

**CHAPTER 13**  
**PUBLIC FIBER OPTIC NETWORK**

**SECTION:**

- 8-13-1: Definitions
- 8-13-2: Purposes
- 8-13-3: Ownership of the Fiber Optic Network
- 8-13-4: Management of Fiber Optic Network Access
- 8-13-5: No Obligation to Serve
- 8-13-6: Applicability to Fiber Optic Network Customers
- 8-13-7: Application for Fiber Optic Network Access
- 8-13-8: Transfer of Access Rights Prohibited
- 8-13-9: Rates and Schedules
- 8-13-10: Limitations Upon Delivery of Fiber Access
- 8-13-11: (Reserved)
- 8-13-12: Limitations Upon Number of Fiber Strands
- 8-13-13: Rights of Way
- 8-13-14: Billing, Collection, and Termination of Utility Service
- 8-13-15: Involuntary Termination of Fiber Optic Access
- 8-13-16: Plans for Payment of Delinquent Accounts
- 8-13-17: Liability for Interruptions of Service
- 8-13-18: Shut-down for Repairs
- 8-13-19: Temporary Suspension of Demand By Customer
- 8-13-20: Interference with Access
- 8-13-21: Protection of Customer's Equipment:
- 8-13-22: Backbone Extensions
- 8-13-23: Distribution System Extension
- 8-13-24: Distribution Design
- 8-13-25: Cost Sharing for Distribution Fiber Extensions
- 8-13-26: Schedule of Rates
- 8-13-27: Tampering with Fiber Optic Network Prohibited
- 8-13-28: Theft of Fiber Optic Access

8-13-1: **DEFINITIONS:** Certain terms used in this Chapter shall have the meanings ascribed below:

**ACCESS NODE:** An enclosure with splice trays on the fiber optic system that provides access for splicing a customer connection to the public distribution system.

**BACKBONE ACCESS POINT:** An enclosure with splice trays on the backbone ring that provides access for splicing distribution fiber to the fiber backbone.

**BUFFER TUBE:** A plastic tube containing a bundle of fiber strands within a fiber optic cable.

**CITY:** The City of Idaho Falls, Idaho.

**CUSTOMER:** A retail or wholesale user of fiber optic access provided through the Fiber Optic System.

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

**DIRECTOR:** The Director of the Idaho Falls Power, or his or her designee.

**DISTANCE RATIO:** The ratio resulting from the total lineal length of a distribution fiber line measured between the fiber backbone and an initial fiber customer's point of delivery, as the denominator, and the distance between any subsequent customer's point of delivery and the initial connection to the backbone, as the numerator.

**DISTRIBUTION FIBER:** A fiber that connects the fiber backbone ring to a customer's facility fiber, customer access drop, or other customer owned equipment.

**FIBER BACKBONE:** A network of dark fiber, generally consisting of 96 or more strands of single mode fiber located within the public right of way, all as more particularly shown on the Fiber Map maintained on file at the offices of Idaho Falls Power.

**FIBER MAP:** A map depicting the location of the public fiber backbone, including any amendments thereto, as may be determined by the Director of Idaho Falls Power.

**FIBER OPTIC CABLE:** A cable containing a bundle of fiber strands.

**FIBER OPTIC CUSTOMER:** A person who applies for or receives fiber optic access from the City.

**FIBER OPTIC PATHWAY:** A physical pathway within a fiber strand through which pulses of light may be transmitted.

**FIBER STRAND:** An individual glass fiber, roughly the thickness of a human hair, that is capable of carrying a distinct signal transmitted in the form of pulses of light.

**INTERCONNECTION WORK:** All activities necessary to establish fiber pathway(s) between two or more locations.

**INTERNET SERVICE PROVIDER OR "ISP":** A Fiber Optic Customer who provides fiber optic access or internet services to Retail Internet Users for monetary gain or other consideration.

**INITIAL DISTRIBUTION FIBER CONSTRUCTION COSTS:** The total cost of designing and constructing an extension of distribution fiber between the backbone and an initial customer's point of delivery. Such amount shall be established by the Director following the construction of such distribution line by the City based upon the reasonable and actual costs incurred by the City, whether performed by City crews or by an independent contractor.

