

CHAPTER 114

CABLE TELEVISION REGULATIONS

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114.01 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. “Cable television system” means any facility that, in whole or in part, receives directly, or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals, by wire or cable, to subscribing members of the public who pay for such services.
2. “Channel” means the segment of the electromagnetic spectrum to which a source of television transmission is assigned.
3. “FCC” means the Federal Communications Commission.
4. “Franchise” means the rights, privileges, and authority granted by the City to the Grantee hereunder and includes all of the terms and conditions of this chapter.
5. “Grantee” means Heritage Communications, Inc., d/b/a Heritage Cablevision, Inc., a corporation organized and existing under the laws of the State, its successors and assigns. When the context so requires, the term “Grantee” means and includes the Grantee, its officers, agents, employees, servants and independent contractors.
6. “Property of the Grantee” means all property, real, personal or mixed, owned or used by the Grantee however arising from or related to or connected with the franchise.
7. “Public property” means all property, real or personal or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.

114.02 USE OF PROPERTY. The Grantee may use public property within the City and, with the written consent of the owner thereof, private property within the City, in furtherance of such activities within the City as may now or hereafter be consistent with generally accepted principles applicable to the operation of a cable television system subject, however, to the following restrictions:

1. **Laws and Regulations.** The Grantee shall comply with all governmental laws, ordinances, rules or regulations as may now or hereafter be applicable thereto.
2. **Restrictions.** The Grantee shall not use or occupy or permit public property or private property to be used or occupied or do or permit anything to be done on or about public property or private property which will, in any manner:
 - A. Impair the owner's interest in or title thereto;
 - B. Impair any mortgage or lease as may now or hereinafter be applicable thereto;
 - C. Adversely affect the then value or character thereof;
 - D. Cause or be likely to cause structural damage thereto, or any part thereof;
 - E. Cause or be likely to cause any damage or injury to any utility service available thereto;
 - F. Create a public or private nuisance, cause any offensive or obnoxious vibrations, noise, odor or undesirable effect or interfere with the safety, comfort or convenience of the owner thereof, and persons lawfully on or about the same;
 - G. Violate the rules, regulations and requirements of any person furnishing utilities or services thereto; or
 - H. Make void or voidable any insurance then in force affecting the same or cause an increase in the rates applicable thereto.

114.03 TAXES. The Grantee shall pay all real estate taxes, special assessments, personal property taxes, license fees, permit fees and other charges of a like nature which may be taxed, charged, assessed, levied, or imposed upon the property of the Grantee and upon any services rendered by the Grantee.

114.04 INSURANCE. The Grantee shall, at all times during the term of the franchise, carry and require their contractors to carry:

1. **General Liability.** Insurance in such forms and in such companies as shall be approved by the City to protect the City and Grantee from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the construction, erection, operation and maintenance of any structure, equipment or appliance. The amount of such insurance shall be not less than \$100,000 as to any one person, \$300,000 as to any one occurrence for injury or death to persons, and \$100,000 for damages to property, with so-called umbrella coverage of at least \$5,000,000.
2. **Worker's Compensation.** Worker's Compensation Insurance as provided by the laws of the State of Iowa, as amended.

3. Automobile. Automobile Insurance with limits of not less than \$100,000/\$300,000 of public liability coverage and automobile property damage insurance with a limit of not less than \$100,000 covering all automotive equipment, with so-called umbrella coverage of at least \$5,000,000.
4. Notice of Cancellation. All of said insurance coverage shall provide a ten (10) day notice to the City in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective.
5. Copies Filed. Copies of all insurance policies required hereunder shall be furnished to and filed with the City prior to the commencement of operations or the expiration of prior policies, as the case may be.
6. Defense Costs. The Grantee shall pay all reasonable expenses incurred by the City in defending itself with regard to all damages, penalties or other claims resulting from the acts of the Grantee, its assigns, employees, agents, invitees, or other persons. Said expenses shall include all out-of-pocket expenses such as attorney's fees, and shall include the value of any service rendered by the City Attorney or any other officers or employees of the City.

114.05 REPAIRS. During the term of the franchise, the Grantee shall, at its own expense, make all necessary repairs and replacements to the property of the Grantee. Such repairs and replacements, interior and exterior, ordinary as well as extraordinary, and structural as well as nonstructural, shall be made promptly, as and when needed.

