

TITLE 20

MISCELLANEOUS

CHAPTER

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CHAPTER 1

CABLE TELEVISION--MID-TENNESSEE CABLE LIMITED PARTNERSHIP

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20-101. Definitions. For the purpose of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein, unless the context clearly indicates that another meaning is intended. The word "shall" is always mandatory, and not merely directory:

(1) "City" shall mean the incorporated City of Harriman and all subsequent additions thereto.

(2) "State" shall mean the State of Tennessee.

(3) "Mayor" shall mean the existing or succeeding chief executive officer of the city, or his designee.

(4) "City council" or "council" shall mean the present governing body of the city or any successor to the legislative powers of the present city council.

(5) "City manager" shall mean the existing or succeeding City Manager of the City of Harriman, Tennessee.

(6) "City attorney" shall mean the existing or succeeding retained legal counsel of the city or his/her assistants.

(7) "Franchise" shall mean the permission, license or authorization given hereunder to construct, operate and maintain a cable television system in the city including this chapter.

(8) "Franchisee" shall mean Mid-Tennessee Cable Limited Partnership, its successors, transferees or assigns, the recipient of the franchise granted herein.

(9) "Cable Act" shall mean the Cable Communications Policy Act of 1984.

(10) "Federal Communications Commission" or "FCC" shall mean that administrative agency of the federal government responsible for cable television regulation on a national level, or its lawful successor.

(11) "Community Antenna Television System" or "CATV" or "Cable Television System" shall mean any facility which, in whole or in part, receives directly or indirectly over the air, by microwave, by satellite or otherwise, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television and AM and FM radio stations or cable programmers and distributes such signals by wire or cable to subscribing members of the public who pay for such services.

(12) "Application" shall include all written communications, in whatever form, made by the franchisee to the city concerning the construction, rendition of services, maintenance, or any other matter pertaining to the cable television system contemplated herein.

(13) "Person" shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

(14) "Subscriber" shall mean a purchaser of any service delivered over the system to an individual dwelling unit or of service to be utilized in connection with a business, trade or profession.

(15) "Chapter" as used herein shall include this chapter and as the same from time to time may be amended.

(16) "Channel" shall mean a band or frequencies in the electromagnetic spectrum which is capable of carrying either one (1) audio-video television signal and/or a number of non-video signals.

(17) "Access channels" shall mean those channels set aside for specific access purposes, as described in Sections 611 and 612 of the Cable Act.

(18) "Basic cable service" or "basic service" shall mean any service tier which includes the transmission of local television broadcast signals as described in Section 602(2) of the Cable Act.

(19) "Normal service interval" shall mean the period between the time that franchisee is notified by a subscriber of a service deficiency and two business days following the receipt of such notice, provided that the subscriber or his representative is available during this period at the premises to be serviced.

(20) "Annual gross revenue" shall mean any and all compensation received from subscribers for cable television signals delivered to subscribers, as well as rentals of equipment.

(21) "Street" shall mean the surface of and the space above and between any public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or other casement now or hereafter held by the city for the purpose of public travel and shall include such other easements or rights-of-way as shall be now held or hereafter held by the city which shall, within their proper use and meaning, entitle the city and its franchise to the use thereof for the purpose of installing or transmitting cable television system transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable television system.

(22) "Public school" shall mean any school, college or university which is a part of an educational program operated by the city or the state.

(23) "Private school" shall mean any school, college or university which is part of a parochial or religious school system and is operated not for profit.

(24) "Local educational authorities" shall mean those individuals, groups, organizations, or governmental entities which provide for primary or secondary education, whether public or private, within the city.

(25) "Good cause" shall represent that set of facts and circumstances which, in an individual case, a reasonable man would adjudge to be beyond franchisee's reasonable control and which would, therefore, represent a justifiable excuse of nonperformance. Depending on the facts and circumstances, good cause may include, but shall not be limited to, delays or interruptions arising from necessary utility changes, rearrangements, power outages, damage to the equipment of franchisee by the city or a third party, the fulfillment of any federal, state and/or local governmental or regulatory

restrictions or requirements, national emergency, uncontrollable material shortages, fire, earthquakes or the elements and acts of God. (Ord. 1010)

20-102. Franchise agreement. There is hereby granted by the City of Harriman to Mid-Tennessee Cable Limited Partnership, its successors and assigns, the right, privilege and franchise to construct, operate, and maintain a cable television system within the franchise area as herein defined, for a period of fifteen (15) years from the effective date of this chapter, (Jan. 5, 1993), subject to the conditions and restrictions as hereinafter provided. Said franchise may be renewed by the city for an additional ten (10) year period if such renewal is made in writing and in compliance with the Cable Act. The city shall provide appropriate public notice and opportunity to comment on such renewal requests. (Ord. 1010)

20-103. Authority not exclusive. The right to use and occupy said franchise area as defined in section 20-102 herein for the purposes herein set forth shall not be exclusive, and the city reserves the right to grant a similar use of said franchise area to any person or entity at any time during the period of the franchise in accordance with Title 7, Chapter 59, Part 201, of the Tennessee Code Annotated, provided, however, no other franchises for a cable service will be granted on terms or conditions more favorable or less burdensome than in any existing franchise. (Ord. 1010)

