

ORDINANCE NO. 105

**AN ORDINANCE CREATING AND AWARDED A CABLE COMMUNICATIONS
FRANCHISE IN THE CITY OF HARMONY AND RULES GOVERNING THE
OPERATION OF SAME.**

Sec. 1 Definition.

Subd. 1 Franchisor.

Franchisor is the City of Harmony, also Franchising Authority.

Subd. 2 Franchisee.

Franchisee is Harmony Cable, Incorporated.

Subd. 3 Board.

Board is the Minnesota Cable Communications Board.

Subd. 4 FCC.

FCC is the Federal Communications Commission of the United States.

Subd. 5 Class IV Channel.

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 communication system.

Subd. 6 Non-voice Return Communications.

Non-voice Return Communications means the provision of appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules.

Subd. 7 Gross Subscriber Revenue.

Gross subscriber revenue means all subscriber revenue derived from Basic Service and Tier I Service.

Subd. 8 Shall and Must.

The words shall and must are mandatory.

Subd. 9 May.

The word may is permissive.

Subd. 10 May Not.

The words may not are unconditionally prohibitive.

Sec. 2 Grant of Authority.

The City Council of Harmony, authorizes that a cable communications franchise for the installation, operation and maintenance of a cable communications system within the City limits of the City of Harmony is granted to Harmony Cable Television, a division of Enterprises III, Incorporated, provided, however, that the franchise shall be subject to the following terms and performance conditions:

Subd. 1 Compliance with Minnesota Cable Communications Board's Franchise Standards.

The franchisee shall at all times be in compliance with the franchise standards of the Minnesota Cable Communications Board.

Subd. 2 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.

Subd. 3 Certificate of Confirmation.

The franchise shall cease to be in force and effect of the franchisee fails to obtain either a regular certificate of confirmation or renewal of a certificate of confirmation from the Board, provided, however, that the franchisee may operate the cable communications system while the Board is considering the application for the renewal of the certificate of confirmation.

Subd. 4 Franchise Terms.

The franchise shall have an initial franchise terms of fifteen (15) years effective from May 16, 1998, expiring May 16, 2013, and any renewal term of granted by the franchising authority, shall be fifteen (15) years.

Subd. 5 Renegotiation of Franchise Terms.

Renegotiation between the franchisor and franchisee shall occur eighteen (18) months before the end of the franchisee term unless franchising authority determines not to reissue the franchise to the franchisee or desires to consider additional applications for a franchise. Such renegotiation periods must be specified and must be mutually agreed upon by the franchisor and franchisee.

Subd. 6 Franchise Exclusivity.

This franchise is non-exclusive.

Subd. 7 Sale of Transfer of the Franchise, Sale or Transfer of Stock.

Sale or transfer of this franchise or sale or transfer of stock so as to create a new controlling interest is prohibited except at the approval of the franchising authority, which approval shall not be unreasonably withheld, and except that such sale or transfer is completed pursuant to Board rules, Chapter 12.

Subd. 8 Franchise Fee.

The franchisee will pay franchise fee of 3% of the gross subscriber revenue to the franchising authority. The fee will not be paid until the system has operated for one full year with a 60% basic service penetration level.

The franchising authority is granted the authority to audit the franchisee's accounting and financial records upon reasonable notice for the purpose of verifying the accuracy of the franchise fee. The franchisee shall file annually with the franchising authority deems appropriate.

Subd. 9 Rates, Rates Change Procedure and Residential Subscriber Contracts.

A. Rates

1. Public Record.

All current subscriber charges are available for public inspection at the office of the City Clerk.

2. Duration of Rates.

There shall be no increase in installation and monthly service charges for twelve (12) months after 90% of the distribution system is activated.

3. Rate Change Procedure.

The franchisee shall notify by mail its cable subscribers and the franchising authority and shall publish any proposed changes in rates or charges at least ninety (90) days in advance of the effective date of such changes. A public hearing shall be held to investigate and discuss the proposed rate changes. The public hearing shall be held within thirty (30) days of the receipt of the notification of proposed changes.

The franchising authority shall consider the following when deciding on whether to grant or deny in whole or in part the rate increase: Franchisee's expenses of operation, including without limitation taxes and fees; franchisee's obligations to make payments with the respect to indebtedness; and franchisee's right to earn a reasonable return on its investment comparable to the return being realized on other investments of comparable risk and uncertainty and also the need of franchisee to earn an adequate return to maintain the financial integrity of the franchisee.

