

ARTICLE 27
SECTION R 27.01 CABLE COMMUNICATIONS ORDINANCE

THE TOWNSHIP OF FRUITLAND ORDAINS:

SECTION R 27.02 GENERAL

SECTION R 27.03 TITLE

This chapter shall be known as the Cable Communications Ordinance.

SECTION R 27.04 PURPOSE

The purposes of this Ordinance is to:

- A. Provide for the franchising and regulation of cable television within the Township of Fruitland;
- B. Provide for a cable communications system that will meet the current needs of the Township and that can be improved and upgraded to meet future needs;
- C. Provide for the payment of fees and other valuable consideration to the Township for the use of the public ways and for the privilege to construct and operate cable communications systems;
- D. Provide for the regulation by the Township of certain rates to be charged to subscribers for certain cable communications services;
- E. Provide for the development of cable communications as a means to improve communication between and among the members of the public and public institutions of the Township; and to
- F. Provide remedies and prescribe penalties for violation of this Ordinance and any franchise granted hereunder.

SECTION R 27.05 APPLICABILITY

This Ordinance is applicable to any application for a cable franchise filed on or after the effective date of this Ordinance and to any such franchise granted thereafter and to any franchised renewed thereafter.

SECTION R 27.06 DEFINITIONS

For the purpose of this Ordinance the following terms, phrases, words, and their deviations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meanings.

- A. “Application” shall mean a proposal seeking authority to construct and operate a cable television system within the Township pursuant to this Ordinance. It shall include the initial proposal plus all related subsequent amendments and correspondence with the Township.
- B. “Basic service” shall mean subscriber cable television services which includes the delivery of local television broadcast signals, access channels, leased channels, and local origination channels, as covered by the regular monthly charge paid by all subscribers to any service tier, excluding premium services, two-way services and FM radio services.
- C. “Cable Commission or Commission” shall mean a governmental or an intergovernmental authority that may be established by local legislative action that shall have the authority to police the provisions of an Agreement and make recommendations for enforcement or improvement on behalf of the Township in an advisory manner. “Cable Commission” and “Commission” may include the Township.
- D. “Cable television services” shall mean the one-way transmission of video programming and associated non-video signals to subscribers together with subscriber interaction, if any, which is provided in connection with the video programming.
- E. “Cable communications system” shall mean a non-broadcast facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, under common ownership and control, that distributes or is designed to distribute to subscribers cable television services, institutional services, or other communications services, but such term shall not include:
 - 1. a facility or combination of facilities that serves only to retransmit the television signals of one or more television broadcast stations;
 - 2. a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way;
 - 3. a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or
 - 4. any facilities of any electric utility used solely for operating its electric utility system.
- F. “Connection” shall mean the attachment of the drop to the radio or television set or other communications device of the subscriber.

- G. “Construction, Construction is Completed, Construction has been Completed, and Construction shall be Complete” shall mean that strand has been put up and all necessary cable, including trunk and feeder cable, has been lashed; for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored and, except as prevented by weather conditions or delayed because of seasons, landscaping restored, that all amplified housings and modules have been installed, including modules for return path signals if proposed, that power supplies have been installed and all bonding and grounding has been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the head ends or hubs has been completed and all processing equipment has been installed; and that any and all other construction necessary for the system to be ready to deliver cable television service to subscribers in a safe and reliable manner has been completed consistent with the terms of this Franchise and industry standards. The term “completion of construction” does not include marketing and installation of subscriber service.
- H. “Council” shall mean the governing body of the Township of Fruitland.
- I. “Dedication” shall mean those dedications and easements for public roadways and utilities and other rights of way maintained for the benefit of the public and controlled by the Township; the terms, conditions, or limitations of which are not inconsistent with the erection, construction, or maintenance of a cable television system, its structures, or equipment.
- J. “Drop” shall mean the cable that connects a subscriber’s premises to the nearest feeder line of the cable system.
- K. “Easement” shall mean a right to use all public rights of way, including public utility easements.
- L. “Feeder Line” shall mean the coaxial or fiber optic cable running from the trunk line to line extenders and taps for the purpose of interconnecting with individual subscribers.
- M. “FCC” shall mean the Federal Communications Commission or any legally appointed or designated agent or successor.
- N. “File” shall mean the delivery, by mail or otherwise, to the appropriate office, officer, or agent of the Township of any document or other instrument which this Agreement requires the Grantee to file with the Township. The date of receipt by the Township shall be considered the file date.
- O. “Force majeure” shall mean acts of God, strikes, acts of a public enemy, wars, blockades, insurrections, riots, unusual delays in transportation, reasonable inability of Grantee to procure materials, and earthquakes or any other natural causes beyond Grantee’s reasonable control and which could not have been reasonably anticipated. The settlement of strikes or labor disturbances shall be entirely within the discretion of the party having the difficulty. Any requirement

