

TOWNSHIP OF LIMA
WASHTENAW COUNTY, MICHIGAN

ORDINANCE NO. 5

(Cable Communications Franchise Ordinance)

AN ORDINANCE ESTABLISHING A POLICY CONCERNING CABLE COMMUNICATIONS; TO ESTABLISH FRANCHISE PROCEDURES AND STANDARDS WHICH ENCOURAGE THE GROWTH AND DEVELOPMENT OF CABLE SYSTEMS AND ASSURE THAT CABLE SYSTEMS ARE RESPONSIVE TO THE NEEDS AND INTERESTS OF THE TOWNSHIP; TO ESTABLISH GUIDELINES WITH RESPECT TO THE REGULATION OF CABLE SYSTEMS; TO ASSURE THAT CABLE COMMUNICATIONS PROVIDE AND ARE ENCOURAGED TO PROVIDE THE WIDEST POSSIBLE DIVERSITY OF INFORMATION SOURCES AND SERVICES TO THE PUBLIC; TO ESTABLISH AN ORDERLY PROCEDURE TO GRANT AND RENEW FRANCHISES; TO PROMOTE COMPETITION IN CABLE COMMUNICATIONS AND MINIMIZE UNNECESSARY REGULATION THAT WOULD IMPOSE AN UNDUE ECONOMIC BURDEN ON CABLE SYSTEMS; AND TO REPEAL ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT WITH THIS ORDINANCE.

THE TOWNSHIP OF LIMA
WASHTENAW COUNTY, MICHIGAN, ORDAINS:

Section 1. SHORT TITLE.

This ordinance shall be known and may be cited as the Lima Township Cable Communications Franchise Ordinance.

Section 2. DEFINITIONS.

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein unless the context clearly indicates that a different meaning is intended. The word shall is always mandatory and not merely directory.

- 1) "Activated Channels" means those channels engineered at the head-end of the cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use.
- 2) "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with such person.
- 3) "Basic Cable Service" means any service tier which includes the retransmission of local television broadcast signals.
- 4) "Board" is the Board of Trustees of the Township of Lima.

- 5) "Cable Channel" or "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel.
- 6) "Cable Operator" means any person or group of persons who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.
- 7) "Cable Service" means the one-way transmission to subscribers of video programming, or other programming service and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
- 8) "Cable System", "Community Antenna Television System", "CATV", "System" shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within the Township, but does not include:
- A) Exclusion - Retransmission of TV Signal. A facility that serves only to retransmit the television signal of one or more television broadcast stations.
 - B) Exclusion - Multiple Unit Dwelling. A facility 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.
 - C) Exclusion - Common Carrier. A facility of a common carrier being excluded by federal law from franchise regulation, 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.
 - D) Exclusion - Electric Utility. Any facility of any electric utility used solely for operating its electric utility system.
- 9) "Commercial Use" means the provision of video programming, whether or not for profit.
- 10) "Commercially Impracticable" with respect to any requirement applicable to a cable operator, that it is commercially impracticable for the cable operator to comply with such requirement as a result of a change in conditions which is beyond the control of the cable operator and the nonoccurrence of which was a basic assumption on which the requirement was based.
- 11) "FCC" means any agency of the United States, including the Federal Communications Commission, Washington, D.C.
- 12) "Franchise" means an initial authorization, or renewal thereof, issued by a franchising authority, whether such authorization is designated as a

franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

13) "Franchise Expiration" means the date of the expiration of the term of the franchise as provided under the franchise agreement.

14) "Franchise Fee" means the fee to be paid by a cable operator pursuant to Section 9 of this Ordinance and includes any tax, fee, or assessment of any kind imposed by the Township on a cable operator or cable subscriber, or both, solely because of their status as such. The term does not include:

A) Any tax, fee, or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their service but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers);

B) Capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities;

C) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages;

D) Any fee imposed under title 17, United States Code.

15) "Franchising Authority" means any governmental entity empowered by Federal, State or local law to grant a franchise.

16) "Gross Revenues" unless otherwise provided by Federal or State law, means the total revenues received by the cable operator from all cable services in the Township being subject to this Ordinance and includes all forms of consideration such as initial lump sum payments or connection charges, advertising and security services.

17) "Institutional Network" means a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers.

18) "Other Programming Service" means information that a cable operator makes available to all subscribers generally.

19) "Person" means an individual, partnership, limited partnership, association, joint stock company, trust, corporation, or governmental entity.

20) "Public, Educational, or Governmental Access Facilities" means channel capacity designated for public, educational, or governmental use, and facilities and equipment for the use of such capacity.

21) "Service Tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator.

22) "State" means the State of Michigan or political subdivision or agency thereof.

23) "Street" means streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other public rights-of-way, and public grounds or waters within or belonging to this Township being subject to this Ordinance.

24) "Township" is the Township of Lima.

25) "Video Programming" means programming provided by, or general considered comparable to programming provided by, a television broadcasting station.

Section 3. GENERAL FRANCHISE REQUIREMENTS.

1) Purposes. The purposes of this Ordinance are:

A) National Policy. Establish policies consistent with national policies concerning cable communications.

B) Growth, Development, Needs. Establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems subject to this Ordinance are responsive to the needs and interests of the Township.

C) Regulation of Cable Systems. Establish guidelines for the exercise of Township authority with respect to the regulation of cable systems.

D) Diversity of Information and Services. Assure that cable communications subject to this Ordinance provide and are encouraged to provide the widest possible diversity of information sources and services to the public.

E) Renewals. Establish an orderly procedure for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by this Ordinance.

F) Competition, Unnecessary Regulation. Promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

2) Franchise Required. A cable operator shall not provide cable service in the Township without a franchise granted pursuant to this Ordinance, except where a cable operator provides cable service to those areas in the Township which are within the boundary of a franchising authority other than the Township.

3) Joint Administration. The Board may enter into contractual undertakings or agreements with other franchising authorities for the joint administration of a franchise; share the costs and responsibilities with other franchising authorities; transfer, or accept, functions or responsibilities from or to other franchising authorities upon the consent of each franchising authority involved.

4) Nonexclusive. Franchises granted pursuant to this Ordinance shall be nonexclusive and shall not affect the right of the Township to grant to any other cable operator a franchise to occupy and use the streets or any part thereof for the construction, operation, and maintenance of a cable service within the Township. The cable operator shall not take a legal position contesting the Board's right to authorize such use of the streets or any part thereof; provided, however, the Board shall give an existing franchise cable operator no less than two (2) weeks notice of the date of hearing on an application for a franchise and provide such cable operator an opportunity to appear and be heard before the Board, prior to the Board's acting on said application.