In the event that the franchising authority decides not to allow the proposed changes in rate or charges, the franchising authority shall inform the franchisee at least thirty (30) days prior to the originally proposed effective dates of the changes. Appeal from the franchising authority's decision may be made to the Board on the appropriate judicial or administrative forum.

The franchisor shall not control the rates for expanded CATV service or advertising. Expanded CATV service means any communications service in addition to Basic CATV service provided by the franchisee either directly or as a carrier for its subsidiaries, affiliates or any other person engaged in communications service, including, but not limited to, pay TV, burglar alarm service, data or other electronic transmission service, facsimile reproduction service, meter reading service and home shopping service.

The provisions do not limit the right of franchisee to increase rates or charges to cover additional sales taxes or copyright fees.

4. Promotion Rates.

Franchisee reserves the right to reduce or eliminate any or all of the rates or charges to aid franchisee in obtaining new subscribers.

B. Residential Subscriber Contracts.

1. Franchisee reserves the right to require a deposit not exceeding two months estimated billing, before connection of a potential subscriber who cannot provide adequate credit reference.

2. Franchisee may require payment of any unpaid amounts due to the franchisee for services previously provided as a condition of any request for reconnection.

3. Franchisee reserves the right to require a deposit on converters up to the cost of the converter.

4. All subscribers, as a condition of receiving cable service, shall agree to the terms and conditions imposed upon the franchisee by franchisee's cable service suppliers.

5. The minimum period for which service may be purchased by a subscriber is one (1) month.

Subd. 10 Franchise Administrator.

The Mayor and City Council shall be responsible for the continuing administration of this franchise.

Subd. 11 Liability Insurance.

The franchise shall indemnify and hold harmless the franchising authority at all times during the term of the franchise and shall maintain throughout the term of the franchise liability insurance in the amount of : \$1,000,000.00 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.

Subd. 12 Performance Bond.

At the time the franchise becomes effective and at all times thereafter until the franchisee has liquidated all of its obligation with the franchising authority, the franchisee shall furnish a

performance bond, certificate of deposit or any other type of instrument approved by the franchising authority in the amount of \$10,000.00. This amount is deemed by the franchising authority to be adequate compensation for damages resulting from the franchisee's nonperformance. The franchising authority may, from year to year, in its sole discretion, reduce the amount of the performance bond or instrument.

Subd. 13 Liability for Injury to Franchisee's Facilities.

Nothing in this franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the franchisee's facilities while performing any work connected with grading, regarding or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

Subd. 14 Public Hearing RE: Franchisee's Credentials

The franchisee's technical ability, financial condition and legal qualifications were considered and approved by the franchising authority in a full public proceeding which afforded reasonable notice and a reasonable opportunity to be heard.

Subd. 15 Channel Capacity.

The franchisee shall construct a cable system with a channel capacity available for immediate or potential use, equal to a minimum of 300 MHz or bandwidth. This will allow for 35 downstream channels and 4 upstream channels. Twenty-three (23) channels shall be activated initially.

The cable system will comply with the state Cable Communication Rules regarding two-way communication capability and activation including technical capabilities for non-voice return communications throughout the system.

Subd. 16 Construction Schedule.

Within 90 days of the granting of the franchise, the franchise shall apply for all necessary permits, licenses, certificates and authorizations; that energized trunk cable shall be extended substantially throughout the authorized area within one year after the receipt of all necessary governmental permits, licenses, certificates and authorizations; and that persons along the route of the energized cable will have individual "drops" as desired during the same period of time; the requirement of this provision may be waived by the franchising authority only upon occurrence of unforeseen events or acts of God. Agreements for extension of cable lines of franchisee beyond the initial territory shall be made between the franchisee and municipality into which the extension is being made. There is no requirement for the extension of service beyond the initial service area.

Franchisee will extend cable service to areas not included in the initial service area as they become financially viable in terms of homes passed and subscriber potential. Under normal conditions the criteria of 35 homes per mile must be achieved before consideration of any line extension, although achievement of 35 potential homes per mile is not an absolute before considering an extension.

