

CHAPTER 110

NATURAL GAS FRANCHISE

110.01 Franchise Granted

110.02 Modern Service Required

110.03 Safe Operation Required

110.04 Construction and Excavations

110.05 Extension of Service

110.06 Indemnification of City

110.07 Rates

110.08 Successors and Assigns

110.01 FRANCHISE GRANTED. The City hereby grants unto Iowa Electric Light and Power Company, an Iowa corporation, its successors and assigns, hereinafter called the Grantee, a nonexclusive franchise and right for a period of twenty-five (25) years from and after the date the ordinance codified by this chapter became effective[†], to erect, construct, reconstruct, maintain and operate within the corporate limits of the City, as the same are now or hereafter may be located or extended, a natural gas plant, or plants, and/or a plant, or plants, for the manufacturing and processing of any and all kinds of gas, and to erect, construct, reconstruct, maintain and operate within said corporate limits distributing systems for the distribution of natural gas, or any and all other types and kinds of gas, whether said plant, or plants, and distribution systems have been heretofore or hereafter may be constructed, together with the franchise and right to enter upon and to use and occupy the streets, avenues, alleys, bridges and other public places of the City as the same now are or hereafter may be located or extended, for the purpose of constructing, reconstructing, maintaining and operating therein, thereon and thereunder systems for the distribution of natural gas and/or any and all other kinds of gas, consisting of mains, pipes, pipe lines, distributing lines, conduits and other equipment, appurtenances and construction necessary or incident to said distribution systems, and together with the franchise and right to supply, distribute and sell natural gas and/or any and all other kinds of gas to the City and to the inhabitants thereof and others within and without the corporate limits of the City for any and all purposes, and upon such terms and conditions and under such restrictions and regulations as are hereinafter contained, and such other reasonable rules and regulations as hereafter may be provided by the rule-making body having jurisdiction thereof.

110.02 MODERN SERVICE REQUIRED. The Grantee shall maintain within the City a modern gas service, with sufficient capacity to meet the reasonable requirements of its patrons, and shall supply same in such a manner as to render efficient service unless prevented by an act of God, a public enemy, a governmental authority, or by a cause not under the control of the Grantee, and in any such event, the Grantee may adopt reasonable rules and regulations governing the volume of gas which it shall be required to furnish its patrons, or any class of patrons.

110.03 SAFE OPERATION REQUIRED. The systems for the distribution of gas shall be constructed, maintained and operated by the Grantee in such a manner as not to interfere unreasonably with any improvements the City may deem proper to make, or to hinder unnecessarily or obstruct the free use of the streets, avenues, alleys, bridges, or other public places, and so as not to interfere with the sewers, drainage or water system of the City.

[†] **EDITOR'S NOTE:** Ordinance No. 175 adopting a gas franchise for the City was passed and adopted on November 5, 1979. Voters approved the franchise at an election held on January 22, 1980.

110.04 CONSTRUCTION AND EXCAVATIONS. Whenever the Grantee, in erecting, constructing or maintaining said distribution systems, shall take up or disturb any pavement or sidewalks, or make any excavations in the streets, avenues, alleys, bridges or public places of the City, said excavations shall at once be refilled and the pavement, sidewalk, or other improvement replaced to the satisfaction of the City officials.

110.05 EXTENSION OF SERVICE. The Grantee shall extend its mains for customers in all cases where bona fide customers apply in writing to be supplied with gas and if said applicants shall sign reasonable contracts for the use of gas for a period of not less than two (2) years, but there shall not be less than one customer for each one hundred (100) feet of main required to be laid to serve said applicants.

110.06 INDEMNIFICATION OF CITY. The Grantee shall hold the City harmless from any and all causes of action, litigation or damages which may arise through or by reason of the construction, reconstruction, maintenance and operation of the systems for the distribution of gas and other construction hereby authorized.

110.07 RATES. The Grantee shall have the right to supply, distribute and sell gas for any and all purposes to the City and to the inhabitants thereof, and to charge therefor such just and reasonable rates as hereafter may be fixed and determined by the rate-making body established under the laws of the State and given jurisdiction thereof.

110.08 SUCCESSORS AND ASSIGNS. All of the provisions of this chapter shall apply to the successors or assigns of the Grantee with the same force and effect as they do to the Grantee.

[The next page is 521]

CHAPTER 111

CABLE TELEVISION FRANCHISE

111.01 Grant of Franchise

111.02 Assignment or Transfer

111.01 GRANT OF FRANCHISE. A nonexclusive right is hereby granted to Telecom (hereinafter referred to as the “Grantee”), its successors and assigns, to establish, construct, operate, maintain, repair, replace, renew, reconstruct and remove a cable television system across public property in the City limits for a term of twenty-five (25) years[†], in accordance with the laws and regulations of the United States of America and the State of Iowa and the ordinances and regulations of the City, including the nonexclusive right, privilege and authority:

1. To sell and supply audio and video communication service to persons within the City;
2. To use public property within the City;
3. To engage in such further activities within the City as may now or hereafter be consistent with the generally accepted principles applicable to the operation of a cable television system.

