

CHAPTER 113

CABLE TELEVISION FRANCHISE AND REGULATIONS – MCC IOWA

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113.01 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. "Basic cable" is the lowest priced tier of cable service that includes the retransmission of local broadcast television signals.
2. "Cable Act" means Title VI of the Communications Act of 1934, as amended.
3. "Cable services" means (i) the one-way transmission to subscribers of video programming or other programming service and (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or any other programming service.
4. "Cable system" means the Grantee's facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple customers within the service area.
5. "FCC" means Federal Communications Commission or successor governmental entity thereto.
6. "Franchising Authority" means the City of Solon.
7. "Grantee" means MCC Iowa LLC, or the lawful successor, transferee or assignee thereof.

8. "Gross revenue" means any revenue received by the Grantee from the operation of the cable system to provide cable services in the service area, provided, however, that gross revenue does not include any tax, fee or assessment of general applicability collected by the Grantee from subscriber for pass-through to a government agency, including the FCC User Fee.

9. "Person" means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.

10. "Public way" means the surface of, and the space above and below any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority 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.

11. "Service area" means the present boundaries of the Franchising Authority and includes any additions thereto by annexation or other legal means, subject to the exceptions in Section 113.14.

12. "Standard installation" is defined as 125 feet from the nearest tap to the subscriber's terminal.

13. "Subscriber" means a person who lawfully receives cable service of the cable system with the Grantee's express permission.

113.02 GRANT. The Franchising Authority 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 services, data services, information and other communications services or for any other lawful purposes.

113.03 OTHER ORDINANCES. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this franchise. Neither party may unilaterally alter the material rights and obligations set forth in this franchise. In the event of a conflict between any ordinance and this franchise, the franchise shall control.

113.04 LEVEL PLAYING FIELD. The Franchising Authority shall not authorize or permit any person providing video programming services and/or cable services to enter into the Franchising Authority's public ways in any part of the service area on terms or conditions more favorable or less burdensome to such person than those applied to the Grantee pursuant to this franchise. A Franchising Authority may require insurance or surety in excess of that required under this franchise in recognition of such operator being either a new entrant or because of the construction requirements specified in that operator's agreement with the Franchising Authority.

113.05 TERM. The franchise granted hereunder shall be for an initial term of fifteen (15) years commencing on the effective date of the franchise (November 1, 2001), unless otherwise lawfully terminated in accordance with the terms of this chapter.

113.06 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 such public ways.

113.07 RESTORATION OF PUBLIC WAYS. If during the course of Grantee's construction, operation or maintenance of the cable system there occurs a disturbance of any public way by the Grantee, the 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.

113.08 RELOCATION AT REQUEST OF THE FRANCHISING AUTHORITY. Upon its receipt of reasonable advance 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 Franchising Authority 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 which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.

113.09 RELOCATION FOR A THIRD PARTY. The Grantee shall, on the request of any person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the public way as necessary any property of the Grantee, provided: (i) the expense of such is paid by the person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (ii) the Grantee is given reasonable advance written notice to

prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

113.10 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.

113.11 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*.

113.12 UNDERGROUND CONSTRUCTION. In those areas of the service area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate and maintain all of its cable system underground. Nothing contained in this section shall require the Grantee to construct, operate and maintain underground any ground-mounted appurtenances.

113.13 ACCESS TO OPEN TRENCHES. The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (1) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (2) 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.

113.14 REQUIRED EXTENSIONS OF THE CABLE SYSTEM. Grantee agrees to provide cable service to all residences in the service area subject to the density requirements specified in this subsection. Whenever the Grantee receives a request for cable service from a potential subscriber in an unserved area contiguous to Grantee's existing distribution facilities where there are at least ten (10) residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its cable system to such subscribers at no cost to said subscribers for cable system extension, other than the published standard/non-standard installation fees charged to all subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the cable system into any portion of the service area

where another operator is providing cable service, into any annexed area which is not contiguous to the present service area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

113.15 SUBSCRIBER CHARGES FOR EXTENSIONS OF SERVICE. No subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of Section 113.14, the Grantee shall only be required to extend the cable system to subscriber(s) in that area if the subscriber(s) are willing to share the capital costs of extending the cable system. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 10. Subscribers who request service hereunder shall bear the remaining cost to extend the cable system on a *pro rata* basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential subscribers be paid in advance. Subscribers shall also be responsible for any standard/non-standard installation charges to extend the cable system from the tap to the residence.

113.16 CABLE SERVICE TO PUBLIC BUILDINGS. The Grantee, upon request, shall provide without charge a standard installation and one outlet of basic cable to those administrative buildings owned or occupied by the Franchising Authority, fire station(s), police station(s) and K-12 school(s) that are passed by its cable system. The cable service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The cable service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any inappropriate use of the Grantee's cable system or any loss or damage to the cable system. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of cable service required by this section. The Grantee shall not be required to provide an outlet to such buildings where a non-standard installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary cable system extension and/or non-standard installation. If additional outlets of basic cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

113.17 EMERGENCY USE. If the Grantee provides an Emergency Alert System (EAS) such EAS shall be operated in accordance with FCC regulations. The Franchising Authority shall permit only appropriately trained and authorized person to operate the EAS equipment and shall take reasonable

precautions to prevent any use of the Grantee's cable system in any manner that results in inappropriate use thereof, or any loss or damage to the cable system. Except to the extent expressly prohibited by law, the Franchising Authority shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

113.18 REIMBURSEMENT OF COSTS. If funds are available to any person using the public way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall reimburse the Grantee in the same manner in which other persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Franchising Authority shall make application for such funds on behalf of the Grantee.

