

## CHAPTER 111

### CABLE TELEVISION FRANCHISE

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**111.01 DEFINITIONS.** For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein.

1. "Cable Television and Telephone System" or "Cable System" is a system utilizing fiber optic (glass) cable, coaxial cable or other comparable or superior media and certain electronic and other components which deliver to subscribing members of the public various communications services.
2. "Cable Television Service" or "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 Federal Communications Commission; and additional closed-circuit channels at the option of the Grantee.
3. "Cable Telephone Service" means the delivery to and receipt from telephones, computers, fax machines and other devices capable of receiving or transmitting such signals, of voice, data and other communications or transmissions.
4. "Cable Service" means cable television service and cable telephone service.
5. "FCC" means the Federal Communications Commission.
6. "Grantee" is Premier Communications, Inc. in accordance with the provisions of this franchise.
7. "Subscribers" are those persons contracting to receive any type of service that Grantee may offer.

**111.02 GRANT OF NONEXCLUSIVE AUTHORITY.** There is hereby granted by the City to Grantee the nonexclusive franchise, right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes and other television and telephone conductors and fixtures necessary for the maintenance and operation in the City of a cable television and/or telephone system for the purpose of distributing and receiving television,

telephone and radio signals and other electronic impulses in order to furnish cable service to the public.

**111.03 TERRITORIAL AREA INVOLVED.** This franchise relates to the present territorial limits of the City and to any area henceforth added thereto during the term of this franchise.

**111.04 TECHNICAL STANDARDS.** Grantee shall at all times comply with all rules and regulations of the Federal Communications Commission and any other duly authorized agency of the United States of America, all laws duly enacted now or hereafter by the United States Congress and all regulations of the Iowa Utilities Board. Without limiting the generality of the foregoing, the cable television system shall meet all applicable FCC technical standards as of the effective date of this franchise and shall conform to such standards and all amendments thereto during the term of this franchise. This chapter shall be deemed conformed, without further action of the Council or Grantee, to any and all rules and regulations relating to the required terms of cable television franchises which are now in effect or which may hereafter be adopted by the FCC or any other duly authorized agency of the United States of America, as of the effective date thereof.

**111.05 SERVICE AVAILABLE DURING EMERGENCY.** In the case of an emergency or disaster, the Grantee shall, upon request of the Council, make available its facilities to the City for emergency use during the emergency or disaster period.

**111.06 TRANSFER OF FRANCHISE.** The Grantee shall have the right to transfer this franchise only with the approval of the Council, upon sixty (60) days written notice served to the Council.

**111.07 UNAUTHORIZED CABLE SYSTEM TAPPING.**

1. Unauthorized Service Prohibited. It shall be unlawful for any person or persons to obtain any cable service from Grantee by installing, rearranging or tampering with any facilities or equipment of Grantee, unless the same is done with the knowledge of and with the permission of the Grantee.
2. Penalty For Violation of This Section. Any person or persons found guilty of a violation of any of the provisions of this section shall be guilty of a simple misdemeanor. Each day of violation shall constitute a separate offense.

**111.08 INDEMNITY.** Grantee shall at all times protect, indemnify, and hold harmless the City from all claims, actions, suits, liability, loss, expense or damage of any and every kind and description, including investigation costs, court costs and attorney fees, which may accrue to or be suffered or claimed by any person or persons arising out of any negligence, fault or misconduct of the Grantee, its agents, officers, servants and employees, including but not limited to construction, repair, maintenance or operation of the cable system and by reason of any license, copyright, property right, patent or workers' compensation claims. Grantee shall maintain in full force and effect liability insurance in one or more solvent insurance companies authorized to do business in Iowa insuring the City and Grantee with regard to all damages and claims in reasonable amounts to be determined from time to time by the Council. The initial amount of liability insurance required shall be \$300,000 per claim. Upon request of the Council, Grantee shall provide a complete copy of the policies then in effect to the Council.

**111.09 FURNISHING SERVICE.**

1. **Television Service.** Grantee shall, during the period of this franchise, furnish reasonable, adequate and efficient cable television service to the residents of the City; and Grantee shall maintain its cable television system in reasonable repair and working order and provide adequate facilities for such maintenance. The requirements of this subsection shall be temporarily suspended in the event such suspension is required for maintenance or improvement of Grantee's cable system or in the event of natural disaster or emergency conditions or other circumstances beyond the control of Grantee.

2. **Telephone Service.** Grantee may, but is not required to, furnish cable telephone service to the residents of the City. However, once Grantee begins offering cable telephone service to residents of the City, Grantee shall furnish reasonable, adequate and efficient cable telephone service to the residents of the City. Grantee shall maintain its cable telephone system in reasonable repair and working order and provide adequate facilities for such maintenance. The requirements of this subsection shall be temporarily suspended in the event such suspension is required for maintenance or improvement of Grantee's cable system or in the event of natural disaster or emergency conditions or other circumstances beyond the control of Grantee.

**111.10 LOCATION OF EQUIPMENT.** Grantee's plant and equipment, including the antenna site, headend, distribution system, structures, poles, wires, underground cable, and appurtenances shall be installed in accordance with good engineering practices, and shall be located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated so as not to endanger or interfere with the lives or property of persons or other franchise holders or to interfere with the improvements the City may deem proper to make, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic to public ways, places, and structures. Erection, installation, construction, replacement, removal, repair, maintenance and operation of the system shall be in accordance with the provisions of the National Electrical Code and National Electric Safety code (as the same may be applicable) and such applicable laws of the United States, State of Iowa and applicable ordinances of the City which may now be in effect or enacted in the future. All installations shall be of a permanent nature, durable and maintained in a safe, suitable and substantial condition, in good order and repair; and shall be aesthetically pleasing wherever possible. The location of said existing and proposed installations shall be subject to the approval of the Council. The Council shall have authority to inspect and supervise all installation and construction.

