

CHAPTER 112

VIDEO FRANCHISE

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112.01 DEFINED TERMS. For purposes of this Chapter, certain capitalized terms have the meanings provided in this Section. Other capitalized terms used in this Chapter are defined in the context in which they are used and shall have the meanings ascribed therein. Capitalized terms used in this Chapter shall have the meaning ascribed to them at the point where defined, irrespective of where their use occurs, with the same effect as if the definitions of said terms were set forth in full and at length every time such terms are used. All terms defined in this Chapter in the singular form will have comparable meanings when used in the plural form and vice versa.

1. “Affiliate” means as to any Person, any Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, the terms “control”, “controlling”, “controlled by” or “under common control with” means having the right to elect or appoint, directly or indirectly, a majority of the board of directors, managers, managing members, general partners or other comparable body or entity responsible for the management or direction of a Person, whether by contract, equity ownership or otherwise.
2. “Cable Act” means, collectively, the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, each as amended.
3. “Cable Franchise Ordinance” is defined in the introductory paragraphs of this Chapter.
4. “Cable Service” means (a) the one-way transmission to subscribers of (i) Video Programming, or (ii) other information that the Company makes available to all subscribers generally, and (b) subscriber interaction, if any, which is

required for the selection or use of such Video Programming or other information.

5. “Communications Act” means the Communications Act of 1934, as amended.
6. “Company” is defined in the introductory paragraphs of this Chapter.
7. “Customer Proprietary Information” means any and all information or data that is provided to the City by, through or on behalf of the Company under this Chapter or the Cable Regulatory Ordinance that relates to any: (a) lists of current, prospective or former customers of the Company or its Affiliates; (ii) nonpublic personal information of any Person who is a current, prospective or former customer of the Company or its Affiliates, including information about any customer’s network or business operations; (iii) customer proprietary network information (“CPNI”) of any party or its Affiliates, within the meaning of Telecommunications Act and implementing FCC Rules, or any similar provision under any other applicable Legal and Regulatory Requirements; or (iv) other sensitive personal or personally identifiable information of a party’s customers required to be safeguarded as confidential under applicable Legal and Regulatory Requirements.
8. “FCC” means the Federal Communications Commission.
9. “FCC Rules” means the rules and published policies of the FCC as in effect from time to time.
10. “Franchise” means the franchise authorization issued by the City under this Chapter which authorizes the construction, operation and maintenance of a Video System within the Public Right-of-Way.
11. “Franchise Area” means the geographic area within the corporate boundaries of the City, including any areas lawfully annexed to the City in the future.
12. “Governmental or Regulatory Authority” means the FCC, the IUB, and any other Federal, state, local, foreign or other governmental or quasi governmental authority and any governmental, quasi governmental or other department, commission, body, board, bureau, agency, association, subdivision, court, tribunal or other instrumentality exercising any executive, judicial, legislative, regulatory or administrative function.
13. “Gross Revenues” means all consideration of any kind or nature, including but not limited to cash, credits, property, and in-kind contributions received from subscribers for the provision of Service within the Franchise Area.
 - a. “Gross Revenues” are limited to the following:

1. Recurring charges for Service.
 2. Event-based charges for Service, including but not limited to pay-per-view and video-on-demand charges.
 3. Rental of set-top boxes and other Service equipment.
 4. Service charges related to the provision of Service, including but not limited to activation, installation, and repair charges.
 5. Administrative charges related to the provision of Service, including but not limited to service order and service termination charges.
- b. For avoidance of doubt, "Gross Revenues" do not include:
1. Revenues not actually received, even if billed, including bad debt.
 2. Revenues received by any Affiliate or any other Person in exchange for supplying goods or services used by the Company to provide Video Service.
 3. Refunds, rebates, or discounts made to third parties, including subscribers, leased access providers, advertisers, or the City or any other unit of local government.
 4. Regardless of whether the services are bundled, packaged, or functionally integrated with Video Service, any revenues derived by the Company from services not classified as Video Service, including, without limitation, revenue received from telecommunications services, revenue received from data communications services, revenue received in connection with home-shopping services, or any other revenues attributed by Company to other noncable or nonvideo service in accordance with the Company's books and records kept in the regular course of business and any applicable Legal and Regulatory Requirements.
 5. Revenues paid by subscribers to home-shopping programmers directly from the sale of merchandise through any home-shopping channel offered as part of Video Service.
 6. Revenues from the sale of Video Service for resale in which the purchaser is required to collect the franchise fee from the purchaser's customer.
 7. Revenues from any tax of general applicability imposed upon the Company or upon subscribers by a Governmental or Regulatory Authority and required to be collected by the Company and remitted to the taxing entity, including but not limited to sales or use tax, gross receipts tax, excise tax, utility users tax, public service tax, and communication taxes, and including any franchise fee imposed under this Chapter or the Regulatory Ordinance.

