

# **Charter Township of Orion**

## **Ordinance No. 80**

### **Cable Communications**

Adopted November 19, 1984

#### **AMENDED**

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**AN ORDINANCE TO REGULATE CABLE COMMUNICATIONS SERVICE IN THE CHARTER TOWNSHIP OF ORION; TO ESTABLISH RULES APPLICABLE BETWEEN SUBSCRIBERS AND CABLE COMMUNICATIONS COMPANIES FOR CABLE COMMUNICATIONS SERVICE; TO REQUIRE A FRANCHISE FOR CABLE COMMUNICATIONS SERVICE AND TO ESTABLISH FEES, CONDITIONS, REQUIREMENTS, AND PROCEDURES FOR OBTAINING A FRANCHISE; TO PROVIDE FOR THE ESTABLISHMENT OF RATES FOR SERVICES, AND PROCEDURES AND REGULATIONS RELATING TO TERMINATION, REVOCATION OR SURRENDER OF FRANCHISE; TO ESTABLISH PENALTIES FOR VIOLATION OF THIS ORDINANCE; TO REPEAL ALL EXISTING AND CONFLICTING ORDINANCES.**

### **Section 1 - Title**

This Ordinance shall be known and may be cited as the "**Township of Orion Cable Communications Ordinance**".

### **Section 2 - Purpose**

The purpose of this Cable Communications Ordinance is to provide fair regulation of cable communications service in the Township of Orion in the interest of the public; to promote and encourage adequate, economical and efficient cable communications service to the residents of the Township of Orion; to promote and to encourage harmony between cable communications companies and their subscribers; to provide for the furnishing of cable communications systems service to the residents of the Township of Orion without unjust discrimination, undue preferences or advantages and to coordinate this Cable Communications Ordinance with such ordinances as may be enacted by the Village of Lake Orion in order to establish joint regulation of cable communications service in both communities.

### **Section 3 - Definitions** *(amended 06.19.00)*

**Intent.** For the purpose of this Ordinance, the following terms, phrases words, and their derivations shall have the meaning given herein:

- A. Grammatical Usage. Words in the present tense include the future tense. The singular number includes the plural, and the plural the singular. The word "shall" is mandatory and "may" is permissible. Words not defined shall be given their common or ordinary meaning.
- B. Other Definitions.

**Access Channel** shall mean any channel dedicated for use by a governmental institution, educational institution, or the public, or for lease.

**Access Channel, Educational** shall mean channel capacity designated for non-commercial educational use.

**Access Channel, Governmental** shall mean channel capacity designated for governmental use.

**Access Channel, Leased** shall mean channel capacity designated for commercial use by Persons unaffiliated with the Operator.

**Access Channel, Public** shall mean channel capacity designated for non-commercial use by the public.

**Activated Channels** shall mean those channels engineered at the Headend of a Cable System for the provision of services generally available to residential subscribers of the Cable System, regardless of whether such services are actually provided, including any public, educational, or governmental use.

**Additional Insureds** shall mean the Township, the Commission, and all subsidiary entities of the Township, now existing or hereinafter created, and their respective elected or appointed officials, officers, boards, commissions, attorneys, agents, representatives and employees.

**Affiliate** (and its variants) shall mean any entity controlling, controlled by, or under common control with the entity in question.

**Basic Service** shall mean any Cable Services tier which includes the retransmission of local television broadcast signals.

**Broadcast** shall mean the over-the-air transmission of an electromagnetic audio or video signal to a broad geographic area.

**Cable Gross Revenues or Gross Revenues** shall mean all of the amounts earned or accrued by a Grantee, or an Affiliate Grantee that is a Cable Operator (as defined in Sec. 602(5) of the Cable Act) from all sources which are in connection with or attributable to the operation of the Cable System within the Township's municipal boundaries, to provide Cable Services within the Township's municipal boundaries.