**INITIAL FIBER CUSTOMER:** A customer who constructs a distribution line at his or her sole expense, which line benefits or potentially benefits a subsequent fiber customer who connects to and uses any portion of such line or facilities constructed by such initial customer.

**POINT OF DELIVERY:** A physical location or point that separates the public fiber optic system from the equipment owned by the customer, typically a patch panel located within the customer's premises.

**PUBLIC FIBER OPTIC SYSTEM:** A publicly owned transmission medium or network of optical fiber cables owned by the City, along with all associated electronics and equipment, capable of carrying a digital signal or data by means of electric lightwave impulses.

**RETAIL INTERNET USER:** A consumer or end-user of internet or data transmission services or fiber optic access who does not sell or provide such services to other customers for monetary gain or consideration.

**ROUTE-DIVERSE RING:** A fiber network design which provides redundant signal pathways along two different routes between two or more locations.

**SPLICE:** A physical connection between the ends of two fiber strands.

**SPLICE POINTS:** A point on the fiber backbone where segments of the fiber backbone are interconnected to each other. Drop cables may also connect distribution fiber to the fiber backbone at these locations.

**SUBSEQUENT FIBER CUSTOMER:** Any fiber customer who connects to or uses any portion of a fiber distribution line constructed at the sole expense of an initial fiber customer.

**USAGE RATIO:** A ratio used to calculate the portion of the initial distribution fiber construction costs to which an initial customer is entitled to recover from a subsequent fiber customer at the time the subsequent customer connects a drop cable to any portion of a distribution line constructed at the expense of the initial customer. The ratio shall consist of a fraction for which the total distribution line capacity constructed by the initial customer's the denominator, and the subsequent customer's projected usage of such capacity, as the numerator.

**UTILITY EASEMENT:** A permanent right to use real property for the purpose of constructing, operating and maintaining publicly owned utility services, including but not limited to a fiber optic cable for communications services.

**WHOLESALE CUSTOMER:** A Fiber Optic Customer who leases one or more fiber optic pairs for the purpose of selling or providing internet or data services to other retail users for monetary gain or consideration. (Ord. 2835, 4-22-10; Ord. 3003, 4-23-15)

8-13-2:           **PURPOSES:** The purposes of this Chapter are as follows:

(A) To enhance access to and encourage cost effective use of high speed data transmission lines serving publicly-owned facilities.

(B) To enhance the growth and continued economic vitality of the City by providing to the City residents a high speed, modern and efficient means of communicating information and transmitting electronic data.

(C) To manage and regulate competing demands for use of the public right-of-way by minimizing the installation of duplicative communications lines and facilities on, over or under the public right-of-way.

(D) 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 duplicative communications lines.

(E) To foster competition among communication providers by providing open access to the publicly-owned fiber network.

(F) To reduce the cost of communication services to City residents by eliminating anti-competitive pricing schemes or monopolistic practices which contribute to higher costs for communications services.

(G) To preserve and enhance the ability of private retail communication providers to serve their clientele without undue competition or regulation by a tax-supported entity. (Ord. 2835, 4-22-10)

8-13-3: **OWNERSHIP OF THE FIBER OPTIC NETWORK:** There is hereby established as a division within Idaho Falls Power, the Public Fiber Optic Network System. Management of the public fiber optic network shall be vested solely in Idaho Falls Power, subject to such rules, regulations, and operational guidelines as may be approved by the Council. Notwithstanding the foregoing, to the extent possible all operational costs, charges, expenses, revenues and receipts attributable to or derived from the operation of the public fiber optic network shall be separately accounted for or fairly apportioned between the fiber optic system and the electrical energy generation, distribution & transmission system, in order to establish fair, equitable and non-discriminatory rates for the delivery of fiber optic access, separate and apart from the establishment of electrical. (Ord. 2835, 4-22-10; Ord. 3003, 4-23-15)

8-13-4: **MANAGEMENT OF FIBER OPTIC NETWORK ACCESS:** The City shall have exclusive right to sell, lease and deliver fiber optic access on the public fiber network. (Ord. 2835, 4-22-10)