8. Revenues forgone from the provision of Video Service to public institutions, public schools, or civic or governmental entities at no charge.
 9. Revenues forgone from the Company's provision of free or reduced-cost Video Service to any Person, including, without limitation, any Governmental or Regulatory Authority.
 10. Revenues from sales of capital assets or sales of surplus equipment.
 11. Revenues from reimbursements by programmers of marketing costs incurred by the Company for the introduction or promotion of new programming.
 12. Directory or Internet advertising revenues including but not limited to yellow page, white page, banner advertisement, and electronic publishing.
 13. Copyright fees paid to the United States Copyright Office.
 14. Late payment charges.
 15. Maintenance charges.
14. "IUB" means the Iowa Utilities Board.
15. "IUB Rules" means the rules and published policies of the IUB as in effect from time to time.
16. "Institutional Network" means any facilities within or services provided using the System reserved and dedicated by the City for noncommercial purposes, including service outlets for the provision of Video Service to public institutions, public or parochial schools, or civic or governmental entities at no charge.
17. "Legal and Regulatory Requirements" means any provision of the Communications Act, Cable Act, Telecommunications Act, the FCC Rules, IUB Rules, and any other Federal, state, local, foreign or other constitution, statute, treaty, ordinance, rule, regulation, regulatory or administrative guidance, principle of common law or equity, order, award, decision, injunction, judgment, ruling, decree, charge, writ, subpoena or verdict entered, issued, made or rendered by any Governmental or Regulatory Authority. To the extent not repealed or preempted by the provisions of this Chapter, the provisions of the Regulatory Ordinance are "Legal and Regulatory Requirements" within this meaning.
18. "Person" means any individual, corporation (including any nonprofit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or other entity or Governmental or Regulatory Authority.

19. “Protected Information” means any and all trade secrets, discoveries, ideas, concepts, know-how, techniques, designs, specifications, drawings, maps, blueprints, diagrams, and other technical, financial and business information concerning the Company or its Affiliates, including all intellectual property rights therein and derivatives thereof or improvements thereto, or any other information relating to any research project, work in process, future development, scientific, engineering, service, manufacturing, marketing or business plans or financial or personnel matters relating to the Company or its Affiliates, or their present or future services, products, sales, suppliers, vendors, customers, employees, lenders or investors, and disclosed to or otherwise received by the City pursuant to this Chapter or the Cable Regulatory Ordinance. For avoidance of doubt, Protected Information includes: (a) information disclosed in a written or other tangible form which is clearly marked with a “confidential” or “proprietary” legend or other comparable legend; (b) information disclosed orally or visually which is identified as confidential at the time of disclosure and confirmed in writing within a reasonable time; (c) any personnel records or employee health data, including genetic information; (d) any Customer Proprietary Information; and (e) any other information which a reasonable person would deem confidential under the context of disclosure or due to the nature of the information. Except for Customer Proprietary Information (which will always continue as Protected Information without exception), “Protected Information” will not include information to the extent that: (i) such information is or becomes publicly available other than through any act or omission of the City or its Representatives; (ii) such information was received by the City, other than under an obligation of confidentiality from a third party, which third party had no obligation of confidentiality to the Company; or (iii) such information was in the possession of the City at the time of the disclosure, or was independently developed by the City without reference to the Company’s Protected Information.
20. “Public Right of Way” means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements. “Public Right of Way” does not include airwaves above any public right-of-way with regard to wireless facilities or services. “Public Right of Way” does not include utility poles owned by the City or its municipal utility.
21. “Regulatory Ordinance” is defined in the introductory paragraphs of this Chapter.
22. “Representative” means, as to any Person, any director, officer, member, manager, general partner, shareholder, employee, agent, consultant, advisor or

other representative of such Person or its Affiliates, including legal counsel, accountants and financial advisors.