20-104. Franchise territory. This franchise is for the present territorial limits of the City of Harriman, Tennessee, and for any area henceforth added thereto during the term of this franchise. (Ord. 1010)

20-105. Extension of unincorporated county limit. Upon annexation of any territory by the city (other than through a governmental consolidation process, as to which the city makes no agreement), the rights of franchise hereby granted shall extend to the territory so annexed to the extent which the city has authority; and all facilities owned, maintained or operated by franchisee, located within, under or over streets of the territory so annexed, shall thereafter be subject to all terms hereof. (Ord. 1010)

20-106. Operational standards. (1) The cable television system as contemplated herein shall be installed and maintained in accordance with the highest accepted industry standards to the end that the subscriber may receive the most desirable form of service. The cable television system shall be built and extended such that cable television service is available to all current residents of the city. In those areas annexed into the city hereafter, the cable television system will be built in such annexed areas of the city having a density of 30 occupied dwelling units per cable mile. The number of miles will be calculated at the closest point of active contiguous, serviceable distribution system and will continue until reaching 250 feet of the dwelling unit.

(2) The cable television system shall be installed and remain capable of using all band equipment and of passing the entire VHF and FM spectrum and it shall have the further capability or converting UHF for the distribution to subscribers on the VHF band.

(3) The cable television system shall be installed and remain capable of transmitting and passing the entire color television signals without the introduction of material degradation of color fidelity and intelligence.

(4) The cable television system shall be installed and remain capable of twenty-four (24) hours per day continuous operation.

(5) The cable television system shall be capable of and will produce a picture upon any subscriber's television screen in black and white or color (provided the subscriber's television set is capable of producing a color picture) that is materially undistorted and free from ghost images and accompanied by proper sound, assuming the technical, standard production television set is in good repair and that the television broadcast signal transmission is receivable satisfactorily at the franchisee's antenna site. In any event, the picture produced shall be as good as is generally accepted in the cable television industry.

(6) The cable television system shall transmit or distribute signals of adequate strength to produce good pictures with good sound in all television receivers operating within the manufacturer's specifications of all subscribers without causing cross modulation in the cables or interference with other electrical or electronic systems.

(7) Franchisee shall not allow its cable or other operations to interfere with the television reception of persons not served by franchisee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents of the city. Should franchisee discover or otherwise become aware of such interference, franchisee shall respond with reasonable diligence to eliminate the interference.

(8) Franchisee shall continue, throughout the term of this franchise, to maintain the technical standards and quality or service set forth in this chapter.

(9) The Franchisee shall make one channel available on the cable television system for use by local educational authorities in accordance with Section 611 of the Cable Act.

(10) The requirements of (1) through (8) above may be waived by the city upon showing by the franchisee of good cause. (Ord. 1010)

20-107. Construction standards. (1) Franchisee shall, at all times, employ reasonable care and shall install and maintain devices or systems for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(2) Franchisee shall install and maintain its wires, cables, fixtures and other equipment so is not to interfere with the equipment of any utility serving

the residents of the city or any other entity lawfully and rightfully using the conduit, pole or other part of the right of way.

(3) The cable television system shall at all times conform to the construction and maintenance standards set forth below:

(a) Methods of construction, installation and maintenance of the cable television system shall comply with the National Electrical Safety Code 1975 (ANSI CI-1975), and any future amendments, modifications or replacements thereof, to the extent that such code is consistent with the local law affecting the construction, installation and maintenance of electrical supply and communications lines. To the extent that such code is inconsistent with the other provisions of this franchise or with local law, the latter shall govern.

(b) Any tower constructed or maintained in the city for use in the cable television system shall comply with the standards contained in Structured Standards for Steel Antenna Towers and Antenna Supporting Structures, EIE Standards RS-222-A, as published by the Engineering Department of the Electronic Industries Association, 20001 I Street, N.W., Washington, D.C. 20006 and as the same may be, from time to time, modified, amended or replaced.

(c) Installations and physical dimensions of any tower constructed in the city for use in the cable television system shall comply with all appropriate Federal Aviation Agency Regulations including, but not limited to, Objectives Affecting Navigable Airspace, 14 C.F.R. Section 77.1 et seq., February, 1965, and as the same may be, from time to time, modified, amended or replaced.

(d) Any antenna structure in the cable television system shall comply with Construction, Marking and Lighting of Antenna Structure, 47 C.F.R. Section 77.1 et seq., February, 1965, and as the same may be, from time to time, modified, amended or replaced.

(e) All working facilities and conditions used during construction, installation and maintenance of the cable television system shall comply with the standards of the Occupational Safety and Health Administration.

(f) Franchisee shall at all times use reasonable care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(g) Franchisee shall construct and operate the system and related facilities in accordance with generally accepted related industry codes, standards and recommendations that are applicable now or that may hereafter become applicable.

(4) As stated above, franchisee shall be required to reasonably comply with standards as set forth in the publications recited above, this to include any

modifications, replacements and/or amendments thereto. However, in the event any publications mentioned herein should become obsolete or should expire, then franchisee shall be required to comply with the latest set of published standards available at such time of obsolescence or expiration.