1. Cable Gross Revenues shall include without limitation all Subscriber and customer revenues earned or accrued net of bad debts, including but not limited to revenues for Cable Services; Basic Services; additional tiers; premium services; pay per view; program guides; installation, disconnection or service call fees; fees for the provision, sale, rental, or lease of converters, remote controls, additional outlets and other customer premises equipment; Franchise Fees paid by Subscribers; revenues from the use of Leased Access Channels; advertising revenues from the Cable System; and revenues and compensation from home shopping programming.
2. Advertising revenues and other revenues whose source cannot be identified with a specific Subscriber shall be allocated to the Township based upon the percentage of subscribers residing in the Township compared to that served from the Headend serving the Township.
3. Such phrase does not include any tax, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency or any amount collected from Subscribers for support of Public, Educational and Governmental access.

**Cable Services** shall mean only:

1. The one-way transmission to Subscribers of (a) video programming or (b) other programming services, such as digital audio; and
2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service and includes, to the extent consistent with applicable law, interactive services, enhanced services, information services, high speed data service, cable modem service, Internet access and Internet service (such as that of an Internet service provider) (where "video programming" means programming provided by, or generally considered comparable to programming provided by a television broadcast station).

**Cable Television Business** shall mean the provision by a Grantee of Cable Services solely by means of a Cable System.

**Cable System or 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 Services which includes video programming and which is provided to multiple subscribers within the Township, but such term does not include (1) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using 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 a facility shall be considered a Cable System (other than for purposes of Section 621(c) of such Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with Section 653 of Title VI of the Communications Act of 1934, as amended; or (5) any facilities of any electric utility used solely for operating its electric utility system.

**Cablecast** shall mean transmission of programming and signals over a Cable System.

**Capability** shall mean a function, service, channel or piece of equipment that has the potential to be operated or received at some time in the future by a Subscriber, programmer, Franchisee, User, or Operator.

**Channel** shall mean a portion of the electromagnetic frequency spectrum which is used in a Cable System and is capable of delivering a television channel.

**Commission** shall mean the Orion Community Cable Communications Commission, or its successor.

**Community Programming** shall mean combined local origination and access programming designed to provide a public benefit for all Users of a Cable System.

**Completion of Construction** shall mean the time when all construction requirements specified in the Franchise Agreement shall be accomplished, and services are available to all residents and institutions.

**Drop** shall mean the cable or wire that connects the distribution portion of a Cable System to a Subscriber's premises.

**Effective Date of the Franchise** shall mean the date on which both parties have signed a Franchise Agreement.

**Event of Default** shall mean any one or more of the following:

1. The failure of Grantee to pay the Franchise Fee or any PEG Access support fees on or before the due dates specified in the Franchise Agreement.
2. Grantee's material breach or violation of any of the terms, covenants, representations or warranties contained in the Franchise Agreement or Grantee's failure to perform any obligation contained in the Franchise Agreement or this Ordinance.
3. The entry of any judgment against Grantee in excess of One Hundred Thousand Dollars (\$100,000), which remains unpaid and is not stayed pending rehearing or appeal, for ninety (90) or more days following entry thereof which may significantly impair Grantee's provision of Cable Service in the Township.
4. The dissolution or termination, as a matter of law, of Grantee or any general partner of Grantee.
5. If Grantee files a voluntary petition in bankruptcy; is adjudicated insolvent; obtains an order for relief under Section 301 of the Bankruptcy Code (11 U.S.C. § 301); files any petition or fails to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seeks or consents to or acquiesces in the appointment of any bankruptcy trustee, receiver, master, custodian or liquidator of Grantee, or any of Grantee's property and/or Franchise and/or of any and all of the revenues, issues, earnings, profits or income thereof; makes an assignment for the benefit of creditors; or fails to pay Grantee's debts generally as they become due.

**FCC** shall mean United States Federal Communications Commission.

**Franchise** shall mean the authorization granted by the Township to construct, operate, and maintain a Cable System to provide Cable Services and to transact a Cable Television Business using certain Public Ways in the Township.

**Franchise Agreement** shall mean an agreement between the Township and a Grantee that sets forth the terms and conditions of a Franchise.

