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## CHAPTER 112

# CABLE TELEVISION FRANCHISE

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

1. “Company” or “Grantee” means Mediacom, the receiver of rights granted by this chapter.
2. “System” or “plant” means the entire complex of wires, cables and associated equipment making up the cable television system.

**112.02 GRANT OF AUTHORITY.** There is hereby granted by the City to the Company, its successors and assigns, a nonexclusive franchise, right and privilege for rights-of-way and use of space over and/or under roads, streets, bridges, avenues, parks, drives and driveways, walks, parking lots, all manner of easements and other public areas of the City, as now existing or hereafter revised or extended, for construction, operation and maintenance of a community antenna television system, consisting of antennas, wires and cables and associated electric/electronic equipment and other necessary supplies and furnishings for the collection and distribution of electronic impulses and energy and for other legal purposes within the capability of the system, with the period of the franchise to be for a term of fifteen (15) years from the date cable television service is offered to subscribers to the Company’s service in the City, with renewal for successive 15-year periods consistent with rules of the Federal Communications Commission.<sup>†</sup> The renewal date shall be June 1, 2010. The Company shall pay all costs of any election and preparation of the franchise ordinance.

**112.03 TERMINATION.** Section 112.02 of this chapter notwithstanding, the City may terminate the franchise, by stating reason, on the fifth or tenth anniversary of the effective date of the ordinance codified herein, by giving the Company notice in writing of its intent to terminate, naming the franchise, not more than sixty (60) or less than thirty (30) days prior to each anniversary. Failure to give such notice abrogates the right of the City to terminate the franchise on the designated anniversary date; however, in the event notice is given, the franchise shall terminate on the designated anniversary. Written notice to the Company under this chapter shall be effectuated by letter sent by ordinary or other mail to the registered agent or any executive officer of the Company.

**112.04 LIABILITY AND INDEMNIFICATION.** Grantee, from start of construction, shall maintain worker’s compensation, public liability and property damage insurance

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<sup>†</sup> **EDITOR’S NOTE:** Ordinance No. 122 granting a cable television franchise was passed and adopted on December 8, 1992.

with a company approved by the Commissioner of Insurance of the State. Limits of liability shall not be less than the following:

1. \$100,000.00 property damage to one person with total of \$200,000.00 any one accident.
2. \$250,000.00 personal injury to one person with total of \$500,000.00 any one accident.

Public liability and property damage insurance shall cover the Grantee, in consideration or defense of claims or suits for alleged injuries or damages due to construction, operation or maintenance of the system. A certificate of insurance shall be filed with the Clerk.

**112.05 OPERATION AND MAINTENANCE.** The City hereby authorizes the Company to enter into a long-term contract with Spirit Lake Cable TV, Inc., Spirit Lake, Iowa, for administration, maintenance and electronic/electric signal service from the Spirit Lake, Iowa, cable television system. Said contract will include a provision that cable television service to the Okoboji system will compare in quality to the service delivered by the Spirit Lake cable television system to its subscribers and that, should the Spirit Lake cable television system be transferred to new owners or operators, the successors to Spirit Lake Cable TV, Inc. will honor the contract and continue to provide service to the Okoboji cable system per the terms of the contract.

**112.06 CONDITIONS OF OCCUPANCY.**

1. The Company may contract with other franchise holders for use of poles and other facilities and equipment to whatever extent such agreements may be of advantage to the Company is providing services offered under the franchise to its subscribers. Should such poles and equipment or contracts not be available or of advantage to the Company, then the Company may own and maintain its own poles and equipment at locations approved by the City's engineer or other designated official except in locations where both telephone and power lines are underground, the Company may be required to place its lines underground. In any event, the Company shall be required to place its lines underground within ten (10) years from the effective date of a City ordinance mandating the Company to do so, consistent with other services or facilities.
2. Company system, cables, wires and equipment shall be of the latest design, incorporating latest engineering techniques and technology available when installed. System shall not be located as to offer an inconvenience to the public or limit free use of streets, alleys and public areas or limit free access to private property.
3. During construction or system modifications or maintenance, surface disturbance of streets or public ways shall be restored to a condition comparable with that existing before such disturbance.
4. Trees and tree branches overhanging or lying on Company lines and cables may be trimmed in a workman-like manner to forestall service interruptions to subscribers.
5. The Grantee, on request of any person holding a valid building moving permit issued by the City, shall temporarily raise or lower its lines to allow such moving. The expense of such modifications to Company lines and cables shall be paid in advance by the holder of the permit. Not less than five (5) days' advance notice

may be required by the Company for such temporary modifications and restoration.

**112.07 ASSIGNMENT AND/OR TRANSFER.** Rights granted hereunder may be freely assigned with approval of the City. The City shall not arbitrarily withhold approval of transfer except it may require the proposed assignee to show financial and technical responsibility and file an instrument of acceptance of the terms and conditions of this chapter with the Clerk.