23. "Telecommunications Act" means the Telecommunications Act of 1996, as amended.
24. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.
25. "Video Service" means Cable Service or any other Video Programming provided by the Company, without regard to delivery technology, including Video Programming provided utilizing Internet protocol television (IPTV) technologies. "Video Service" does not include any Video Programming service or other service provided solely as part of, and via, a data communications service that enables users to access or stream content, information, electronic mail, or other services offered over the public Internet.
26. "Video System" means the Company's wireline communications facilities located at least in part in the Public Right of Way and designed to provide Video Service to multiple customers within the Franchise Area.

112.02 REGULATORY AUTHORITY. The Company's operation of its Video System shall be governed by this Chapter only to the extent that the City is permitted to exercise its power as a local franchising authority with respect to the Company's Video Service under applicable Legal and Regulatory Requirements. Without limiting the City's otherwise lawful authority under other applicable City codes and ordinances, this Chapter shall authorize and regulate the Company's use and occupancy of the Public Right of Way within the City for the purpose of providing Video Service over its Video System. The provisions of this Ordinance are intended and shall be applied and construed in such a manner as to govern the Company's use and occupancy of public rights-of-way in competitively neutral and nondiscriminatory manner as compared to other public and private utilities using and occupying such rights-of-way, including any municipal utility. Nothing in this Chapter shall be interpreted or construed to impose any requirement that has the purpose or effect of prohibiting, limiting, restricting or conditioning the provision of telecommunications services or other communications or data services by the Company or any of its Affiliates.

112.03 GRANT OF FRANCHISE. The Company is hereby granted a renewal of its Franchise, conferring upon the Company, its successors and assigns, a nonexclusive right, license and authority to construct, operate and maintain a Video System for the purpose of providing Video Service to end-

user customers located in the Franchise Area. The Franchise includes the right of the Company to construct, install, maintain, operate, repair replace and remove facilities and equipment comprising the Video System in the Public Right of Way throughout the Franchise Area.

112.04 TERM AND RENEWAL. The renewal term of the Franchise shall commence upon expiration of the Cable Franchise Ordinance (December 10, 2012) and shall continue for a period of ten (10) years. At the end of this renewal term and any subsequent renewal term(s), the Company may apply for a subsequent renewal of the Franchise by giving written notice to the City not less than ninety (90) days prior to the expiration of the Franchise. In determining whether to grant any subsequent renewals, the City shall consider those factors prescribed by Federal law, including (i) whether the Company has substantially complied with the material terms of the Franchise and with applicable Legal and Regulatory Requirements; (ii) the extent and quality of the Company's Video Service; (iii) whether the Company remains financially, legally and technically qualified to provide Video Service; and (iv) whether renewal of the Franchise promotes the Video Programming-related community needs and interests. The City may terminate the Franchise for cause as provided in the Regulatory Ordinance. In the event the Company elects to cease its operation of a Video System and to no longer provide Video Service, the Company may terminate the Franchise by submitting not less than ninety (90) days prior written notice to the City. The terms and provisions of this Ordinance that can only be given proper effect if they survive the termination of the Franchise will survive and remain enforceable notwithstanding the termination, rescission, or expiration of the Franchise, for any reason whatsoever. In addition, all provisions of this Ordinance will remain valid as to any obligation incurred prior to termination of the Franchise until such time as such obligations have been discharged. This Section specifically preempts and supersedes any additional or different franchise term or renewal conditions or requirements provided under the Regulatory Ordinance.

112.05 FRANCHISE FEE. For the term of the Franchise, the Company shall pay to the City an annual franchise fee of five percent (5%) of the Company's annual Gross Revenues received from subscribers for the provision of Video Service within the Franchise Area. The franchise fee shall be payable quarterly at the Clerk's office as provided in the Cable Regulatory Ordinance. Any franchise fees collected and paid under this Section may be credited to the City's general fund and used for the City's lawful general fund purposes. The Company may identify the franchise fee collected and paid under this Section as a separate line item on the regular bill of each subscriber. This Section specifically preempts and supersedes any additional or different franchise fee

requirements provided under the Regulatory Ordinance.

