

TITLE 9

BUSINESS REGULATIONS AND LICENSING

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Chapters:

- 9.02 Liquor Retailer's Permits**
- 9.06 Cable Television System**

Chapter 9.02

LIQUOR RETAILER'S PERMITS

Sections:

9.02.010 Issuance of Permits

9.02.010 Issuance of Permits. That the Board of Trustees of the Town of Santa Claus, hereby consents that liquor retailer's permits may be issued to applicants otherwise duly qualified under the laws of the State of Indiana in respect to premises located within the Town of Santa Claus. (Ord. 1968-1, January 15, 1968)

Chapter 9.06

CABLE TELEVISION SYSTEM

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9.06.010 Tele-Media Company of Mid-South CATV. To the extent that the same may be lawfully given, and subject to the conditions herein set forth, the non-exclusive right be and the same is hereby granted by The Town of Santa Claus, County of Spencer of the State of Indiana, to Tele-Media Company of Mid-South, an Indiana Limited Partnership (the "Company"), to construct, operate and maintain transmission and distribution facilities, including, but not limited to, the erection of poles, cables, wires and other appurtenances and additions thereto, in, under, over, along, across and upon the streets, lanes, alleys, avenues, sidewalks, bridges, tunnels, highways, parking lots and other public places in the Town, and subsequent additions thereto, for the purpose of transmission by cable and distribution of television impulses and television energy for sale to the inhabitants of the Town and other purposes, under the terms and conditions hereinafter set forth (the "CATV System"). (Ord. 1994-13, S1, 1994)

9.06.020 Procurement of Easements. The Company shall procure any and all easements, rights of way, covenants, grants, certificates of approval and permits which may be required from any private persons or corporations or from any Federal, state, municipal or other governmental authority and from the utility companies operating in the Town for or in connection with the placing, maintaining or using of the attachments and the television cable herein referred to or the

granting of this right. (Ord. 1994-13, S2, 1994)

9.06.030 Liability Insurance and Workmen's Compensation Coverage.

- (1) The Company agrees to maintain and keep in full force and effect at all times during the term of this Ordinance sufficient liability insurance coverage to protect the Town against any such claims, suits, judgments, executions or demands in a sum not less than \$250,000 per person in any one claim; \$250,000 as to any one accident or occurrence; and not less than \$250,000 for property damage as to any one accident or occurrence provided, however, that the Town shall notify the Company in writing within thirty (30) days after notice or presentation of any claim or demand, either by suit or otherwise, made against the Town on account of or arising out of any act or omission connected with the operation of this Ordinance. (Ord. 1994-13,S3(A), 1994)
- (2) The Company shall also maintain in full force and effect throughout the duration of this Ordinance sufficient workmen's compensation insurance coverage to adequately and fully protect its agents and employees as required by law. (Ord. 1994-13, S3(B), 1994)

9.06.040 Maintenance. All the Company's attachments and installations shall be made and maintained at the Company's sole expense, in safe condition and thorough repair and in such place and manner as shall be approved by the Town. Upon receipt of written notice at any time from the Town that said attachments interfere with Town property, endanger its employees or the public, or interfere with the primary use and purpose of said Town property or highways, the Company shall at its own expense remove, alter, rearrange, improve or repair such attachments in such manner as the Town may reasonably direct. (Ord. 1994-13, S4, 1994)

9.06.050 Indemnification of Town. The Company shall indemnify and save harmless the Town at all times during the term of this Ordinance from and against any and all losses resulting from injuries or damage to persons or property including injuries to the employees of the Town or damage to the property of the Town arising out of negligence from or in any manner by actions or omissions of the Company or its agents while engaged in the work of constructing, operating or maintaining the CATV System; and such loss shall include all payments made by the Town to any of its injured employees or to their relatives or representatives, pursuant to any statute or resolution, whether based on negligence on the part of the employer or not. Further, the Company agrees to defend, fully indemnify and save harmless the Town from and against any and all claims and demands whatsoever, including any claims or demands from any source whatsoever on account of license or copyright infringements or violations of any transmittal rules and regulations of the Federal Communication Commission (the "FCC) or other governmental regulatory bodies, provided, however, that the Town shall notify the Company in writing within thirty (30) days after notice or presentation of any claim or demand, either by suit or otherwise, made against the Town on account of or arising out of any act or omission connected with the operation of this Ordinance. The company agrees to pay any costs or expenses incurred in defending any action brought against the Town as a result of alleged damages from the company's activities under this agreement. (Ord. 1994-13, S5, 1994)