5) Rights-of-Way. A franchise granted pursuant to this Ordinance shall authorize the construction of a cable system over public rights-of-way and through easements which are within the area to be serviced by the cable system and which have been dedicated for compatible uses, except that in using such easements the cable operator shall ensure —

A) Safety, Appearance. The safety, functioning and appearance of the property and the convenience and safety of other persons shall not be adversely affected by the installation, maintenance, or construction of facilities necessary for a cable system.

B) Distribution of Expense. The cost of the installation, construction, operation, maintenance, or removal of such facilities shall be borne by the cable operator or subscriber, or a combination of both.

C) Just Compensation. The owner of the property shall be justly compensated by the cable operator for any damages caused by the installation, construction, operation, maintenance, or removal of such by the cable operator.

D) Minimum Interference. All transmission and distribution structures, lines, and equipment erected by the cable operator, within the Township, shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and public places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys, or public ways and public places.

E) Damage to Public Property. In case of disturbances of any street, sidewalk, alley, public way, or paved area, the cable operator shall, at its own cost and in a manner approved by the Board or its representative(s), replace and restore such street, sidewalk, alley, public way or paved area in as good a condition as existed prior to such disturbance.

F) Relocation of Equipment and Materials. If at any time during the period of a franchise granted pursuant to this Ordinance, the Township shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the cable operator, upon reasonable notice by the Township, shall remove or relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

G) Interference with Travel. Any poles or other fixtures placed in any public way by the cable operator shall be placed in such a manner so as not to endanger persons or property and so as not to interfere with the usual travel on such public way.

H) Engineering Standards, FCC Specifications. All of the cable operator's plant and equipment, including but not limited to the antenna site, head-ends and distribution system, towers, house connections, structures, poles, wires, cables, coaxial cables, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices and meet all relevant specifications of the FCC, Federal, State and local law.

I) Rights of Permit Holders. The cable operator shall, at the request of any private party holding an appropriate permit issued by the Township, temporarily raise or lower its lines to permit the moving of any building or other structure, and the actual expense of such shall be paid by the party so requesting. The cable operator may require that such expense be paid prior to its raising or lowering its lines.

6) Discrimination Based on Income. The Township shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

7) Discrimination, Hearing Impaired. The Township has the authority to prohibit the cable operator from discriminating among customers of the basic cable service. The Township may require and regulate the installation or rental of equipment which facilitates the reception of basic cable service by hearing impaired individuals.

8) Permits, Licenses. A franchise granted pursuant to this Ordinance does not take the place of any other franchise, license or permit which may be required by Federal, State or local law.

9) Federal, State Law. Any franchise, renewal thereof, or transfer of an existing franchise shall be subject to all applicable State or Federal law, including rules and regulations promulgated by the FCC.

10) Safety Requirements. The cable operator shall at all times employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. The cable operator shall install and maintain its wires, cables, fixtures, and other equipment in accordance with all applicable Federal, State and local laws, rules, and

regulations, and in such manner so as not to interfere with any installations of the Township or of a public utility serving the Township. All structures and all lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places in the Township, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

11) Removal of Facilities Upon Subscriber's Request. Upon termination of service to any subscriber, the cable operator shall on request of the subscriber promptly remove its facilities and equipment from the premises of such subscriber which are normally considered temporary, including converter boxes.

12) Protection of Subscriber Privacy. The Township may adopt such rules, regulations or ordinances for the protection of subscriber privacy as is consistent with Federal and State law.

Section 4. GRANT OF FRANCHISE.

1) Franchise Agreement. The Board by resolution may grant a nonexclusive franchise by approving the terms of a franchise agreement.

2) Application. A person making application for a nonexclusive franchise shall provide the following information: name, address and telephone number of the applicant; if a corporation, copy of Articles of Incorporation, By-Laws, certificate of incorporation, and/or certificate to transact business in Michigan, list of major shareholders, affiliates and corporate officers; if a partnership or limited partnership, Articles of Incorporation, name, addresses of partners, copy of certificate of partnership; if other than a corporation or partnership, name and address of owner(s), copy of any agreement between the owners, copy of certification of doing business as filed with the Washtenaw County Clerk; map of area to be serviced by the cable system and construction schedule; projected capital costs, revenues and operating expenses; technical performance standards; list of all franchise authorities (including their addresses and telephone numbers) in which the applicant, or its or their affiliate(s) has provided cable service within three (3) years of the date of the application; map of service area showing location of all facilities; equipment and poles to be utilized by the applicant; statement setting forth the applicant's proposal for public, educational, and governmental access; financial statement prepared by a Certified Public Accountant stating the financial condition and net worth of the applicant; and such other and further information as requested by the Board.

3) Channels' Capacity, Rates, Public, Educational or Governmental Use. Each applicant shall attach to the application a proposal setting forth the video programming and other programming services which shall be made available to the subscribers within the area to be serviced; the rates to be charges for such services; the channel capacity to be designated for public, educational or governmental use; the channel capacity on institutional networks to be designated for educational or governmental use; and a statement respecting clarity of reception. The Board may not require, as part of a proposal for a franchise or renewal thereof, a channel capacity other than provided by Federal law.

4) **Term of Franchise.** The term of the franchise shall be specified in the franchise agreement, but in no event shall the period exceed thirty (30) years. The franchise shall commence upon the date in which the cable operator meets the requirements of subparagraphs A, B, and C below. In the event said conditions are not met within thirty (30) days from the date of the resolution approving the franchise agreement, the franchise agreement shall be null, void and of no effect.

A) **Unconditional Acceptance.** A duly authorized representative of the owner of the cable system shall ratify the franchise agreement and file with the Township Clerk its unconditional acceptance of the terms, provisions, and conditions of the franchise as approved by the Board and agree to comply and abide by all its provisions, terms and conditions. Such acceptance shall be in writing and sworn to before a Notary Public or other officer authorized by law to administer oaths.

B) **Proof of Insurance, Bond.** The cable operator shall file with the Township Clerk copies of all policies provided for in of this Ordinance, which shall be approved by the Township Attorney.

C) **Payment of Application Fee.** Payment in full of the Application Fee as provided for in subsection 4(5).