**Franchise Fee** shall have the meaning set forth in Section 622(g) of the Communications Act of 1934, as amended (47 U.S.C. § 542(g)), as in effect on January 1, 2000, as the fee payable by a Grantee to the Township or its designee under a Franchise.

**Grantee** shall mean the Person or company receiving a Cable System Franchise (equivalent to "Franchisee").

**Grantor** shall mean the Charter Township of Orion.

**Headend** shall mean shall mean the electronic control center of a Cable System where incoming cable communication signals are amplified, processed, and converted before being delivered to the Subscriber's premises.

**Initiation of Construction** shall mean the first step in construction, either stringing of cable on utility poles or breaking ground for underground cabling.

**Interconnection** shall mean the linking of separate Cable Systems by microwave, coaxial cable, fiber optic lines, or other means.

**Local Origination Channel** shall mean Channel capacity utilized on a Cable System including Channels, facilities, and equipment designated under a Franchise Agreement for the production of programming by the Operator that specifically concerns events, people, places, or other subjects related to the Township.

**Monitoring** shall mean observing a communication signal or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means. Monitoring shall not include a systematic,

nonindividually addressed sweep of a Cable System for the purpose of verifying system integrity, controlling return path transmissions, or billing for pay services.

**Normal Business Hours** shall have the meaning set forth in a Franchise Agreement.

**Operator** shall mean the Franchisee.

**PEG Channels** shall mean the Public, Educational, and Governmental Access Channels collectively.

**Person** shall mean any individual, firm, partnership, association, corporation, limited liability company, trust, company, or organization of any kind.

**Pole Agreements** shall mean the authorization from utility companies to the Franchisee for use or space of their easements, equipment, poles, or other facilities for installation of equipment related to a Cable System.

**Public Ways** shall mean all dedicated public rights-of-way, streets, highways, waterways, and alleys. "Public Ways" shall not include property of the Township which is not a dedicated public right-of-way, street, highway, or alley.

**Security Fund** shall mean the cash fund or irrevocable letter of credit provided by the Franchisee to secure certain aspects of its performance under this Ordinance and a Franchise Agreement.

**Subscriber** shall mean a recipient of services which are delivered over a Cable System.

**System** shall have the same meaning as Cable System.

**Tamper or Tapping** shall mean observing a communication signal exchange when the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means.

**Telecommunications Service** shall mean the offering of telecommunications directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used, where the term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. "Telecommunications Services" shall not include Cable Services.

**Township** shall mean the Charter Township of Orion, Michigan.

**Township Attorney** shall mean the attorney appointed by the Township Board.

**Township Board** shall mean the legislative body of Orion Charter Township, Michigan.

**Township Supervisor** shall mean the Chief Administrative Officer of Orion Charter Township, Michigan.

**Uncured Event of Default** shall have the meaning set forth in a Franchise Agreement.

**User** shall mean a person utilizing a Cable System Channel for purposes of production and transmission of programming.

**Users** shall mean those persons, institutions, or entities who use the PEG Channel-related facilities or provide programming on a PEG Channel.

**Village** shall mean the Village of Lake Orion.

**Virtual Office** shall mean a substitute for a locally situated office whereby Grantee will dispatch technicians to the home of customers with converter or remote problems for service, and employees to deliver and retrieve cable equipment as specified in a Franchise Agreement.

## **Section 4 - Franchise Required**

- A. **No Construction Without Franchise.** A person shall not construct, install, maintain or operate a Cable Communications System in the Township of Orion nor shall any person provide a cable communications service or acquire ownership or control of a cable communications company in the Township of Orion without such person having first obtained a franchise

therefor from the Grantor in the form of a franchise agreement between the Grantor and the franchisee, which franchise agreement shall include, at a minimum, compliance with the specifications of this Cable Communications Ordinance.