(5) All conductors, cables, towers, poles and other components of the system shall be located and constructed by the franchisee in back of the street curbs, except insofar as such components cross streets and public rights of way, so as to provide minimum interference with access by adjoining property owners to the streets and public ways, and no pole or other fixture or the franchisee shall be placed in the public way so as to interfere with the usual travel on such public way.

(6) The requirements of (1) through (5) above may be waived by the city upon showing of good cause. (Ord. 1010)

20-108. Conditions of street occupancy. (1) All transmissions and distribution structures, lines and equipment erected by franchisee within the franchise area shall be located so as to not cause unreasonable interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of said streets, alleys or other public ways and places. The cable television system shall be constructed and operated in compliance in all material respects with all adopted local, state and national construction and electrical codes which are in effect as of the date of this construction.

(2) Prior to commencing construction, franchisee shall submit to the city detailed maps showing proposed construction locations. These plans shall show the proposed placement of franchisee's cables on the city right of way, and poles that are to be erected by franchisee as required for construction, and locations where franchisee proposed to attach to existing utility poles. Franchisee shall cooperate with the city and any of its agents during any initial construction period and throughout the full term of the franchise in regards to construction procedures, practices and locations.

(3) Whenever the city or State of Tennessee shall require the relocation or reinstallation of any property of franchisee in any of the streets of the franchise area, it shall be the obligation of the franchisee, upon notice of such requirements, to cooperate in the timely removal and relocation or reinstallation of said property so as not to cause unreasonable delay. Such relocations, removal or reinstallations by franchisee shall be at the sole cost of franchisee.

(4) Whenever in any place within the franchise area, all or any part of the electric and telephone utilities shall be located underground, it shall be the obligation of the franchisee to locate or to cause its property to be located underground within such places. If the electric and telephone utilities shall be relocated underground in any place within the franchise area after franchisee shall have previously installed its property, franchisee shall, nevertheless, at the

same time or in a timely manner thereafter, remove and relocate its property also underground in such places. Any facilities of franchisee placed underground at the property owner's request, in an area where electric or telephone facilities are aerial, shall be installed with the additional expense being paid by the property owner.

(5) Franchisee shall have the authority to trim trees upon and overhanging streets of the franchise area so as to prevent the branches of such trees from coming into contact with franchisee's wires and cables. Franchisee shall obtain from the city if required, a permit to conduct any such trimming and the same shall be conducted in strict obedience of all local laws and ordinances and at the sole expense of franchisee.

(6) In the case of any disturbance of any street or sidewalk caused by franchisee, franchisee shall, at its own cost and expense and in a manner approved by the city, replace and restore such street or sidewalk in as good a condition as before the work involving such disturbance was done.

(7) Franchisee shall maintain, repair and keep in good condition for a period of one (1) year following such disturbance all portions of a sidewalk or street disturbed by it or its agents, provided such maintenance and repair shall be made necessary because of defective workmanship or materials supplied by franchisee.

(8) Franchisee shall, upon the request of any person holding a building permit issued by the city, temporarily remove, raise or lower its wires to permit the moving of such building(s). The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same, and the franchisee shall have the authority to require such payment in advance. Franchisee shall be given not less than seventy-two (72) hours' advance notice to arrange for such temporary wire changes.

(9) If, at any time, in case of fire or disaster in the franchise area, it shall become necessary in the judgment of the city manager or the chief of police or fire department, to cut or move any of the wire cables, amplifiers, appliances or other fixtures of franchisee, this may be done and the repairs thereby rendered necessary shall be made by franchisee, at franchisee's sole cost and expense and without charge against the city.

(10) Franchisee's work, while in progress, shall be properly executed at all times with suitable barricades, flags, lights, flares or other devices as are reasonably required to protect all members of the public having occasion to use the portion of the street involved or adjacent property. (Ord. 1010)

20-109. Supervision by the city. (1) Franchisee shall construct, operate and maintain the cable television system in strict compliance with all laws, ordinances and departmental rules and regulations affecting the cable television system.

(2) Within sixty (60) days of the end of each calendar year, the franchisee shall provide the city, in writing, with an annual update of system activities and developments since the close of the previous calendar year.

(3) The cable television system and all parts thereof shall be subject, upon reasonable notice, to the right of periodic inspection by the city.

(4) If at any time, the powers of the city council or any agency or official of the city council are transferred by law to any other board, authority, agency or official, then such other board, authority, agency or official shall have the powers and rights previously vested under this chapter in the city council or any agency or official of the city.