5) **Application Fee.** The Board shall establish a non-refundable application fee which fee shall be the actual expenses incurred by the Township for processing the application, to include publication and notice requirements and attorney fees. The Board may require the application fee to be paid prior to the Board acting on the resolution to approve the franchise agreement.

6) **Conditions Precedent to Grant of Franchise.** No franchise shall be issued by the Board to any applicant until:

A) **Sufficiency of Information.** The information and documents provided for in subsection 4(2) are determined by the Board to be complete and in a form and content acceptable to the Board. Nothing provided for in this Ordinance shall be construed to prohibit the Board from requiring further or additional information or documents.

B) **Complaint Procedure.** Procedures have been adopted by the applicant and the Board for the investigation and resolving of all complaints regarding the operation of the cable service.

C) **Business Office Hours.** The application shall establish and maintain a regular business office and a twenty-four (24) hour, seven day-a-week telephone number to receive subscriber complaints.

D) **Administrator.** The Board may establish a committee composed of one or more persons to be responsible for the administration of a franchise granted pursuant to this Ordinance, such administrator(s) shall supervise and implement the complaint procedure set forth in the franchise.

E) **Notice to Subscribers.** The franchise shall provide that the application shall give notice to subscribers at the time of the initial subscription of the procedure for reporting and resolving complaints.

F) **Board Determination.** The Board shall make a finding based on the information and documents submitted by the applicant that the applicant has the technical, administrative and financial ability to provide the cable service set forth in the franchise.

7) **Effect on Non-Service Area.** In considering an application or renewal thereof, the Board shall consider the effect which the proposed franchise may have on the economic feasibility of providing cable service to areas within the Township not currently receiving cable service.

8) **Public Meeting.** Prior to the Board's acting on any application for a franchise, the Township shall publish in a newspaper having general circulation in the Township the date and place of the Board meeting in which the application shall be considered by the Board. The notice shall state the area to which the applicant intends to provide cable service, the proposed programming, and rates. The Township Clerk shall send by ordinary mail to the applicant, at the address stated in the application, notice of the time and place of such meeting and such further notices as may be required pursuant to subsection 3(4) of this Ordinance. At such hearing the application and public shall be provided an opportunity to be heard. The notice and meeting shall be conducted in accordance with the Michigan Open Meeting Act.

Section 5. RENEWAL OF FRANCHISE.

1) **Pre-Proposal Procedure.** During the six (6) month period which begins with the 35th month before the franchise expiration, the Township may, on its own initiative and shall at the request of the cable operator, commence proceedings which afford the public in the Township appropriate notice and participation for the purpose of identifying the future cable-related community needs and interests and reviewing the performance of the cable operator under the franchise during the then current franchise term. Upon completion of these proceedings, the cable operator seeking renewal of the franchise may, on its own initiative or at the request of the Township, submit a proposal for renewal.

2) **Information Required.** Subject to Section 12, any such proposal shall contain such material as the Township may require, including proposals for an upgrade of the cable system. The Township may establish a date by which such proposal shall be submitted.

3) **Post-Proposal Procedure.** Upon submittal by a cable operator of a proposal to the Township for renewal of the franchise, the Township shall provide prompt public notice of such proposal and, during the four (4) month period which begins on the completion of any proceeding under subsection 1 above, renew the franchise or issue a preliminary assessment that the franchise should not be renewed and, at the request of the cable operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding in accordance with subsection 5(4) to consider whether —

A) **Compliance of the Franchisee.** The cable operator has substantially complied with the material terms of the existing franchise and applicable law.

B) **Evaluation of Service.** The quality of the cable 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.

C) **Capabilities of Cable Operator.** The cable operator has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the cable operator's proposal.

D) **Township's Future Needs.** The cable 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 interests.

4) **Fair Hearing, Notice.** In any proceeding under subsection 5 (3), the cable operator shall be afforded adequate notice and the cable operator and the Township, or its designee, shall be afforded a fair opportunity for full participation, including the right to introduce evidence [including evidence related to issues raised in the proceedings under subsection 5 (1)], to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding. At the completion of the proceeding, the Board shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding and transmit a copy of such decision to the cable operator. Such decision shall state the reasons therefor.

5) **Deny Renewal.** Any denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors described in subparagraphs A through D of subsection 5 (3), pursuant to the record of the proceedings required in subsection 5 (4). The Board may not base a denial of renewal on the basis of subparagraphs 5 (3)A or 5 (3)B without first providing the cable operator with notice describing the infraction and providing the cable operator an opportunity to correct the deficiency. The Township is prohibited from denying a request for renewal in any case in which it is documented that the Township has waived its right to object or has effectively acquiesced.

6) **Optional Procedure.** Notwithstanding the provisions of subsections 1 through 5 of this Section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and the Township may, after affording the public adequate notice and opportunity to comment, grant or deny such proposal at any time (including after proceedings pursuant to this Section have commenced). The provisions of subsections 1 through 5 of this Section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections 1 through 5 of this Section.

7) **Transfer of Ownership.** If a renewal of a franchise held by a cable operator is denied and the Township acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself.

8) **Renewal Fee.** The Board by resolution shall establish a renewal fee which shall be the reasonable expenses incurred by the Township for processing a renewal of a franchise, to include notice expenses and attorney fees.

Section 5. TRANSFER OR CHANGE OF CONTROL OF FRANCHISE.

1) **Transferability.** Except with the express approval of the Board, or as provided in subsection 6 (2), a franchise granted pursuant to this Ordinance is nontransferable by the holder of the franchise to any other person or group of persons acting in concert, none of whom already own or control an interest in the cable operator. Such approval shall not unreasonably be withheld.

2) **Transfers Less Than 25 Percent of Ownership or Control.** A franchise issued pursuant to this Ordinance shall not required Township approval when ownership or control of less than twenty-five (25%) percent of the right of control or ownership in the cable system is acquired by a person or group of persons acting in concert, none of whom already own or control twenty-five (25%) percent of the right of control or ownership, singularly or collectively. Any transfer, singularly or in the aggregate of more than a twenty-five (25%) percent of the right of control or ownership interest, without Township approval, shall be deemed a substantial breach of the franchise agreement and grounds for revocation pursuant to Section 8 of this Ordinance. The cable operator shall file annually with the Township Clerk not later than ninety (90) days after the cable operator's fiscal year a complete list of the names of persons having a twenty-five (25%) percent or greater ownership interest in the cable system.