8-13-5: **NO OBLIGATION TO SERVE:** The City shall have no obligation to serve or provide fiber optic access to any customer. The City reserves the right to limit or refuse access to the public fiber network at its sole discretion, provided access shall not be denied or limited on the basis of race, color, religious creed, ancestry, age, national origin, familial status, veterans status,

disability, sexual orientation, and/or gender expression/identity. (Ord. 2835, 4-22-10; Ord. 3075, 7-14-16)

**8-13-6: APPLICABILITY TO PUBLIC FIBER OPTIC NETWORK CUSTOMERS:**

The provisions of this Chapter shall apply only to the delivery of fiber optic access and related services across the publicly-owned fiber optic network. 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. (Ord. 2835, 4-22-10)

**8-13-7: APPLICATION FOR FIBER OPTIC NETWORK ACCESS:**

(A) Fiber optic access shall not be delivered to any customer until the customer or the customer's authorized agent personally appears at the office of Idaho Falls Power, 140 S. Capital Ave., Idaho Falls, Idaho, and makes written application for delivery of fiber optic access. Such application shall be in such form as may be determined by the Director and the City Attorney. The Director may require appropriate identification of any customer or agent making application for fiber optic access. Customers requesting any fiber optic access which contemplates substantial extensions of the fiber backbone or the construction of significant enhancements or additions to the fiber optic network at public expense, as determined by the Director, may be required to present site plans, improvement plans, feasibility plans, financial statements and financial guarantees contemporaneously with such application and, where the customer is allowed to amortize payments for such extensions, enhancements, or additions, the customer shall allow the City to audit all relevant financial records of such customer. Any customer who willfully gives materially false information in the customer's application or who shall falsely represent the customer's identity shall be guilty of a misdemeanor and fiber optic access to such customer may be subject to summary termination of access.

(B) In the event installation of distribution fiber is necessary in order to provide the access requested by the customer, the cost of designing and installing such distribution line shall be borne by the customer, subject to the customer's recovery of a portion of such cost from a subsequent customer, in the manner set forth in this Chapter. The Director may require the initial customer to pay the estimated costs of such design and installation to the City prior to and as a condition for the commencement of the installation of such distribution fiber by the City. The design and/or installation of such distribution fiber may be performed by the City or by an independent contractor hired by the City. In the event the installation is performed by an independent contractor, the City shall deliver a copy of the contractor's bid to the customer prior to its issuance of a notice to proceed to such independent contractor. In the event the actual costs of such construction exceed the initial estimate by the Director, such excess shall be paid to the City within fifteen (15) days after the delivery of an itemized invoice to the customer by the City, reflecting the total amount of the design and construction costs incurred by the City in constructing such distribution fiber extension. In the event such construction costs are less than the estimate, then such difference shall be returned to the initial customer within thirty (30) days after the substantial completion of such distribution fiber extension. In no event will the City undertake the design or

construction of a new distribution line, if the customer is delinquent in their payment of the access charges set from time to time by Resolution of the Council or is otherwise in default of the customer's obligations under this Chapter. Upon approval by the Director and where the amount to be amortized does not exceed ten thousand dollars (\$10,000), payment for distribution fiber may also be made in monthly installments not to exceed a total of sixty (60) months. Written agreement approved by the Director and signed by the customer shall be required for amortization. Amortization shall not be allowed if the Retail Internet User for whom the distribution fiber is being constructed or installed has paid the wholesale customer for such distribution fiber or has agreed to pay for such distribution fiber in full. Amortization shall not be allowed until the wholesale customer has demonstrated a satisfactory payment history of not less than one (1) year with the public fiber system unless approved by the Director. If the Retail Internet User for whom such distribution fiber has been provided thereafter discontinues the customer's service agreement with the customer with whom the City has executed an amortization agreement, such Retail Internet User shall not be allowed to again use such distribution fiber unless the new service provider for such Retail Internet User agrees to assume and pay the entire balance then owed on the account of such distribution fiber. (Ord. 2835, 4-22-10; Ord. 3003, 4-23-15; Ord. 3075, 7-14-16)