(5) The city and the franchisee, by its acceptance hereof, agree that the purposes of the provisions hereof are to create the relationship of franchiser and franchisee, to provide for the terms and conditions of that relationship, including compensation for the use of municipal property and municipal supervision, and the conditions upon which such property may be utilized. (Ord. 1010)

20-110. Franchise fees. (1) Franchisee herein shall pay to the city for the use of the streets and other facilities of the city in the operation of the cable television system and for the municipal supervision thereof a sum equal to three percent (3%) of the Annual Gross Revenues, as defined herein, from receipts from subscribers within the city. Said fee shall be paid on a quarterly basis within forty-five (45) days after the end of a calendar quarter, with an adjustment fee being the final quarterly payment of the year. Quarterly payments shall be a reasonable estimate of anticipated and realized receipts. The final payment will be adjusted upward or downward by franchisee based on gross revenues received from subscribers for the year in order to arrive at the three percent (3%) per year fee. The franchisee shall file with the city within forty-five (45) days after the expiration of each of the franchisee's fiscal years a statement clearly showing in detail the Annual Gross Revenues received from subscribers by the franchisee during the preceding fiscal year.

(2) In the event this franchise should be terminated or forfeited prior to the end of the franchise term, as defined herein, franchisee shall immediately submit to the city a financial statement prepared by a certified public accountant or chief financial officer of franchisee acceptable to the city showing the Annual Gross Revenues of franchisee for the time elapsed since the last fiscal year report. Franchisee shall pay to the city not later than forty-five (45) days following the termination of this franchise a like percentage of such Annual Gross Revenues and any other sums legally due and owing the city.

(3) In the event that any payment is not made on or before the applicable date fixed herein, franchisee shall be subject to the penalty provided for hereinafter.

(4) The city shall have the right to inspect the franchisee's records showing the Annual Gross Revenues from which its franchise payments are computed. The right of audit and computation of any and all amounts paid

under this franchise shall always be accorded to the city. Should the city notify franchisee in writing of its desire to inspect and/or audit franchisee's records, franchisee shall be obligated to produce such records and make them available to the city within twenty (20) working days of such notification. (Ord. 1010)

20-111. Service maintenance standards. (1) Franchisee shall maintain sufficient repair and maintenance crews capable of responding to subscriber complaints or requests for service within the normal service interval as defined herein.

(2) Service to subscribers. (a) Any verbal, telephonic or written complaint relating to the quality or continuity or service shall be attended to within the normal service interval as defined herein.

(b) The provisions contained in this subsection shall not apply if the discontinuation of service is occasioned because of an act of God, strike, national emergency, or any other circumstance beyond the control of franchisee. Similarly, this provision shall not apply to service requests or complaints pertaining to television set malfunctions or other breakdowns not related to the operation of the cable television system.

(c) Franchisee shall have the right to prescribe reasonable service rules, regulations and rates for the conduct of its business; provided, however, that such service rules and regulations, as well as subsequent amendments or modifications thereof, shall be made available upon request for inspection by the city. The franchisee may increase or adjust its rates following thirty (30) days' written notice to all subscribers and to the city. If such notice is given, there shall be no regulation of rates by the city. (Ord. 1010)

20-112. Complaint procedures. (1) Franchisee shall establish procedures for receiving, acting upon and resolving subscriber complaints. Franchisee shall furnish a notice of such procedures to each subscriber at the time of the initial subscription to the system. In addition, franchisee shall maintain a written record, or "log", listing the date and time of each customer's complaints, identifying the subscriber, describing the nature of the complaints, and when and what action was taken by franchisee in response thereto. Such records shall be kept for a period of one (1) year reflecting the operations to date and shall be available for inspection during normal business hours.

(2) The city manager or his/her authorized designee is hereby designated as the city complaint officer and shall have the primary responsibility for the continuing administration of the complaint procedures hereunder. Any subscriber, user, programmer or other interested person who has a complaint regarding the quality of cable television service, equipment malfunctions, billings, or any other matters, which remain unsolved for thirty (30) days after same have been brought to franchisee's attention, may file a complaint in writing with the city complaint officer. Upon the filing of such a

complaint, such city complaint officer shall notify franchisee and make an investigation to determine whether or not there is probable cause to credit the allegations. If he/she determines after such investigation that there is probably cause to credit the allegations of the complaint, he shall so notify franchisee and complainant in writing and promptly endeavor to resolve the matter by conciliation and persuasion. In the event that the city complaint officer is unable to obtain conciliation within a reasonable time, he shall promptly set the matter for a hearing where all parties may give evidence and the merits of the dispute will be decided. The city complaint officer shall make public his/her decision, along with a statement reciting the basis therefor. Within thirty (30) days thereafter, either franchisee or the complainant may appeal in writing the decision rendered by the city complaint officer to a committee of three city council persons appointed to hear said appeals. At the appeal hearing, the aggrieved party may contest the findings of fact or interpretation of controlling law, at which time the city council persons may affirm, reject, or modify the decision of the city complaint officer. The affirmance, rejection or modification of said decision by the city council persons shall be final, subject to judicial review upon request of the franchisee. (Ord. 1010)

20-113. Performance bond. (1) Thirty (30) days prior to beginning construction, franchisee shall deposit with the city clerk a performance bond from surety authorized to do business in the State of Tennessee, in the minimum amount of twenty-five thousand dollars (\$25,000.00). The form and content of such performance bond shall be acceptable to the city. The performance bond shall be used to ensure the faithful performance by franchisee of all provision of this chapter; compliance with all orders, permits and direction of any agency, commission, board, department, division, or office of the city having jurisdiction over its acts or defaults under this franchise; and the payment of franchisee of any claims, liens and taxes due the city which arise by reason of the construction, operation or maintenance of the system.