9.06.060 No Installation Charges For Town Hall, Firehouse, Police Department, Clerks Office, and School. Upon the written request of the Town Council, the Company shall furnish free installation and free basic service for one (1) outlet in the Town Hall, Town Firehouse, Police Department, and the Clerks Office, provided, however, that nothing herein shall require the Company to construct additional distribution facilities to service the Town Hall and/or Town Firehouse or etc. Upon the written request of any school in the Town, the Company shall furnish free installation and free basic service for one (1) outlet in each school in the Town, provided, however, that nothing herein shall require the Company to construct additional distribution facilities to service such school. (Ord. 1994-13, S6, 1994)

9.06.070 Extension of Service

- (1) The Company is hereby authorized to extend the distribution facilities within the franchise area to the extent that such extension is or may become economically feasible.
- (2) In the event additional adjacent territory is incorporated within the Town limits, by annexation or otherwise, the Town's rights and duties under this Ordinance shall be deemed to include such additional territory. The Company shall make cable service available to such annexed area as long as it is economically feasible to do so. As used herein, "economically feasible" shall mean that there are at least 30 homes per mile adjacent to the existing cable television system distribution plant. (Ord. 1994-13, S7, 1994)

9.06.080 Franchise Fee. The Company shall pay to the Town a franchise fee of 3% of the Company's gross annual subscriber revenues from basic satellite basic & premium cable television service. All franchise fees to be paid by the Company shall be paid within ninety (90) days after the close of its fiscal year. The Company shall make its books and records pertaining to basic gross subscriber revenues available for inspection at all reasonable times to the Town Council, within 60 days notification. (Ord. 1994-13, S8, 1994)

9.06.090 Terms and Conditions. In consideration for the foregoing rights and privileges, the Company agrees to the following terms and conditions:

- (1) Neither the Company nor any of its agents or employees shall at any time repair, attempt to repair, sell or attempt to sell television or radio sets or parts thereto; nor shall they recommend or solicit business for any television or radio dealers or repairmen, provided, however, that this provision shall not apply to the routine operation and maintenance of the CATV System and service connected therewith.
- (2) The Company shall expeditiously investigate and resolve all subscriber complaints concerning the operation of the CATV System, normally within twenty-four (24) hours but not later than forty-eight (48) hours, except in cases of emergencies. A record shall be made of all complaints received showing the name of the complaining party, the complaint and the action taken to rectify the complaint. Said record shall be kept for a minimum of two (2) years.

- (3) After having received reasonable notice of at least seventy-two (72) hours prior to the move, the Company shall comply with all moving permits issued by the Town by temporarily raising or lowering its wires to permit the moving of structures or high loads. The cost to the Company of complying with the moving permit shall be borne by the entity that obtained the moving permit, and the Company shall have the right to request payment in advance.
- (4) The Company shall abide by all provisions set forth in local Town Ordinances and shall abide by all regulations of the FCC and other governmental regulatory bodies, as now enacted or as subsequently amended, and the same are incorporated herein by reference.
- (5) Subscribers to the Company's services shall not be required to assure the Company that they will subscribe to the Company's service for any length of time and subscribers may terminate service at any time.
- (6) All poles, ducts and other facilities of the Company shall be erected, constructed and maintained so as not to interfere with the traffic over public highways and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any public highway. The Company shall have reasonable authority to trim trees upon, abutting and overhanging all streets, alleys, easements, sidewalks, and other areas where the CATV System may from time to time be located in public places of the Town so as to prevent the branches of such trees from coming into contact with or otherwise interfering with the facilities and service of the Company.
- (7) The Town shall have the right to approve the location of any poles or underground cable line required to be erected or installed by the Company.
- (8) If, at any time, the Town shall elect to alter or change the grade of any street, sidewalk, alley or other public way, the Company shall remove, relay and relocate its poles, wires, cable, underground conduits, manholes and other fixtures at the Company's sole cost and expense, upon receiving adequate notice from the Town.
- (9) The Company shall grant to the Town, free of charge, the joint use of any and all poles owned by the Company for any proper Town use so long as such use by the Town does not interfere with the operation and maintenance of the CATV System.
- (10) The Company, during the installation, maintenance and operation of its television transmission and distribution system, must guard and protect any opening or obstruction in the streets or other public places by placing adequate barriers, fences or boarding, the bounds of which shall be clearly designated by warning lights during periods of dusk and darkness.
- (11) The Company agrees to restore to as good a condition as before entry, any pavement, sidewalk, or other improvement of any street, avenue, alley or other public place disturbed by the Company. (Ord. 1994-13, S9 A-K, 1994)