3) **Procedure.** Prior to the Board acting upon a request to transfer control or ownership, the Board shall obtain from the transferor and transferee such information and documents as is necessary or beneficial to determine that the transferee has the legal, technical and financial ability to fulfill the terms of the franchise, that the transferee has such bonds and insurance as provided for in this Ordinance, that the transferor accounts for all fees due the Township, and that the interests of the public shall not be adversely affected by such transfer. The Board, prior to acting upon a request to transfer in a newspaper of general circulation in the Township, stating the date time and place of a Public Hearing at which an opportunity shall be provided for interested persons to address the Board.

4) **Right of First Refusal.** No franchise shall be transferred unless the holder shall first offer the system, lines, equipment, and customer lists to the Township for purchase for sixty (60) days upon such terms, price, and conditions as the holder desires to sell. If the Township shall tender to the holder during said sixty (60) days the price on the terms and conditions set forth in the notice of offer, the holder shall sell and convey

said assets according to the notice of offer. If the Township shall fail to exercise the option, then the holder can sell free of this provision but not for any lesser price or more favorable terms and conditions than those offered to the Township. Provided, however, that if a renewal of a franchise held by a cable operator is denied, pursuant to Section 5 of this Ordinance, and the Township acquires ownership of the cable system or affects a transfer of ownership of the system to another person, pursuant to this Section, any such acquisition or transfer shall be at a fair market value, determined on the basis of the cable system valued as a going concern but with no value allocated to the franchise itself.

5) Receivership - Foreclosure - Bankruptcy. A franchise granted pursuant to this Ordinance shall, at the option of the Township, cease and terminate one hundred and twenty (120) days after the appointment of a receiver or receivers or trustee(s) to take over and conduct bankruptcy or other action or proceeding, unless such receivership or trusteeship, shall have been vacated prior to the expiration of said one hundred twenty (120) days.

6) Transfer Fee. The Board by resolution shall establish a transfer fee which shall be the reasonable expenses incurred by the Township for processing a transfer of a franchise, to include notice expenses and attorney fees.

Section 7. MODIFICATION OF FRANCHISE.

1) Modification of Franchise Requirements. During the period of a franchise, the cable operator may obtain from the Township modifications of requirements in such franchise.

A) Facilities, Equipment. In the case of any such requirement for facilities or equipment, including public, educational, or governmental access facilities or equipment, if the cable operator demonstrates that it is commercially impracticable for the operator to comply with such requirement, and the proposal by the cable operator for modification of such requirement is appropriate because of commercial impracticability.

B) Service. In the case of any such requirement for service, if the cable operator demonstrates that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.

2) Public Proceeding. Any final decision by the Township under Section 7 shall be made in a public proceeding. Such decision shall be made within 120 days after receipt of such request by the Township, unless such 120-day period is extended by mutual agreement of the cable operator and this Township.

3) Modification Without Township Approval. Notwithstanding subsection 1 above, a cable operator may, upon 30 days advance notice to the Township, rearrange, replace, or remove a particular cable service required by the franchise if --

A) Availability. Such service is no longer available to the cable operator; or

B) Royalty. Such service is available to the cable operator only upon the payment of a royalty required under Section 801(b)(2) of title 17, United States Code, which the cable operator can document is substantially in excess of the amount of such payment required on the date of the cable operator's offer to provide such service, and has not been specifically compensated through a rate increase or other adjustment.

4) Service Exception. Notwithstanding subsections 7 (1) and (2), a cable operator may take such actions to rearrange a particular service from one service tier to another or otherwise offer the service, if the rates for all of the service tiers involved in such actions are not subject to regulation under Section 10 of this Ordinance.

5) Public, Educational, Governmental Access. A cable operator may not obtain modification under this Section of any requirement for services relating to public, educational or governmental access.

6) New Technologic Developments. It shall be the policy of the Township to liberally amend a franchise granted pursuant to this Ordinance upon application of the cable operator or the Township, whenever necessary to enable the cable operator or the Township, whenever necessary to enable the cable operator to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity to more effectively, efficiently, or economically serve its customers; provided, however, that this Section shall not be construed to require the Township to make any amendment or to prohibit it from unilaterally changing its policies as stated herein.

Section 8. REVOCATION OF FRANCHISE.

1) Grounds for Revocation. A franchise granted hereunder shall be subject to the right of the Township by resolution of a majority of the Board to revoke the franchise based on the following:

A) Breach of Franchise. The cable operator has substantially failed to comply with the material terms of the existing franchise.

B) Violation of Law. The cable operator has substantially failed to comply with applicable law, including, but not limited to, this Ordinance.

C) Community Needs. The quality of the cable 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 not been reasonable in light of community needs.

D) Inability to Provide Service. The cable operator has demonstrated the financial, legal, or technical inability to provide the services, facilities, or equipment as set forth in the franchise agreement.

E) Change in Community Needs. A substantial change in the needs or interests of the Township has occurred since the granting of the franchise, which needs or interests the cable operator, taking into account the cost of meeting such needs or interests, has the ability to provide but refuses or neglects to so provide.

2) Notice to Correct. Upon a determination by the Board that grounds for revocation exist, the Township Clerk shall send notice to the cable operator's business address and, if a corporation, to its resident agent, setting forth one or more of the grounds provided in A through E above with sufficient specificity to inform the cable operator of the nature of the grounds such as to provide the cable operator an opportunity to correct such infraction. The Board shall provide the cable operator a reasonable opportunity to correct such deficiency.

3) Administrative Proceeding. In the event the deficiency is not corrected, as provided in subsection 2 above, the Township shall commence an administrative proceeding after providing prompt public notice of such proceeding, in accordance with subsection 8 (4).

4) Notice, Fair Hearing. In any proceeding under Section 8, the cable operator shall be afforded adequate notice and right to introduce evidence, to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding. At the completion of a proceeding under this subsection, the Township shall issue a written decision stating whether the franchise is revoked based upon the record of such proceeding and transmit a copy of such decision to the cable operator. Such decision shall state the reasons therefor. A revocation shall be based on one or more adverse findings made with respect to the factors described in subparagraphs A through E of subsection 8 (1) above, pursuant to the record of the proceedings under this subsection.

5) Conditions of Sale. If the franchise is revoked for cause and the Township acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at an equitable price.

Section 9. FRANCHISE FEE.

