

CHAPTER 112

CABLE TELEVISION FRANCHISE

112.01 Definitions	112.10 Rates and Charges
112.02 Grant of Authority	112.11 City Rights in Franchise
112.03 Compliance with Laws and Ordinances	112.12 Maps, Plats and Reports
112.04 Liability and Indemnification	112.13 Cancellation of Franchise
112.05 Operation and Maintenance of the System	112.14 Duration of Franchise
112.06 Safety Requirements	112.15 Insurance
112.07 Conditions of Street Occupancy	112.16 Indemnity
112.08 Erection, Removal and Use of Poles	112.17 Transfer of Franchise
112.09 Removal of Facilities	112.18 Other Conditions

112.01 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" or "Cable System" means a system utilizing coaxial cables and certain electronic and other components which deliver to subscribing members of the public various communications services.
2. "Grantee" means COMSERV, LTD., or any successors or assigns as may be in accordance with the provisions of the franchise.

112.02 GRANT OF AUTHORITY. There is hereby granted to the Grantee for a period of twenty-five (25) years from the effective date of the ordinance codified in this chapter the 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 conductors and fixtures necessary for the maintenance and operation in the City of a CATV system. Upon request for service, the Grantee shall extend its lines and service within the County beyond the initial service area to any location in which there are at least 45 homes per mile of cable required to extend CATV service from the initial service area. Grantee shall, whenever it shall receive a request for service from at least eight (8) potential subscribers within one thousand (1,000) feet from its existing system, extend such system to said subscribers at no cost to the subscriber for system extension other than usual connect fees for all subscribers. The 1,000 feet shall be measured in extension length of Grantee's cable required for service located within the public way or easements and shall not include length of the necessary service drop to the subscriber's home or premises.

112.03 COMPLIANCE WITH LAWS AND ORDINANCES. The Grantee shall, at all times during the life of the franchise, be subject to all lawful exercise of the police power of the City and to such reasonable regulations as the City shall hereafter provide.

112.04 LIABILITY AND INDEMNIFICATION. The Grantee, by its acceptance of the franchise, agrees that it will pay all damages and penalties which the City may legally be required to pay as a result of granting the franchise, including the cost of defending any legal action against the City arising out of the installation, operation or maintenance of the CATV system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this chapter.

112.05 OPERATION AND MAINTENANCE OF THE SYSTEM. The Grantee shall install such equipment and have the necessary equipment and personnel to maintain its facilities such as to assure efficient service, and it shall have the necessary equipment and personnel to make repairs promptly and interrupt service only for good cause and for the shortest time possible. Grantee shall apply for a cross-ownership waiver in accordance with FCC Rule 214, and gain approval of FCC prior to construction.

112.06 SAFETY REQUIREMENTS.

1. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.
2. The Grantee shall install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the National Electric Safety Code as promulgated by the National Bureau of Standards and the National Electrical Code of the National Board of Fire Underwriters and in such manner that they will not interfere with any installation of the City or of a public utility serving the City.
3. All structures and all lines, equipment, and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition and in good order and repair.

112.07 CONDITIONS OF STREET OCCUPANCY.

1. All transmission and distribution structures, lines and equipment erected by the 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 and reasonable convenience of property owners who join any of the said streets, alleys and public ways or places.
2. In the case of a disturbance of any street, sidewalk, alley, public way or paved area, the Grantee shall, at its own expense and in a manner approved by the City, replace and restore such street, sidewalk, alley, public way or paved area in as good a condition as before the work involving such disturbance was done.
3. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the City so as to prevent the branches of the trees from coming in contact with the wires and cables of the Grantee.
4. If at any time during the period of the franchise the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, the Grantee, upon reasonable notice by the City, shall relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
5. In all sections of the City where the cables, wire or other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so.

112.08 ERECTION, REMOVAL AND USE OF POLES. No poles or other wire holding structures shall be erected by the Grantee without prior approval of the City with regard to location, height, type and any other pertinent aspect. No location of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be moved or modified by the Grantee at its own expense whenever the Council determines that the public convenience would be enhanced thereby.

112.09 REMOVAL OF FACILITIES. The Grantee upon termination by any subscriber of the Grantee's service shall promptly remove all of its facilities and equipment from the premises of a subscriber upon said subscriber's written request.

112.10 RATES AND CHARGES. In consideration for services rendered to subscribers, the Grantee shall have the right to charge and collect from subscribers fair and reasonable compensation calculated to offset all necessary costs for provision of the services and including a fair rate of return on investment devoted thereto, under efficient and economical management.