111.02 ASSIGNMENT OR TRANSFER. The Grantee shall not assign or transfer any right granted under the franchise to any other person, company or corporation without prior consent of the Council, which consent shall not be unreasonably withheld, provided that the Grantee shall have the right to assign the franchise to a corporation wholly owned by the Grantee or to a limited partnership of which the Grantee is a general partner without prior consent of the City.

[†] **EDITOR’S NOTE:** Ordinance No. 181 adopting a cable television franchise for the City was passed and adopted on June 22, 1981.

[The next page is 525]

CHAPTER 112

CABLE TELEVISION REGULATIONS

112.01	Definitions	112.21	Performance Standards
112.02	Use of Property	112.22	Channel Capacity and Performance
112.03	Taxes	112.23	Installation and Maintenance of Subscriber Terminals in City Buildings and Schools
112.04	Insurance	112.24	Telecast of Educational Activities
112.05	Repairs	112.25	Program Alteration
112.06	Hold Harmless	112.26	Subscriber Rates and Charges
112.07	Assignment	112.27	Service Rules and Regulations
112.08	Insolvency of Grantee	112.28	Service Agreements
112.09	Default of Grantee	112.29	Payments to City
112.10	Termination	112.30	Injury to Property of Grantee
112.11	Compliance with Applicable Laws	112.31	Intercepting Signals of Grantee
112.12	Installation and Maintenance of Property of the Grantee	112.32	Filing of Reports
112.13	Interference	112.33	Filing of Maps and Plats
112.14	Installation of Cables	112.34	Filing of Communications with Regulatory Agencies
112.15	Restoration of Ground Surface	112.35	Access
112.16	Alteration of Grade	112.36	Discrimination Prohibited
112.17	Temporary Removal of Cables	112.37	Other Business Activities Prohibited
112.18	Tree Trimming	112.38	Arbitration
112.19	Line Extensions	112.39	Reservations
112.20	Service Requirements		

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” means 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” means the segment of the electromagnetic spectrum to which a source of television transmission is assigned.
3. “FCC” means the Federal Communications Commission.
4. “Franchise” means the rights, privileges, and authority granted by the City to the Grantee hereunder and includes all of the terms and conditions of this chapter.
5. “Grantee” means Telecom, its successors and assigns. When the context so requires, the term “Grantee” means and includes the Grantee, its officers, agents, employees, servants and independent contractors.
6. “Private property” means all property, real, personal or mixed, owned by a private person, including property owned by a public utility not owned or operated by the City.
7. “Property of the Grantee” means all property, real, personal or mixed, owned or used by the Grantee however arising from or related to or connected with the franchise.
8. “Public property” means all property, real or personal or mixed, owned or used by the City, including property owned or used by a public utility owned or operated by the City.

112.02 USE OF PROPERTY. The Grantee may use public property 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 hereafter be consistent with generally accepted principles applicable to the operation of a cable television system subject, however, to the following restrictions:

1. Laws and Regulations. The Grantee shall comply with all governmental laws, ordinances, rules or regulations as may now or hereafter be applicable thereto.
2. Restrictions. 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 any 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 vibrations, 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.

112.03 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.

112.04 INSURANCE. The Grantee shall, at all times during the term of the franchise, carry and require their contractors to carry:

1. General Liability. 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. 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 so-called umbrella coverage of at least \$5,000,000.
2. Worker's Compensation. Worker's Compensation Insurance as provided by the laws of the State of Iowa, as amended.

3. Automobile. 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 so-called umbrella coverage of at least \$5,000,000.
4. Notice of Cancellation. 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 said material alteration or cancellation shall become effective.
5. Copies Filed. Copies of all insurance policies required hereunder shall be furnished to and filed with the City prior to the commencement of operations or the expiration of prior policies, as the case may be.
6. Defense Costs. 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.

112.05 REPAIRS. During the term of the franchise, the Grantee shall, at its own expense, make all necessary repairs and replacements to the property of the Grantee. Such repairs and replacements, interior and exterior, ordinary as well as extraordinary, and structural as well as nonstructural, shall be made promptly, as and when needed.

112.06 HOLD HARMLESS. During the term of the franchise, the Grantee absolutely assumes and agrees to pay the City for, and the Grantee forever agrees to indemnify 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 an account of any actual or alleged loss, damage or injury to any property or person whatsoever, however arising from or related to or connected with, directly or indirectly, (a) injury to or death of any person, or loss, damage or injury to any property of the Grantee, and/or (b) the nonobservance 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, (c) the nonobservance by the Grantee of any of the terms and conditions of the franchise, and/or (d) the granting of the franchise.

112.07 ASSIGNMENT. The Grantee shall not assign or transfer any right granted under this chapter to any other person without prior consent of the Council, which consent shall not be unreasonably withheld, provided that the Grantee shall have the right to assign the provisions of this chapter to a corporation wholly owned by the Grantee or to a limited partnership of which the Grantee is a general partner without the prior consent of the City.