that force majeure shall be remedied with all reasonable dispatch shall not require settlement by acceding to the demands of the opposing party or parties when such course is inadvisable in the discretion of the party having the difficulty.

- P. “Franchise” shall mean the nonexclusive right and authority to construct, maintain, and operate a cable communications system through use of the public streets, dedications, public utility easements, other public rights of way, or public places in the Township pursuant to a contractual agreement executed by the Township and a Grantee.
- Q. “Gross revenues” shall mean all revenue from the cable communications system derived directly or indirectly by Grantee, its affiliates, subsidiaries, parent, and any other person in which Grantee has a financial interest in association with the provisions of cable communications services within the Township. Gross revenues shall include, but not be limited to, basic service monthly fees, institutional service fees, program service fees, installation, studio rental, production equipment and personnel fees, reconnection fees, leased channel fees, converter rentals, advertising revenues, and copyright fees. Gross revenues shall also include, value at retail price levels, the value of any goods, services, or other enumeration in non-monetary form, received by Grantee or other described above in consideration of performance by the Grantee or others described above any advertising or other service in connection with the cable system. Gross revenues shall not include any taxes on services furnished by Grantee payable to the State of Michigan or any other governmental unit and collected by Grantee on behalf of said governmental unit, or any revenues from the provision of cable communications services outside the Township.
- R. “Installation” shall mean the connection of the system at the subscriber’s premises.
- S. “Person” shall mean an individual or legal entity, such as a corporation or partnership.
- T. “Premium service” shall mean pay television offered on a per channel or per program basis.
- U. “Service tier” shall mean a specific set of cable subscriber services which are made available as, and only as, a group for purchase by subscribers at a separate rate for the group.
- V. “Street” or “public way” shall mean the surface of and the space above and below any public street, road, highway, path, sidewalk, alley, court, or easement now or hereafter held by the Township for the purpose of public travel or public utilities and shall include public easements or rights of way.
- W. “Subscriber” shall mean a recipient of cable communications services or other services provided over a cable communications system.

- X. "Township" is the Township of Fruitland, Michigan. "Township" may include "Cable Commission" or "Commission".
- Y. "White Lake Area" shall mean all those governmental units in the vicinity of White Lake; specifically the City of Montague, City of Whitehall, Blue Lake Township, Fruitland Township, Montague Township, Whitehall Township, and White River Township.

SECTION R 27.07 AUTHORITY

SECTION R 27.08 REQUIREMENT OF A FRANCHISE

It shall be unlawful to construct, install, maintain or operate a cable communications system or part of a cable communications systems or part of a cable communications system within the Township without a valid franchise obtained pursuant to the provisions of this Chapter.

SECTION R 27.09 TERM

The term of a franchise shall be as specified in the franchise agreement, but it shall not exceed a period of fifteen (15) years.

SECTION R 27.10 USE OF PROPERTY

- A A Franchise grants to Grantee the authority to use the Township's public streets, sidewalks, easements, and other rights of way for the purposes of this Agreement. No property right is bestowed by a franchise.
- B. A franchise shall authorize the use of the public ways for installing cables, wires, lines, and other facilities in order to operate a cable television communications system but shall neither expressly nor impliedly be deemed to authorize the Grantee to provide service to, or, install cables, wires, lines, or any other equipment or facilities upon private property without an applicable easement or the owner's consent, or to utilize publicly or privately owner utility poles or conduits without a separate agreement with the owners thereof.

