

CHAPTER 25

TELEVISION

Sec. 25.1. DEFINITIONS.

The following words and phrases, when used in this ordinance, shall, for the purposes of this ordinance, have the meanings ascribed to them in this section:

(1) Cable television system. The term 'cable television system' shall mean 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. The term 'channel' shall mean the segment of the electromagnetic spectrum to which a source of television transmission is assigned.

(3) City. The term 'City' shall mean the City of Ames, Iowa. When the context so requires, the term 'City' shall mean and include the City, its officers, agents, employees, servants, and independent contractors.

(4) FCC. The term 'FCC' shall mean the Federal Communications Commission.

(5) Franchise. The term 'franchise' shall mean the non-exclusive authorization to erect, install, construct, reconstruct, replace, remove, repair, maintain and operate in or upon, under, above, across and from the streets, avenues, highways, sidewalks, bridges and other public ways, easements, and rights-of-way, as now existing and all extensions thereof and additions thereto, in and belonging to the city (hereinafter sometimes called 'municipal properties'), all necessary poles, wires, cables, coaxial cables, transformers, amplifiers, underground conduits, manholes and other television and/or radio conductors and fixtures for the sole purpose of the maintenance and operation in the city of a cable television system for the origination, interception, sale and distribution of television and radio signals, all in strict accordance with the laws, ordinances and regulations of the United States of America, the State of Iowa, and the city, as now existing or hereafter adopted or amended, subject to the reservation in the city of the right to grant a similar or same use, simultaneously, to any other person; and, subject at all times to all lawful exercise of the police power of the City of Ames and to such reasonable regulations as the city and/or council shall hereinafter provide, and compliance with all applicable state and federal regulations; and, including by way of specification but not limitation, a rule prohibiting the use of the city streets or alleys for the installation of additional poles or underground cable, and may include regulations requiring all or part of said transmission system to be installed and maintained underground.

(6) Grantee. The term 'grantee' shall mean any person granted a franchise in accordance with the provisions of this ordinance.

(7) Local Gross Revenues. The term 'local gross revenues' shall include all revenues derived from a franchisee's activities within the City of Ames, including revenues from advertising, except only the grantee's portion of pay channel revenue will be included.

(8) Person. The term 'person' shall mean any individual, or any corporation, business, or mixed, owned by a private person, including property owned by a public utility not owned or operated by the City.

(9) Property of the Grantee. The term 'property of the grantee' shall mean all property, real, personal or mixed, owned or used by the grantee however arising from or related to or connected with the franchise.

(10) Public Property. The term 'public property' shall mean all property, real, personal or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.

(Ord. No. 2435, Sec. 1, 2-27-73; Ord. No. 2661, Sec. 1, 7-18-78; Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.2. FRANCHISE REQUIRED.

No person shall establish and operate a cable television system within the city except upon obtaining the grant of a franchise as defined and provided for in this article. The person seeking a franchise shall execute a franchise agreement with the city of Ames, which agreement shall incorporate all provisions of this chapter as fully

operative terms of the agreement, and including an agreement with respect to rental of the City's transmission line poles and other municipal properties; and, obtain council approval of such other contracts, leases, licenses and permit as the council shall determine to be necessary and proper for the protection of the public interest.
(Ord. No. 2435, Sec. 1, 2-27-73; Ord. No. 2661, Sec. 1, 7-18-78; Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.3. TERMS OF FRANCHISE.

The franchise and the rights, privileges, and authority thereby granted, subject to the provisions of this article, shall take effect and be in force from and after final approval thereof, as provided by law, and shall continue in force and effect for a term of not more than fifteen (15) years.
(Ord. No. 2435, Sec. 1, 2-27-73; Ord. No. 2661, Sec. 1, 7-18-78; Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.4. USE OF PROPERTY.

The grantee may use public right-of-way 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 hereinafter be consistent with generally accepted principles applicable to the operation of a cable television system subject, however, to the following restrictions:

(1) The grantee shall comply with all governmental laws, ordinances, rules or regulations as may now or hereinafter be applicable thereto.

(2) 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 the 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 vibration, 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.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.5. 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.
(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.6. INSURANCE.

The grantee shall, at all times during the term of the franchise, carry and require their contractors to carry:

(1) 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 in connection with the cable television system. 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, as to grantee, so-called umbrella coverage of at least \$5,000,000.

- (2) Workmen's Compensation Insurance as provided by the laws of the State of Iowa as amended.
- (3) 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, as to grantee, so-called umbrella coverage of at least \$5,000,000.
- (4) 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 of said material alteration or cancellation shall become effective.
- (5) 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.
(Ord. No. 2435, Sec. 2, 2-27-73; Ord. No. 2661, Sec. 1, 7-18-78; Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.7. REPAIRS.

During the term of the franchise, the grantee shall, at its own expense, make all necessary repairs and replacement to the property of the grantee.