(2) The performance bond shall be maintained at the minimum amount of twenty-five thousand dollars (\$25,000.00) during the entire term of this franchise, even if amounts have to be withdrawn pursuant to subsections (1), (3) or (4) of this section.

(3) If franchisee fails to pay the city any compensation within the time fixed herein, and fails after thirty (30) days' written notice to pay to the city any fees due and unpaid, or fails to repay the city within such thirty (30) days any damages, costs or expenses which the city is compelled to pay by reason of the acts of default of franchisee in connection with this franchise, and fails after receipt of thirty (30) days' written notice of such failure by the city to comply with any provision of this franchise which the city reasonably determines can be remedied by demand on the performance bond, the city may, subject to subsection (4) herein, demand payment of the amount thereof, with interest and

any penalties, from the performance bond. Upon such demand for payment, the city shall notify franchisee of the amount and date thereof.

(4) Notwithstanding subsection (3) hereinabove, in the case of a bona fide dispute regarding compliance, franchisee may request a hearing before the city manager within thirty (30) days after written notification of non-compliance and penalty by the city. At such hearing, all parties may file evidence and the merits of the dispute will be decided. The city manager shall make public his decision, along with a statement reciting the basis therefor. Within thirty (30) days, franchisee may appeal to the city council, in writing, the decision rendered by the city manager. At the appeal hearing, franchisee may contest the findings of fact or interpretation of controlling law, at which time the city council may affirm, reject or modify the decision of the city manager. The affirmance, rejection or modification of said decision by the city council shall be final, subject to judicial review upon request of franchisee.

(5) The rights reserved to the city with respect to the performance bond are in addition to all other rights by the city, whether reserved by negotiation with franchisee or authorized by law, and no action, proceeding or exercise of a right with respect to such performance bond shall affect any other rights the city may have. (Ord. 1010)

20-114. Liability insurance. (1) Franchisee shall maintain, and by its acceptance of this franchise specifically agrees that it will maintain, throughout the term of this franchise, liability insurance insuring the franchisee and city (and naming the city, its officials, boards, council, agents, and employees as additional insureds) with regard to any and all damages for the following:

(a) A general comprehensive public liability insurance policy indemnifying, defending and saving harmless the city, its officers, boards, commissions, agents or employees from any and all claims by any person or entity whatsoever on account of injury to or death of a person or persons derivative from any injury to or death of a person or persons (i.e., including but not limited to claims for loss of services, medical and other expenses) occasioned by the operations of franchisee under this franchise or alleged to have been so caused or occurred with a minimum liability of five hundred thousand dollars (\$500,000.00) per personal injury or death of any one (1) person and one million dollars (\$1,000,000.00) per personal injury or death of any two (2) or more persons in any one (1) occurrence.

(b) Property damage insurance indemnifying, defending and saving harmless the city, its officers, boards, commissions, agents and employees from and against all claims by any person or entity whatsoever for property damage, including loss of use and all consequential damages, occasioned by the operation of franchisee under this franchise or alleged to have been so caused or occurred with a minimum liability of two hundred fifty thousand dollars (\$250,000.00) for property damage to any

one (1) person and five hundred thousand dollars (\$500,000.00) for property damage to any two (2) persons in any one occurrence.

(c) One million dollars (\$1,000,000.00) for all other types of liability.

All insurance shall be kept in full force and effect by franchisee throughout the term of this franchise and until after the removal of all poles, wires, cables, underground conduits, manholes and other conductors and fixtures incident to the maintenance and operation of the cable television system as defined in this franchise.

(2) An insurance certificate obtained by franchisee in compliance with this section shall be filed and maintained with the city clerk during the term of this franchise.

(3) Neither the provision of this section nor any damages recovered by the city hereunder shall be construed as limiting the terms, obligations or liabilities imposed under any other section of this franchise. (Ord. 1010)

20-115. General indemnification. (1) Franchisee agrees by the acceptance of this franchise to indemnify, hold and save the city free and harmless from all liability on account of injuries, deaths or damages to persons or property arising out of the construction, maintenance, repair and operation of its cable television system. In the event that suit shall be brought against the city, either independently or jointly with franchisee on account thereof, franchisee shall upon written notice by the city, defend the city in any such suit at the cost of franchisee, and, in the event of a settlement approved by franchisee or final judgment being obtained against the city, which franchisee had notice and opportunity to defend, franchisee shall indemnify the city and pay such settlement of judgment, together with all costs, and hold the city harmless therefrom.

(2) Franchisee shall pay, and by its acceptance of this franchise specifically agrees that it will pay, all expenses incurred by the city in defending itself with regard to all damages and penalties mentioned in subsection (1) hereinabove, provided franchisee had written notice and declined to defend the city. These expenses shall include but not be limited to, all out-of-pocket expenses, such as attorney's fees, and shall also include the reasonable value of any services rendered by the city attorney or his assistants or any employees of the city or its agents. (Ord. 1010)

20-116. Assignment of franchise. (1) No assignment of this franchise shall take place, whether by forced or voluntary sale, lease, or assignment, without prior written notice to and approval by the city council which shall not be unreasonably withheld. The notice shall include full identifying particulars of the proposed transaction, and the city council shall act by resolution. The city council shall have forty-five (45) days within which to approve or disapprove an

assignment. If no action is taken within such forty-five (45) day period, approval shall be deemed to have been given.

