

CHAPTER 9

FIBER OPTIC SYSTEM

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8-9-1: PURPOSE: The purpose of this Chapter is to establish a City owned Fiber Optic System which provides broadband access to meet the needs of:

- A. City Departments
- B. Public Safety Organizations
- C. Other Publicly Owned and Operated Facilities
- D. Community Anchor Institutions
- E. Businesses
- F. Residents

To protect the public right-of-way by improving both the management and regulation of competing demands through the elimination of duplicate fiber optic facilities within the public right-of-way.

To protect the economic vitality of the City by providing the broadband transport service and fiber facilities leasing required by broadband service providers.

To reduce the cost of maintaining the sidewalk, pavement and public facilities located within the public right-of-way by minimizing the number of pavement cuts and dislocation of other public facilities necessitated by the construction or installation of fiber optic facilities.

To foster competition among retail broadband service providers by providing open Access to the City Fiber Optic System.

To protect the cost of broadband services by eliminating anti-competitive pricing schemes or monopolistic practices which contribute to higher costs for broadband services.

To protect the ability of retail broadband service providers to reach subscribers and provide service without undue competition or regulation by a tax-supported entity.

8-9-2: DEFINITIONS: Certain terms used in this chapter shall have the meanings ascribed below:

ACCESS: Access to or use of the Fiber System in the form of either broadband transport service or Dark Fiber leasing.

CITY: The City of Ammon, Idaho.

CUSTOMER: A retail or wholesale user of the Fiber Optic System.

DARK FIBER: A single fiber strand without any light flowing through it.

DEMARCATIION POINT: The point of connection on an Optical Network Terminal or Network Interface Device at which the City Fiber Optic System ends and a point of interconnection is established for the customer's use.

DIRECTOR: The Director of the Ammon Technology Department, or his or her appointed designee.

FIBER OPTIC SYSTEM: The City owned Fiber Optic System, including all fiber, facilities, equipment and appurtenances.

PLANT: A single fiber running from point to point provided to a Customer as a Dark Fiber lease.

PROVIDER: A retail broadband service provider.

SERVICE: Any future or current, retail or customer broadband service which may be transported utilizing the Fiber Optic System.

SUBSCRIBER: A current or potential Provider Customer.

TRANSPORT: Broadband transport service consisting of Ethernet services as supported by the City Fiber System.

8-9-3: OWNERSHIP, CONTROL AND MANAGEMENT: The City shall have exclusive and complete ownership, control and management of the Fiber Optic System within all Demarcation Points, which shall include the device or interface provided for interconnection. The City may make such rules and regulations as are necessary for the operation of the Fiber Optic System both inside and outside the City limits.

8-9-4: NO OBLIGATION TO SERVE: The City shall have a obligation to provide Access to any provider or subscriber. The City shall not be obligated to construct extensions or install the additional facilities necessary to meet a Customer's needs, except as explicitly authorized by the Director. The City reserves the right to limit or refuse Access at its sole discretion, provided access shall not be denied or limited on the basis of race, religion, age, national origin or gender.

8-9-5: APPLICABILITY: The provisions of this chapter shall apply only to the Fiber Optic System. Nothing herein shall be construed or deemed to regulate the delivery of communications or data services over or across lines, facilities, or equipment owned by a private communications provider, or which may be located in the public right-of-way pursuant to a franchise, lease, or other license or privilege granted by the City.

8-9-6: TRANSFER OF RIGHTS PROHIBITED: All rights to Access and any rights or privileges arising under the provisions of this Chapter shall not be transferred to any person or entity without the express written approval of the Director.

8-9-7: BILLINGS: Fiber Optic System Access provided by the City shall be billed to the Customer in accordance with a schedule of rates as established by the City Council by resolution which may be amended from time to time, and such rates shall be kept on file in the office of the City Clerk and information furnished to interested parties upon request.

8-9-8: LIMITATIONS: Access to the City of Ammon Fiber Optic Utility shall be provided only to those customers that have been included in a service network system via a residential or commercial fiber optic project or by separate contract for services negotiated by the Director and approved by the City Council.

Fiber Optic System Access may be supplied under a given rate schedule provided that the fiber optic system has the ability to meet the requirements of the rate schedule applicable thereto.

Nothing herein shall be construed or deemed to prevent the City from negotiating separate contracts with any customer solely for the purpose of obtaining assistance in constructing or installing additional plant for the benefit of said customer. Such negotiations shall be handled by the Director and approved by City Council.