SECTION R 27.11 NON-EXCLUSIVE

The grant of authority for use of the Township's public streets, sidewalks, easements, and other rights of way is not exclusive and does not establish priority for use over other franchise holders, permit holders, or the Township's own use of public property. A Grantee shall respect the rights and property of the Township and other authorized users of public streets, sidewalks, easements, and rights of way. Disputes over the use of the public streets, sidewalks, easements, and other rights of way shall be submitted to the Township for resolution, which decision shall be final.

SECTION R 27.12 FRANCHISE APPLICATIONS

SECTION R 27.13 FILING OF APPLICATIONS

Applications for a cable television franchise will be considered pursuant to the following procedures:

- A. An application may be filed at any time or pursuant to a request for proposals (RFP) issued by the Township.
- B. The Township may request additional information from an applicant for a franchise at any time.
- C. All applications to be acceptable for filing must be accompanied by a filing fee of \$1,000. The Township shall apply all filing fees received against all costs associated with its evaluation of any pending application. In the event that total costs are less than total filing fees, the Township shall refund a portion of the filing fee.

SECTION R 27.14 CONTENT OF APPLICATIONS

To be acceptable for filing, an application must conform to any applicable RFP and all the information specified therein. Where an application is not filed pursuant to an RFP, it shall contain, at minimum, the following information:

- A. Identification of the ownership of the applicant, if not a natural person, including the names and addresses of all persons with one (1) percent or more ownership interest and the ultimate controlling natural persons and identification of all officers and directors and any other primary business affiliation of each.
- B. An indication of whether the applicant, or any entity controlling the applicant, including any officer of a corporation or major stockholder thereof, has been adjudged bankrupt, has had a cable franchise revoked, or been found guilty by any court or administrative agency in the United States of: (1) a violation of a security or antitrust law; or (2) a felony or any other crime involving moral turpitude. Identify any such person or entity and fully explain the circumstances.
- C. A demonstration of the applicant's technical, legal and financial ability to construct and operate the proposed cable facility.
- D. A description of the physical facility proposed, including channel capacity (one-way and two-way if any), the area to be served, a summary of technical characteristics and headend and access facilities.
- E. A description of how any construction will be implemented, identification of areas having above ground or below ground cable facilities, the proposed construction schedule and a description (where appropriate) of how service will be converted from any existing facility to a new facility.

- F. A description of the services to be provided over the system, including identification of television signals (both broadcast and non-broadcast) to be carried and all non-television services to be provided initially. Where service will be offered by tiers, identify the signals and/or services to be included on each tier.
- G. The proposed rates to be charged, including rates for each service tier, as appropriate, and charges for installation, converters and other services.
- H. Information as necessary to demonstrate compliance with all relevant requirements contained in this Chapter.
- I. A demonstration of how the proposal is reasonable to meet the future cable-related community needs and interests. In particular, the application should describe how the proposal will satisfy the needs as analyzed in any recent community needs assessment commissioned by the Township.
- J. A demonstration that the proposal is designed to be consistent with all federal and state requirements.
- K. Pro forma financial projections for each year of the Franchise term. The projections shall include a statement of income, balance sheet, statement of sources and uses of funds and schedule of capital additions. All significant assumptions shall be explained in notes or supporting schedules that accompany the projections.
- L. A complete list of all cable communications systems in which the applicant, or a principal thereof, holds an equity interest.
- M. An affidavit of the applicant or duly authorized officer thereof, certifying, in a form acceptable to the Township, the truth and accuracy of the information contained in the application and acknowledging the enforceability of application commitments.
- N. In the case of an application by an existing franchisee for a renewed franchise, a demonstration that said franchisee has substantially complied with the material terms of the existing franchise and with the applicable law.
- O. Other information that the Township, or its agents, may request of the applicant.

SECTION R 27.15 APPLICANT REPRESENTATIVES

Any person who files an application with the Township for a cable television franchise shall forthwith, at all times, disclose to the Township, in writing, the names, addresses and occupations of all persons who are authorized to represent or act on behalf of the applicant in those matters pertaining to the application. The requirement to make such disclosure shall continue until the Township shall have rejected an applicant's application or until an applicant withdraws its application.