8-13-8: TRANSFER OF ACCESS RIGHTS PROHIBITED: All rights to fiber access and any rights or privileges arising under the provisions of this Chapter shall not be transferred to any person or entity without the prior express written approval of the Director. (Ord. 2835, 4-22-10; Ord. 3075, 7-14-16)

8-13-9: RATES AND SCHEDULES: Fiber optic access supplied by the City shall be billed in accordance with the schedule of rates set forth in this Chapter and as set from time to time by Resolution of this Council. The schedule of rates is designed to provide monthly rates for access supplied to the customer. Selection of appropriate rates shall be based on the customer's choice of available services, subject to the approval of the Director. (Ord. 2835, 4-22-10; Ord. 3075, 7-14-16)

8-13-10: LIMITATIONS UPON DELIVERY OF FIBER ACCESS:

(A) Access shall be delivered only to premises or facilities which are in conformity with the provisions of this Chapter, the International Building and/or Fire Codes, the Zoning Ordinance and all other ordinances of the City.

(B) Access will be supplied under a given rate schedule only to such points of delivery as are adjacent to the public fiber optic system of the City and provided that the public fiber optic system has the technological capability to meet the customer's service needs under the rate schedule applicable thereto. The City shall not be obligated to construct extensions or install additional fiber access facilities necessary to meet a fiber customer's needs except as explicitly authorized by the Director.

(C) No portion of the Fiber Optic System shall be used by any customer for the purpose of extending a fiber line or providing fiber access to any person whose point of delivery is not located within the territorial limits of the City.

(D) No backbone fiber pair shall be leased for a period of less than one year. (Ord. 2835, 4-22-10)

8-13-11: (RESERVED):

8-13-12: LIMITATIONS UPON NUMBER OF FIBER STRANDS: Consistent with the stated purpose of this Chapter to promote competition among communication service providers in Idaho Falls, no customer may lease or use more than six fiber pairs, twelve strands, at any given time, except as expressly provided for in a written agreement signed by an authorized agent of the City. (Ord. 2835, 4-22-10)

8-13-13: RIGHTS OF WAY: The City may condition fiber optic access 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, equipment and apparatus, over, across and upon property owned or controlled by the customer or the customer's landlord. The City may also require such dedication or conveyance to be by warranty deed or it may require execution of an indemnification covenant assuring good and merchantable title thereto. Such utility easement may also be used for the purpose of providing fiber optic access to other fiber customers of the City. Such utility easement shall permit access thereto by the City employees, 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. (Ord. 2835, 4-22-10)

8-13-14: BILLINGS: Billings for fiber optic access shall be rendered upon a monthly basis. Bills rendered for fiber optic access are payable upon receipt and shall become delinquent ten (10) days from the date on which the billing was rendered. When the delinquent date falls on a legal holiday, the next regular business day shall be considered to be the delinquent date. Any billing that is not paid prior to the delinquent date shall be assessed a delinquency fee of five percent (5%) of the amount of the billing. Billings shall be deemed paid upon receipt at the office of the City Treasurer. Bills may be rounded to the nearest even dollar. Any account not paid by the past due date shall bear interest at the maximum rate permitted by law, commencing upon the past due date. (Ord. 2835, 4-22-10)

8-13-15: VOLUNTARY TERMINATION OF FIBER OPTIC ACCESS:

(A) In the event that any customer desires to discontinue receiving fiber optic access from the City, the customer shall give advance notice in writing to the Director of such desire. Customers will be responsible for all fiber optic access made available to the customer's premises until the date set forth in the customer's notice and for any construction or

distribution costs provided or incurred by the City in order to make access available to such customer. In the event any customer fails to give written notice in the manner set forth above, the customer shall be responsible for any and all bills or monthly service charges incurred until such notice is given, or until another customer makes application to receive fiber optic access at the same point of delivery, regardless of whether or not the original customer actually utilized the fiber optic access for their own purposes.

