

CHAPTER 13. REGULATION OF BUSINESSES AND FRANCHISES

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13.00. **Cable Communications Franchise.**

13.01. **Definitions:**

13.01.1. **"Franchisor" and "Franchising Authority"** is the City of Tyler.

13.01.2. **"Cable Communications System"** means any system which operates for hire the service of receiving and amplifying broadcast by one or more television or radio stations and any other programs originated by a cable communications company or by another party, and distributing such programs by wire, cable, microwave, or other means, whether such means are owned or leased to persons who subscribe to such service.

13.01.3. **"Franchisee"** is MediaCom or its successor or assign.

13.01.4. **"FCC"** is the Federal Communications Commission of the United States.

13.01.5. **"Class IV Channel"** means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

13.01.6. **"Technical capacity for non-voice return communications"** means the provisions of a system design which, with the installation of cable non-voice communications electronic modules.

13.01.7. The word **"shall"** is mandatory.

13.01.8. The word **"may"** is permissive.

13.02. **Compliance with Minnesota Cable Communications Board's Franchise Standard.** The franchise shall at all times be in compliance with Minnesota Franchise Standards contained in MSA 238.084.

13.03. **Compliance with State and Federal Laws.** The Franchisee and the Franchising Authority shall conform to all state laws and rules regarding cable communications not later than one (1) year after they become effective, unless otherwise stated, and to all federal laws and regulations regarding cable communications as they become effective.

13.04. **Franchise Term.** The Franchisee shall be granted a renewal term commencing from the last date of renewal, and continuing thereafter for a period of twelve years.

13.05. **Renegotiation of Franchise Terms**. In the event that the Franchisee desires to renew this franchise at the expiration of its term, the Franchisee shall inform the City a minimum of six months prior to the date of renewal for the purpose of permitting ample time to negotiate the terms of renewal. The failure of either party to notify the other shall not serve to waive any rights of the Franchiser or the Franchisee to renegotiate the terms of a renewal agreement.

13.06. **Franchise Exclusivity**. This franchise is non-exclusive.

13.07. **Sale or Transfer**. The Franchise shall not be sold or transferred, nor shall there be a transfer of the stock of the Franchisee, so as to create a new controlling interest as defined by MSA 238.083, except at the approval of the franchising authority, which approval must not be unreasonably withheld. Any such sale or transfer must comply in all respects with the requirements of MSA 238.083. The City does hereby adopt the restrictions on transfer as set out in MSA 238.083, as they exist as of the date of adoption of this code. In considering all future transfers, the City shall follow the requirements of MSA 238.083 in the event that this statute is amended to be more restrictive in its application. The City will continue to follow the current statute in the event that the statute as it now exists, is repealed or modified by the legislature to be less restrictive. Under no circumstances shall the requests for the transfer of a franchise be less restrictive than that currently set out in MSA 238.083.

13.08. **Franchise Fee**. The Franchising Authority shall have authority to charge the Franchisee what actual expenses the City incurs incident to the creation of the franchise, renewal of the franchise, publication of franchising ordinances, and the associated costs thereof, together with such additional expenses as the City may incur in operating, regulating, and dealing with the franchise itself. The Franchising Authority has the authority to audit the Franchisee's accounting and financial records upon reasonable notice. The Franchisee shall file with the Franchising Authority annual reports of gross revenues and other information as the Franchising Authority shall deem appropriate.

13.08.1. The Franchisee shall be permitted, at its discretion, to eliminate or reduce any of the rates or charges to aid the Franchisee in obtaining new subscribers.

13.08.2. The Franchisee shall be permitted to require a deposit on converters equal to the costs of the converters.

13.08.3. The Franchisee shall be permitted to require a deposit for connection of the potential subscriber who is unable to provide adequate credit information.

13.08.4. The Franchisee may require payment of any unpaid accounts or amounts due to the Franchisee for service previously provided as a condition of any request for connection or reconnection to the system.

13.08.5. The Franchisee may require all subscribers, as a condition of receiving cable

service, to agree to the terms or conditions imposed by the Franchisee upon all cable service subscribers.

13.108.6. All of the requirements set forth herein, shall be applied by the Franchisee to all subscribers on a uniform and nondiscriminatory basis.

13.108.7. No residential subscriber contracts exist at this time.

13.108.8. Subscriber charges are established by the Franchisee in accordance with applicable State and Federal Laws.

13.09. **Rates.** Current subscriber charges are available for public inspection in the municipality and are posted in the Office of the City Administrator. The Franchisee shall provide the City Administrator with a suitable notice for posting on each occasion that rates are modified.