114.06 HOLD HARMLESS. During the term of the franchise, the Grantee absolutely assumes and agrees to pay the City for, and the Grantee forever agrees to indemnify the City against, and agrees to hold and save the City harmless from, any and all damage, injury, costs, expenses, liability, claims, settlements, judgments, decrees and awards of every kind and nature whatsoever, including attorney's fees, costs and disbursements, that may ever be claimed against the City by any person whatsoever, or an account of any actual or alleged loss, damage or injury to any property or person whatsoever, however arising from or related to or connected with, directly or indirectly: (a) injury to or death of any person, or loss, damage or injury to any property of the Grantee, and/or (b) the nonobservance by the Grantee of the provisions of any laws, statutes, ordinances, resolutions, regulations or rules duly promulgated by any governmental entity which may be applicable directly or indirectly, to rights, privileges, and authority, and the obligations and liabilities, assumed by the Grantee under the franchise, (c) the nonobservance by the Grantee of any of the terms and conditions of the franchise, and/or (d) the granting of the franchise.

114.07 ASSIGNMENT. The Grantee shall not assign or transfer any right granted under this chapter to any other person without prior consent of the Council, which consent shall not be unreasonably withheld, provided that the Grantee shall have the right to assign the provisions of this chapter to a corporation wholly owned by the Grantee or to a limited partnership of which the Grantee or other wholly owned subsidiary of Heritage Communications, Inc. is a general partner without the prior consent of the City.

114.08 INSOLVENCY OF GRANTEE. In the event that the Grantee shall become insolvent, or be declared a bankrupt, or the property of the Grantee shall come into the possession of any receiver, assignee or other officer acting under an order of court, and any

such receiver, assignee or other such officer shall not be discharged within sixty (60) days after taking possession of such property, the City may, at its option, terminate the franchise by giving written notice thereof to the Grantee.

114.09 DEFAULT OF GRANTEE. In the event the Grantee shall fail to comply with any of the terms and conditions of the franchise within sixty (60) days after receipt of notice in writing from the City specifying the failure or default, the City may, at its option, terminate the franchise by giving written notice thereof to the Grantee. This section shall not apply to failures or defaults beyond the reasonable control of the Grantee.

114.10 TERMINATION. Upon termination of the franchise for any cause, the Grantee shall remove the property of the Grantee from all public property and private property within the City and shall return such public property and private property to the owner thereof in the same condition as when the property of the Grantee was placed thereon, ordinary wear and tear excepted.

114.11 COMPLIANCE WITH APPLICABLE LAWS. During the term of the franchise, the Grantee shall comply with all governmental laws, ordinances, rules or regulations as may be applicable to the construction, operation, maintenance, repair, replacement, renewal, reconstruction, and removal of a cable television system, the sale and supply of audio and video communications services, the use of public property and private property and the engagement in such further activities as may now or hereafter be consistent with generally accepted principles applicable to the operation of a cable television system.

114.12 INSTALLATION AND MAINTENANCE OF PROPERTY OF THE GRANTEE. During the term of the franchise, the property of the Grantee shall be constructed, operated, maintained, repaired, replaced, renewed, reconstructed, and removed in accordance with generally accepted engineering principles so as not to endanger or interfere with the lives of persons or to interfere with improvements which the City may deem proper to make or to unnecessarily hinder or obstruct pedestrian or vehicular traffic or use of public property or private property.

114.13 INTERFERENCE. The Grantee's cable television system shall be so designed, engineered and maintained so as not to interfere with radio and television reception of persons who are not subscribers of the Grantee.

114.14 INSTALLATION OF CABLES. The Grantee shall have the right, privilege, and authority to lease, rent or in any other manner obtain the use of wooden poles with overhead lines, conduits, trenches, ducts, lines, cables, and other equipment and facilities from any and all holders of public licenses and franchises with the City, and to use such poles, conduits, trenches, ducts, lines, and cables in the course of its business. The Grantee shall install its cable on the existing poles owned by other holders of public licenses and franchises with the City whenever possible for the installation of its cable. When installation of cable on poles is insufficient, or when holders of other public licenses or franchises have installed underground cable, then in that event, the cable used by the Grantee shall be installed underground.