- (1) Such repairs and replacements, interior and exterior, ordinary as well as extraordinary, and structural as well as non-structural, shall be made promptly, as and when needed.
(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.8. HOLD HARMLESS.

During the term of the franchise, the grantee absolutely assumes and agrees to pay the City for, and the grantee forever indemnifies 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 on account of any actual or alleged loss, damage or injury to any property whatsoever, however arising from or related to or connected with, directly or indirectly:

- (1) injury to or death of any person, or loss, damage or injury to any property of the grantee; and/or
- (2) the non-observance 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; and/or
- (3) the non-observance by the grantee of any of the terms and conditions of the franchise; and/or
- (4) the granting of the Franchise.

Sec. 25.9. ASSIGNMENT.

The grantee shall not assign or transfer any right granted under this ordinance to any other person, company, or corporation without prior consent of the City Council, which consent shall not be unreasonably withheld, provided that the grantee shall have the right to assign the provisions of this ordinance to a corporation which owns or is 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 prior consent of the City.
(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.10. 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.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.11. DEFAULT OF GRANTEE.

In the event the grantee shall fail to comply with any of the terms and conditions of the franchise within thirty (30) 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.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.12. TERMINATION.

In the event of termination or non-renewal of the franchise, grantee at its own expense will remove all coaxial cable, amplifiers and any other items of equipment which may have been installed from time to time, provided, however, that in the event that Grantee is successful in concluding a sale or transfer of its system to a franchisee, grantee shall be relieved of its obligation to perform under the terms of this section.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.13. COMPLIANCE WITH APPLICABLE LAWS.

During the term of the franchise, the grantee shall comply with all governmental laws, ordinances, rules or regulations as may now be hereinafter 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 hereinafter be consistent with generally accepted principles applicable to the operation of a cable television system.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.14. 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.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.15. INTERFERENCE.

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

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.16. 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 within 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 both installed underground cable, then in that event, the cable used by the grantee shall be installed underground.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.17. 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 other surface including any street or alley disturbed, in as good a condition as before said work was commenced.
(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.18. 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.
(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.19. 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.
(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.20. 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 and in accordance with City standards.
(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.21. LINE EXTENSIONS.

Grantee shall extend its cable television system to newly annexed areas as rapidly as possible. However, under procedures hereafter established, the grantee may defer service when service would otherwise be required hereunder for those places, addresses, sites or locales of the City where due to sparse population or unusually difficult construction conditions, service would be economically non-compensatory to the grantee. The procedure for obtaining the right to so defer service shall be as follows:

(1) File with the Ames Cable Television Commission and publish once each week for two weeks in a newspaper of general circulation in the City a map of the City of Ames on which there shall be clearly and precisely shown those places, addresses, sites or locales of the city to which the grantee intends to defer service as aforesaid and further stating:

(a) That the costs and computations showing that service to the subject areas will be non-compensatory to the grantee is on file at the Ames Public Library and there available for study and copying by any person on request.

(b) That any person opposed to all or any part of or place of such proposed deferral may file a written protest in the office of the City Clerk for the City of Ames.

(2) For those places, addresses, sites or locales for which no written objection is filed by 5:00 p.m. on the tenth business day following the last date of publication, the deferral shall be final and in effect, unless or until protested and denied by the Cable Television Commission as hereafter provided.

(3) For those places, addresses, sites or locales for which a protestor can provide written, documented evidence showing that the grantee's projected costs of service are unreasonably high or that projected revenues are unreasonably low, the Cable Commission shall, after notice and an opportunity for public hearing, approve or deny the deferral of service.

(4) The standard for determining if service to the place or locale proposed for deferment would be non-compensatory shall be whether the grantee will realize a rate of return of not less than 12% after taxes as determined by dividing projected gross receipts from customer services in the locale or place, less expenses, by the cost of construction to the place or in the locale for which service is to be deferred.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.22. 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 reasonable control of the grantee, with the approval of the City which shall not be unreasonably withheld.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.23. 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. The grantee shall maintain signal quality in accordance with accepted industry standards throughout the duration of the franchise.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.24. 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.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.25. ACCESS CHANNELS.

A grantee shall provide access channels, subject to the regulations of the Federal Communications Commission, as follows:

- (1) A specially designated, non-commercial public access channel available on a first come, non-discriminatory basis.
- (2) A specially designated channel for use by the Ames Community School District.
- (3) A specially designated channel for use by the City pursuant to the policies and directions of the City Council.
- (4) A specially designated channel for Iowa State University.

In addition to the foregoing requirements there shall be made available a pool of two more channels for one year from the date of the franchise. Should there be no significant use of said additional channels in the one year period, Heritage shall be released from any further obligation to make the said pool channels available.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.26. PUBLIC SERVICE INSTALLATIONS.