13.10. **Rate Changes.** The Franchisee shall notify, by mail, its cable subscribers and the City of a proposed rate change. The Franchisee shall publish any proposed changes in rates at least thirty (30) days in advance of the effective date for such changes.

13.11. **Bonding Requirement.** At the time the franchise becomes effective and thereafter until the Franchisee has liquidated all of its obligations with the Franchising Authority, the Franchisee shall furnish a performance bond, certificate of deposit, or other type of instrument approved by the Franchising Authority, in an amount the Franchising Authority deems to be adequate compensation for damages resulting from the Franchisee's non-performance. The Franchising Authority may, from year to year at its sole discretion, reduce or eliminate the amount of the performance bond or instrument.

13.12. **Franchise Administrator.** The City Administrator and City Council of Tyler, shall be responsible for the continuing administration of this franchise.

13.13. **Liability Insurance.** The Franchisee shall indemnify and hold harmless the Franchising Authority at all times during the term of the franchise, and shall maintain, throughout the terms of the franchise, liability insurance in the amount not less than one million dollars, combined limits, insuring both the Franchising Authority and the Franchisee with regard to all damages and penalties which they may legally be required to pay as a result of the exercise of the franchise.

13.14. **Liability for Injury to Franchisee's Facilities.** Nothing contained in the franchise relieves a person from liability arising out of the failure to exercise reasonable care to avoid injuring the Franchisee's facilities while performing work connected with grading, regrading, or changing the line of the street or public place, or with the construction or reconstruction of a sewer or water system.

13.15. **Franchisee's Credentials.** The Franchisee's technical ability, financial condition, and

legal qualifications were considered and approved by the Franchising Authority. A public hearing was held after reasonable notice affording an opportunity to be heard.

13.16. **Construction Standard.** The Franchisee shall construct and maintain a cable system with a channel capacity available for immediate or potential use equal to a minimum of 72 MHZ of band width, the equal amount of 12 television broadcast channels. For the purposes of this section, a cable system with a channel capacity available for immediate or potential use, equal to a minimum of 72 MHZ of band width means the provision of a distribution system designed or constructed so that a minimum of 72 MHZ of band width, the equivalent of 12 broadcast channels, can be put into use with only the addition of the appropriate headend equipment.

13.17. **Application for Permits.** That within ninety (90) days of the granting of the franchise, the Franchisee shall apply for the necessary governmental permits, licenses, certificates, and authorizations.

13.17.1. That the energized trunk cable must be extended substantially throughout the authorized area within one year after receiving the necessary governmental permits, licenses, certificates, and authorizations, and the persons along the route of the energized cable will have individual drops, as desired, during the same period of time.

13.17.2. That the requirements of this section may be waived by the Franchising Authority only upon occurrence of unforeseen events or acts of God.

13.18. **Easements and Construction Authorizations.** The Franchisee shall obtain a permit from the proper municipal authority before commencing construction of any communications system, including the opening or disturbance of any road, street, sidewalk, driveway, or public place. If the Franchisee fails to meet the conditions of the permit, the Franchising Authority shall have the right to correct or cause to be corrected, at the sole expense of the Franchisee, any violations of the conditions of the permit such as the return of the land to its previous grading, the clean up of construction debris, and the like.

13.19. **Compliance with Applicable Codes.** All wires, conduits, cable, and other property and facilities of the Franchisee shall be located, constructed, installed, and maintained in compliance with applicable codes. The Franchisee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic, or travel upon the streets and public places of the franchise area or endanger the lives or property of any person.

13.20. **Relocation of Plant.** The following procedure shall be used by the Franchisee and Franchising Authority for the relocation or removal of the Franchisee's wires, conduits, cables, and other property located in a street, right-of-way, or public place whenever the Franchising Authority undertakes public improvements which affect the Franchisee's property.

13.20.1. The Franchising Authority or municipality shall give thirty (30) days' written notice to the Franchisee of the actions it wishes the Franchisee to take with respect to the relocation or removal of the Franchisee's equipment and shall allow a reasonable period of time thereafter to complete such request.

13.20.2. The Franchisee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove its property when required by the Franchising Authority. The Franchising Authority and municipalities which are parties to any Joint Powers Agreement or any amendments thereto hereby consent to the abandonment by Franchisee of its buried property in place. Upon permanent abandonment of any buried property in place, the Franchisee shall, upon request, submit to the Franchising Authority an instrument transferring ownership of such property to the Franchising Authority or municipality. The abandonment of buried property in place by the Franchisee shall not relieve the Franchisee from legal liability for loss or damage, including personal injury, occurring to employees of the City or other third parties. The authorization by the City to permit the Franchisee to abandon its plant in place shall not constitute the acceptance of liability by and on behalf of the City for any loss or damage.

