

TITLE VI – REGULATION OF BUSINESS AND VOCATIONS
FRANCHISES

CHAPTER 154
CABLE TELEVISION REGULATIONS

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

154.02 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 DOW-SAT OF IOWA, INC., an Iowa corporation authorized to do business in the State of Iowa, with its Iowa office at East Walnut Street, Williamsburg, Iowa 52361, the Grantee of rights under Chapter 153 of this Code of Ordinances.
2. “Federal Communications Commission” or “FCC” means the Federal agency by that name as constituted by the Communications Act of 1934, as amended.
3. “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.

154.03 GRANTING OF FRANCHISE. The regulatory ordinance codified herein and the companion ordinance codified by Chapter 153 of this Code of Ordinances which grants to the Company the nonexclusive right to construct, operate and maintain a cable television system in the City, were passed and adopted by the Council after a full, open and public meeting. The City found that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company’s construction arrangements were 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 electronics 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.

154.04 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.

154.05 FCC REGULATIONS. The Company shall, at all times, comply with the rules and regulations governing CATV operations promulgated by the FCC, and specifically those set out in what is presently 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.

154.06 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 (1) year from the effective date of the FCC's amendment of at the time of renewal of the ordinance codified in this chapter, whichever occurs first.

154.07 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.

154.08 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 or State law.

154.09 FRANCHISE TERM. The franchise granted the Company shall terminate twenty-five (25) years from the date of grant.

154.10 SYSTEM CONSTRUCTION, MAINTENANCE AND PROCEDURES.

1. **Right-of-Way Permits.** 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 the use of the 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, 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 or private property damaged or destroyed shall be promptly repaired or replaced by the Company and restored to serviceable condition. All equipment used shall be technologically capable of handling the reception and distribution of color television signals in the climatic conditions prevalent in the City.
2. **Interference Prohibited.** 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. **Service Provided.** 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 unfeasible or economically non-compensatory. For purposes of determining compliance with the provisions of this section, and governing extensions of cable service with the City, the Company shall extend service to new subscribers at normal installation charge and monthly rate for customers of that classification where there is an average of forty (40) homes per linear mile of new cable construction.
4. **Location of Facilities.** 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 said streets, alleys or other public ways and places. In the event electrical and phone lines are buried to the subscriber's residence, the Company shall be required to bury the cable also.
5. **Restoration of Facilities.** 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 disturbed in as good condition as before said work was commenced.

6. **Alteration of Grade.** In the event that at the time during the period of this franchise, the City shall lawfully elect or alter, or change the grade of any street, alley or other public way, the Company, 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.
7. **Interference with Utilities.** The Company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant or main, 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. **Temporary Removal of Cables.** The Company shall, on the request of any person holding a building moving permit issued by the City, or other governmental authority, 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 not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.
9. **Tree Trimming.** 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 trimming shall be done at the expense of the Company.
10. **Service to City and Schools.** The Company shall provide, upon request and without charge, service to any buildings owned and operated by any public or parochial elementary or secondary school within the corporate boundaries of the City. This shall mean only an energized cable to such buildings. The cost of any internal wiring shall be borne by the institution.

154.11 PERFORMANCE GUARANTEE. The Company shall secure and provide, at its expense, a performance bond to be maintained during the construction period to insure completion of initial installation of the system. This bond shall run in favor of the City and shall be in the sum of five thousand dollars (\$5,000.00). Said bond shall be eliminated following completion of construction of the system.

154.12 CITY RIGHTS. The City has and retains the following 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. The Company will allow an emergency disaster warning system to be hooked up through the cable system.
3. **No Property Right.** Nothing in this chapter shall grant to the Company any right of property in the City-owned property.
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 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. **Corrections 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 written notice to correct such violation. All such violations shall be corrected as soon as practicable by the Company.

154.13 PAYMENTS TO THE CITY. Payments to the City shall be as follows:

1. **Annual Payment.** The Company shall pay to the City a fee equal to three percent (3%) of the gross subscriber revenues received by the Company for monthly basic cable television service rendered to customers located within the City.
2. **Due.** All payments required by the Company to the city shall be made annually and shall be due ninety (90) days after the close of the twelve (12) month period.
3. **Records Available.** Subscriber lists and other necessary data shall be provided to the City at least annually and a certified statement showing the gross subscriber revenues shall be furnished annually.