1) Fee. Subject to the limitations of subsection 2 below, any cable operator may be required to pay a franchise fee under the terms of a franchise granted pursuant to this Ordinance. The fee received by the Township shall be used for administering this Ordinance. Any fee not needed to that purpose may be used for any Township purpose determined by the Board.

2) Limitations. For any twelve (12) month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system. For purposes of this subsection, the twenty (12) month period shall be the twelve (12) month period applicable under the franchise for accounting purposes. Nothing in this subsection shall prohibit the Township and a cable operator from agreeing that franchise fees which lawfully could be collected for any such twelve (12) month period shall be paid on a prepaid or deferred basis; except

that the sum of the fees paid during the term of the franchise may not exceed the amount, including the time value of money, which would have lawfully been collected if such fees had been paid per annum. Nothing in this Ordinance shall be construed to limit any authority of the Township to impose a tax, fee or other assessment of any kind on any person (other than a cable operator) with respect to cable service or other communications service provided by such person over a cable system for which charges are assessed to subscribers but not received by the cable operator. For any twelve (12) month period, the fee paid by such person with respect to any such cable service or other communications service shall not exceed 5 percent of such person's gross revenue derived in such period from the provision of such service over the cable system.

3) **Pass Through to Subscribers - Increase.** A cable operator may pass through to subscribers the amount of any increase in a franchise fee, unless the Township demonstrates that the rate structure, specified in the franchise reflects all costs of franchise fees and so notifies the cable operator in writing.

4) **Pass Through to Subscribers - Decrease.** A cable operator shall pass through to the subscribers the amount of any decrease in a franchise fee.

5) **Court Proceedings, Burden of Proof.** In any court proceeding under subsection 3 above the Township shall demonstrate that the rate structure reflects all costs of the franchise fee.

6) **Payment of Fee, Late Charges.** The payment of the franchise fee or sums specified in the franchise agreement for public, educational or governmental access channels shall be paid to the Township or its authorized designee on or before the 15th day of each month following the month for which payable. Should the cable operator fail to remit such sum within 10 days from the due date thereof, a late charge shall be imposed upon the cable operator by the Township. Such late charge shall be as follows: Following a 10 day grace period, two (2%) percent of the fee due for the first 10 days, five (5%) percent for the second 10 days, and thereafter ten (10%) percent of the balance due. A failure to make full and timely payment of the sums due the Township on or after sixty (60) days from the date the payment was due shall constitute a material breach of the franchise agreement.

7) **Payments - Not a Release or Accord and Satisfaction.** No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the Township may have for further or additional sums payable under a franchise granted pursuant to this Ordinance or for the performance of any other obligation.

Section 10. REGULATION OF RATES.

The Township may regulate the rates for the provision of cable service, or any other communications service provided over a cable system only to the extent provided for by Federal and State law, which provides, among other things, for the regulation of rates for basic cable service under circumstances in which a cable system is not subject to effective competition.

Section 11. CABLE CHANNELS FOR PUBLIC, EDUCATIONAL OR GOVERNMENTAL USE.

1) Township's Authority. The Board may establish requirements in a franchise agreement with respect to the designation or use of channel capacity of public, educational or governmental use to the extent provided in Section 11. The Board may request as part of the cable operator's initial proposal for a franchise and may require as part of a cable operator's proposal for a franchise renewal, subject to Section 5 of this Ordinance, that channel capacity be designated for public, educational or governmental use and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of the channel capacity designated pursuant to this subsection.

2) Enforcement. The Township may enforce any requirement in this Ordinance, or franchise granted pursuant to this Ordinance, regarding the providing or use of such channel capacity. Such enforcement authority includes the authority to enforce any provisions of the franchise agreement for services, facilities or equipment proposed by the cable operator which relate to public, educational or governmental use of channel capacity, whether or not required by the Township pursuant to subsection 11(1).

3) Rules and Procedures. In the case of any franchise agreement under which channel capacity is designated under subsection 11(1), the Township shall prescribe (i) rules and procedures under which the cable operator is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated, and (ii) rules and procedures under which such permitted use shall cease.

4) Editorial Control. Subject to subsection 12 (4), a cable operator shall not exercise any editorial control over any public, educational or governmental use of channel capacity provided pursuant to this Section.

5) Public Service Installations. The cable operator shall, without charge for installation, maintenance or service, make single installations of its standard community antenna service, facilities at each fire and police station, Township Hall, public school and public library, provided it is not more than two hundred (200) feet from the service facilities of the cable system.

12. REGULATION OF SERVICES, FACILITIES, AND EQUIPMENT.

1) Township's Authority to Regulate. The Township may not regulate the service, facilities and equipment provided by a cable operator except to the extent consistent with Federal and State law. To the extent related to the establishment or operation of a cable system in the cable operator's proposal for a franchise, the Township may establish requirements for facilities and equipment, but may not establish requirements for video programming or other information services; and, subject to Section 7, may enforce any requirements contained within the franchise for facilities and equipment, and for broad categories of video programming or other services.

2) Diversity of Information Services. The Board, to the extent provided by Federal and State law, shall assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public in a manner consistent with the growth and development of cable systems.

3) Cable Channels for Commercial Use. A cable operator shall designate channel capacity for commercial use by persons unaffiliated with the operator in accordance with the following requirements:

A) Channels: 36-54. An operator of any cable system with 36 or more (but not more than 54) activated channels shall designate ten (10) percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

B) Channels: 55-100. An operator of any cable system with 55 or more (but not more than 100) activated channels shall designate fifteen (15) percent of such channels which are not otherwise required for use (or the use of which is not prohibited) by Federal law or regulation.

C) Channels: 101 or more. An operator of any cable system with more than 100 activated channels shall designate fifteen (15) percent of all such channels.

D) Channels: 36 or less. An operator of any cable system with fewer than 36 activated channels shall not be required to designate channel capacity for commercial use by persons unaffiliated with the operator.

E) Enforcement. The Board may require the cable operator to comply with the provisions of subparagraphs 12 (7)A through D unless otherwise provided by Federal law or regulation.

F) Channel Capacity - Designation. The cable operator may not be required to designate channel capacity for any use (other than commercial use by unaffiliated persons under this Section) except as provided in Section 11, but a cable operator may offer in a franchise agreement or proposal for renewal thereof, to provide, consistent with applicable law, such capacity for other than commercial use by such persons.

G) Unused Channel Capacity. A cable operator may use any unused channel capacity designated pursuant to this Section until the use of such channel capacity is obtained, pursuant to a written agreement, by a person unaffiliated with the operator.