SECTION R 27-16 CONSIDERATION OF APPLICATIONS

- A. The Township will consider each application for a franchise where the application is found to be acceptable for filing and in substantial compliance with the requirements of this Chapter and any applicable RFP. In evaluating an application, the Township will consider, among other things, the applicant's past service record in other communities, the nature of the proposed facilities and services, proposed rates and whether the proposal would adequately serve the public needs and the overall interests of the citizens of the Township. Where the application is for a renewed franchise, the Township shall consider whether: (1) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law; (2) the quality of the operator's service, including signal quality, response to consumer complaints and billing practices (but without regard to the mix, quality or level of cable services or other services provided over the system) has been reasonable in light of community needs; (3) the operator has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the operator's proposal; and (4) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interest.

- B. Where the Township determines that an applicant's proposal, including the proposed service area, would serve the public interest, it may grant a franchise to the applicant. The franchise agreement will constitute a contract, freely entered into, between the Township and the grantee. Said franchise agreement shall incorporate by reference the relevant provisions of this Chapter. Any such franchise must be approved by Ordinance of the Council.

- C. In the course of considering an application for a renewed franchise, the Council shall hold a public hearing, following at least 14 days prior notice, in which the public and the franchisee seeking renewal shall be offered an opportunity to speak, offer evidence and question witnesses. A recording shall be made of such hearing. Based on the record of such hearing and the application (including any negotiations relative thereto), the Council shall determine whether to grant a renewed franchise and shall issue a written opinion stating the reasons for its decision.

- D. A franchise granted pursuant to this Chapter shall not take effect until the applicant pays a grant fee to the Township. The grant fee shall be equal to the Township's direct costs in the franchising process less the application filing fees received. The Township shall provide to the grantee a statement summarizing such costs prior to the execution of the franchise.

SECTION R 27.17 ACCEPTANCE

A franchise and its term and conditions shall be accepted by a grantee by written instrument, in a form acceptable to the Township Attorney and filed with the Township within thirty (30) days after the granting of the franchise by the Township. In its acceptance, the grantee shall declare that it has carefully read the terms and conditions of this Ordinance and the franchise and accepts all of the terms and conditions of this Ordinance and the franchise and agrees to abide by same.

In accepting a franchise, a grantee shall indicate that it has relied upon its own investigation of all relevant facts, that it was not induced to accept the franchise and that it accepts all reasonable risks related to the interpretation of the franchise.

SECTION R 27.18 FRANCHISE CONDITIONS

SECTION R 27.19 NON-TRANSFERABILITY OF RIGHTS

- A. A franchise issued pursuant to this Chapter shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consideration, or otherwise hypothecated in any manner, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any person or entity, or the controlling interest in any corporation holding a franchise hereunder be changed, without the prior consent of the Township, which shall not be unreasonably withheld. Such a transfer of control is not limited to major interest holders but includes actual working or de facto control by minor interest holders in whatever manner exercised. Every change, transfer, or acquisition of control of Grantee shall make the Franchise subject to cancellation unless and until the Township shall have consented. Change in control by virtue of inheritance shall not come into the provisions of this section. A rebuttable presumption that a change in controlling interest has occurred shall arise upon the acquisition or accumulation by any person or group of persons of five (5%) percent of the voting shares of the Grantee, except where such person or group of persons own fifty (50%) or more of the voting stock, singularly or collectively, before such acquisition or accumulation,
- B. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the Township may inquire into all qualifications of the prospective controlling party, and Grantee shall assist the Township in any such inquiry. The Township may require any reasonable conditions which it deems necessary at the time of review to ensure that the cable communications system will comply with the provisions of this Agreement for the balance of the term of the Franchise.
- C. Any unauthorized transfer in violation of this section shall be deemed a material breach in default of this Agreement and shall subject the Grantee to all applicable penalties and to all other remedies, legal and equitable, which are available to the Township.
- D. Grantee shall notify the Township of any occurrence which constitutes an unauthorized transfer under this Article, or of the entry of any judgment, petition, or order described in this Article, within four (4) days of the occurrence of such event.