154.14 RATES AND CHARGES. 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 meet operating costs and provide a reasonable return on invested capital.

154.15 CABLE SERVICE PROVIDED. The Company shall provide two (2) levels of cablevision service. The "basic service" shall consist of all readily available over the air channels, which are channels 2, 5, 7, 8, 9, 13, and 17, and satellite channels WTBS (Atlanta), WGN (Chicago), ESPN, USA, CNN, CBN, Nickelodean, Lifetime, MTV, and Nashville Network. The "subscription pay

network” may include, but shall not be limited to HBO and Cinemax. Additional channels may be offered if available.

154.16 RECORD KEEPING. The Company shall keep full, true and accurate and current books, records, maps, plans, financial statements and other like materials, and the same shall be made available for inspection and copying by the City upon reasonable notice and during normal business hours. The Company shall supply to the City, upon completion of the initial installation of the system, a complete system map showing the location of all lines, poles and other company apparatus with subscriber usage symbols. This map shall be updated at least annually.

154.17 SERVICE PROCEDURES. During the term of the franchise, and any renewal thereof, the Company shall maintain within the City a 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 nearby 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.

154.18 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.

154.19 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, during daytime or evening “prime time” viewing hours.

154.20 LOCAL PROGRAM TRANSMITTING CAPABILITIES. The Company will make available a channel to be used by the City to transmit local programming. The City, or anyone permitted by the City to utilize local programming, shall not generate any revenue in connection therewith except to defray any actual costs incurred for the broadcast operation.

154.21 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.

154.22 LIABILITY AND INDEMNIFICATION. The Company shall indemnify the City and its officers, agents and employees for and hold it harmless from all liability, damage, cost or expense, including attorney fees, 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 representatives within fifteen (15) days after the presentation of any claim or demand to the City, or its officers, agents or employees, either by suit, or otherwise, made against the City, its officers, agents or employees, on account of any negligence or other claims as aforesaid on the part of the Company. The Company further agrees as follows:

1. The Company shall carry Worker's Compensation insurance with statutory limits and Employer's Liability insurance with limits of not less than \$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 \$500,000.00 as to any one occurrence and against liability due to injury or death of persons, \$500,000.00 as to any one person and \$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 and decreases in said insurance coverage requirements. The Company shall, within sixty (60) days or receipt of that written notice obtain such insurance coverage as is specified in said notice.
3. Company's Workers' Compensation, Comprehensive General Liability and Comprehensive Automobile Liability insurance shall be written by an insurance company authorized to do business in the State and the Company agrees to furnish the City with certificates of insurance of said policies, which shall provide that insurance shall not be canceled unless thirty (30) days prior written notice first be given to the City.

154.23 ACTIVITIES PROHIBITED.

1. The Company shall not allow its cable or other operations to interfere with television reception or 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 franchise 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. The Company, any and all of its officers, agents and employees are specifically prohibited from engaging in the sale, service, rental or leasing of television receivers or television or radio receiver related parts and accessories with any person anywhere in the City, whether for a fee or charge or not. The Company shall prohibit any of its officers, agents and employees from violating the terms of this section at all times, whether in the performance

of duties of the Company or otherwise. Nothing herein shall be construed to prevent the Company from contracting with a local business which sells or services television sets to perform installation, maintenance or repair services for it.

4. 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 the same. Such action shall be a simple misdemeanor.

154.24 LOCAL PARTICIPATION. Citizen input and local participation in programming decisions are deemed important to the successful operation of the system. The Company shall, at least annually, arrange a meeting between the Company and the Council for the purpose of discussing system performance, subscriber complaints, the availability of additional services, and related matters. This meeting will be in the nature of a public hearing and citizen criticism, questions and suggestions will be actively solicited. The Council may, if they deem it desirable, appoint a citizen advisory committee to participate in the meeting and to evaluate the Company's service and to periodically meet with Company officials to discuss such matters.

154.25 LOCAL PURCHASING OF SERVICE AND MATERIALS. The Company shall, wherever and whenever practical and feasible, purchase any materials, labor, supplies, insurance and service necessary for the installation, maintenance, repair and operation of the system from persons and businesses located in the City.

154.26 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, or should the Company file for bankruptcy or be adjudicated a bankrupt, or be placed in receivership, the same shall cause for the forfeiture or revocation of the Company's 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.