(2) Franchisee shall have the right to mortgage, pledge or otherwise hypothecate the assets of its cable television system including the rights granted under this franchise. (Ord. 1010)

20-117. Review and renewal. (1) The city council shall not make a decision involving the renewal, cancellation or expiration of franchisee's franchise unless the city manager has advised franchisee in writing, at least thirty (30) days prior to such meeting, as to its time, place and purpose. Such renewal procedures will be conducted pursuant to Section 626 of the Cable Act.

(2) It shall be the policy of the city to amend this franchise upon application of the franchisee when necessary to enable franchisee to take advantage of advancements in the state of the art which will afford it an opportunity to more effectively, efficiently or economically serve its subscribers, provided, however, that this section shall not be construed to require the city to make any amendment. No such amendment shall create any rights in franchisee other than those specifically set out in such amendments. (Ord. 1010)

20-118. Revocation of franchise. (1) In addition to all other rights and powers reserved or pertaining to the city, the city reserves, as an additional and as a separate and distinct remedy, the right to revoke this franchise and all rights and privileges of franchisee hereunder in any of the following enumerated events or for any of the following reasons:

(a) Franchisee shall, by act or omission, violate any material or substantial term or condition or this chapter and shall within thirty (30) days following written notice by the city fail to effect such compliance; or

(b) Franchisee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt, or all or part of franchisee's facilities should be sold under an instrument to secure a debt and are not redeemed by franchisee within thirty (30) days from said sale; or

(c) Franchisee fails to restore service following ninety-six (96) consecutive hours of interrupted service, except when an act or God, disaster, or other action beyond the control of the franchisee caused such service interruption; or

(d) Franchisee attempts to or does practice any fraud or deceit or pattern of material misrepresentation in its conduct or relations with the city under this franchise.

(2) No such revocation shall be effective unless or until the city council shall have adopted an ordinance setting forth the cause and reason for the revocation and the effective date thereof, which ordinance shall not be adopted without thirty (30) days' prior written notice thereof to franchisee and an opportunity for the franchisee to be heard upon the proposed adoption of said

ordinance. Franchisee shall furnish to the city a written statement at least ten (10) days prior to the date on which city council convenes to consider such proposed ordinance setting out its position relative to the cause(s) of such revocation. In the event the revocation as proposed in said ordinance depends upon finding a fact, such finding of fact is made by the city council shall be, in writing, after the hearing provided for, if requested by franchisee.

(3) Notwithstanding the grounds for termination herein, no termination procedure shall be held except in compliance with FCC regulations and the Cable Act.

(4) Franchisee shall not be declared in default nor be subject to any sanction under any provision of this section in any case in which the performance of such provision is prevented for reasons of good cause. Any final determination shall be subject to judicial review upon request of the franchisee. (Ord. 1010)

20-119. Franchisee's obligation to remove or to sell its facilities in the event of revocation of non-renewal. (1) In the event of revocation of this franchise as provided for in section 20-118 herein or in the event this franchise is not renewed as provided for in section 20-117 herein, the city shall have the option of either requiring franchisee to remove from the public streets where its properties are located all or any part of its equipment and facilities so located within ninety (90) days of the effective date of such revocation or non-renewal, or of requiring franchisee to leave all of its equipment and facilities in place within the franchise area.

(2) The city manager is hereby authorized to enforce the provisions of this section as hereinafter provided.

The city manager shall immediately notify franchisee in writing of such revocation or non-renewal. Within ninety (90) days following receipt of such notice, franchisee shall, if required, remove from the streets of the city upon, over and under which its properties are located all of said properties. Such removal, if required, shall be performed by franchisee in such a manner so as to not permanently destroy, mar or damage the franchise areas in which such removal is being conducted. The city representative shall make an inspection of the areas in which the removal is being or has been conducted, and should it be found that franchisee has unreasonably destroyed, marred or damaged such areas, franchisee shall be held responsible for the expenses of repairing such areas to the satisfaction of the city.

(3) In the event franchisee has not removed its facilities within ninety (90) days as described herein, or in the event the city elects not to require franchisee to remove its facilities, franchisee shall be obligated to sell its facilities in place within the franchise area to either the city or to any new franchise operator. Any sale of facilities as required by this subsection shall be pursuant to the valuation requirements of Section 626 of the Cable Act. (Ord. 1010)

20-120. Liquidated damages. Should it be found, after conducting the hearing and appeal procedure provided for herein, and after written receipt by franchisee of a finding of violation by the city manager or his designee, that franchisee is in violation of the terms of this chapter, the liquidated damages chargeable to the performance bond, provided for under section 20-113 herein, shall be as follows:

(1) For failure to provide or maintain data and reports as requested by the city or as required herein, franchisee shall forfeit one hundred dollars (\$100.00) per day or part thereof that the violation continues, if, after twenty (20) days written notice, such data or reports are not supplied.