SECTION R 27.20 LETTER OF CREDIT

- A. Before commencing any construction, Grantee shall deposit with the Township a cash bond of Letter of Credit from a financial institution chosen by the Grantee and approved by the Township in the amount of Five Thousand Dollars (\$5,000). The Letter of Credit may not be revoked or terminated until completion of the system plus an additional sixty (60) days except with written approval of the Township. Thereafter a Two Thousand Five Hundred Dollars (\$2,500) cash bond shall be maintained. The form and content of

such cash bond or Letter of Credit shall be approved by the Township Attorney. The cash bond or Letter of Credit shall be used to insure the faithful performance of Grantee of all provisions of this Chapter, compliance with all orders, permits, and directions of any agency, authority, board, department, division, or office of the Township having jurisdiction over its acts or defaults under the license, and the payment by Grantee of any costs, claims, liens, liquidated damages, and taxes due the Township which arise by reason of the construction, operation, or maintenance of the system, or breach or termination of the franchise.

- B. If grantee fails to make timely payments to the Township or its designee of any amount due, or fails to make timely payment to the Township of any taxes due, or fails to repay the Township for damages, costs, or expenses which the Township shall be compelled to pay by reason of any default of Grantee, or fails to comply with any provisions this Franchise which the Township reasonably determines can be remedied by the draw on the irrevocable Letter of Credit, the township may draw upon the Letter of Credit in the amounts sufficient to repay the Township, with interest and any penalties, plus costs and reasonable attorney fees incurred thereby.
- C. Not later than thirty (30) days after the mailing of notification to Grantee of drawing pursuant to the above subsections, the Grantee shall cause the Letter of Credit to be restored to the full amount required hereby. Failure to effect timely restoration of the Letter of Credit shall constitute a material breach of this Chapter and the Franchise.
- D. Upon termination of the Franchise, the Letter of Credit shall be delivered to the Grantee within ninety (90) days of such termination, provided there are not outstanding defaults on the part of the Grantee which results or may result in assessment of liquidated damages. The remainder of the Letter of Credit, less such assessment, shall be forthwith delivered to Grantee.
- E. The rights reserved to the Township with respect to the Letter of Credit are in addition to all other rights of the Township, whether reserved by this Agreement or related documents or authorized by law, and no action, proceeding, or exercise of a right with respect to such Letter of Credit shall affect any other right the Township may have.
- F. Failure to deposit said Letter of Credit as required above, or the failure to maintain said Letter of Credit, in the full amount required hereby in effect during the entire term of this Agreement, and of any renewal or extension thereof, shall constitute a material breach of this Agreement.

SECTION R 27.21 INSURANCE AND INDEMNITY

- A. After the granting of the Franchise and following simultaneously with the filing of the acceptance of the Franchise and prior to the commencement of construction and at all times during the term of the Franchise, Grantee shall obtain and deliver to the Township, written evidence of payment of premiums for and the originals or duplicate originals of the following:

1. A general comprehensive public liability or policies indemnifying, defending, and holding harmless the Township, its officials, boards, authorities, agents, and employees from and against all claims by any person whatsoever, including the costs, defense costs, attorney fees, and interest arising therefrom, on account of injury to or death of a person or persons occasioned by the operations of the Grantee under the Franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of One Million Dollars (\$1,000,000.00) per person injury or death of any one (1) person and in any one (1) accident or occurrence.
 2. A property damage insurance policy or policies indemnifying, defending, and saving harmless the Township, its officials, boards, authorities, agents, and employees from and against all claims by any persons whatsoever, including the costs, defense costs, attorney fees and interest arising therefrom, for property damage occasioned by the operation of the Grantee under the Franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of Five Hundred Thousand Dollars (\$500,000.00) for property damage to the property of any one (1) person in any one (1) accident or occurrence.
- B. All insurance policies called for herein shall be in a form reasonably satisfactory to the Township Attorney.
- C. Failure to comply with the provisions of this section shall constitute a material breach of this Chapter and the Franchise.

