

CHAPTER 113

CABLE TELEVISION FRANCHISE AND REGULATIONS

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113.01 PURPOSE. The purpose of this chapter is to provide regulatory provisions of cable television systems in the City.

113.02 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. "Company" means Alden Cablevision, the grantee of rights under the regulatory ordinance codified in this chapter.
2. "Federal Communications Commission" or "FCC" means the Federal agency by that name as constituted by the Communications Act of 1934, as amended.
3. "Gross subscriber revenues" means only those revenues derived from the monthly service charges paid by subscribers located within the City for regular cable television reception service, which service includes only the transmission of broadcast signals and the programming presented on the required access and origination channels, if any. Gross subscriber revenues shall not include any revenues received:
 - A. As reimbursement of expenses in the operation of any access channels;
 - B. As advertising payments;
 - C. From the leasing of cable channels;
 - D. From programs for which a per-channel or per-program charge is made; and

E. From furnishing other communications and nonbroadcast services either directly or as a carrier for another party or any other income derived from the system. Gross subscriber revenues shall also not include revenues received as installation charges and fees for reconnections, inspections, repairs or modifications of any installations.

4. "System" means the lines, fixtures, equipment, attachments and appurtenances thereto which are used in the construction, operation and maintenance of the community antenna television system authorized by this chapter.

113.03 GRANTING OF FRANCHISE. The regulatory ordinance codified herein which grants to the company the nonexclusive right to construct, operate and maintain a cable television system in the City was passed and adopted by the Council after a full, open and public proceeding. The proceeding was held after public notice was given and afforded all interested parties the opportunity to comment upon the legal, character, financial, technical and other qualifications of the company. Having received at said proceeding all comments regarding the qualifications of the company, the City found that the company possesses the necessary legal, technical, character, financial and other qualifications and that the company's construction arrangements are adequate and feasible. Therefore, the City grants to the company a nonexclusive franchise, right and privilege to construct, erect, operate, modify and maintain in, upon, among, across, above and over and under the highways, streets, alleys, sidewalks, 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 cable television system for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs, and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways and public places and all manner of easements for the purposes set forth in this chapter.

113.04 COMPLIANCE REQUIRED GENERALLY. The company shall, at all times during the life of the regulatory ordinance codified in this chapter, be subject to all lawful exercise of the police power by the City and to such reasonable regulations as the City shall hereafter by resolution or ordinance provide. The construction, operation and maintenance of the system by the company shall be in full compliance with such portions of the National Electrical Safety Code as may be applicable and as the same may be amended

and revised from time to time, and in full compliance with all other applicable rules and regulations now in effect or hereafter adopted by the Federal Communications Commission, the City or any other agency of the State or the United States, which may hereafter acquire jurisdiction of the operations of the company authorized in this chapter.

113.05 NATIONAL ELECTRIC SAFETY CODE. All facilities and equipment of the company shall be constructed and maintained in accordance with the requirements of the National Electrical Safety Code, and such applicable ordinances and regulations set forth by the City and/or any local, State or Federal agencies.

113.06 FCC REGULATIONS. The company shall, at all times, comply with the rules and regulations governing CATV operations promulgated by the FCC, specifically those set out in Section 76.31 of the FCC Rules and Regulations. This shall include adherence by the company to FCC rules regarding technical and engineering specifications involved in the construction of the CATV system and signal carriage therein.

113.07 MODIFICATION OF FCC RULES. Consistent with the requirements of Rule 76.31 (a)(6) of the FCC, any modification of Rule 76.31 resulting from amendment thereto by the FCC shall be incorporated in this chapter by specific amendment thereto by lawful action of the Council within one year from the effective date of the FCC's amendment or at the time of renewal of the ordinance codified in this chapter, whichever occurs first.

113.08 TRANSFER. The company shall not sell or transfer its system to another, or transfer any rights under this chapter to another without written notice and approval by the City; provided, that such approval shall not be unreasonably withheld if the vendee, assignee or lessee has filed with the appropriate official of the City an instrument duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of this chapter and agreeing to perform all conditions thereof.

113.09 COMPANY RULES AND REGULATIONS. The company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to exercise its rights and perform its obligations under this chapter and to assure uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of federal and State law.

113.10 FRANCHISE TERM. The franchise granted under this chapter shall terminate twenty-five (25) years from the date of grant, subject to renewal for periods of reasonable duration on the same terms and conditions as contained in this chapter, or on such different or additional terms and conditions as may be lawfully specified by the Council and as are consistent with the requirements of Rule 76.31 of the FCC.

113.11 FRANCHISE RENEWAL. No renewal of the ordinance codified in this chapter shall be effective except pursuant to a public proceeding affording due process. The company shall be a party to any such proceedings and any other proceedings in which its rights, privileges or interests would be affected and shall be fully entitled to such due process rights as may be available under applicable laws, ordinances, rules and regulations.