13.21. **Technical Standards.** There are hereby incorporated by reference as a minimum, the technical standards promulgated by the Federal Communications Commission relating to Cable Communication Systems contained in subpart K of part 76 of the Federal Communications Commission's Rules and Regulations relating to Cable Communication Systems, and found in the Code of Federal Regulations, Title 47, Section 76.601 to 76.617. The results of tests required by the Federal Communications Commission must be filed within ten (10) days of the conduct of the tests with the Franchising Authority.

13.22. **Special Testing.** In the event that special testing is required to determine the source of technical difficulties, the Franchisee shall be responsible for the costs of special testing.

13.23. **Non-voice Return Capability.** The Franchisee shall provide a cable communication system having the technical capability for non-voice return communications. Nothing herein shall be construed to require the Franchisee to supply or otherwise provide to the subscribers any terminal equipment or device necessary to utilize the non-voice return capability of the system. The Franchisee shall provide such a capability upon request by a subscriber with respect to the energized cable, cable "drops," and connections. Upon such request, Franchisee shall propose rates and charges to apply to installation and use of such capability by subscribers.

13.24. **Subscriber Privacy.** No signals of Class IV cable communications channel may be transmitted from a subscriber terminal for the purpose of monitoring individual viewing patterns or

practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one (1) year which shall be renewed at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind. The permission shall be required for each type of classification of Class IV cable communications activity planned for the purpose of monitoring individual viewing patterns or practices.

13.24.1. No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including, but not limited to, lists of the names and addresses of such subscribers or any lists that identify the viewing habits of subscribers, shall be sold or otherwise made available to any party other than to the Franchisee and its employees for internal business use, and to the subscriber who is the subject of that information, unless the Franchisee has received specific written authorizations from the subscriber to make such data available.

13.24.2. Written permission from the subscriber shall not be required for the Franchisee conducting system-wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth above.

13.24.3. For the purposes of this section, a "Class IV Cable Communications Channel" means a signaling path provided by a Cable Communication System to transmit signals of any type from a subscriber terminal to another point in the communications system.

13.25. **Subscriber Complaints.** All complaints by the franchisor, subscribers, or other citizens regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to the cable communications system shall be investigated by the Franchisee.

13.25.1. Complaints regarding the quality of service, equipment malfunctions, and similar matters shall first be directed to the Franchisee's office. Should Franchisee fail to satisfy a complaint, it may then be directed to the Mayor of Tyler for investigation. In response to a complaint, Franchisee shall be afforded a reasonable opportunity to present written statements of its position. The Mayor of Tyler shall attempt to resolve the complaint, but if this cannot be achieved, he shall submit a recommendation to the City Council, recommending that:

13.25.1.1. The Complaint be dismissed; or

13.25.1.2. Corrective action be taken by the Franchisee.

13.25.2. Appeal from the City Council's action may be made to the appropriate

judicial or administrative forum.

13.26. **Repairs and Complaints.** The Franchisee shall maintain a local office with a local manager and telephone number or a toll-free or collect phone number for the purpose of reporting complaints from the cable service area, and the Franchisee shall maintain a repair service capable of responding to subscriber's complaints or requests for service within twenty-four (24) hours after receipt of the complaint or request. The costs of making repairs or adjustments shall be borne by the Franchisee.

13.27. **Termination.** The Franchising Authority reserves the right to terminate and cancel any franchise granted hereunder and rescind all rights and privileges associated therewith in the event that:

13.27.1. The Franchisee substantially violates any provision of this franchise ordinance;

13.27.2. Attempts to evade any of the provisions of the franchise ordinance; or

13.27.3. Practices any fraud or deceit upon the Franchising Authority.

Upon the occurrence of any of the above-listed events, the Franchising Authority shall provide the Franchisee with written notice citing the reasons alleged to constitute cause for termination of the franchise. The Franchising Authority shall allow the Franchisee a reasonable time, but in any event no less than thirty (30) days subsequent to receipt of the notice, in which to remedy the cause. If, during such period, the cause is remedied to the satisfaction of the Franchising Authority, the Franchising Authority may declare the notice to be null and void. If the cause is not remedied to the satisfaction of the Franchising Authority, during such period, the Franchising Authority shall provide the Franchisee with an opportunity to be heard at a public hearing before the governing body of the Franchising Authority prior to the termination of the franchise.