114.15 RESTORATION OF GROUND SURFACE. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk,

driveway, or surface of any street or alley disturbed, in as good a condition as before said work was commenced.

114.16 ALTERATION OF GRADE. In the event that during the term of the franchise, the City shall elect to alter or change the grade of any street, alley, or public way, the Grantee, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

114.17 TEMPORARY REMOVAL OF CABLES. The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its cables to permit the moving of buildings. The expense of such temporary removal, raising, or lowering of cables shall be paid by the person requesting the same and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than five (5) days' advance notice to arrange for such temporary cable changes.

114.18 TREE TRIMMING. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the cables of the Grantee. All trimming shall be done at the expense of the Grantee.

114.19 LINE EXTENSIONS. It shall be the obligation of the Grantee to serve all residents of the City except to the extent that density of homes, adverse terrain or other factors render providing service impracticable, technically infeasible or economically noncompensatory. For purposes of determining compliance with the provisions of this section, and to provide for a reasonable and nondiscriminatory policy governing extensions of cable service within the City, Grantee shall extend service to new subscribers at the normal installation charge and monthly rate for customers of that classification where there is an average of fifty (50) homes per each linear mile of new cable construction. In the event the requirements of this section are not met, extensions of service shall be required only on a basis which is reasonable and compensatory.

114.20 SERVICE REQUIREMENTS. During the term of the franchise, the Grantee shall furnish reasonable, adequate and efficient cable television service to subscriber terminals. This requirement may be temporarily suspended due to circumstances beyond the control of the Grantee.

114.21 CUSTOMER SERVICE STANDARDS. The City has the legal authority to adopt and enforce customer service standards for the cable television system in the City as permitted by the Cable Television Consumer Protection and Competition Act of 1992. Upon review of the customer service standards adopted by the Federal Communications Commission (FCC) on March 11, 1993, by MM Docket No. 92-263 of the FCC, and deeming it in the best interest of the City, the Council herewith adopted by reference the above-mentioned customer service standards for cable television service effective July 15, 1994.

114.22 PERFORMANCE STANDARDS. The Grantee shall produce a picture in black and white or in color that is of high quality accompanied by proper sound on typical standard television sets in good repair. The Grantee shall also transmit signals of adequate strength to produce good pictures with good sound at all subscriber terminals throughout the City without causing cross modulation in the cables or interfering with other electrical or electronic systems.

114.23 CHANNEL CAPACITY AND PERFORMANCE. During the term of the franchise, the cable television system of the Grantee shall conform to the channel capacity and performance requirements contained in the then current regulations of the FCC.

114.24 INSTALLATION AND MAINTENANCE OF SUBSCRIBER TERMINALS IN CITY BUILDINGS AND SCHOOLS. During the franchise, the Grantee shall at its sole cost, install and maintain a subscriber terminal in such buildings owned or used by the City, and in such buildings owned or used by recognized educational authorities within the City, both public and private, as may be designated by the governing body having jurisdiction thereof. Such subscriber terminals shall be placed in such location within such buildings as may be designated by the governing body having jurisdiction thereof. This provision is meant to apply only to those buildings accessible to Grantee's system.

114.25 TELECAST OF EDUCATIONAL ACTIVITIES. The Grantee shall not cablecast, tape, reproduce or otherwise convey to its subscribers the activities of any recognized educational authority, public or private, without the written consent of the governing body of such authority.

114.26 PROGRAM ALTERATION. Any signal received by the Grantee from a television broadcast station shall be cablecast by the Grantee in its entirety, as received, without alteration.

114.27 SUBSCRIBER RATES AND CHARGES. All basic rates and charges made by the Grantee for its services shall be fair, reasonable, just and uniform, designed to meet all necessary costs of service, including a fair rate of return on net valuation of its properties devoted thereto under efficient and economic management. Multi-user rates and charges may be negotiated between the Grantee and the subscriber, but in no event shall the multi-user rates and charges for any subscriber exceed the aggregate of rates and charges which would be charged to the multi-user if computed on the basis of single-user rates and charges. A current schedule of rates will be kept on file with the Clerk.

