

CHAPTER 113

CABLE TELEVISION FRANCHISE AND REGULATIONS

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113.01 DEFINITION OF TERMS. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the single number, and words in the single number include the plural number.

1. “Cable Service” means the delivery by the Grantee to television receivers (or any other suitable type of audio video communications receivers) of the signals of over the air television broadcast stations, satellite programming services and other video programming sources authorized for transmission over cable television systems by the FCC; and additional closed circuit channels at the option of the Grantee.
2. “Cable System” is the system used and/or operated by Grantee for the provision of Cable Service. It may utilize fiber optic cable, coaxial cable, twisted-pair cable and other media and electronic and other components as Grantee shall determine.
3. “City” is the City of Milford, Iowa.
4. “Council” is the City Council of City.
5. “FCC” means the Federal Communications Commission or successor agency of the United States government having jurisdiction over the operations of Grantee in the City.
6. “Grantee” is Milford Communications, LLC.
7. “Gross Franchise Fee Revenue” means gross revenue from the sale of basic-tier Cable Service to Subscribers, provided, however, that Gross Franchise Fee Revenue shall not include franchise fees, the FCC User Fee or any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency.
8. “Person” is any person, firm, partnership, association, corporation, company or organization of any kind and any other legally recognized entity.
9. “Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including public utility easements and dedicated utility strips, held by the City in the Service Area which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.

10. “Service Area” means the present boundaries of the City, and shall include any additions thereto by annexation or other legal means.

11. “Subscribers” are those persons contracting with Grantee to receive any type of Cable Service that Grantee may offer.

113.02 GRANT OF FRANCHISE.

1. Grant. The City hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System for the transmission and distribution of Cable Service. In accepting this Franchise, Grantee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce general ordinances necessary for the health, safety and welfare of the public and it agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to such powers. Such ordinances include, but are not limited to, ordinances of a general nature that place reasonable restrictions upon the right of Persons to use Public Ways, provided, however, that such restrictions shall not be inconsistent with the rights granted to Grantee by this Franchise.

2. This franchise relates to the present territorial limits of the City and to any area henceforth added thereto during the term of this franchise.

3. The City hereby grants the right, privilege, and authority to Grantee to lease, rent or in any other legal manner obtain the use of poles with overhead lines, conduits, trenches, ducts, lines, cables and other equipment and facilities from any and all holders of other public licenses and franchises within the corporate limits of the City and to use such poles, conduits, trenches, ducts, lines and cables in the course of its business.

4. Nothing in this Franchise shall limit or deny service as presently provided by direct reception or limit the right of individuals to erect and maintain antennas for their own use.

5. Any leaks in Grantee’s equipment which impairs or restricts normal television reception to non-subscribers shall be located and repaired within seventy-two (72) hours of notification to Grantee.

113.03 STANDARDS OF SERVICE.

1. Conditions of Occupancy. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways and in accord with City authority to manage and control the Public Ways.

2. Restoration of Public Ways. If during the course of the Grantee’s construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3. Relocation for the City. Upon its receipt of reasonable advance written notice, to be not less than ten (10) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements.
4. Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection "reasonable advance written notice" shall be not less than thirty (30) business days in the event of a temporary relocation and not less than one hundred twenty (120) days for a permanent relocation.
5. Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System or in accord with any City tree trimming ordinance which may hereafter be adopted.
6. Safety Requirements. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code.
7. Access to Open Trenches. The City agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the City agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench. In the event compliance with this paragraph causes the City extra expenses for either, or both, the required notices or costs for delay in any project or public work, Grantee shall reimburse such expenses to the City.

113.04 PROGRAMMING ALTERATION. Grantee shall have the right to prescribe service rules and regulations for the conduct of its business with its subscribers and service users, not inconsistent with the provisions of its franchise or with the rules and regulations of the FCC, and other applicable laws, rules and regulations.

113.05 UNAUTHORIZED CABLE USE. It shall be unlawful for any person to obtain any cable television services from the cable television system by installing, rearranging, or tampering with any facilities or equipment of said cable television company unless the same is done with the knowledge and permission of the cable television company. Any person found guilty of a violation of any of the provisions of this section shall be deemed guilty of a misdemeanor. A violation will also be assessed to any person who injures, destroys, or defaces any lawfully installed property of the Grantee.