**111.11 EQUIPMENT OF OTHER FRANCHISE HOLDERS.** 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 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.

**111.12 PLAT OF INSTALLATIONS.** Grantee shall file with the Clerk a copy, true and accurate, of maps and/or plats of all existing and proposed installations on, over or under the streets, trails, alleys, sidewalks, parking area or other property owned by the City or over which the City has an easement. These maps and plats shall conform to the requirements of the City and shall be kept continuously up to date.

**111.13 SCHEDULE OF RATES.** Grantee shall at all times maintain on file with the Clerk a schedule setting forth all rates and charges to be made to subscribers, including those for additional channels and services other than basic-tier service.

**111.14 CONFORMANCE WITH CODES.** Grantee shall be required to conform to all present and future applicable City building codes including but not limited to plumbing and electrical codes and any ordinances providing for the manner and method of cutting streets, excavations in the right of way, backfills, etc. Grantee shall restore all property of the City, and all other property located in the City, to its original condition after the installation of either overhead or underground cable or any other equipment of or by Grantee.

**111.15 LOCATION OF LINES.** All transmission and distribution structures, lines and equipment erected by Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of the City and of property owners who adjoin any of the said streets, alleys, or other public ways and places, and with other franchise holders and to be aesthetically pleasing wherever possible.

**111.16 SURFACE REPAIR.** In case of any disturbance of pavement, sidewalk, driveway, grass or other surfacing, Grantee shall, at its own cost and expense, and in a manner approved by the City, replace and restore all paving, sidewalk, driveway or other surfacing disturbed to at least as good a condition as before said work was commenced.

**111.17 OTHER FRANCHISE HOLDERS.** Grantee shall cooperate with the other City franchise holders.

**111.18 STREET CHANGES.** If at any time during the period of this franchise, the City shall elect to alter in any way, including change of grade of, any street, alley, trail or public way, or any other property owned by the City or over which the City has an easement, Grantee upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cable, underground conduits, manholes and other fixtures at Grantee's own expense.

**111.19 MOVING BUILDINGS IN CITY.** Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit moving of buildings. The reasonable expense of such temporary removal or raising or lowering of wires 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 forty-eight (48) hours advance notice to arrange for such temporary wire changes.

**111.20 TRIMMING TREES.** Grantee shall have the authority to trim trees hanging over the streets, alleys, sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee.

**111.21 UNDERGROUND CABLE.** In all sections of the City where the cables, wires, or other like facilities of other public utilities are placed underground, Grantee shall place its wires, cables or other like facilities underground to the maximum extent that technology existing at the time reasonably permits Grantee to do so.

**111.22 REPAIRS.** Grantee shall furnish and maintain a toll-free telephone number available to subscribers twenty-four (24) hours a day (with recorder or similar device for telephone calls outside normal business hours) for complaints and requests for repairs.

Grantee shall maintain a repair and "trouble shooting" force capable of locating, correcting and repairing all problems, malfunctions and inadequate reception of the cable television system and cable television service in accordance with applicable regulations of the FCC and Iowa Utilities Board. Grantee shall maintain a subscribers' complaint procedure capable of resolving subscribers' complaints.

**111.23 SERVICE TO SCHOOLS.** Grantee shall provide service to each public and parochial school location within the City upon request. Grantee shall be entitled to charge an amount equal to its actual cost for labor and materials for each such installation. Thereafter, Grantee shall provide basic tier service to each school at which it has made such installation without charge. If any school requests installation of additional outlets, Grantee may charge for the installation thereof an amount equal to its actual cost for labor and materials for each such additional installation but shall not make any further charge for providing basic-tier service thereto.

**111.24 SERVICE TO CITY.** Grantee shall also provide to the City one (1) connection to be selected by the Council with regular service to all sets connected within the building to the terminal junction without charge.

**111.25 PUBLIC ACCESS CHANNEL.** Grantee shall carry the programming of one (1) public access channel as part of the basic tier service package, at no additional charge to its customers, provided, however, that Grantee shall not be required to pay any portion of the cost of equipping and maintaining such public access channel, of connecting such public access channel to Grantee's cable television system or of generating the programming therefor.

**111.26 FRANCHISE FEE.** For the term of the franchise granted hereunder, Grantee shall pay a franchise fee to the City equal to three (3) percent of the subscriber revenues from the sale of basic programming services within the corporate limits of the City. Such fee shall be payable on a semi-annual basis, with payment for any semi-annual period due within thirty (30) days after the end of the period.

**111.27 MISCELLANEOUS.**

1. Grantee's legal, character, financial, technical and other qualifications and the adequacy and feasibility of its construction arrangements have been approved by the Council after consideration in a full public proceeding affording due process to all interested persons.
2. The duration of this franchise shall be ten (10) years. Such term shall begin as of the effective date of the ordinance codified by this chapter.<sup>†</sup>
3. Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Grantee's business office. Should Grantee fail to satisfy a complaint, it may then be directed to the Clerk for investigation. Complainants and Grantee shall be afforded a reasonable opportunity to present written statements of their position. The Clerk shall attempt to resolve the complaint; and if this cannot be achieved, the Clerk shall submit a recommendation to the Council, which shall either (i) dismiss the complaint, or (ii) specify corrective steps to

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<sup>†</sup> **EDITOR'S NOTE:** Ordinance No. 1998-1, adopting a cable television franchise for the City, was passed and adopted on December 21, 1998. Pursuant to a motion passed on January 16, 2006, the franchise was transferred from Vernon Communications & TV to Premier Communications, Inc.

be taken by Grantee. Appeal from the Council's action may be made to the appropriate judicial or administrative forum.

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