9.06.100 Written Notice of Any Violation. The Town shall give written notice to the Company of any alleged violation of any covenant in this Ordinance specifying the nature of the violation and the specific section or sections of this Ordinance which have allegedly been violated. The Town shall allow the Company at least ninety (90) days to remedy the condition complained of prior to cancellation by the Town of this franchise for breach of any covenant hereunder, provided that such cancellation or forfeiture shall first be declared by a court of competent jurisdiction after a hearing and upon appropriate full and final findings of fact pursuant to law. (Ord. 1994-13, S10, 1994)

9.06.110 Similar Service Prohibited. The Town shall not permit any individual or company to provide services similar to those of the Company without first having secured a franchise from the Town. The Town shall not grant a franchise to individuals or companies offering or furnishing services similar to those of the Company on terms and conditions more favorable to such individuals or companies than those contained herein, unless this Ordinance is amended to provide for such favorable terms and conditions. (Ord. 1994-13, S11, 1994)

9.06.120 Term. Upon continuing full and complete performance by the Company of each and every term of this Resolution, the right herein granted shall continue for a term of fifteen (15) years from the date this Ordinance was adopted. Renewal of this franchise shall be in compliance with any federal or state laws which may be presently enacted, or enacted at a later date, which may apply to franchise renewal. All of the terms, conditions and provisions herein shall continue to apply in any such extension period or during the aforementioned court proceeding. (Ord. 1994-13, S12, 1994)

9.06.130 Public, Educational and Government Access. Upon written notice from the Council and within 180 days, Tele-Media Company will provide the necessary equipment to allow the Town to operate a P.E.G. channel. The Town shall be responsible for 50% of the costs incurred to provide said equipment as mutually agreed by the Council and Tele-Media Company.

9.06.140 Transfer of Company Title and Interest Written Notice. All right, title and interest of the Company in this Resolution shall be freely assignable without the consent of the Town. The Company hereby agrees to give the Town written notice of any assignment within forty-five (45) days of the effective date of the assignment. (Ord. 1994-13, S14, 1994)

9.06.150 Written Communication Addresses. All notices and other communications hereunder shall be in writing and shall be deemed to have been given on the date of actual delivery if mailed, first class, registered or certified mail, return receipt requested, postage prepaid to the following respective addresses:

To the Town:

Town of Santa Claus
P.O. Box 92
Santa Claus, IN 47579

To the Company:

Tele-Media Company of Mid-South
P.O. Box 09768
Columbus, Ohio 43209

Any party to this Ordinance may change the address to which all communications and notices may be sent by addressing notices of such change in the manner provided hereunder. (Ord. 1994-13, S15, 1994)

9.06.160 Conflicting Ordinances Repealed. Any and all ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed. (Ord. 1994-13, S16, 1994)

9.06.170 Cost of Publication of Ordinance 1994-13. The Company shall assume the cost of publication of this Ordinance, if such publication is required by law. (Ord. 1994-13, S17, 1994)

9.06.180 Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Town Council hereby declare that they would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this Ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Company. (Ord. 1994-13, S18, 1994)

9.06.190 Effective When. The Ordinance is hereby declared to be a measure in the interest of public peace, health, welfare and safety, and shall therefore go into immediate effect upon the passage and adoption of this Ordinance, and within thirty (30) days from the effective date the Company shall file its written acceptance, at which time this Ordinance shall constitute a contract between the Company and the Town. (Ord. 1994-13, S19, 1994)

9.06.250 FCC Rate Regulations. The Town will follow the FCC Rate Regulations in its regulation of the Basic Service Rates and Charges of the Company and any other cable television system operating in the Town, notwithstanding any different or inconsistent provisions in the Franchise. (Ord. 1993-25, S1, 1993)

9.06.260 Consideration of Views. In connection with such regulation, the Town will ensure a reasonable opportunity for consideration of the views of interested parties. (Ord. 1993-25, S2, 1993)

9.06.270 Regulating Basic Service Rates and Charges. The Town Council President, or his designee, is authorized to execute on behalf of the Town and file with the FCC such certification forms or other instruments as are now or may hereafter be required by the FCC Rate Regulations in order to enable the Town to regulate Basic Service Rates and Charges. (Ord. 1993-25, S3, 1993)