8-9-9: RIGHTS OF WAY: The City may condition providing transport or plant upon the customer's dedication or conveyance to the City of a utility easement for the installation, operation and maintenance of the City's fiber system, over, across and upon property owned or controlled by the customer or the customer's landlord. Such utility easement may also be used for the purpose of providing Access to other customers of the City. Such utility easement shall permit access thereto by authorized representatives of the City at all reasonable hours or at any time in any emergency situation. By acceptance of or submission of an application for fiber optic access, the customer shall be deemed to waive any claim for damages to the customer's

property or equipment located within such utility easement, arising from the operation or maintenance of the Fiber Optic System therein. Such acceptance or application shall also be deemed to constitute a waiver of any claim for damages arising from a taking or any severance damages with respect to a customer's underlying fee, simple interest.

8-9-10: LIABILITY FOR INTERRUPTIONS: The City shall not be liable for any loss, injury or damage of any kind, including but not limited to consequential, special and punitive damages, resulting from the interruption, reduction, loss or restoration of Access from any cause, including without limitation any loss by fire, flood, accident, casualty, sabotage, terrorist act, strike, labor slow-down, act of God or the public enemy or failure or inadequacy of the Fiber Optic System. The City disclaims any express or implied warranty of merchantability or fitness for a particular purpose and the delivery of Access to any customer shall not be construed as or deemed to be the delivery of goods under the Idaho Uniform Commercial Code. By acceptance of transport or plant, the customer agrees to, and shall be deemed to, waive any and all claims for damage or loss to the customer's lines, facilities, or communications equipment caused by any act or omission of the City, however, nothing herein shall be deemed or construed as a waiver of any claim for damage or liability arising out of the gross negligence or malicious act of the City, or its agents.

8-9-11: INTERRUPTION OF SERVICE SUPPORT: Support for outages of the fiber optic system shall be handled as follows:

Residential Service:

Single Residential Property: Shall be confined to best effort during regular business hours. No service for a single service will be provided outside of regular business hours.

Multiple Residential Properties: Residential outages of 3 or more contiguous properties will receive support 24 hours a day, 7 days a week, and 365 days a year, or 24/7/365.

Commercial Service:

Commercial support shall always be given priority and available 24/7/365.

8-9-12: SHUT-DOWN FOR REPAIRS: For the purpose of making necessary repairs, upgrades or changes to its Fiber Optic System, or to avoid damage to property or to persons, the City may without prior notice to the customer suspend Access for such periods as may be reasonably necessary to make such repairs, upgrades or changes and the City shall not be liable for damage of any kind, direct or indirect, as a result of such discontinuance of Access.

8-9-13: INTERFERENCE WITH THE FIBER OPTIC SYSTEM: The City may refuse to supply Access where there is a possibility that the delivery of such may seriously impair or disrupt any other customers, or which may disrupt the operation of the Fiber Optic System. The City may also discontinue or disconnect Access for a Customer if the Customer, by their use of the Fiber Optic System, is seriously impairing any other Customer's use of the Fiber Optic System. The City may also, without prior notice, suspend or disconnect any customer using the

Fiber Optic System for the purposes of delivering any virus, spam, spyware, denial of service attacks, or any other illegal or malicious purpose which has the effect of or is intended to impair or impede the operation of the Fiber Optic System, the internet, or any public or private computer or computer network connected thereto or for the purpose of obtaining illegal or unauthorized access to other computers or networks connected to the Fiber Optic System.

8-9-14: PROTECTION OF THE CUSTOMER'S EQUIPMENT: The customer is solely responsible for the selection, installation and maintenance of all equipment and wiring on the customer side of the Demarcation Point. The customer shall install and maintain suitable protective devices and equipment to protect life and property from harm or injury and the City assumes no duty to warn or otherwise assist the customer in the selection or use of such protective devices.

8-9-15: TAMPERING WITH FIBER OPTIC SYSTEM PROHIBITED: Other than City representatives working under the supervision of the Director, no person shall connect to, adjust, tamper with or make any alteration or addition to the Fiber Optic System, without having first obtained written permission from the Director. Any person who willfully or maliciously causes damage to, interference with or obstruction to the efficient operation of the Fiber Optic System shall be guilty of a misdemeanor. Any person who causes such damage shall in addition to any criminal fines or penalties, be liable to the City for any reasonable damages which may be proximately caused by such damage or interference. Such amounts may be included upon the customer's regular monthly billing statement for utility service and upon the customer's failure or refusal to pay such charges, Fiber Optic System Access or any other public utility service provided by the City, may be terminated in accordance with the procedures set forth in this chapter.