112.08 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.

112.09 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.

112.10 TERMINATION. Upon termination of the franchise for any cause, the Grantee shall remove the property of the Grantee from all public property and private property within the City and shall return such public property and private property to the owner thereof in the same condition as when the property of the Grantee was placed thereon, ordinary wear and tear excepted.

112.11 COMPLIANCE WITH APPLICABLE LAWS. During the term of the franchise, the Grantee shall comply with all governmental laws, ordinances, rules or regulations as may be 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 hereafter be consistent with generally accepted principles applicable to the operation of a cable television system.

112.12 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.

112.13 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.

112.14 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 with 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 installed underground cable, then in that event, the cable used by the Grantee shall be installed underground.

112.15 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 surface of any street or alley disturbed, in as good a condition as before said work was commenced.

112.16 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.

112.17 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.

112.18 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.

112.19 LINE EXTENSIONS. It shall be the obligation of the Grantee 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 within the City, Grantee 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 thirty (30) homes per each linear mile of new cable construction. In the event the requirements of this section are not met, extensions of service shall be required only on a basis which is reasonable and compensatory.

112.20 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.

112.21 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.

112.22 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.

112.23 INSTALLATION AND MAINTENANCE OF SUBSCRIBER TERMINALS IN CITY BUILDINGS AND SCHOOLS. During the franchise, the Grantee shall at its sole cost, install and maintain a subscriber terminal in such buildings owned or used by the City, and in such buildings owned or used by recognized educational authorities within the City, both public and private, as may be designated by the governing body having jurisdiction thereof. Such subscriber terminals shall be placed in such locations within such buildings as may be designated by the governing body having jurisdiction thereof. This provision is meant to apply only to those buildings accessible to Grantee's system. During the term of the franchise, the Grantee agrees to provide free of charge "basic monthly cable television" for

each subscriber terminal installed and maintained at Grantee's cost. As used herein, "basic monthly cable television" is the provision of television broadcast signals and access and origination channels, if any, and does not include advertising services, rental of studios or equipment, provision of program production services, per-channel or per-program charges to subscribers ("pay cable"), rental of channels, sale of channel time, provisions of commercial services such as security systems or any other services of the system.

112.24 TELECAST OF EDUCATIONAL ACTIVITIES. The Grantee shall not cablecast, tape, reproduce or otherwise convey to its subscribers the activities of any recognized educational authority, public or private, without the written consent of the governing body of such authority.

112.25 PROGRAM ALTERATION. Any signal received by the Grantee from a television broadcast station shall be cablecast by the Grantee in its entirety, as received, without alteration.

112.26 SUBSCRIBER RATES AND CHARGES. All rates for service shall be reasonable, compensatory and nondiscriminatory. Except as otherwise provided in the franchise, the Grantee shall have the right, privilege and authority to change the rates and charges.

112.27 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. The Grantee shall file such rules and regulations, and all amendments thereto, with the City. The City reserves the right to adopt reasonable rules and regulations concerning the operation of Grantee's business and concerning the resolution of subscriber complaints involving Grantee. Grantee shall provide at its cost either a local or toll free telephone number for subscribers to call for purposes of receiving and resolving all questions regarding the quality of service, equipment, malfunctions, needed repairs, complaints and similar matters.

112.28 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.

112.29 PAYMENTS TO CITY. The Grantee shall pay to the City one percent (1%) of its annual "basic monthly cable television service" revenue for the service rendered to customers located within the City. All payments as required by the Grantee to the City shall be made annually and shall be due forty-five (45) days after the close of the year. Upon demand by the City, Grantee shall furnish the City with an operating report showing Grantee's annual "basic monthly cable television service" revenue during the preceding year or years and such other information as the City shall reasonably require with respect to the Grantee's services within the City for such period or periods.

112.30 INJURY TO PROPERTY OF GRANTEE. No person shall wrongfully or unlawfully injure the property of the Grantee.

112.31 INTERCEPTING SIGNALS OF GRANTEE. No person shall wrongfully or unlawfully intercept the signals of the Grantee.

112.32 FILING OF REPORTS. On or before April 1 of each year, the Grantee shall file with the City copies of FCC Form 325 and FCC Form 326 for the preceding calendar year.

112.33 FILING OF MAPS AND PLATS. On or before April 1 of each year, the Grantee shall file with the City maps and plats showing the location and nature of all new property of the Grantee within the City as of the end of the preceding calendar year.

112.34 FILING OF COMMUNICATIONS WITH REGULATORY AGENCIES. The Grantee shall file with the City, copies of all petitions, applications and communications submitted by the Grantee to any regulatory agency having jurisdiction over the Grantee.

112.35 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.

112.36 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.

112.37 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.

112.38 ARBITRATION. Any controversy between the City and the Grantee regarding the rights, duties and liabilities of either party under the franchise shall be settled by arbitration. This section shall not apply to termination proceedings under Section 112.10. 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.

112.39 RESERVATIONS. The right is 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.