112.06 PEG CAPITAL SUPPORT FEE. For the term of the Franchise, the Company shall pay the City an annual PEG capital support fee of fifteen cents (\$0.15) per subscriber per month. The PEG capital support fee shall be payable in the same manner as the franchise fee payments. Any PEG capital support fee collected and paid pursuant to this Section shall be used only for the support of public, educational and governmental access equipment and facilities. The PEG capital support fee shall not be deemed to be “franchise fees” and shall not be included in Gross Revenues for purposes of this Chapter or applicable Legal and Regulatory Requirements. The Company may identify the PEG capital support fee collected and paid under this Section as a separate line item on the regular bill of each subscriber. This Section specifically preempts and supersedes any additional or different PEG capital support fee requirements provided under the Regulatory Ordinance.

112.07 PEG CAPITAL GRANT. For the term of the Franchise, the Company shall provide the City with an annual capital grant in the amount of five hundred dollars (\$500.00). The PEG capital grant shall be payable on or before January 30 each year at the Clerk’s office as provided in the Cable Regulatory Ordinance. Any PEG capital grant paid pursuant to this Section shall be used solely for the acquisition and maintenance of capital equipment and facilities in support of educational and governmental programming. The PEG capital grant shall not be deemed to be “franchise fees” for purposes of this Chapter or applicable Legal and Regulatory Requirements. This Section specifically preempts and supersedes any additional or different PEG capital grant requirements provided under the Regulatory Ordinance.

112.08 PEG ACCESS EQUIPMENT AND CAPACITY. The Company shall not be required to provide PEG access equipment as provided under the Regulatory Ordinance. For the term of the Franchise, the Company shall designate a sufficient amount of channel capacity on the Video System to allow the provision of a comparable number of public, educational, and governmental channels that the Company has activated and provided in the Franchise Area under the terms of the Franchise Ordinance. If no such channels are active, the City may during the term of the Franchise request a maximum of two public, educational, and governmental channels in accordance with the qualifications and limitations set forth in the Cable Regulatory Ordinance. The public, educational, and governmental content to be provided pursuant to this Section and the operation of the public, educational, and governmental channels shall be the responsibility of the City, and the Company shall be responsible only for the transmission of such content, subject to technological restraints. The City shall

ensure that all transmissions, content, or programming to be transmitted by the Company pursuant to this Section are provided or submitted to the Company in a manner or form that is capable of being accepted and transmitted by the Company, without requirement for additional alteration or change in the content, over the Video System, which is compatible with the technology or protocol utilized by the Company to deliver Video Service. At its election, the City may reasonably request the Company to make any necessary change to the form of any programming, furnished for transmission, which shall be charged to the City, not to exceed the Company's incremental costs. In that case, the City shall have up to twelve (12) months to reimburse the Company for such costs. The provision of such transmissions, content, or programming to the Company shall constitute authorization for the Company to carry such transmissions, content, or programming, at the Company's option, beyond the jurisdictional boundaries of the Franchise Area. This Section specifically preempts and supersedes any additional or different PEG access equipment and capacity requirements provided under the Regulatory Ordinance.

112.09 INSTITUTIONAL NETWORK. For the term of the Franchise, the Company shall provide an Institutional Network comparable to the Institutional Network that the Company has provided in the Franchise Area under the terms of the Franchise Ordinance, including free service to the following locations within the City's Institutional Network:

- City Hall
- Fire Station
- Cascade Public Library
- Aquin System
- Western Dubuque Community Senior and Junior High School
- Western Dubuque Community Elementary School

The City may from time to time request reasonable additions or modifications to the Institutional Network, provided that, (a) the total revenues forgone by the Company from the provision of Video Service to public institutions, public or parochial schools, or civic and governmental entities at no charge shall be limited to an amount not to exceed the existing total of forgone revenues associated with providing such services to such institutions and (b) the total amount of direct or indirect financial support provided for an Institutional Network shall be limited to ongoing maintenance and support of the existing Institutional Network. For the purposes of this Section, maintenance and support shall only include the reasonable incremental cost of moves, changes, and restoring connectivity of the fiber or coaxial cable lines up to a demarcation point at any location within the Institutional Network. This Section specifically

preempts and supersedes any additional or different Institutional Network requirements provided under the Regulatory Ordinance.