(B) In the event any Wholesale Customer terminates service prior to the expiration of one (1) year from the date service was first commenced, then the entire unpaid balance for the service charges remaining for such one (1) year period, shall become immediately due and payable upon delivery of the customer's notice of termination. (Ord. No. 2736, 2-14-08; Ord. 2835, 4-22-10; Ord. 3075, 7-14-16)

8-13-16: **BILLING, COLLECTION, AND TERMINATION OF UTILITY SERVICE:** Billing, collection, and termination for utility service shall be processed pursuant to the City billing, collection, and termination policy established by Council Resolution. (Ord. No. 2736, 2-14-08; Ord. 2835, 4-22-10; Ord. 2964, 8-14-14; Ord. 3039, 11-24-15)

8-13-17: **LIABILITY FOR INTERRUPTIONS OF ACCESS:** 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 fiber optic 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 distribution fiber, backbone fiber or appurtenant facilities. The City disclaims any express or implied warranty of merchantability or fitness for a particular purpose and the delivery of fiber optic 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 fiber optic access, 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. (Ord. 2835, 4-22-10; Ord. 3039, 11-24-15)

8-13-18: **SHUT-DOWN FOR REPAIRS:** For the purpose of making necessary repairs, upgrades or changes to its backbone or distribution facilities, or to avoid damage to property or to persons, the City may without prior notice to the customer suspend fiber optic 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 fiber optic access. (Ord. 2835, 4-22-10; Ord. 3039, 11-24-15)

8-13-19: **TEMPORARY SUSPENSION OF DEMAND BY CUSTOMER:** Whenever a customer suspends operation due to strikes, action of any governmental authority, act of God or the public enemy or other force majeure, the customer shall continue to be obligated to pay the monthly fiber optic access charge provided in the rate schedules set forth in this Chapter and for

any distribution costs established in his or her Fiber Optic Access Application, irrespective of such temporary suspension. (Ord. 2835, 4-22-10; Ord. 3039, 11-24-15)

8-13-20: **INTERFERENCE WITH ACCESS:** The City may refuse to supply fiber optic access where there is a possibility that the delivery of access may seriously impair or disrupt access to any other customers, or which may disrupt the operation of the public fiber optic backbone. The City may also disconnect fiber access if the customer's connection is seriously impairing access to any other customers. The City may also, without prior notice, suspend or disconnect access to any customer using the public network 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 public 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 public fiber optic system. (Ord. 2835, 4-22-10; Ord. 3039, 11-24-15)

8-13-21: **PROTECTION OF CUSTOMER'S EQUIPMENT:** The customer is solely responsible for the selection, installation and maintenance of all equipment and wiring, other than the City's apparatus, on the customer side of the point of delivery. 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. (Ord. 2835, 4-22-10; Ord. 3039, 11-24-15)

8-13-22: **BACKBONE EXTENSIONS:** Extensions of the fiber backbone ring may be made at the sole discretion of the City. Access to the backbone ring will be provided through the construction of distribution system facilities as described in this Chapter. The City reserves the right to upgrade, overbuild and rebuild the network in any fashion which may result in new backbone or distribution and service drop boundaries. (Ord. 2835, 4-22-10; Ord. 3039, 11-24-15; Ord. 3075, 7-14-16)

8-13-23: **DISTRIBUTION SYSTEM EXTENSION:** An extension of the distribution system is any continuation of, or branch from, the nearest available existing distribution fiber or new branch from the nearest available Backbone Access Point. The City may make extensions of the distribution system at customer expense as provided for in the schedule of rates set forth in this Chapter and as set from time to time by Resolution of this Council. All distribution construction work shall be undertaken solely by the City and at the expense of the customer. An estimate of construction costs will be provided for customer review and approval prior to beginning any construction activity and the City may require the customer to pay such estimate in full prior to the commencement of such system extension. In the event that actual costs exceed the estimate, the customer shall pay such excess before fiber optic access is provided. Customers may elect to pay for the construction costs of such extension in full at the time of connection to the publicly owned fiber system or may, with the approval of the Director, amortize such costs over a period not to exceed sixty (60) months, where the amount to be amortized does not exceed up to ten thousand dollars (\$10,000). Notwithstanding the customer's participation in the construction costs of any extension of the distribution system, ownership and control of such extensions shall remain solely with the City. (Ord. 2835, 4-22-10; Ord. 3039, 11-24-15; Ord. 3075, 7-14-16)