H) Public, Educational, Governmental Channel Designation. Any channel capacity which has been designated for public, educational or governmental use may not be considered as designated under this Section for commercial use for purpose of said Section.

4) Obscene or Indecent Programming. Nothing in this Ordinance shall be construed as prohibiting the Board and a cable operator from

specifying, in a franchise agreement or renewal thereof, that certain cable service shall not be provided or shall be provided subject to conditions if such cable service is obscene or is in conflict with community standards in that it is lewd, lascivious, filthy, or indecent or is otherwise unprotected by the Constitution of the United States.

A) Device - Prohibit Viewing. In order to restrict the viewing of programming which is obscene or indecent, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

5) Number of Channels. The cable system shall be capable of two way service and of transmitting at least thirty-five (35) channels.

Section 13. SIGNAL QUALITY REQUIREMENTS.

1) Color, Stereo TV Signals. The facilities used by the cable operator shall be capable of distributing color and stereo TV signals. All signals received by the cable operator in color and/or stereo shall be transmitted to the subscribers in color and/or stereo.

2) Quality of Reception. The cable operator shall produce a picture, whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production television sets in good repair and as good as the state of the art allows; and shall transmit signals of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with other electrical or electronic systems. For purposes of this Section, the standards to be applied in determining whether or not the cable operator is producing a good picture or transmitting signals of adequate strength to produce same are those acceptable standards as set forth in the rules and regulations of the Federal Communications Commission relative to community antenna television systems as amended or as shall be amended hereafter.

3) Subscription Demonstrations. The cable operator shall demonstrate by instruments and otherwise to subscribers, upon request, that a signal of adequate strength and quality is being delivered. Such demonstration shall be made by taking a standard production television set with a screen of sufficient area as to clearly demonstrate the relative merit of the receiving signal.

4) FCC Requirements. The cable operator shall comply with all rules and regulations of the FCC with respect to the reception, carriage, and distribution of signals.

Section 14. CONSTRUCTION, ERECTION, AND COMMON USE OF POLES.

1) Construction and Installation of System. Subject to the provisions and restrictions of the franchise, this Ordinance, and Federal and State law, the cable operator shall have the right to construct, erect, operate, and maintain in, upon, along, across, above, over and under the streets, alleys, public ways, and public places now laid out or dedicated, and all extensions thereof, and additions thereto in the Township, poles, wires,

cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a CATV system in the Township; and to lease, rent, or in any other lawful manner, obtain the use of towers, poles, lines, cables, and other equipment and facilities from any and all holders of public licenses and franchises within the limits of the Township, including, but not limited to, Detroit Edison Company and Michigan Bell Telephone Company, and to use same on such terms as agreed upon subject to all existing and future ordinances of the Township. The poles used for the cable operator's distribution system shall be those erected and maintained by Detroit Edison Company and/or Michigan Bell Telephone Company when and where applicable, providing mutually satisfactory rental arrangements can be entered into with said companies.

2) Erection, removal, and Common Use of Poles. No poles or other wire holding structures shall be erected by the cable operator without prior approval of the Township with regard to location, height, type, and other pertinent aspect. However, no location of any pole or wire holding structure of a cable operator at its expense whenever the Township determines that the public convenience would be enhanced thereby. Where poles or other wire holding structures already in existence for the use in serving the Township are available for use by the cable operator, but it does not make arrangements for such use, the Township may require the cable operator to use such poles and structures if the Township determines that the public convenience would be enhanced thereby and the terms of the use available to the operator are just and reasonable. Where the Township or a public utility serving the Township desires to make use of the poles or other wire holding structures of the cable operator, but agreement therefor with the cable operator cannot be reached, the Township may require the cable operator to permit such use for such consideration and upon such terms as the Township Board shall determine to be just and reasonable, if the Township Board determines that the use would enhance the public convenience and would not unduly interfere with the cable operator's operation.

3) Underground Locations. In those areas of the Township where transmission or distribution facilities of both the current public utility providing telephone service and the utility providing electric service are underground or hereafter may be placed underground, then the cable operator shall likewise construct, operate and maintain all of its transmission and distribution facilities underground to the maximum extent that then existing technology permits, and in conformance with the then existing National Electrical Safety Code, The Bureau of Standards Handbook and Telephone Systems Practices governing joint attachments and practices, as well as in conformance with all applicable state and local ordinances and codes. If and when necessary amplifiers and/or transformers in the cable operator's transmission and distribution lines may be appropriate housings upon the surface of the ground. Said housings and the location and construction of all work required by or pursuant to this Ordinance shall be approved in advance by the Township.

4) Construction - Township Approval. Prior to the commencement of construction, the cable operator shall obtain the Township's approval, which shall not be unreasonably withheld. The cable operator where practicable shall utilize existing poles in the Township. It is the stated intention of the Township that all holders of public franchises and rights

within the corporate limits of the Township will cooperate with the cable operator's usage of their poles and pole line facilities whenever possible so that the number of new or additional pole line facilities installed within the Township may be minimized.

Section 15. OPERATION AND MAINTENANCE.

- 1) **Effective, Prompt Service.** The cable operator shall render effective service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as it is possible, shall be preceded by notice and shall occur during periods of minimum use of the system.
- 2) **Business Office; Telephone.** The cable operator shall maintain an office in the County of Washtenaw which shall be open all usual business hours, have a listed local phone or toll-free number and be so operated that complaints and requests for repair or adjustments may be received at any time, 24 hours each day.
- 3) **Repairs.** The cable operator shall possess and maintain personnel and equipment necessary to respond in an effective and timely manner to repairs and maintenance caused by naturally occurring phenomena of nature.

Section 16. CONSUMER PROTECTION.

- 1) **Consumer Service, Construction Schedules.** The Township may require, as part of a franchise or renewal thereof, subject to Section 5, provisions for enforcement of customer service requirements of the cable operator and construction schedules and other construction-related requirements of the cable operator.

Section 17. EQUAL EMPLOYMENT OPPORTUNITY.

- 1) **Establish Requirements.** The Township, in accordance with Federal and State law, may establish or enforce any requirement respecting equal employment opportunity, including any requirement which affords equal employment opportunity protection for employees, and may establish enforce or encourage any cable operator to conduct business with enterprises which are owned or controlled by members of minority groups or which have their principal operators located in the Township.

Section 18. LIABILITY INSURANCE AND INDEMNIFICATION.