(1) A grantee shall, without charge for installation, maintenance, or service, make single installations of its standard cable television service facilities with one convertor at each of the following locations in the City:

- (a) City Administration Building;
- (b) Fire Station;
- (c) Police Station;
- (d) Public Library;
- (e) All public school buildings of the Ames Community School District; and
- (f) All accredited private schools for elementary and secondary education but not to include day care centers and nursery schools.

(2) A grantee shall without charge for installation, maintenance, or service, make single installations of its standard cable television service facilities with one convertor at each of five reasonable and appropriate locations for Iowa State University.

(3) The grantee shall establish and maintain, at grantee's sole expense, a building space that is reasonably suited to meet and support the production of public access programming. The grantee shall also provide, on a one time basis, \$60,000 for the purchase of studio equipment.

(Ord. No. 2435, Sec. 1, 2-27-73; Ord. No. 2661, Sec. 1, 7-18-78; Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.27. SUBSCRIBER RATES AND CHARGES.

Grantee shall have the right, privilege, and authority to charge reasonable rates and charges to its subscribers for its services. Grantor reserves the right to reimpose rate regulation should the law change in this regard.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.28. 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.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.29. 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.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.30. FRANCHISE FEES.

During the term of a franchise, a grantee shall pay to the City a sum of money equal to five percent (5%) of the annual local gross revenues accruing from services rendered with the City. Sales tax or other taxes levied directly on a per subscriber basis and collected by a grantee shall not be included in computation of sums due the City. Said fees shall be paid quarterly not later than August 15, November 15, February 15 and May 15 for the preceding three-month period ending, respectively, June 30, September 30, December 31, and March 31. Not later than the date of each payment, grantee shall file with the city Council, a written statement signed under penalty of perjury by an officer of the grantee, which identifies in detail the sources and amounts of gross revenues received by a grantee during the quarter for which payment is made.

(1) No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount.

(2) No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Section.

(3) Any franchise fees which remain unpaid after the dates specified above shall be delinquent and shall thereafter accrue interest at the maximum legal rate until paid.

(4) The City shall have the right to inspect at all times during business hours a grantee's records of or pertaining to the local gross revenue from which its franchise payments are computed and the right of audit and recomputation of any and all amounts paid under a franchise. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under a franchise or for the performance of any other obligation thereunder.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.31. INJURY TO PROPERTY OF THE GRANTEE.

No person shall wrongfully or unlawfully injure the property of the grantee.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.32. INTERCEPTING SIGNALS OF THE GRANTEE.

No person shall wrongfully or unlawfully intercept the signals of the grantee.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.33. PENALTY.

Violation of any of the provision of Section 25.31 or 25.32 of this ordinance shall be a simple misdemeanor.

(Ord. No. 2435, Sec. 1, 2-27-73; Ord. No. 2661, Sec. 1, 7-18-78; Ord. No. 3003, Sec. 36, 2-23-88; Ord. No. 3076, Sec. 1, 3-20-90, Ord. No. 3589, 9-26-00)

Sec. 25.34. 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.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.35. 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.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.36. 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.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.37. ARBITRATION.

Any controversy between the City and the grantee regarding the rights, duties or liabilities of either party under the franchise shall be settled by arbitration conducted under the auspices of the American Arbitration Association and in accordance with Chapter 679A of the Iowa Code. Such arbitration shall be before three (3) disinterested arbitrators, one (1) named by the City, one (1) named by the grantee, and one (1) named by the two (2) thus chosen. The decision of the arbitrators shall be conclusive and shall be enforced in accordance with the laws of the State of Iowa.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.38. SALE OF SYSTEM.

In the event Cablevision decides to sell the Ames cable system, the City shall have the right of first refusal to purchase the system at fair market value provided that the City shall be required to pay no less than the highest bona fide offer received by Cablevision.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.39. SEVERABILITY.

If any section, provision or part of this ordinance shall be adjudged to be unconstitutional, illegal, invalid, or inapplicable to any person or circumstances, such adjudication shall not affect the validity of this ordinance as a whole, or any section, provision or part thereof not adjudged to be unconstitutional, illegal, invalid or inapplicable to any person or circumstances.

(Ord. No. 3076, Sec. 1, 3-20-90)

Sec. 25.40. RESERVATIONS.

The right is reserved to the City Council or its successor or equivalent to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find

necessary in the exercise of the police power.

(Ord. No. 3076, Sec. 1, 3-20-90)

(Ord. No. 2435, Sec. 1, 2-27-73; Ord. No. 2463, Sec. 1, 1-8-74; Ord. No. 2661, Sec. 1, 7-18-78; Ord. No. 2824, Sec. 1, 5-25-82; Ord. No. 3076, Sec. 1, 3-20-90; Ord. No. 3510, Sec. 1, 1-26-99)