113.12 SYSTEM CONSTRUCTION, MAINTENANCE AND PROCEDURES.

1. In furtherance of the company's execution of contracts with public utility companies or any other owner or lessee of any poles located within or without the City to whatever extent such contract or contracts may be expedient and of advantage to the company for use of poles and posts necessary for proper installation of the system, the company may obtain right-of-way permits from appropriate State, County and Federal officials necessary to cross highways or roads under their respective jurisdictions, to supply main trunk lines from the company's receiving antennas, obtain permission from the Federal Aviation Authority to erect and maintain antennas suitable to the needs of the system and its subscribers and obtain whatever other permits a City, County, State or Federal agency may require. The company shall construct its cable system using material of good and durable quality and all work involved in the construction, installation, maintenance and repair of the cable system shall be performed in a safe, thorough and reliable manner. Any municipal property damaged or destroyed shall be promptly repaired or replaced by the company and restored to serviceable condition.

2. The company's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with any improvements the City may deem proper to make or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

3. In the event that the City annexes further territory as authorized by the law, the company shall extend energized trunk cable to the remaining portions of the City so annexed within an acceptable time thereafter, unless additional time is granted by the Council upon request of the company for good cause shown. Extension of service shall not be one of the requirements as set forth in this section.

4. All transmission and distribution structures, lines and equipment erected by the company 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 of reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. In the event the electrical and phone lines are buried to the subscriber's residence, the company shall be required to bury the cable also.

5. In case of any disturbance of pavement, sidewalk, driveway, grass or other surfacing, the company shall, at its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway, grass or surface of any street or alley or other public or private property in as good condition as before said work was commenced.

6. In the event that at any time during the period of the franchise the City lawfully elects to alter or change the grade of any street, alley or other public way, the company, upon reasonable notice by the City, shall remove, relay or relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

7. The company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrants or mains and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such manner as not to interfere with the usual travel on said streets, alleys and public ways.

8. The company shall, on the request of any person holding a building moving permit issued by the City temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same and the company shall have the authority to require such payment in advance. The company shall be given no less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

9. The company 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 wires and cables. All tree trimming is to be done under the direction of the City and at the expense of the company.

10. The company shall provide, upon request and without charge, service to any municipal buildings owned and operated by the City and to any public or parochial elementary or secondary school. This shall mean only an energized cable to such building. The cost of any internal wiring shall be borne by the institution.

113.13 LINE EXTENSIONS. It shall be the obligation of the company 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 with the City, the company 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 forty-five (45) homes per each linear mile of new cable construction. In the event that the requirements of this section are not met, extensions of service shall be required only on a basis which is reasonable and compensatory.

113.14 CITY RIGHTS.

1. City Rules. The right is reserved by the City to adopt, in addition to the provisions contained in this chapter and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power; provided, that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights granted in this chapter, and shall not be in conflict with the applicable laws of the State or the United States.

2. Emergency or Disaster. In the case of any emergency or disaster, the company shall, upon request of the City, make available its facilities to the City for emergency use during the emergency or disaster period.

3. No Property Right. Nothing in this chapter shall grant to the company any right of property in the City-owned property, nor shall the City be compelled to maintain any of its property any longer than or in any fashion other than in the City's judgment, its own business or needs may require.

4. Construction Approval by City. Except for individual service drops, the company shall not erect any pole, install any underground lines or conduits, run any line, make any attachment, nor shall any construction of any kind be commenced without the prior approval of the director of engineering or appropriate department of the City, which approval shall not be unreasonably withheld, and the City shall have and maintain the right to inspect the construction, operation and maintenance of the system by the company to insure the proper performance of the terms of this chapter.

5. Correction of Defects. In the event the company should violate any of the terms of this chapter, or any of the rules and regulations as may be from time to time lawfully adopted, the City shall immediately give to the company sixty (60) days' written notice to correct such violation.

113.15 PAYMENTS TO THE CITY. The company shall, commencing one (1) year from the date of the first service and during each year of operation under the franchise, pay to the City three percent (3%) of the annual gross subscriber revenues received by the company for regular monthly cable television services rendered to customers located within the City. At the time of this annual payment, the company shall furnish the City with an operating report showing the company's annual gross subscriber revenues during the preceding year. All payments as required by the company to the City shall be made semiannually and shall be due forty-five (45) days after the close of the six (6) month period.

113.16 RATES AND CHARGES. In consideration for services rendered to subscribers, the company shall have the right to charge and collect reasonable and just compensation which shall reflect, among other things, the company's need to attract new capital and provide a reasonable return on invested capital.

113.17 RECORD KEEPING. The company shall keep full, true, accurate and current books of account, which books and records and all other pertinent books, records, maps, plans, financial statements and other like materials, shall be made available for inspection and copying by the City upon reasonable notice and during normal business hours.