- 1) **Insurance.** The cable operator shall, at all times during the term of a franchise granted pursuant to this Ordinance, carry and require their contractors to carry:
 - A) **Insurance.** Insurance in such forms and in such companies as shall be approved by the Township, such approval not to be unreasonably withheld, to protect the Township and cable operator from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the construction, erection, operation and maintenance of any structure, equipment, or appliance. The amount of such insurance shall not be less than

\$500,000.00 as to any one person and \$1,000,000.00 as to any one accident for injury or death to persons and \$250,000.00 for damages to property.

B) Workmen's Compensation Insurance. Workmen's Compensation Insurance as required by the laws of the State of Michigan, as amended.

C) Automobile Insurance. Automobile insurance with limits of not less than \$500,000.00/1,000,000.00 of public liability coverage and automobile property damage insurance with a limit of not less than \$350,000.00 covering all automotive equipment.

D) Notice of Policy Cancellation. All of said insurance shall provide a thirty (30) day notice to the Township Clerk in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective.

E) Filing of Policy Copies with Township Clerk. Copies of all policies required hereunder shall be furnished to and filed with the Township Clerk prior to the commencement of the franchise agreement or the expiration of prior policies, as they case may be.

2) Indemnification. The cable operator shall indemnify, defend and hold the Township absolutely harmless from any and all liability arising out of a franchise granted, renewed or transferred in accordance with this Ordinance. Such indemnification shall include, but not be limited to, any damages, penalties, or other claims resulting from the acts or omissions of the cable operator, its assigns, employees, agents, invitees, or other persons and shall include, but not be limited to damages to person or property arising out of the construction, maintenance or operation of the cable system, infringement of civil rights, patents, trademarks, trade names, or copy rights, libel, or slander. The cable operator shall reimburse the Township for its actual expenses incurred to defend against any such action to include, but not be limited to, attorney fees, expert witness fees, discovery expenses, court fees, damages and penalties and interest thereon, and expense incurred on appeal.

3) Review/Modification of Coverage. The Board shall annually review the insurance provided for in this Section, and, if, in the reasonable determination of the Board, the insurance coverage is inadequate or in any manner insufficient to cover the cable operator's or the Township's liability, the Board shall so notify the cable operator and the cable operator shall provide such additional or further coverage within thirty (30) days of the date said notice is mailed. The failure or neglect of the cable operator to provide such further or additional coverage shall be cause to revoke the franchise in accordance with Section 8 of this Ordinance.

4) Construction Bond. Unless otherwise provided for in the Franchise Agreement, the cable operator shall, concurrently with its acceptance of the franchise, file with the Township Clerk and at all times thereafter maintain in full force and effect until terminated as hereinafter provided, at cable operator's sole expense, a corporate surety bond or, at the option

of the Township, an irrevocable bank letter of credit in the amount of Ten Thousand Dollars (\$10,000.00) conditioned upon the cable operator finally completing the construction and activation of the Cable Television System pursuant to the franchise and particularly in conformance with a provision in the franchise respecting construction schedule. If the cable operator shall fail to so complete said construction and activation, and failing so to do the Township at its option shall have the right to complete such construction, or any portion thereof, and the surety shall be liable to the Township, not to exceed the amount of the bond, for the reasonable cost incurred therefor.

Any extension of the aforesaid time limits must be authorized by the Township Board and only when the Township Board determines such extension is necessary and appropriate due to causes beyond the control of the cable operator.

The construction bond shall be terminated only after the Township Board finds that the cable operator has finally completed the said construction and activation of the Cable Television System as aforesaid.

The rights reserved to the Township with respect to the construction bond are in addition to all other rights of the Township which have been reserved by this Ordinance, or authorized by law, and no action, proceeding or exercise of right with respect to such construction bond shall affect any other right the Township may have.

The Bond shall be in such form and with such sureties as are acceptable to the Township Clerk.

5) Removal of CATV Systems; Bond. At the expiration of the term of a franchise granted pursuant to this Ordinance or upon the termination and cancellation as provided therein, the Township shall have the right to require the cable operator to remove at its own expense any and all visible portions of the CATV System from the public ways within the Township. Upon acceptance of the franchise the cable operator shall furnish bond or, at the option of the Township, other satisfactory evidence of security in the amount of Ten Thousand Dollars (\$10,000.00) to guarantee the payment of charges for work performed in the removal of the Cable System, as indicated above, upon termination of the franchise by any provision of this Ordinance. In lieu of a bond, the Board and the franchisee may agree to a security deposit to insure the removal of the CATV Systems as provided in this paragraph.

Section 19. MAPS, PLATS, AND REPORTS.

1) Inspection of Records. The Township or its authorized designee shall have full and complete access to the cable operator's records and books relating to the cable system and such other cable systems which transmit from the headend(s) which transmit to the Township, or such cable systems which have access to the public, educational or governmental channels utilized by the Township. Such records to include the cable operator's plans, contracts, engineering, accounting, financial, statistical, customer and service records, reports to stockholders, affiliates, partners and owners of the cable systems, agreements and franchises with other franchising authorities having access to the public, educational or

governmental channels utilized by the Township or transmitting from the headend(s) which transmits to the Township. Such inspections shall be conducted at the business office of the cable operator during business hours or at such other place and time as is mutually agreed to by the Township and cable operator. The Township shall have the right to audit any and all amounts paid pursuant to this Ordinance or a franchise granted pursuant to this Ordinance.

2) Annual Financial Reports. The cable operator shall file annually with the Township Clerk not later than ninety (90) days after the end of the cable operator's fiscal year a copy of any reports to its stockholders or partners, a copy of its Michigan Annual Report, an income statement applicable to the operations during the preceding 12-month period, a balance sheet, and a statement of its properties devoted to CATV operations, by categories, giving its investment in such properties on the basis of original cost less applicable depreciation. These reports shall be prepared or approved by a Certified Public Accountant and there shall be submitted along with them such other reasonable information as the Township shall request with respect to the cable operator's properties and expenses related to its CATV operations within the Township.

3) Filing and Communications with Regulatory Agencies. Copies of all petitions, applications and communications submitted to the FCC, Security and Exchange Commission, any other federal, state, or local regulatory commission or agency having jurisdiction in respect to any matter affecting CATV operations authorized pursuant to this Ordinance, or franchising authority having access to the public, educational or governmental access channels being utilized by the Township, shall, upon request of the Township, also be submitted simultaneously to the Township.