(2) For failure to comply with the operation standards as specified in section 20-105 thereof, following the city council's resolution directing franchisee to make improvements within a reasonable time period, franchisee shall forfeit fifty dollars (\$50.00) per day or part thereof that the violation continues unless cause can be shown for said delay.

(3) For failure to test, analyze and report on the performance of the system following the reasonable request of the city, franchisee shall forfeit fifty dollars (\$50.00) per day or part thereof that the violation continues unless cause can be shown for said delay.

(4) For failure to pay the franchise fee when due pursuant to section 20-110 herein, franchisee shall pay a one time flat charge of five percent (5%) of the amount due.

(5) The rights in this section are separate, distinct and in addition to those enumerated elsewhere in this chapter.

(6) Any liquidated damages imposed by the City of Harriman in accordance with this license may be reduced by the city if it finds that the failure of the franchisee resulted from conditions beyond the franchisee's control and/or acts of God.

(7) Any damages assessed under this section 20-120, shall be subject to judicial review at the request of the franchisee. (Ord. 1010)

20-121. Rights reserved to the city. Without limitation upon the rights which the city might otherwise have, the city does hereby expressly reserve the following rights, powers and authorities:

(1) To exercise its governmental police powers now or hereafter to the full extent that such powers may be vested in or granted to the city.

(2) To grant additional franchises within the city to other persons for the construction of a cable television system.

(3) To exercise any other rights, powers or duties required or authorized under the laws of the United States; Constitution of the State of Tennessee; the laws of Tennessee; or the city charter. (Ord. 1010)

20-122. Compliance with municipal, state and federal laws, rules and regulations. (1) Notwithstanding any other provision of this franchise to the

contrary, franchisee shall at all times reasonably comply with all laws, rules and regulations of the state and federal governments or any administrative agencies thereof; provided, however, that if any such state or federal law, rule or regulation shall require franchisee to perform any service or shall prohibit franchisee from performing any service or shall permit franchisee to perform any service in conflict with the terms of this franchise or of any law, rule or regulation of the city, then as soon as possible following knowledge thereof, franchisee shall notify the city manager of the point of conflict believed to exist between such law, rule or regulation and the laws, rules or regulations of the city or this franchise, provided, however, that nothing herein shall compel franchisee to act in any way which violates or contravenes any local, state or federal law, rule or regulation.

(2) Franchisee shall be subject to all city ordinances, rules and regulations and franchisee shall also be subject to all applicable rules and regulations which, from time to time, may be promulgated by the Federal Communications Commission for cable television systems. (Ord. 1010)

20-123. Franchisee to have no recourse. (1) Except as expressly provided for in this franchise, franchisee herein shall have no recourse whatsoever against the city for any loss, cost or expense of damage arising out of any of the provisions or requirements of this franchise or because of the enforcement thereof by the city.

(2) Franchisee expressly acknowledges that upon acceptance of this franchise it did so relying upon its own investigation and understanding of the power and authority of the city to grant this franchise.

(3) Franchisee further acknowledges by the acceptance of this franchise that it has carefully read the terms and conditions hereof and is willing to and does accept all of the risks of the meaning of such terms and conditions.

(4) Franchisee further acknowledges by the acceptance of this franchise that this franchise is non-exclusive. (Ord. 1010)

20-124. Notices to franchisee. At any time the city manager, mayor, city council, members of the city council, or resident of the city brings an issue regarding this chapter, agreements or applications thereunder, or the activities of any franchisee to a meeting or work session of the city council, the city manager will notify franchisee. Such notification shall take place at least twenty (20) days prior to the meeting. (Ord. 1010)

20-125. Franchisee's application incorporated. (1) Franchisee shall provide all services specifically set forth in its application, if any, to provide cable television service within the city, and by its acceptance of this franchise, franchisee specifically grants and agrees that its application is hereby incorporated by reference and made a part of this chapter.

(2) In the event of a conflict between such proposals and the provisions of this chapter, and the franchise and/or application, the provisions of the application shall prevail. (Ord. 1010)

20-126. Continuity of service mandatory. It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to franchisee are honored. In the event that franchisee elects to overbuild, rebuild, modify or sell the cable television system, or the city council terminates or fails to renew the franchise, franchisee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted services regardless of the circumstances. In the event of a change of franchisee, the current franchisee shall cooperate with the city to operate the system for a temporary period in maintaining continuity of service to all subscribers. (Ord. 1010)

20-127. Time essence of this franchise. Whenever this franchise shall set forth any time for any action to be performed by or on behalf of franchisee, such time shall be deemed of the essence and any failure of franchisee to perform within the time allocated may be sufficient grounds for the city to revoke this franchise; provided franchisee receives notice of intent to revoke and has thirty (30) days to cure any and all alleged violations as specified in the chapter. (Ord. 1010)

20-128. Acceptance. This chapter and its terms and provisions shall be accepted by franchisee by a written acceptance executed and acknowledged by franchisee and filed with the city clerk. Said acceptance shall incorporate franchisee's written application, if any, to the city for the cable television franchise and shall bind and obligate franchisee to perform and carry out all provisions of said application. The city council may require franchisee to clarify any portion of its written application, if any, prior to final acceptance. (Ord. 1010)

CHAPTER 2

EMERGENCY SERVICES RESPONDERS

SECTION

20-201. Emergency services responders must comply with requirements of OSHA.