Any violation of the provisions of this section shall be deemed a misdemeanor and subject to section 1-4-1 of the Ammon City Code.

8-9-16: THEFT OF ACCESS OR USE: It shall be unlawful for any person to make any connection to or install or construct any facility or equipment with the specific intent of obtaining Access from or making use of the Fiber Optic System, without paying for such Access or without paying the fees and charges established by the provisions set forth in this chapter.

8-9-17: FIBER OPTIC RATES, FEES: Fiber Optic Rates Established. The City Council shall establish fiber optic rates and any associated fees by resolution which may be amended from time to time, and such rates shall be kept on file in the office of the City Clerk and information furnished to interested parties upon request.

8-9-18: DUE DATE: Bills rendered for participation in the fiber optic system are payable ten (10) days following the month of service and as such the bill is due in full at such time. If the account is not paid by the 10th of the month following the due date, the account will become delinquent. When the due date falls on a legal holiday or on a day when City offices are not open for business, the next regular business day is considered the due date and the past due date.

When remittances are made by mail, bills shall be deemed paid on the date of mailing as shown by the postmark.

8-9-19: DELINQUENT ACCOUNTS: When a utility account is not paid by the 10th of the month following the month of service, as hereinabove stated, and the bill remains unpaid, the account will become delinquent and shall be handled in the following manner:

- (A) On or after the delinquent date, a delinquency statement is to be mailed to the responsible party, stating a date the account balance must be paid in full.
- (B) If there has been no response to the mailed delinquency statement by the deadline date in said statement, a notice shall be posted at the residence/location stating the date that the water will be turned off. A posting fee will be added to the account for said notice.
- (C) In cases when a notice is posted at the residence/location, the customer can make payment or arrangements for payment prior to the disconnection of service.
- (D) In cases when services is turned off for non-payment, there shall be a fee charged which shall include payment for the shut off and the future turn on. Service shall not be restored until the account is paid in full by approved funds as listed in item (F).
- (E) Notice of shut off shall be posted at the residence/location stating the date that the shut off/disconnection will be performed.
- (F) In the event of payment of a delinquent account, personal checks shall not be accepted, and the balance must be paid by cash or one of the following: certified funds; cashier's check, certified check, credit card or money order.
- (G) Payments received for services by a check that is subsequently returned unpaid by any financial institution shall be assessed a return check fee as set by resolution of the City Council. Said fee shall be charged to the customer's utility account and charges for utilities that said check was to pay shall also be billed back to the customer's utility account. Any returned check must be paid within five (5) working days from the time the notice is given by the City of the returned check or the utility account shall be considered delinquent. All fees shall be paid in full prior to reinstatement of services. Partial payments of amounts due shall be applied to check fees prior to being applied to services.

8-9-20: VOLUNTARY DISCONNECT: Fiber optic service may be voluntarily disconnected at any time by written request to the City of Ammon administrative office of the City.

There shall be no charge for a voluntary disconnect. Reconnection of voluntarily disconnected service shall be charge a reconnection fee set by resolution of the City Council.

8-9-21: SERVICES PROVIDED: Fiber Optic Utility Access may include emergency, lifeline or other public safety or welfare services as part of the utility rate for Ammon property owners. The City shall not provide any retail end user service, such as voice, video or Internet that is not directly related to the City's police powers or public health and welfare as part of the utility rate.

8-9-22: SEPARATE CONTRACT AUTHORIZED: Nothing herein shall be construed or deemed to prevent the City from negotiating separate contracts or agreements with any customer for the purpose of obtaining assistance in constructing or installing additional plant for the benefit of said customer or providing services not included in the utility rate structure. Such negotiations shall be handled by the Director and approved by City Council.

8-9-23: CONTINUING OBLIGATION OF EXISTING CONTRACTS: All contracts in effect on the date of the adoption of this code shall remain in effect until said contract expires. Upon expiration of a contract all new contracts shall be charged pursuant to the rates set by resolution of the Council or by negotiation of a new contract as with the Director and approved by the City Council.

8-9-24: VIOLATIONS AND PENALTIES: Any violation of the provisions of this chapter deemed to be a misdemeanor shall be subject to penalties prescribed for such violations under section 1-4-1 of this code. Any person violating the provisions of this chapter deemed to be an infraction shall be subject to the penalties as provided for in section 1-4-2. Violations of this chapter shall be deemed an infraction, unless such violation is designated in this chapter as a misdemeanor.