The franchisee will build a 2-way interactive system with non-voice return capability with a minimum of 35 downstream channels and 4 upstream channels. The system will consist of the following components:

Satellite Receiver Dish

Tower

Head-End with necessary electronics

A distribution system of approximately 6.75 miles of mostly aerial cable and some buried cable; and distribution equipment capable of providing 35 downstream channels and 4 upstream channels.

Subd. 17 Authorization to Commence Construction.

The franchising authority grants unto the franchisee an easement over its municipal properties including, but not limited to, roads, streets, sidewalks, and driveways and all public places for the purpose of constructing and operating a communications system. Franchisee's duty to provide cable communication service to any subscribers is conditioned upon the receipt by franchisee of franchisee of necessary easements from private parties without unreasonable cost or effort to franchisee.

The franchisee shall obtain any required permits 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 expenses of the franchisee, any violations of the conditions of the permit such as the return of land to its previous grading, the clean up of construction debris, and the like.

Subd. 18 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.

Subd. 19 Relocation of Wires, Etc.

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-away, or public place whenever the franchising authority undertakes public improvements which affect the franchisee's property.

The franchising authority or municipality shall give sixty (60) 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.

The franchisee shall, at its expense, protect, support, temporarily disconnect, relocate, or remove its property when required by the franchising authority. The franchising authority hereby consents to

the abandonment by franchisee of its buried property in place. Upon permanent abandonment of any buried property in place, the franchisee shall submit to the franchising authority an instrument to be approved by the franchising authority transferring ownership of such property to the franchising authority or municipality.

Any other person or entity requesting relocation or removal of the franchisee's property shall reimburse the franchisee for all costs of such relocation or removal. Any person or entity which damages franchisee's property shall reimburse the franchisee for the cost of all necessary repairs and testing and for the loss of revenues, if any, to the franchisee caused by an interruption of cable service due to damaging of franchisee's property.

Subd. 20 Technical Standards.

The rules of the Federal Communications Commission relating to cable communications systems contained in subpart K of part 76 of the Federal Communications Commission's rules and regulations relating to cable communications systems are incorporated by reference. The results of any tests required by the Federal Communications Commission shall be filed within 10 days of the conduct of such tests with the franchising authority & the Board. During the term of this franchise and any extension hereof, franchisee shall keep informed of technological developments in the area of cable communications and shall make reasonable efforts to make such technology available to its subscribers, subject to technical, financial, and other limitations of the system. The franchisee shall meet with the franchising authority not less than every two (2) years to discuss the availability of technological innovations available.

Subd. 21 Special Testing.

in the event that the special testing is required to determine the source of technical difficulties, the franchisee shall be responsible for the costs of special testing.

Subd. 22 Subscriber Privacy.

No signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes 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 year which shall be renewable 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 revokable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV cable communications activity planned for the purpose.

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 the subscribers or any lists that identify the viewing habits of subscribers may be sold or otherwise made available to any party other than to the company and its employee for internal business use, or to the subscriber subject of that information, unless the company has received specific written authorization from the subscriber to make the data available.

2. Written permission from the subscriber shall not be required for the systems conducting systemwide 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 in 4 MCAT S4.202 V. 1.

Subd. 23 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.

Complaints regarding the quality of service, equipment malfunctions, and similar matters shall first be directed to franchisee's office. Should franchisee fail to satisfy a complaint, it may then be directed to the Mayor of Harmony for investigation. In response to a complaint, franchisee shall be afforded a reasonable opportunity to present written statements of its position. The Mayor of Harmony shall attempt to resolve the complaints but, if this cannot be achieved, he shall submit a recommendation to the City Council, recommending that: (1) the complaint be dismissed, or (2) corrective action be taken by franchisee. Appeal from the City Council's action may be made to the Board or the appropriate judicial or administrative forum.

Subd. 24 Repairs and Complaints.

The franchisee shall provide to the subscriber at least a toll-free or collect telephone number for the reception of subscriber complaints and the franchisee shall maintain a repair service capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. Costs included in making repairs, adjustments and installations shall be borne by franchisee.

Subd. 25 Termination.