113.18 SERVICE PROCEDURES. During the term of the franchise, and any renewal thereof, the company shall maintain within the City a nearby business office or agent for the purpose of receiving and resolving all questions regarding the quality of service, equipment malfunctions and similar matters. The provisions of this section shall be complied with if the company may be reached by local, toll-free telephone call and provides the Clerk's office with

the name, address and telephone number of a person who will act as the company's agent to receive complaints regarding quality of service, equipment malfunctions and similar matters. The nearby office shall be open to receive inquiries or complaints from subscribers during normal business hours and in no event less than nine o'clock (9:00) a.m. to five o'clock (5:00) p.m., Monday through Friday. Any complaints from subscribers shall be investigated and acted upon as soon as possible, but at least within four (4) business days of their receipt. The company shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for periodic inspection by the City.

113.19 PROTECTION OF PRIVACY. The company shall not permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from subscriber's premises of two-way services utilizing aural, visual or digital signals without first obtaining written permission of the subscriber. It is unlawful for any person to attach or affix or cause to be attached or affixed any equipment or device which allows access or use of the cable television service without payment to the company for same. Such action shall be a simple misdemeanor.

113.20 PROGRAM CONTENT RESTRICTIONS. In addition to providing basic cable television service consisting of broadcast, locally originated, access and automated signals, the company may offer subscribers optional services on a per-program or per-channel basis. However, the company shall not display X-rated motion pictures either as part of its basic cable or pay cable services.

113.21 DISCRIMINATION PROHIBITED. The company shall not refuse to hire, or discharge from employment or discriminate against any person regarding compensation, terms, conditions or privileges of employment because of sex, age, race, color, creed or national origin. The company shall take affirmative action to insure that employees are treated, during employment, without regard to their sex, age, race, color, creed or national origin.

113.22 LIABILITY AND INDEMNIFICATION. The company shall indemnify the City and hold it harmless from all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to this chapter. The City shall notify the company's representative within fifteen (15) days after the presentation of any claim or demand to the City, either by suit, or otherwise, made against the City on account of any negligence or contract as aforesaid on the part of the company. The company agrees as follows:

1. The company shall carry Worker's Compensation insurance with statutory limits and Employers' Liability insurance with limits of not less than one hundred thousand dollars (\$100,000.00) which shall cover all operations to be performed by the company as a result of this chapter.

2. The amounts of insurance to be carried for liability due to property damage shall be five hundred thousand dollars (\$500,000.00) as to any one occurrence and against liability due to injury or death of persons, five hundred thousand dollars (\$500,000.00) as to any one person and one million dollars (\$1,000,000.00) as to any one occurrence. The City shall reserve the right during the term of the franchise to increase or decrease the amount of insurance coverage required, provided that notice in writing is made to the company of all increases or decreases in said insurance coverage requirements. The company shall, within sixty (60) days of receipt of that written notice, obtain such insurance coverage as is specified in said notice.

3. Company's Worker's Compensation, Comprehensive General Liability and Comprehensive Automobile Liability insurance shall be written by an insurance company with a capital and/or surplus of not less than three million dollars (\$3,000,000) and company agrees to furnish the City with certified copies or certificates of insurance of said policies, which shall provide that insurance shall not be canceled unless ten (10) days' prior written notice first be given to the City.

4. Within six (6) months after the effective date of the ordinance codified by this chapter, the company shall file with the Federal Communications Commission such request, petition or other application as is then proper to secure from said Federal Communications Commission any and all necessary permits, licenses, waivers or the like as may be necessary to be secured from said Federal Communications Commission to fully comply with the terms of this chapter. The company shall thereafter diligently pursue such application with the Federal Communications Commission and shall do all reasonable things necessary and proper to secure any such permit, license, waiver, approval or the like from it. The company shall keep the City advised, from time to time, of the progress of such application.

113.23 ACTIVITIES PROHIBITED.

1. The company shall not allow its cable or other operations to interfere with television reception of persons not served by the company, nor shall the system interfere with, obstruct or hinder, in any manner, the operation of the various utilities serving the residents of the City.

2. The company shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing in this chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

3. No person shall wrongfully or unlawfully intercept the signals of the company.

113.24 VIOLATION; PENALTY. Should the company, its successors or assigns violate any of the provisions of this chapter or any reasonable rules and regulations established by the City pursuant hereto and should such violation continue for more than thirty (30) days after the City has given the company written notice of such violation, failure or default, the same shall be cause for the forfeiture or revocation of the franchise and the termination of all rights hereunder; provided, however, any delay in correcting such violation which is caused by factors beyond the control of the company shall not be included in computing the length of the continuance of such violation.

EDITOR'S NOTE

Ordinance No. 438 adopting a cable television franchise for the City was passed and adopted on June 9, 1983. December 1997, due to poor service and breach of contract, the City took legal channels to void the contract with the cable company.

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