112.10 BONDING REQUIREMENTS. For the term of the Franchise and provided that the Company maintains its principal place of business within the Franchise Area, the Company shall not be required to provide any form of performance or surety bond as provided under the Regulatory Ordinance.

112.11 CUSTOMER SERVICE STANDARDS. The Company shall comply with customer service standards consistent with those contained in applicable FCC Rules, and shall maintain a local toll-free telephone number for customer service contacts. This Section specifically preempts and supersedes any additional or different customer service standards provided under the Regulatory Ordinance.

112.12 TECHNICAL STANDARDS. The Company shall comply with technical standards consistent with those contained in applicable FCC Rules. This Section specifically preempts and supersedes any additional or different technical standards provided under the Regulatory Ordinance.

112.13 NONEXCLUSIVE FRANCHISE; EQUAL PROTECTION. The Franchise is nonexclusive and shall in no way prevent the City from granting or renewing any other franchise for Cable Service or Video Service in accordance with applicable Iowa and Federal laws. In the event the City enters into a franchise, permit, license authorization or other agreement of any kind with any Person other than the Company, to use or occupy the Public Right of Way for the purpose of constructing, operating or maintaining a system for providing Cable Service or Video Service to any part of the Franchise Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one service provider not be granted an unfair competitive advantage or another service provider, and to provide all Persons equal protection under the law.

112.14 CONSTRUCTION AND INSTALLATION. The Company shall construct, install, maintain, operate, repair, replace and remove the Video System in a manner consistent with accepted technical and engineering standards and in accordance with all applicable Legal and Regulatory Requirements. All facilities and equipment comprising the Video System and located in the Public Right of Way shall be located so as to cause minimum interference with the proper use of the Public Right of Way and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any Public Right of Way. In case of any facilities or equipment causing interference with the Public Right of Way, the Company

shall, at its own cost and expense and in a commercially reasonable manner, modify, remove or relocate such facilities or equipment. In the event that at any time during the term of the Franchise the City lawfully elects to alter or change any street, alley or other Public Right of Way, the Company shall, if necessary and upon reasonable notice from the City, modify, remove or relocate any facilities or equipment at its own cost an expense and in a commercially reasonable manner, provided that where public funds are available to compensate for such removal or relocation under applicable Legal and Regulatory Requirements, the Company shall not be required to pay such costs. Decisions concerning the need for relocation of facilities shall be made and applied to all users of the affected Public Right of Way (including the City and any of its Affiliates) in a competitively neutral and nondiscriminatory manner. In connection with any construction, reconstruction, maintenance or repair project, the City and the Company shall communicate and coordinate with each other (and with other private and public utility companies utilizing the affected Public Right of Way and any third party contractors involved with any project) in a timely and open manner in order to limit the potential need for relocation of facilities and to minimize costs and disruption of utility services in connection with any required relocations. In case of any disturbance or damage to a Public Right of Way, the Company shall, at its own cost and expense and in a commercially reasonable manner approved by the City, replace and restore such right of way to as good a condition as before the Company's activities were commenced. This Section specifically preempts and supersedes any additional or different construction and installation requirements provided under the Regulatory Ordinance.

112.15 SERVICE EXTENSIONS. The Company shall provide service to residents on a nondiscriminatory basis, and shall not deny access to Video Service to any resident or neighborhood on the basis of income. The Company shall serve all residents of the City, except to the extent that density of homes, adverse terrain or other factors render providing service commercially impracticable or technically infeasible. For purposes of determining compliance with the provisions of this Section, and to provide for a commercially reasonable and non-discriminatory policy governing extensions of video service within the City, the Company shall extend service to new subscribers at the normal installation charge and monthly rate for customers taking the same service, where there is an average of at least forty-five (45) homes per each linear mile of new facilities construction. In the event the requirements of this Section are not met, extensions of Video Service shall be required only on a basis which is commercially reasonable. Nothing in the preceding shall prohibit the Company from offering Video Service in any area not meeting the preceding density requirements on terms acceptable to the

Company. This Section specifically preempts and supersedes any additional or different service extension standards provided under the Regulatory Ordinance.