13.28. **Abandonment.** No Franchisee or Cable Communications Company, notwithstanding any provision in a franchise, may abandon a cable communications service or a portion of it without having given three months prior written notice to the franchising authority. No cable communications company may abandon a cable communications service or a portion of it without compensating the Franchising Authority for damages resulting to it from the abandonment.

13.29. **Removal of Cable Equipment upon Termination or Forfeiture.** Upon termination or forfeiture of a franchise, the Franchisee shall remove its cable, wires, and appliances from the streets, alleys, and other public places within the franchise area if the Franchising Authority so requests. In the event that the Franchisee fails to remove its equipment within a reasonable time after the request of the Franchising Authority, the Franchising Authority may accept bids for a contract to remove the equipment. The Franchisee shall have the right to bid on such contract. The Franchising Authority may award the contract to the appropriate bidder and charge the costs of such contract to the Franchisee. The Franchisee is legally responsible for reimbursing the City for all such costs, including incidental city

costs of bidding, advertising, legal fees, and other associated matters. The provisions of this section shall not apply to equipment of the Franchisee which is buried under Section 13.120, provided the Franchisee has transferred the ownership of any buried equipment to the Franchising Authority, and the Franchising Authority has agreed to accept such buried equipment, and satisfactory arrangements have been made with regard to the liability associated with leaving the buried equipment in place.

13.30. Municipal Right to Purchase System. If the franchise or cable system is offered for sale, the Franchising Authority shall have the right to purchase the system for an amount not more than the sale price offered by the third party buyer. The Franchising Authority shall not be required to match unusual or unique terms.

13.31. Access Channels. There shall be a minimum of one (1) access channel which the Franchisee shall make available to each of the subscribers who receive some or all of the services offered on the system, in addition to the specially designated access channel described below. The Franchisee shall provide to each of its subscribers who receive all or any part of the total services offered on the system, reception on at least one specially designated access channel. Franchisees providing only alarm services or only data transmission services for computer operated functions shall be exempt from providing access channel reception to alarm and data service subscribers. The specially designated access channel may be used by local educational authorities and local government on a first come, nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the local educational authorities or local government, the Franchisee may lease time to commercial or non-commercial users on a first come, nondiscriminatory basis if the demand for such time arises. The Franchisee may also use this specially designated access channel for local origination during those hours when the channel is not in use by local educational authorities, local government, or commercial or non-commercial users who have leased time on the specially designated access channel. The VHF spectrum may be used for the specially designated access channel required in this paragraph.

The Franchisee and Franchising Authority shall establish rules pertaining to the administration of the specially designated access channel.

Nothing in this code shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiations between the parties to a franchise, or by a potential access user who wishes to install converters in order to make use of any additional channel or channels.

13.32. Unauthorized Cable Tapping. It shall be unlawful for any person or persons to obtain any cable television services by installing, rearranging, or tampering with any facilities or equipment of any cable television company, or any firm or private person unless the same is done with the knowledge of any with the permission of such cable television company, firm, or private person. Any person or persons found guilty of a violation of any of the provisions of this Section shall be deemed guilty of a misdemeanor for which a sentence of not more than ninety (90) days or a fine of not more than One Thousand Dollars (\$1,000.00) or both, may be imposed.

13.33. **Amendments.** The Franchising Authority and Franchisee shall have the continuing right, during the term herein or a renewal hereof, to amend this franchise ordinance from time to time, by mutual agreement.

13.34. **Separability.**

13.34.1. If any section, subsection, sentence, clause, phrase, or portion of this code is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

13.34.2. Should any provision of this franchise be inconsistent or at variance with any rule, regulation, or policy, in whole or in part, of the Federal Communications Commission or any other agency having jurisdiction, such provision shall be invalid, but the remaining provisions hereof shall not be affected hereby.

13.34 to 13.39 **Reserved.**

13.40. **Transient Merchants, Peddlers and Hawkers and Auctioneers.** No solicitors, peddlers, or transient merchants shall go in or upon any private residences where said person has not been requested or invited to solicit orders for the sale of goods, wares, and merchandise.

13.41. **Penalties.** Any person found to be violating the provisions of this Code shall be guilty of a misdemeanor, and on conviction thereof, shall be fined in an amount not exceeding \$1,000.00 for each such violation or incarcerated for a period of not more than ninety (90) days or both. Each day on which such violation shall continue shall be deemed as a separate offense.

13.42. **Expenses.** Any person violating any of the provisions of this Code shall become liable to the City for any expense, loss or damage occasioned by the City by reason of such violation.

13.43. **Violations and Penalties.** Any person, firm or corporation who shall violate any of the provisions of this Chapter shall be guilty of a misdemeanor. Each day that a violation continues shall constitute a separate offense.