114.28 RATE REGULATION PROCEEDINGS.

1. Authority. The City has the legal authority to administer and shall enforce against any non-municipally owned cable television system operator, as permitted therein, the provisions of Part 76, Subpart N of the Rules and Regulations of the Federal Communications Commission (FCC), concerning Cable Rate Regulation, 47 C.F.R. §§76.900 *et. seq.*, as they currently read and hereafter may be amended, which are herewith incorporated by reference.

2. Rate Regulation Proceedings. Any rate regulation proceedings conducted under this section shall provide a reasonable opportunity for consideration of the views of any interested party, including but not limited to, the City or its designee, the cable operator, subscribers, and residents of the franchise area. In addition to all other provisions required by the laws of the State of Iowa and by the City, and in order to provide for such opportunity for consideration of the views of any interested party, the City shall take the following actions:

A. The City shall publish notice as provided in Section 362.3 of the Code of Iowa and shall mail, by certified mail, to the cable operator a notice of the intent to conduct a public proceeding on basic service tier rates and/or

charges for equipment to receive such basic service tier, as defined by the FCC.

B. The public notice shall state, among other things, that cable television rates are subject to municipal review and explain the nature of the rate review in question; that any interested party has a right to participate in the proceeding; that public views may be submitted in the proceeding, explaining how they are to be submitted and the deadline for submitting any such views; that a decision concerning the reasonableness of the cable television rates in question will be governed by the Rules and Regulations of the FCC; and that the decision of the City is subject to review by the FCC.

C. The City shall conduct a public proceeding to determine whether or not the rates or proposed rate increases are reasonable. The City may delegate the responsibility to conduct the proceeding to any duly qualified and eligible individual or entity. If the City or its designee cannot determine the reasonableness of a proposed rate increase within the time period permitted by the FCC Rules and Regulations, it may announce the effective date of the proposed rates for an additional period of time as permitted by the FCC Rules and Regulations, and issue any other necessary or appropriate order and give public notice accordingly.

D. In the course of the rate regulation proceeding, the City may request additional information from the Cable Operator that is reasonably necessary to determine the reasonableness of the basic service tier rates and equipment charges. Any such additional information submitted to the City shall be verified by an appropriate official of the cable television system supervising the preparation of the response on behalf of the entity, and submitted by way of affidavit or under penalty of perjury, stating that the response is true and accurate to the best of that person's knowledge, information and belief formed after reasonable inquiry.

E. The City may request proprietary information, provided that the City shall consider a timely request from the Cable Operator that said proprietary information shall not be made available for public information, consistent with the procedures set forth in Section 0.459 of the FCC Rules and Regulations. Furthermore, said proprietary information may be used only for the purpose of determining the reasonableness of the rates and charges or the appropriate rate level based on a cost-of-service showing submitted by the Cable Operator.

F. The City may exercise all powers under the laws of evidence applicable to administrative proceedings under the laws of the State of Iowa and by the City to discover any information relevant to the rate regulation proceeding, including, but not limited to, subpoena, interrogatories, production of documents, and deposition.

G. Upon termination of the rate regulation proceeding, the City shall adopt and release a written decision as to whether or not the rate or proposed rate increase is reasonable or unreasonable, and, if unreasonable, its remedy, including prospective rate reduction, rate prescription, and refunds.

H. The City may not impose any fines, penalties, forfeitures or other sanctions, other than permitted by the FCC Rules and Regulations, for charging an unreasonable rate or proposing an unreasonable rate increase.

I. Consistent with FCC Rules and Regulations, the City's decision may be reviewed only by the FCC.

J. The City shall be authorized, at any time, whether or not in the course of a rate regulation proceeding, to gather information as necessary to exercise its jurisdiction as authorized by the Communications Act of 1934, as amended, and the FCC Rules and Regulations. Any information submitted to the City shall be verified by an appropriate official of the cable television system supervising the preparation of the response on behalf of the entity, and submitted by way of affidavit or under penalty of perjury, stating that the response is true and accurate to the best of that person's knowledge, information and belief formed after reasonable inquiry.

3. Certification. The City shall file with the FCC the required certification form (FCC Form 328) on September 1, 1993, or as soon thereafter as appropriate. Thirty days later, or as soon thereafter as appropriate, the City shall notify the Cable Operator that the City has been certified by the FCC and that it has adopted all necessary regulations so as to begin regulating basic service tier cable television rates and equipment charges.