SECTION R 27.22 PAYMENT OF FEES AND COSTS

- A. Grantee in consideration of the privilege granted under this Franchise of the use of public ways and the privilege to construct and operate a cable television system, shall pay the Township not more than five percent (5%) of its total revenues for the entire term of this Franchise.
- B. Grantee shall file with the Township, by the end of each year, a financial statement showing the total revenues received by Grantee during the preceding calendar year. Grantee shall pay the yearly portion of the Franchise fee to the Township on or before the time such financial statement is due to be filed. Grantee shall also file, no later than one (1) month after the end of its fiscal year, a statement of its total basic service revenues for the preceding fiscal year, audited by an independent public accountant, certified in the State of Michigan, if so requested by the Township. Grantee shall bear the cost of such audit. Any Franchise fee payment in adjustment for any shortfall of the total annual payment for the year shall be made at that time. Adjustments for any overpayment shall be by credit to subsequent yearly payments.
- C. In the event the Franchise is revoked or otherwise terminated prior to its expiration date, the Grantee shall file with the Township, within ninety (90) days of the date of revocation or termination, an audited financial statement showing the gross revenues received by the Grantee since the end of the previous year and shall make adjustments at that time for the franchise fees due up to the date of revocation or termination.
- D. Nothing in this Ordinance or franchise agreement shall limit the Township's authority to tax Grantee.

- E. No acceptance of any payment shall be construed an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Township may have for further or additional sums payable under the provisions of this Ordinance or franchise agreement. All amounts paid shall be subject to auditing and revision by the Township.
- F. Failure to comply with this section shall constitute a material breach of the Ordinance or franchise agreement and shall subject the Grantee to all measures, legal or equitable available to the Township.

SECTION R 27.23 FORFEITURE AND TERMINATION

In addition to all other rights and powers retained by the Township under this Ordinance and any franchise issued pursuant thereto, the Township reserves the right to forfeit and terminate the franchise and all rights and privileges of the franchisee, with reasonable cause, by majority vote of the Council after at least 30 days prior written notice, with reasons if any, and an opportunity to appear and make arguments at a public hearing.

SECTION R 27.24 FORECLOSURE

- A. Upon the foreclosure or other judicial sale of all or a substantial part of the cable communications system facilities, or upon the termination of any lease covering all or a substantial part of the cable communications system, or upon the occasion of additional events which effectively cause termination of the systems operation, Grantee shall notify the Township of such fact and such notification or the occurrence of such terminating events shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Agreement governing the consent of the Township to such change in control of Grantee shall apply.
- B. In the event that a secured creditor of the Grantee forecloses upon the Grantee's interest in the system and proceeds to operate the system by receivership or otherwise, such action shall not be deemed grounds for termination of the franchise agreement.

SECTION R 27.25 RECEIVERSHIP

- A. The Township shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver to take over and conduct the business of Grantee, unless such receivership shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:
 - 1. Within one hundred twenty (120) days after the election or appointment, such receiver shall have fully complied with all of the provisions of this Franchise and remedies and defaults thereunder; and
 - 2. Within said one hundred twenty (120) days, such receiver shall have executed an agreement, duly approved by the court having jurisdiction, whereby such receiver assumes and agrees to be bound by each every provision of this Franchise as granted to Grantee except where expressly prohibited by Michigan law.

- B. Grantee shall immediately notify the Township in writing if:
1. Grantee files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors;
 2. Grantee files an answer admitting the jurisdiction of the Court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or
 3. Grantee is adjudicated bankrupt, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver or trustee of all or any part of its property including all or any part of the cable system.
- C. In the event that a secured creditor of the Grantee forecloses upon the Grantee's interest in the system and proceeds to operate the system by receivership or otherwise, such action shall not be deemed grounds for termination of the franchise agreement.