4) Fixtures, Subscribers. The cable operator shall, on or before the first day of April of each year, file with the Township Clerk true and accurate maps or plats, showing the location of all existing and proposed installations, which shall include all receiving and transmitting stations, all trunk lines, whether leased or owned outright and feed lines, whether leased or owned outright.

5) Additional Information. The Board or the administration official, as provided in subparagraph 4 (6) D, may request information from the cable operator respecting any matter relevant to the franchise, to include without limitation, information relevant to gross revenue and governmental or subscriber complaints. Within thirty (30) days of mailing such request, the cable operator shall furnish to the Township the information so requested.

Section 20. RIGHTS RESERVED TO THE TOWNSHIP.

1) Franchise Subject to Police Power. The cable operator shall, at all times during the period of a franchise granted hereunder, be subject to all lawful exercise of the police power of the Township and to such reasonable regulations as the Township shall hereinafter provide. Such regulations may include prohibiting the cable operator's use of the Township streets or alleys for the installation of additional poles or underground cable, and installation of additional poles or underground cable, and may include regulations requiring, pursuant to Section 14, the transmission systems to

be installed and maintained underground. The police power may be exercised through amendment of this Ordinance as well as through enactment of separate ordinances and regulations. Unless provided for in a franchise granted pursuant to this Ordinance, such amendments, enactments, and regulations may be adopted without consultation with the cable operator.

2) Policy or Fire Alarm System. The Township shall have the right to install and maintain free of charge upon the poles and cables of the cable operator any wire and pole fixtures necessary for a police or fire alarm system, on the condition that such wire or pole fixtures do not interfere with the cable communications operations of the cable operator and that such installations shall be installed in a safe manner in conformance with State and Township regulations.

3) Supervision, Inspection. The Township shall have the right to supervise all construction or installation work performed subject to the provisions of the franchise and make such inspections as it shall find necessary to insure compliance with the terms of the franchise and all other pertinent provisions of law. At the expiration of the franchise or upon its termination or cancellation, as provided for herein, the Township shall have the right to require the cable operator to remove at its own expense all portions of the cable communications system from all public streets, alleys, ways, and areas within the Township.

Section 21. MISCELLANEOUS PROVISIONS.

1) Time of the Essence in This Franchise. The cable operator shall not be relieved of its obligation to comply promptly with any of the provisions of this Ordinance or franchise granted pursuant to this Ordinance by any failure of the Township to enforce prompt compliance.

2) Recourse of Cable Operator Against Township. The cable operator shall have no recourse whatsoever against the Township or its officers, boards, commissions, agents or employees for any loss, cost, expense or damage arising out of any provisions or requirement of this Ordinance or because of its enforcement.

3) Emergency Use of Facilities. In the case of emergency or disaster, the cable operator shall, upon request of the Township or its designated agent, make available its facilities to the Township for emergency use for the duration of such emergency or disaster. The cable system will be engineered to provide an audio alert system. This cable system would allow certain authorized officials to automatically override the "audio" signal of all channels and transmit and report emergency information. In the event of any such use by the Township, the Township will hold harmless and indemnify the cable operator from any damages or penalties resulting from the use of this service.

4) Township Right to Intervention. A cable operator who is granted a franchise pursuant to this Ordinance agrees to not oppose intervention by the Township in any suit or proceeding to which the cable operator is a party.

5) Township Enforcement Expense. A cable operator who is granted a franchise pursuant to this Ordinance agrees to pay to the Township its actual cost incurred to enforce the provisions of this Ordinance, to include without limitation proceedings pursuant to Section 8 of this Ordinance, or the terms of a franchise agreement granted pursuant to this Ordinance. Such costs to include, but not by way of limitation, filing fees, discovery expenses, expert witness fees, attorney fees, expenses incurred to enforce a judgment or incurred on appeal.

6) Captions. Captions or headings to sections or subsections thereof are intended to provide ready access to this Ordinance and shall not be construed in any manner to interpret the content of any section or subsection thereof.

Section 22. CHANGES IN FEDERAL OR STATE REGULATIONS.

This Ordinance is granted subject to the right of the Township or the cable operator to renegotiate the terms of the franchise at any time after the effective date of the franchise agreement upon thirty (30) days notice to the cable operator if Federal or State regulations alter the fees, service, conditions, or standards upon which the CATV System is to operate. Nothing contained in this Section shall be construed to prohibit the Township from exercising its right to modify this agreement unilaterally in the absence of notice from the cable operator that renegotiation is desired.

Section 23. SEPARABILITY.

1) Validity of Ordinance; Sections not Invalidated. If any section, subsection, subparagraph, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

2) Term of Ordinance; Application to Subsequent Cable Operators. This Ordinance does not cease to be effective upon the expiration date of a franchise agreement or change in the identity of the cable operator.

Section 24. EFFECTIVE DATE, PUBLICATION.

This Ordinance shall be published in full in a daily newspaper of general circulation qualified under State Law to publish legal notices, in the Township of Lima, within thirty (30) days after its adoption and shall be recorded in the Ordinance Book of the Township and such recording authenticated by the signatures of the Supervisor and the Township Clerk.

This Ordinance shall take effect on the day following publication of this Ordinance.

Introduced: November 2, 1987

Adopted: December 7, 1987

Published: December 16, 1987

Effective: December 17, 1987



ARLENE BAREIS, Clerk
Township of Lima

Prepared by:

KEUSCH AND FLINTOFT, P.C.
Attorneys for Lima Township
BY: PETER C. FLINTOFT, (P-13531)
119 South Main Street
P.O. Box 187
Chelsea, Michigan 48118
Phone: 313/475-8671.


CERTIFICATE

I hereby certify that the foregoing constitutes a true and complete copy of an ordinance duly adopted by the Township Board of the Township of Lima at a regular meeting held on December 7, 1987, at which all Members were present except (all present).

I further certify that Member Betty Messman moved adoption of said Ordinance, and that Member Charles Trinkle supported said motion.

I further certify that the following Members voted for adoption of said Ordinance: Arlene Boreis, Betty Messman, Charles Trinkle, Robert and Heller, and Leila Bauer. that the following Members voted against adoption of said Ordinance None.

I further certify that said Ordinance has been recorded in the Ordinance Book of the Township and that such recording has been authenticated by the signatures of the Supervisor and the Township Clerk.



ARLENE BOREIS, Clerk
Township of Lima

Dated: December 7, 1987



LEILA BAUER, Supervisor
Township of Lima

Dated: December 7, 1987