4. Notice of Rate Change. With regard to the cable programming service tier, as defined by the Communications Act of 1934, as amended, and the FCC Rules and Regulations, and over which the City is not empowered to exercise rate regulation, the Cable Operator shall give notice to the City of any change in rates for the cable programming service tier or tiers, any change in the charge for equipment required to receive the tier or tiers, and any changes in the nature of the services provided, including the program services included in the tier or tiers. Said notice shall be provided within five (5) business days after the change becomes effective.

5. Delegation of Power. The City may delegate its powers to enforce this chapter to municipal employees or officers (the "cable official"). The cable official will have the authority to:

- A. Administer oaths and affirmations;
- B. Issue subpoenas;
- C. Examine witnesses;
- D. Rule upon questions of evidence;
- E. Take or cause depositions to be taken;
- F. Conduct proceedings in accordance with this chapter;
- G. Exclude from the proceeding any person engaging in contemptuous conduct or otherwise disrupting the proceedings;
- H. Hold conferences for the settlement or simplification of the issues by consent of the parties; and
- I. Take actions and make decisions or recommend decisions in conformity with this chapter.

114.29 SERVICE RULES AND REGULATIONS. The Grantee shall have the right to prescribe reasonable service rules and regulations and operating rules for the conduct of its business. Such rules and regulations shall be consistent with the terms and conditions of the franchise. The Grantee shall file such rules and regulations, and all amendments thereto, with the City.

114.30 SERVICE AGREEMENTS. The Grantee shall have the right to prescribe a reasonable form of service agreement for use between the Grantee and its subscribers. Such service agreement shall be consistent with the terms and conditions of the franchise.

114.31 PAYMENTS TO CITY. The Grantee shall pay to the City one percent (1%) of its annual basic monthly cable television service revenue for service rendered to customers located within the City. For purposes of this section, "basic monthly cable television service" is the provision of television broadcast signals and access and origination channels, if any, and does not include advertising services, rental of studios or equipment, provision of program production services, per-channel or per-program charges to subscribers ("pay cable"), rental of channels, sale of channel time, provision of commercial services such as security systems or any other services of the system, the rates and charges for which shall not require approval of the City.

114.32 FILING OF REPORTS. On or before April 1 of each year, the Grantee shall file with the City copies of FCC Form 325 and FCC Form 326 for the preceding calendar year.

114.33 FILING OF MAPS AND PLATS. On or before April 1 of each year, the Grantee shall file with the City maps and plats showing the location and nature of all new property of the Grantee within the City as of the end of the preceding calendar year.

114.34 FILING OF COMMUNICATIONS WITH REGULATORY AGENCIES. The Grantee shall file with the City, copies of all petitions, applications and communications submitted by the Grantee to any regulatory agency having jurisdiction over the Grantee.

114.35 ACCESS. The Grantee shall and does hereby grant to the City the right to enter upon the property of the Grantee, upon reasonable notice, at any and all reasonable times to inspect the same for purposes pertaining to the rights of the City.

114.36 DISCRIMINATION PROHIBITED. The Grantee shall not grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage with respect to rates, charges, services, service facilities, rules, regulations, or in any other respect.

114.37 OTHER BUSINESS ACTIVITIES PROHIBITED. During the initial term of the franchise or any extension thereof, the Grantee shall not engage in the business of selling, leasing, renting or servicing television or radio receivers, or their parts and accessories, and the Grantee shall not require or attempt to direct its subscribers to deal with any particular person or firm with respect to said activities.

114.38 ARBITRATION. Any controversy between the City and the Grantee regarding the rights, duties and liabilities of either party under the franchise shall be settled by arbitration. This section shall not apply to termination proceedings under Section 114.10. Such arbitration shall be before three disinterested arbitrators, one named by the City, one named

by the Grantee, and one named by the two thus chosen. The decision of the arbitrators shall be conclusive and shall be enforced in accordance with the laws of the State.

114.39 INJURY TO PROPERTY OF THE GRANTEE. No person shall wrongfully or unlawfully injure the property of the Grantee.

114.40 INTERCEPTING SIGNALS OF THE GRANTEE. No person shall wrongfully or unlawfully intercept the signals of the Grantee.

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