112.16 OWNERSHIP AND REMOVAL. The Video System shall be and remain the exclusive property of the Company at all times and for all purposes. Any costs, expenses, taxes or other assessments arising from or related to the construction, installation, maintenance, operation, repair, replacement and removal of the Video System shall be the sole responsibility of the Company. Upon expiration or termination of the Franchise in accordance with this Chapter, the Company shall, upon written request of the City, at its own cost and expense and within a commercially reasonable time under the circumstances, remove all facilities and equipment comprising the Video System and restore the Public Right of Way to as good a condition as before the Company's activities were commenced. In the event the Company fails to remove its facilities and equipment within a reasonable time after the written request of the City, the City may accept bids for a contract to remove the facilities and equipment. The Company shall have the right to bid on such a contract. The City may award the contract to the appropriate bidder and charge the costs of such contract to the Company. The provisions of this Section shall not apply to facilities or equipment of the Company which are buried; provided, however, the Company shall transfer ownership to the City of any buried facilities and equipment which are not removed. Nothing in this Section shall require the Company to remove or transfer ownership of any facilities or equipment comprising the Video System so long as such facilities or equipment are being utilized by the Company or an Affiliate to provide telecommunications services or other communications or data services to subscribers within the City.

112.17 CONFIDENTIALITY OF PROTECTED INFORMATION. Any Protected Information of the Company, and the results derived in any way from such information, is and will remain the sole and exclusive property of the Company, and the City has no right or license in or to the Company's Protected Information. Protected Information of the Company that has been disclosed to the City will be maintained in confidence by the City, which will safeguard this information using the same degree of care as it uses to safeguard its own Protected Information, but in no case less than a reasonable degree of care. Without limiting the preceding, the City will (a) limit access to the Company's Protected Information to those of its Representatives with a need to know such Protected Information for the performance of the City's responsibilities and obligations under this Chapter and the Regulatory Ordinance and (b) limit use

of the Company's Protected Information for the exclusive purpose of fulfilling its obligations and responsibilities under this Chapter and the Regulatory Ordinance. The City has established and will maintain commercially reasonable safeguards against the destruction, loss, alteration of or unauthorized use of or access to the Company's Protected Information in the possession of the City or its Representatives, which safeguards will include policies for the disposal/destruction of any such data that are commensurate with the sensitivity of the materials to be disposed of or destroyed. The City warrants that it will take all steps necessary to ensure fulfillment of this obligation and will take all reasonable measures, including court proceedings, to restrain its Representatives from unauthorized disclosure or use of the Company's Protected Information. In the event a subpoena or other legal process is served upon the City that, pursuant to the requirement of a Governmental or Regulatory Authority, requires the disclosure of the Company's Protected Information, the City will notify the Company promptly upon receipt of such subpoena or other request for legal process (unless such notice is prohibited by applicable Legal or Regulatory Requirements), and will cooperate with the Company, at the Company's expense, in any lawful effort by the Company to contest the legal validity or scope of such subpoena or other legal process.

112.18 LEGAL COMPLIANCE; SEVERABILITY. The rights and obligations of the Company and the City under this Chapter shall be subject to, and are intended to comply in all respects with, all applicable Legal and Regulatory Requirements. Each party agrees to take all such further acts and execute all such further documents as the other party reasonably may request to fulfill their respective obligations under this Chapter or to assist the requesting party in complying with all Legal and Regulatory Requirements applicable to such party's rights and obligations under this Chapter. Every provision of this Chapter is intended to be severable. If any provision hereof is invalid or unenforceable for any reason whatsoever under the applicable Legal and Regulatory Requirements of a particular jurisdiction, this Chapter will be construed and enforced as if the invalid or unenforceable provision were not a part of this Chapter for purposes of that jurisdiction, and the remaining provisions of this Chapter will remain in full force and effect and will not be affected by the invalid or unenforceable provision or by its severance from this Chapter. Moreover, a provision as similar in terms to the invalid or unenforceable provision as may be possible and be valid and enforceable in the applicable jurisdiction will be substituted automatically as part of this Chapter in lieu of the illegal, invalid or unenforceable provision. If applicable Legal and Regulatory Requirements are subsequently amended or interpreted by an appropriate Governmental or Regulatory Authority in a way that causes any provision of this Chapter that was formerly invalid or unenforceable to become

valid or enforceable, that provision (to the extent that it subsequently becomes valid and enforceable) will be considered to be adopted as part of this Chapter as of the effective date of that amendment or interpretation.

