

CHAPTER 9

FIBER OPTIC SYSTEM

8-9-1:	Purpose
8-9-2:	Definitions
8-9-3:	Ownership, Control and Management
8-9-4:	No Obligation to Serve
8-9-5:	Applicability
8-9-6:	Transfer of Rights Prohibited
8-9-7:	Billings
8-9-8:	Limitations
8-9-9:	Rights of Way
8-9-10:	Liability for Interruptions
8-9-11:	Shut-Down for Repairs
8-9-12:	Interference with the Fiber Optic System
8-9-13:	Protection of the Customer's Equipment
8-9-14:	Tampering with Fiber Optic System Prohibited
8-9-15:	Theft of Access or Use
8-9-16:	Violations and Penalties

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.

DEMARICATION 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 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 recommendation of the Director and approved by City Council through resolution.

8-9-8: LIMITATIONS: 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. 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.

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: 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.

8-9-12: 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.

8-9-13: 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.

8-9-14: 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.

8-9-15: 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.

8-9-16: 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.