized reception, use or sale of cable services.

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

Sec. 9-64. Conflicting ordinance repealed.

All ordinances or parts of ordinances in conflict are hereby repealed to the extent of any such conflict.

Sec. 9-65. Severability.

Any section or provision of this chapter that is construed to be invalid or void, shall not affect the remaining sections or provisions of which shall remain in full force and effect.

Sec. 9-66. Waiver or exemption.

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

Sec. 9-67. Section titles.

The bold section titles appearing in this chapter are used solely for convenience and are not intended to affect the meaning of the chapter.

(Ord. No. 909, 1-23-95.)