8-13-24: DISTRIBUTION DESIGN: All new connections between the backbone fiber and the end use location shall be designed by authorized City personnel. Distribution will begin at the most appropriate Backbone Access Point or Access Node as determined by the Director and shall run to a patch panel installed at the desired customer location. Distribution spurs, connecting the backbone to the Access Nodes, will be constructed of single mode fiber cable conforming to City standards. Routing will follow the public right-of-way and be placed on publicly owned poles to the maximum extent possible. Service drops will terminate at a patch panel in the end user's premises. The patch panel shall be supplied by the City and the cost thereof shall be included in the customer distribution costs payable in accordance with this Chapter. All customers shall allow authorized personnel of the City access to the customer's patch panel at all reasonable times and any customer who refuses to allow such access shall be subject to termination of fiber access in the manner set forth in this Chapter. (Ord. 2835, 4-22-10; Ord. 3075, 7-14-16)

8-13-25: COST SHARING FOR DISTRIBUTION FIBER EXTENSIONS:

- (A) The purpose of this Section is to establish an equitable method for sharing the cost of constructing distribution fiber lines among customers who use such lines in common. The initial construction costs to extend any portion of a distribution fiber line shall be borne entirely by and shared among customers using such distribution fiber, in the manner set forth in this Section.
- (B) Each initial fiber customer who constructs distribution fiber at that customer's sole expense shall be entitled to recover a portion of the r initial distribution fiber construction costs from any subsequent fiber customer(s) who connect to any portion of the distribution fiber constructed by such initial fiber customer. Such cost recovery shall be based upon the amounts paid by the initial customer to the City pursuant to the provisions of this Chapter. Such cost recovery shall be limited to collection only from a subsequent fiber customer who connects to such portion of the distribution fiber within five (5) years from the date that the distribution fiber was placed in service. Such cost recovery shall be undertaken in the manner set forth in this Section and shall be limited to a customer's recovery of not more than seventy-five percent (75%) of the initial distribution fiber construction costs paid by the initial fiber customer.
- (C) At the time any subsequent customer applies for connection to a distribution fiber line that was constructed at the sole expense of the initial customer,

The Director shall notify the initial customer and the subsequent customer(s) of the cost recovery amount to be paid by the subsequent customer(s). Such cost recovery amount shall then be paid to the City in a lump sum or, upon the approval of the Director, in amortized payments in accordance with the terms of an amortization agreement approved by the Director prior to the delivery of fiber optic access to the subsequent customer(s). Any approved amortized payment amount shall not exceed ten thousand dollars (\$10,000). Upon receipt of the cost recovery amount, the City shall credit the payment by the subsequent customer(s) against the initial customer's monthly bill. In no case shall the total cost recovery

from a subsequent customer exceed seventy-five percent (75%) of the initial customer's construction cost.

- (D) A subsequent customer who connects to any portion of the distribution fiber constructed at the initial customer's expense shall pay no more than twenty-five percent (25%) of the initial customer's remaining amortized balance. Ord. 3075, 7-14-16)
- (E) All rights to cost recovery shall terminate upon the initial customer's termination of access to the public fiber optic system or at the expiration of five (5) years from the date of the distribution fiber being placed into service, whichever first occurs. (Ord. 2835, 4-22-10; Ord. 3039, 11-24-15; Ord. 3075, 7-14-16)

8-13-26: SCHEDULE OF RATES:

- (A) Applicability: This rate schedule applies to all customers receiving Dark Fiber access from the City. The interconnection fees set forth below shall be paid by the customer prior to the customer's connection to the Fiber Optic System.
- (B) Fees: The following fees associated with dark fiber optic access provided by the City shall be set from time to time by Resolution of the Council and be paid as a condition for the commencement or continuation of fiber optic access to a customer:

<b>Backbone Dark Fiber Service Fees</b>		<b>Notes</b>
Backbone Service Fee, per single pair fiber, per month		One fiber pair over entire backbone ring. Payable as per Sections 8-13-14 and 8-13-15 hereof.
New customer connection fee		Applied toward engineering and new account costs. Payable prior to connection.
<b>Distribution Costs &amp; Fees</b>		<b>Notes</b>
Construction Costs		As determined by the Director, payable prior to connection or amortized in a Fiber Optic Access Agreement.
Distribution engineering fee		Applied towards engineering, design, layout and testing costs.
Distribution Access Fee		One distribution pair per drop, payable monthly as per Section 8-13-14 and 8-13-15.
Cost Sharing Payments or Credits		If applicable, calculated on job by job basis and payable as per section 8-13-26 hereof.