112.19 FORCE MAJEURE. The Company shall not be liable for any delay or failure in performance of any part of its obligations under this Chapter from any cause beyond its control and without its fault or negligence, including acts of God, acts of civil or military authority, government regulations, adverse judicial proceedings, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation common carriers.

112.20 ASSIGNMENT OR TRANSFER. The Company shall not assign or transfer any right granted under this Chapter to any other Person without the prior written consent of the City; provided that such prior written consent shall not be unreasonably withheld or delayed if the proposed assignee or transferee agrees in writing to assume the Company's obligations under this Chapter, including compliance with the terms and conditions of this Chapter and the applicable provisions of the Regulatory Ordinance. Notwithstanding the preceding or anything in this Chapter or the Regulatory Ordinance to the contrary, no restrictions or special rights with respect to assignment or transfer of the Franchise or the Video System shall apply to transfers from the Company to any Affiliate of the Company. This Section specifically preempts and supersedes any additional or different assignment or transfer restrictions or rights provided under the Regulatory Ordinance.

112.21 THIRD PARTY LIABILITY. Nothing in this Chapter shall be deemed to create civil liability by one party for actions, omissions or negligence of the other party, or of the other party's agents, employees, officers or assigns. This Chapter shall not be interpreted or construed to provide any third parties (including, but not limited to the Company's customers) with any remedy, claim, liability, reimbursement, cause of action or any other right as against the Company or the City. Each of the Company and the City shall bear responsibility for its own actions, omissions and negligence. Without limiting the preceding, the Company shall hold the City harmless from any claim, liability or damage arising from or caused by the Company's activities under the Franchise.

112.22 NOTICES. All notices, consents, waivers, and other communications under this Chapter or the Regulatory Ordinance must be in writing and will be deemed to have been duly given when (a) delivered by hand (with confirmation

of receipt), (b) sent by email or facsimile (with confirmation of receipt), provided that a copy is mailed by registered mail, return receipt requested or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the address of the receiving party designated below, as such address may be modified by notice given in accordance herewith.

If to the City:

City of Cascade, Iowa
Cascade City Hall
320 First Avenue West, PO Box 400
Cascade, IA 52033

Fax: (563) 852-7554
Email: cascadecity@netins.net

If to the Company:

Cascade Communications Company
Attn: General Manager
106 Taylor Street SE, PO Box 250
Cascade, IA 52033

Fax: (563)-852-3710
Email: dave@cascadecomm.com

112.23 EMERGENCY ALERT SYSTEM. The Company shall comply with all current and subsequent FCC Rules concerning the maintenance, operation and testing of an Emergency Alert System.

112.24 LEGAL EFFECT; OTHER ORDINANCES. This Chapter and applicable provisions of the Regulatory Ordinance contain the entire agreement between the City and the Company regarding the Franchise. Any ordinance or provision of any ordinance inconsistent with the provisions of this Chapter is hereby repealed, including without limitation the following provisions of the Regulatory Ordinance:

§ 113.03	§ 113.11	§ 113.19	§ 113.27	§ 113.35
§ 113.04	§ 113.12	§ 113.20	§ 113.28	§ 113.36
§ 113.05	§ 113.13	§ 113.21	§ 113.29	§ 113.42
§ 113.06	§ 113.15	§ 113.22	§ 113.30	§ 113.43
§ 113.08	§ 113.16	§ 113.23	§ 113.31	§ 113.51
§ 113.09	§ 113.17	§ 113.24	§ 113.33	
§ 113.10	§ 113.18	§ 113.26	§ 113.34	

The Company shall comply with the terms of any lawfully adopted or amended generally applicable local ordinance (including the Regulatory Ordinance), to the extent the provisions of such ordinance do have the effect of limiting the benefits or expanding the obligations of the Company under this Chapter. In the event of any conflict between this Chapter and any ordinance (including the Regulatory Ordinance) this Chapter shall control. Neither party may unilaterally alter the material rights and obligations set forth in this Chapter.

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