112.11 CITY RIGHTS IN FRANCHISE.

1. The right is hereby reserved to the Council 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; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.
2. The Council shall have the right to inspect and the Grantee shall make available, its books, records, maps, plans and other like materials of the Grantee pertaining to the operation of the CATV System at any time during normal business hours, provided that thirty (30) days' notice shall have been given to Grantee as to what records are to be produced for such inspection.
3. The Council shall have the right during the term of the franchise to install and maintain free of charge upon the poles of said CATV System any wire or pole fixtures necessary for a police alarm system, on the condition that such wire and pole fixtures do not interfere with the operations of the Grantee.
4. The Council shall have the right to hold a public or private hearing on any matter pertaining to this chapter, and the Grantee shall make available its representatives or agents for such hearing.

112.12 MAPS, PLATS AND REPORTS. On or before March 1 of each year, the Grantee shall file with the Council true and accurate maps or plats of the CATV trunk and feeder lines within the City limits as of December 31 of the preceding year.

112.13 CANCELLATION OF FRANCHISE. The Council reserves the right to terminate and cancel the franchise and all rights and privileges of the Grantee hereunder in the event the Grantee becomes insolvent, unable or unwilling to pay its debts or is adjudged as bankrupt. Termination and cancellation, other than as a result of bankruptcy, shall be by ordinance only adopted after ninety (90) days' notice to the Grantee. The termination or cancellation of the franchise shall give the City no vested interest in the business or property of the Grantee, and the Grantee shall have a reasonable

period to dismantle its equipment in the event of such cancellation or termination and to restore all streets, alleys, sidewalks and public places to their original condition.

112.14 DURATION OF FRANCHISE. The franchise and the rights, privileges and authority herein granted shall be nonexclusive for a term of twenty-five (25) years. The original term of the franchise shall be automatically extended for successive additional five-year periods unless one of the parties hereto gives twelve (12) months' written notice to the other party of its intention not to extend the franchise on these terms and conditions. Notwithstanding such notice, the City and Grantee agree to negotiate in good faith changes proposed by either party which would apply to a renewal or extension of the franchise so as to insure continuity of service to the public.

112.15 INSURANCE. Grantee shall maintain at its expense the following insurance policies:

1. **Comprehensive General Liability.** A general comprehensive public liability insurance policy indemnifying, defending, and saving harmless the City, its officers, boards, Council members, agents or employees from any and all claims by any person whatsoever for injury to or death of a person or persons occasioned or alleged to have been occasioned by the operation of the Grantee under the franchise, in the amount of at least \$100,000.00 per personal injury or death of any one person and \$300,000.00 for personal injury or death of any two or more persons in any one occurrence.

2. **Property Damage.** Property damage insurance indemnifying, defending and saving harmless the City, its officers, boards, Council members, agents or employees from or against all claims by any person whatsoever for property damage occasioned or alleged to have been occasioned by the operation of the Grantee under the franchise, in the amount of at least \$100,000.00 for property damage of any one person and \$300,000.00 for property damage of two or more persons in any one occurrence.

All of the foregoing insurance contracts shall be in force in a form satisfactory to the City, shall be issued and maintained by companies authorized to do business in the State of Iowa and acceptable to the City and shall be kept in full force and effect by the Grantee during the term of the franchise, including any required removal of equipment, structures, facilities, apparatus and appurtenances. The contracts shall contain provisions requiring that thirty (30) days' written notice of any cancellation be given to both the City and Grantee.

112.16 INDEMNITY. The Grantee shall fully indemnify, defend and save harmless the City, its officers, boards, Council members, agents and employees against any and all claims, suits, actions, liability and judgments for damage to persons or property, including, without limitation, damages arising out of copyright infringement and out of the installation, operation, or maintenance by Grantee of a cable television system, whether or not any act or omission complained of is authorized, allowed or prohibited by this chapter. The Grantee shall pay all expenses, including attorneys' fees, personally incurred by the City in defending itself with regard to all such claims, suits, actions, liability and judgments.

112.17 TRANSFER OF FRANCHISE. The Grantee shall not assign or transfer the franchise to any other person without prior written consent of the City, which consent shall not be unreasonably withheld.

112.18 OTHER CONDITIONS. Notwithstanding the terms of this chapter, the Grantee is not required to operate in violation of any rule or regulation of the Federal Communications Commission or any Federal or State law which may hereafter be adopted.

EDITOR'S NOTE

Ordinance No. 235 adopting a cable TV franchise for the City was passed and adopted on February 20, 1984. Ordinance No. 394, adopted July 18, 2005, approved the franchise transfer from Comserv, Ltd. to Corn Belt Telephone Company.