113.19 SYSTEM UPGRADE. The Grantee shall upgrade the cable system to a minimum capacity of one hundred ten (110) channels and shall be two-way capable no later than thirty-six (36) months following the effective date of the agreement. The Grantee shall notify the Franchising Authority in writing upon completion of upgrade.

113.20 FRANCHISE FEE.

1. The Grantee shall pay to the Franchise Authority a franchise fee of three percent (3%) of annual gross revenues (as defined in Section 113.01 of this chapter). In accordance with the Cable Act, 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. Limitation on Franchise Fee Actions. The period of limitation for recovery by the Franchising Authority of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due to the Franchising Authority.

113.21 RATES AND CHARGES. The Franchising Authority may regulate rates for the provision of basic cable and equipment as expressly permitted by Federal or State law.

113.22 RENEWAL OF FRANCHISE.

1. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the

renewal of the Grantee's franchise shall be governed by and comply with the renewal provisions of Federal law.

2. In addition to the procedures set forth in the Cable Act, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal pursuant to the Cable Act and complete renewal of the franchise prior to expiration of its term.

3. Notwithstanding anything to the contrary set forth in this section, the Grantee and the Franchising Authority agree that at any time during the term of the then current franchise, while affording the public appropriate notice and opportunity to comment in accordance with the provisions of Federal law, the Franchising Authority and Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current franchise and the Franchising Authority may grant a renewal thereof.

4. The Grantee and the Franchising Authority consider the terms set forth in this section to be consistent with the express renewal provisions of the Cable Act.

113.23 CONDITIONS OF SALE. If a renewal or extension of Grantee's franchise is denied or the franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the cable system or by its actions lawfully effects a transfer of ownership of the cable system to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act. The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its cable system to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its cable system which is reasonably acceptable to the Franchising Authority, the Grantee and Franchising Authority may avail themselves of any rights they may have pursuant to Federal or State law. It is further agreed that the Grantee's continued operation of its cable system during the twelve-month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

113.24 TRANSFER OF FRANCHISE. The Grantee's right, title or interest in the franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an entity controlling, controlled by or under common control with the Grantee, without the prior written notice to the Franchising Authority. No such notice shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title or interest of the Grantee in the franchise or cable system in order to secure indebtedness.

113.25 BOOKS AND RECORDS. The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, and no more than once annually, may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this franchise. Such notice shall specifically reference the section of the franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing cable service in the service area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide subscriber information in violation of Section 631 of the Cable Act.

113.26 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 Franchising Authority shall be designated as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days' prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this section.

113.27 INDEMNIFICATION. The Grantee agrees to indemnify, save and hold harmless and defend the Franchising Authority, 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, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

113.28 NOTICE OF VIOLATION. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

113.29 GRANTEE'S RIGHT TO CURE OR RESPOND. The Grantee shall have thirty (30) days from receipt of the notice described in Section 113.28 to: (i) respond to the Franchising Authority contesting the assertion of noncompliance; or (ii) to cure such default; or (iii) in the event that, by the nature of the default, such default cannot be cured within the thirty-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

113.30 PUBLIC HEARING. In the event that the Grantee fails to respond to the notice as described in Section 113.28 pursuant to the procedures set forth in Section 113.29, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to Section 113.29(iii) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority 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.

113.31 ENFORCEMENT. Subject to applicable Federal and State law, in the event the Franchising Authority, after the hearing set forth in 113.30, determines that the Grantee is in default of any provision of the franchise, the Franchising Authority may:

1. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or
2. Commence an action at law for monetary damages or seek other equitable relief; or

3. In the case of a substantial default of a material provision of the franchise, seek to revoke the franchise in accordance with Section 113.32.

113.32 REVOCATION. Should the Franchising Authority seek to revoke the franchise after following the procedures set forth in Sections 113.28 – 113.31, the Franchising Authority 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 Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the franchise at a public meeting. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public meeting, 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 Franchising Authority, 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 Franchising Authority shall determine whether or not the franchise shall be revoked. If the Franchising Authority determines that the franchise shall be revoked, the Franchising Authority shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination of the Franchising Authority to an appropriate court, which shall have the power to review the decision of the Franchising Authority *de novo*. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal to the appropriate court must be taken within sixty (60) days of Grantee's receipt of the determination of the Franchising Authority. The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the franchise in lieu of revocation of the franchise.

113.33 FORCE MAJEURE. The Grantee shall not be held in default under or in noncompliance with the provisions of the franchise or 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 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 Franchising Authority'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 subscriber 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 Franchising Authority and/or subscribers.

113.34 ACTIONS OF PARTIES. In any action by the Franchising Authority 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.

113.35 ENTIRE AGREEMENT. This franchise constitutes the entire agreement between the Grantee and the Franchising Authority 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.

113.36 NOTICE. Unless expressly otherwise agreed between the parties, every notice or response required by this franchise to be served upon the Franchising Authority 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/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail, or d) or the next business day if sent by express mail or overnight air courier.

EDITOR'S NOTE

Ordinance No. 308, granting a cable television franchise, was adopted on November 1, 2001. MCC Iowa LLC accepted the franchise on November 19, 2001. The franchise shall expire on October 31, 2016, unless extended by the mutual agreement of the parties.