The franchising authority shall have the right to terminate and cancel the franchise and all rights and privileges of the franchise if the franchisee substantially violates any provision of the franchise ordinance, attempts to evade any of the provisions of the franchise ordinance or practices any fraud or deceit upon the franchising authority. The municipality shall provide the franchisee with a written notice of the cause for termination and its intention to terminate the franchise and shall allow the franchisee a minimum of thirty days after service of the notice in which to correct the violation. The franchisee shall be provided with an opportunity to be heard at a public hearing before the governing body of the municipality prior to the termination of the franchise. In the event that the municipality determines to terminate the franchise, the franchisee has thirty days from the date of the conclusion of the public hearing at which the termination of the franchise is considered, within which to file an appeal with the Board, pursuant to Minn. Stat. S238.14. During the thirty day period and until the Board determines the appeal, if any appeal is taken, the franchise remains in full force and effect, unless the term of the franchise ends sooner. If the Board approves of the action of the municipality, the franchise terminates immediately; if the Board disapproves of the action of the municipality, the franchise remains in full force and effect during its term unless sooner terminated in accordance with law or 4 MCAR SS 4.001 - 4.250. Any appeal to the Board is contested case to which the Board is not a party.

Subd. 26 Abandonment.

The franchisee may not abandon any portion of the cable communications service provided hereunder without having given three (3) months prior written notice to the franchising authority and the Board. No cable communications service or any portion thereof without compensating the franchising authority for damages resulting to it from such abandonment.

Subd. 27 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 writing.

In the event the franchisee fails to remove its equipment within a reasonable time after the written 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 a contract. The franchising authority may award the contract to the appropriate bidder and charge the costs of such contract to the franchisee. The provisions of this Section shall not apply to equipment of the franchisee which is buried; provided, however, that franchisee shall transfer ownership of any buried equipment not so removed to the franchising authority.

Subd. 28 Municipal Right to purchase System.

In the event that franchisee decides to sell the franchise and/or cable system, the franchising authority shall have a first right of refusal to purchase the franchise and/or cable system on terms substantially identical to those of any prospective purchaser's bonafide offer. The franchisee shall give written notice of the terms and conditions of a prospective sale, to the franchising authority at least thirty (30) days prior to the proposed closing date of such sale. in the event, the franchising authority does not within sixty (60) days from the receipt of such notice, give written notice to franchisee of its intent to exercise the option to purchase on substantially identical terms and conditions, the franchisee shall be able to sell the franchise and/or cable system on those terms and conditions. In the event, the franchising authority exercises its option to purchase, the closing date for such a sale shall occur within a reasonable time after such exercise.

Subd. 29 Community Access Channels.

1. The franchisee shall provide to each of its subscribers who receive some or all of the services offered on the system, reception on at least one specially designated community access channel. The specially designated community access channel may be used by local educational authorities and local government on a first-come, first-served nondiscriminatory basis. During those hours that the specially designated community access channel is not being used by the local educational authorities or local government, the franchisee shall lease time to commercial or noncommercial users on a first- come, first-served nondiscriminatory basis if the demand for that time arises. The franchisee may also use those specially designated community 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. The franchisee will purchase and provide a camera and recording equipment for use in producing local programming. No charge shall

be made for use of the equipment except if the program is of a commercial nature. The franchisee shall provide a character generator equipped with automated remote weather information. The VHG spectrum (Channels 2-13) must be used for the specially designated access channel required in 4 MCAR S4.202 CC.

2. The franchisee shall establish rules for the administration of the specially designated access channel. The operating rules governing the specially designated access channel shall be filed by the franchisee with the Minnesota Cable Communications Board within 90 days after access channel is put into use.

3. Franchisees providing only a alarm services or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers.

Subd. 30 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 or any cable television company, or any firm or private person unless the same is done with the knowledge of and 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 \$500.00, or both, may be imposed.

Subd. 31 Free Services.

Franchisee will provide one free drop to the City of Harmony. This drop will provide basic service only and is to be installed in the city hall.

In addition, franchisee will provide one free basic service drop to both the high school and the elementary school.

Subd. 32 Emergency Override.

Franchisee will also provide an emergency override system that will permit the interruption of all audio programming for broadcasting of emergency messages, such as warning of severe storms. Access to the emergency operation can be made by telephone by authorized personnel.

Passed by the City Council of the City of Harmony, Minnesota, this 24th day of May, 1983.

Modified on 14th day of February, 2006

Mayor

ATTEST:

Clerk

The terms and conditions of the above ordinance are hereby accepted by the Harmony Cable Television this 24th day of May, 1983.

HARMONY CABLE TELEVISION

by
President