SECTION R 27.26 REMOVAL OF CABLE COMMUNICATION SYSTEM

At the expiration of the term for which the Franchise issued hereunder is granted or upon its termination as provided herein, Grantee shall, within one hundred eighty (180) days after notice by the Township, remove at its own expenses all designed portions of the cable communications system from all streets and public ways within the Township and shall restore said streets and public ways to their former condition. Grantee shall have the right to sell the physical plant to a subsequent Grantee, subject to Township approval, in which case said plant need not be removed. If Grantee fails to remove all facilities within one hundred eighty (180) days after notice by the Township, the Township may perform the work at Grantee's expense or assume ownership of any and all of Grantee's physical properties not properly removed in accordance with this section.

SECTION R 27.27 RATES

- A. The initial rates which the Grantee shall charge shall not be increased for a period of two (2) years from the date of granting of a Franchise or renewal.
- B. The Township reserves the right to reasonably regulate by ordinance or resolution the rates for any service or equipment, as allowed by state and federal law. Such rates and charges subject to regulation shall be just and reasonable, considering Grantee's costs, including reasonable return on investment over the remaining term of the Franchise, and shall not give preference or advantage to any subscriber or class of subscribers. Fees and charges subject to regulation by the Township pursuant to state and federal law shall not be increased without prior approval of the Township. The Township shall promptly respond to any request for an increase in fees and to charges subject to such regulation.
- C. Rates and charges not regulated by the Township may be changed by Grantee following a minimum thirty (30) days prior written notice to the Township and each subscriber.

SECTION R 27.28 RECORDS

Grantee shall maintain a complete set of books and records within Muskegon County. Upon reasonable notice to Grantee, the Township will have the right to inspect all records relating to cable operations pursuant to the Franchise at any time during normal business hours.

SECTION R 27.29 PUBLIC DROPS

- A. Grantee shall provide, without charge, one (1) drop to any four (4) school district buildings and to any four (4) municipal buildings as determined by the District and Township. Grantee shall furnish public drops with two-way modulators limited to the public governmental/school access channel. A character generator, purchased by the Cable Commission, shall be installed by Grantee at a location and time to be determined by the Commission with an additional unit provided to the School District if a second public access channel is provided.
- B. The cable television system installed by Grantee shall include an emergency alert audio override capability which will permit designated officials of the Commission to override by remote control the audio of all channels for the purposes of public notification of emergency conditions only. The Commission shall pay for all costs, excluding installation and the monthly dedicated phone line charge which shall be paid for by Grantee, associated with the emergency alert audio override.

SECTION R 27.30 PARENTAL CONTROL

Grantee shall provide subscriber controlled lock out devices, audio and visual, at no additional cost to subscribers upon their request. These devices should provide the greatest degree of parental discretion and control. The Township may designate by resolution specific devices by brand and model and may revise its designations as improved devices become available.

SECTION R 27.31 ADMINISTRATION

SECTION R 27.32 SERVICE OF NOTICE

- A. All notices required to be given to the Township under any provision of this Agreement shall be in writing and shall be deemed served when delivered by hand or mailed by certified mail, return receipt requested, to the Township Clerk.
- B. All notices required to be given to the Grantee under any provision of this Agreement shall be in writing and shall be deemed served when delivered by hand or mailed by certified mail, return receipt requested, to Grantee's address for service of notice.
- C. Grantee shall maintain within the White Lake area an office and address for service of notice by mail.

SECTION R 27.33 SEVERABILITY

Should any section of this Chapter, or any portion thereof, be held invalid, unconstitutional, preempted, or otherwise rendered unenforceable by any court of competent jurisdiction, legislation, or administrative agency, any such partial invalidity of this Chapter shall not effect the remaining portions hereof.

SECTION R 27.34 LOCAL REGULATORY FRAMEWORK

The Township Council may establish a governmental or intergovernmental Cable Television Commission consisting of a minimum of three (3) persons having authority to act for and on behalf of the Township in an advisory capacity any matters relating to the administration of this Franchise. The Legislative Body may increase or decrease the number of Commission members, or change the membership of the Commission, or alter the authority and power of such Commission from time to time as it may deem necessary and desirable. The Grantee shall cooperate with the Commission in respect to those matters and powers vested within it as set forth by the Legislative Body.

Effective date. This Ordinance shall take effect immediately after publication.

Adopted: December 16, 1996

Amended: April 18, 2005

Published: April 24, 2005

Effective: May 01, 2005