113.06 REGULATION BY THE CITY.

1. Franchise Fee. The Grantee shall pay to the City a franchise fee of three (3) percent of annual Gross Franchise Fee Revenue (as defined in subsection 113.01(7) of this Franchise.) The twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. The franchise fee payment shall be due annually and payable within 90 days after the close of the preceding calendar year. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.
2. Transfer of Franchise. Grantee shall not transfer this Franchise without the approval of the City, which approval shall not be unreasonably withheld.

113.07 INSURANCE AND INDEMNIFICATION.

1. Insurance Requirements. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage. The City shall be designated as an additional insured. Such insurance shall be non-cancelable except upon thirty (30) days prior written notice to the City. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.
2. Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the City, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System in the Service Area.

113.08 ENFORCEMENT AND TERMINATION OF FRANCHISE.

1. Notice of Violation. In the event that the City believes that the Grantee has not complied with the terms of the Franchise, the City shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the City shall notify the Grantee in writing of the exact nature of the alleged noncompliance.
2. The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 113.08(1) to (A) respond to the City, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of such default, it cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed.
3. Public Hearing. In the event that the Grantee fails to respond to the notice described in subsection 113.08(1) pursuant to the procedures set forth in subsection 113.08(2), or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 113.08(2)(C) above, if it intends to continue its investigation into the default, then the City shall schedule a public hearing. The City shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

4. Enforcement. Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 113.08(3), determines that the Grantee is in default of any provision of the Franchise, the City may:

A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

B. Commence an action at law for monetary damages or other or additional relief, with or without equitable relief; or

C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchisee in accordance with subsection 113.08(5).

5. Revocation. Should the City seek to revoke the Franchise after following the procedures set forth in subsections 113.08(1-4) above, the City shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the City has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The City shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the City, to compel the testimony of other persons as permitted by law, and to question witnesses.

A complete verbatim record and transcript shall be made of such hearing.

Following the hearing, the City shall determine whether or not the Franchise shall be revoked. If the City determines that the Franchise shall be revoked, the City shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination of the City to an appropriate court, which shall have the power to review the decision of the City for abuse of discretion. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the City. Until the merits of the appeal have been determined in a final judgment of such court, the Franchise shall remain in force.

The City may, at its sole discretion, take any lawful action that it deems appropriate to enforce the City's rights under the Franchise in lieu of revocation of the Franchise.

6. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the City's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the City and/or Subscribers.

113.09 MISCELLANEOUS PROVISIONS.

1. **Actions of Parties.** In any action by the City or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.
2. **Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the City and supersedes all other prior understandings and agreements oral or written. Any amendments to this Franchise shall be mutually agreed to in writing by the parties.
3. **Reservation of Rights.** Acceptance of the terms and conditions of this franchise will not constitute, or deemed to constitute, a waiver, either expressly or impliedly, by Grantee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. The City acknowledges that Grantee reserves all of its rights under applicable Federal and State Constitutions and laws.
4. **Notice.** Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the City or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: (A) upon receipt when hand delivered with receipt/acknowledgement, (B) upon receipt when sent certified, registered mail, (C) within five (5) business days after having been posted in the regular mail or (D) on the next business day if sent by express mail or overnight air courier.

The notices or responses to the City shall be addressed as follows:

City Clerk
City of Milford

The notices or responses to the Grantee shall be addressed as follows:

Milford Communications, LLC
339 First Avenue NE
P.O. Box 200
Sioux Center, IA 51250

The City and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

5. Descriptive Headings. The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

6. Severability. If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

7. Term and Effective Date. The effective date of this Franchise is the later of (A) the date of final adoption by the City; or (B) the acceptance of the Franchise by Grantee. As of the effective date of this Franchise, all inconsistent legislative enactments of the City are repealed. The term of the Franchise is twenty-five (25) years from its effective date.

(Ch. 113 – Ord. 6-27-16 – Aug. 16 Supp.)

EDITOR'S NOTE

Ordinance No. 6-27-16 adopting a cable television franchise and regulations for the City was passed and adopted on June 27, 2016.

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