20-201. Emergency services responders must comply with requirements of OSHA. (1) Selected emergency responders must be trained to the standard set forth in OSHA Law 29 CFR 1910.120, Section Q, within eighteen (18) months from the passage of the ordinance comprising this chapter and that if within the period of 18 months the Roane County Emergency Management Agency (EMA) is unable to provide the training to meet the intent of this chapter, the Roane County EMA will recommend an appropriate extension for the deficient organization.

(2) It is hereto mandated that all emergency services be trained in the ICS system in order to be compliant within eighteen (18) months from the passage of the ordinance comprising this chapter.

(3) After the period of eighteen (18) months has passed from the passage of the ordinance comprising this chapter, additional hazardous material response funding will be withheld from any department(s) that is deemed deficient until such time as it is shown that the deficient department(s) is in compliance with these requirements. (as added by Ord. #04-11, Aug. 2004)

CHAPTER 3

CIVIL RIGHTS ACT OF 1964
COMPLIANCE MANUAL

SECTION

20-301. Compliance manual adopted.

20-301. Compliance manual adopted. (1) The Title VI Compliance Manual for the City of Harriman shall be adopted in its entirety by reference.¹

(2) The following statement shall be deemed as the City of Harriman's Title VI policy statement:

"It is the policy of the City of Harriman to ensure that no citizen shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (as added by Ord. #07-08-02, Aug. 2007)

¹A copy of the Compliance Manual regarding Title VI of the Civil Rights Act of 1964 is available for review in the office of the city recorder.

CHAPTER 4

PARKS AND RECREATION ADVISORY COMMITTEE

SECTION

20-401. Committee appointments; terms and compensation.

20-402. Vacancies and removal of committee members.

20-403. Eligibility of committee members.

20-404. Authority; duties and responsibilities.

20-405. Solicitation of funds, grants, and gifts.

20-401. Committee appointments; terms and compensation. The committee shall consist of seven (7) appointees and two (2) ex-officio members. Appointments shall be made by the mayor subject to approval of the city council. The initial appointments shall include two (2) members to serve a term of one (1) year, two (2) members to serve a term of two (2) years, and three (3) members to serve a term of three (3) years. Thereafter, all appointments shall be for terms of three (3) years. The parks and recreation director and one (1) member of the city council shall serve as ex-officio members. All members shall serve without compensation and shall be required to pass a background check. (as added by Ord. #0815-02, Sept. 2015)

20-402. Vacancies and removal of committee members. Members of the committee may be removed for cause upon majority of four (4) votes by the council. All vacancies shall be filled for the unexpired term by appointment of the mayor subject to approval of the city council. Removal for cause includes, but is not limited to, regularly being absent from committee meetings. (as added by Ord. #0815-02, Sept. 2015)

20-403. Eligibility of committee members. Appointees to the committee shall be citizens of the City of Harriman or its urban growth boundary. Appointees shall be generally considered persons of good moral character and shall be subjected to a background check prior to appointment. Appointees should be generally interested in and/or involved in the recreational programs of the City of Harriman. While not requirement, it is anticipated that a successful committee member will periodically volunteer in support of recreational activities within the City of Harriman. (as added by Ord. #0815-02, Sept. 2015)

20-404. Authority; duties and responsibilities. The committee shall make recommendations to council so that they properly oversee, regulate, operate, and fund the municipal parks and recreation facilities and activities. Members of the committee shall organize and elect officers as deemed necessary by the committee; however ex-officio members shall not be eligible to serve as

permanent chairperson, but shall preside during election of the chair. The committee may adopt by-laws, rules, and regulations governing its action. The committee shall have the duty to develop and recommend governing policies governing the operations of the municipal parks and recreation facilities and programs. Duties the committee will include:

- (1) Periodically identify the present recreation resources, programs, and facilities available to citizens within the City of Harriman;
- (2) Conduct a "needs assessment" of recreation programs to citizens within the City of Harriman;
- (3) Stimulate citizens interest in recreation and to create motivation for citizens participation;
- (4) Establish recreation plan with goals and priorities to provide the recreation programs and facilities necessary to meet the recreation needs for the citizens of the City of Harriman;
- (5) Coordinate various recreation programs and encourage growth; and
- (6) Develop policies guiding use and operations of city recreational facilities for council review and approval. (as added by Ord. #0815-02, Sept. 2015)

20-405. Solicitation of funds, grants, and gifts. The committee may be given by the city council the right to seek funds from public and private sources in the name of the City of Harriman for the municipal parks and recreation facilities, but all funds shall be deposited in accordance with State of Tennessee requirements with the city treasury primarily for the improvement of the municipal parks and recreation facilities and their operations. (as added by Ord. #0815-02, Sept. 2015)