**112.08 FEES.** Within sixty (60) days after the close of the Grantee's first year of operation or close of its fiscal year, Grantee agrees to pay to the City, in lieu of an annual fee or other charge including pole rent, an annual stipend not to exceed three percent (3%) of the gross receipts for the first year or fraction thereof and three percent (3%) of the gross receipts for each year of operation thereafter. Gross receipts as defined for the purpose of this payment shall be limited to monthly or annual charges collected for service rendered within the City and shall not include sales taxes or other direct taxes of income from connections, reconnections or other sources including but not limited to rents, advertising, special services such as special programming or movie channels. Grantee shall keep records of gross receipts available on request for a period of one year after close of each Company fiscal year, for inspection or audit by a duly authorized agent of the City during reasonable business hours.

**112.09 RATES AND CHARGES.** Initial rates and charges to subscribers shall be in line with standards of the industry and shall not exceed those filed with the Clerk. Annually, the Company may adjust the rates and charges for services rendered, on the basis of the U.S. government Consumer Price Index. Other adjustments in rates and charges may be made provided a new schedule of rates and charges is filed with the Clerk thirty (30) days prior to the effective date thereof. During the said thirty (30) days, the Council may set a time and place, not more than fifteen (15) days after the passage of the 30 days, for public meeting affording due process to which the Grantee is an indispensable party. Within 30 days after the said public hearing, the Council may take no action, or by resolution grant or deny the proposed new schedule. Should the Council take no action or grant the new schedule, the new schedule will then become effective at the termination of the latter thirty-day period. Should the Council deny the new schedule, then the Council shall notify the Company in writing setting forth the reason(s) for said denial. The Company may then appeal the Council's decision or file a new proposed schedule of rates and charges under this section. The Company shall not be required to extend service to isolated structures, buildings or new construction unless said structures are as a group of four or more within one thousand (1,000) feet of trunk or feeder lines, and a majority of the occupants agree to accept the service when available.

**112.10 PUBLIC ACCESS.** The Company agrees that in contracting with Spirit Lake Cable TV, Inc., as provided under Section 112.05 of this chapter, that the public access channel of the Spirit Lake cable television system will be the public access channel provided the Okoboji system under the same terms and conditions. Conditions are as follows: The channel may be used by the City, school or other public bodies as a public service, educational or informational channel on a first come, first served basis. The City, school or other public bodies shall furnish any special equipment and personnel necessary to feed public service, informational or educational programs in to the Company's system. The Company shall not be responsible for the content of said public service, informational or educational programs and reserves the right to use this channel at any

time during any period for which no program or use of such channel is scheduled by the City, school or other public bodies.

**112.11 OPERATION STANDARDS.** The Grantee shall pursue with diligence permits to construct and operate the system as may be required by the Federal Communications Commission or other regulatory agencies. Grantee shall keep licenses and permits current and operate the system in accordance with the rules and regulations of said agencies and applicable City ordinances.

**112.12 SERVICE EXTENSIONS.** The Grantee may locate a portion of the system or extend service outside the corporate limits of the City without conflict or restriction by any part of this chapter.

**112.13 CONSTRUCTION AND DEVELOPMENT.** Upon approval and certification by the Federal Communications Commission and other agencies having regulatory authority, the Company shall proceed with engineering and construction of the system.

**112.14 MODIFICATION OF REGULATIONS.** Any modifications of requirements of the Federal Communications Commission or other regulatory agencies having jurisdiction shall be incorporated into this chapter within one year of adoption of modifications or at the time of the franchise renewal, whichever comes first.

**112.15 ANTI-DISCRIMINATION.** Grantee shall not make or grant special privileges or discriminate against any person, subscriber or legal entity or subject anyone to a prejudice or disadvantage.

**112.16 INDIVIDUAL ANTENNAS.** Nothing in this chapter shall limit or deny service as presently provided by direct reception or limit the right of individuals to erect and maintain their own antennas.

**112.17 UNAUTHORIZED CONNECTIONS.** It is unlawful for any person to secure cable services from Company lines or facilities, or any user or lessee of Company lines and/or facilities by tapping, rearranging, reinstalling, tampering with or readjusting any of said lines and/or facilities or in any other manner unless the same is done with the prior knowledge and consent of the Company, user or lessee of said lines and facilities. Any person securing said service as outlined above or tampering with said lines and equipment in any manner shall be deemed guilty of a misdemeanor and shall be subject to penalties as provided by law. Should any person secure service from said lines illegally or connect equipment illegally thereto, the Company or its users or lessees shall not be liable for alleged damages, interference with or operation of any equipment or facilities so illegally connected.

**112.18 LIMITATION OF ACTIVITIES.** Company shall not engage in the sale or servicing of residential television receivers or parts and supplies or recommend any manufacturer or service personnel over any other.

**112.19 SERVICE OUTSIDE CITY.** The Grantee, without restriction, taxation, fee or license, may use the rights-of-way as outlined in Sections 112.02 and 112.06 of this chapter, as a corridor to place one or more cables through the City to communities outside the corporate limits of the City.