- (C) Monthly Backbone Service Fee: Each customer shall pay the specified monthly fee covering cost of service for the use of one or more single pairs of fiber traversing the entire backbone

ring, regardless of actual distances used. Only that route shown on the Network Map as dark fiber backbone is included in the monthly backbone service fee. Any route not covered by the dark fiber backbone is considered part of the distribution system and service drop network, and shall be subject to additional service charges or fees as specified in this Chapter.

- (D) New Customer Connection Fee: At the time application of access is made, each customer shall pay a new customer access fee in the amount set forth in subsection (B) of this section. The new customer connection fee is a one time, non-refundable, account activation fee, which is intended to cover the City's initial costs for the following services:
- (1) Engineering costs associated with fiber strand allocations
  - (2) Fiber splicing activities
  - (3) Continuity testing of the associated backbone fiber strands
  - (4) Account and billing setup
- (E) Distribution Installation Costs: Distribution installation costs will be estimated on a case by case basis. The City's network engineering staff will determine the most economical route to provide distribution service or access to the customer location that satisfies the City's requirements for reliability, efficiency, splice limitations and system loss. An estimate of the construction costs will be presented to the customer for approval prior to commencing any work. Once the estimate is accepted by the customer, the construction will be done by the City with actual final costs being billed to the customer. The Director may require such estimate to be paid in full not less than thirty (30) days prior to the start of construction, or alternatively if the customer desires to execute an amortization agreement, then such executed amortization agreement shall be delivered to the Director not less than thirty (30) days prior to the start of construction. Any amounts incurred in excess of such estimate shall be billed to and paid by the customer prior to the delivery of fiber optic access.
- (F) Distribution Engineering Fee: A one-time service drop fee for engineering will be charged for each service drop requested by the customer and shall be added to and included within the estimated installation fees and costs. The fee will cover costs for the preparation of installation and construction cost estimates, schedule of work, route map, fiber loss budget, splicing and activation and certification test results.
- (G) Distribution Access Fee: A monthly distribution access fee shall be charged to each subsequent fiber customer served from the fiber optic network by an initial fiber customer covered under the backbone service fee for the use of one distribution pair of fiber. This fee covers the City's operation and maintenance costs for the distribution line.
- (H) Cost Sharing Payment or Credit: Upon receipt of an application for access from a subsequent customer, the Director shall calculate the cost-sharing charge to be borne by the subsequent customer, according to this Chapter. The charge is only applicable if a subsequent customer makes use of a portion of a distribution line constructed by an initial customer or if another subsequent customer makes use of a distribution line paid for by a preceding subsequent customer.

(I) Disconnect or Reconnect Fees: In the event any wholesale customer requests a disconnection or reconnection of any Retail Internet User served by such wholesale customer, to any distribution fiber or to the fiber backbone, the Director may charge a disconnect or reconnect fee to such wholesale customer, in an amount equivalent to the reasonable cost of labor or materials incurred by the City in making such disconnection or reconnection. (Ord. 2835, 4-22-10; Ord. 2964, 8-14-14; Ord. 3075, 7-14-16)

8-13-27: TAMPERING WITH FIBER OPTIC NETWORK PROHIBITED: No person shall connect to, adjust, tamper with or make any alteration or addition to the Fiber Optic System, without having first obtained express 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 access or any other public utility service provided by the City, may be terminated in accordance with the procedures set forth in this Chapter. (Ord 2835, 4-22-10; Ord. 3039, 11-24-15)

8-13-28: THEFT OF FIBER OPTIC ACCESS: 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 fiber optic access from or making use of the Fiber Optic System, without paying for such access or without paying the fees and charges set forth in this Chapter. (Ord 2835, 4-22-10; Ord. 3039, 11-24-15)