- B. Necessity of Franchise Agreement. A person shall not use, occupy or traverse the streets, alleys, lanes, avenues, boulevards, sidewalks, bridges, viaducts, rights-of-ways or any other public place or public way in the Township of Orion or any extensions thereof or additions thereto, whether on, above, or under the surface of the ground, for the purposes of installing, construction, maintaining or operating a Cable Communications System or facilities therefor or for the purpose of furnishing a cable communications service without such person having first obtained a franchise therefor in the form of a franchise agreement between the Grantor and the franchisee, which franchise agreement shall include, at a minimum, compliance with all the specifications of this Cable Communications Ordinance.
- C. Minimum Requirement for Franchise Agreement. The requirements of this Cable Communications Ordinance are minimum requirements of a franchise agreement. Additional requirements including, but not limited to, rates, charges, deposits, specifications regarding required interconnections, studios or other signal origination facilities, number of channels to be equipped and available for immediate use upon initial construction of the system, use of channels by the Township of Orion or the Commission, schools, public libraries and other educational institutions, equality of community access, availability of equipment to users, required establishment and expansion of service area, other use of channels and other specifications or requirements of a cable communications franchise or system may be established in the franchise agreement.

## **Section 5 - Commission**

- A. Creation of Board. The Orion Township Board and the Lake Orion Village Council shall establish a commission to be known as the Orion Community Cable Communications Commission. The Orion Township Board and the Lake Orion Village Council shall solicit from the public and from the franchisee names of persons interested in serving on the Commission, but neither Board nor Council are limited to names thereby submitted.
- B. Membership of Board. The Commission shall consist of nine (9) members, four (4) members appointed by the Orion Township Board, four (4) members appointed by the Lake Orion Village Council, and one (1) member appointed by joint resolution of the Orion Township Board and the Lake Orion Village Council. Each member shall serve a term of two (2) years provided however, that appointments to the first commission shall be for such term as follows: three (3) members appointed by the Orion Township Board shall serve a two (2) year term and one (1) member appointed by the Orion Township Board shall serve a one (1) year term, three (3) members appointed by the Lake Orion Village Council shall serve a two (2) year term and one (1) member appointed by the Lake Orion Village Council shall serve a one (1) year term. Except for this initial commission, every person appointed to said commission thereafter shall serve a two (2) year term. Any vacancy on the Commission shall be filled by the Board that originally filled the vacated position for the remainder of the term. The Township and the Village shall each retain the power to remove, at any time, any Commission member it appointed and to fill the vacancy or vacancies created by any such removal for the remainder of the removed member's term. The terms of the members appointed from the Village Council shall expire March 30. The terms of members appointed from the Township Board shall expire November 30. The terms of all other members shall expire June 30. *(amended 05.28.98)*
- C. Appointment of Elected Official. Two of the appointments made by the Orion Township Board must be an elected official, i.e., the Supervisor, Clerk, Treasurer or Trustee. Two of the appointments made by the Village of Lake Orion must be an elected official, i.e., a Councilman. Each elected official appointed to serve on the Cable Communications Commission shall serve only so long as he holds public office in his respective jurisdiction or his term on the Commission shall expire, whichever event shall occur first. It is the intent of this subsection to ensure that at least two (2) members of the Commission are elected office holders from Orion Township and two (2) members of the Commission are elected office holders from the Village of Lake Orion.
- D. Compensation. No employee or person with an ownership interest in a cable television franchise granted pursuant to this Cable Communications Ordinance shall be eligible for membership on the Commission. Members of the Commission may be compensated at a rate to be determined by the Orion Township Board and the Lake Orion Village Council. Such rate of compensation, if any, shall be established and may be revised from time to time by joint resolution of the Orion Township Board and the Lake Orion Village Council.
- E. Duties and Powers. The Commission, in addition to the duties and responsibilities as hereinbefore provided and any duties and responsibilities that the Lake Orion Village Council and the Orion Township Board may delegate to it from time to time by joint resolution or pursuant to the Intergovernmental CATV Agreement attached hereto and incorporated herein by reference, shall have the following functions:

1. Discuss the Cable Communications Ordinance and franchise thereunder with prospective franchise applicants.
2. Prior to the granting of the first franchise, solicit applications from as many cable communications companies as possible.
3. Establish general policy relating to community programming channels with a view to maximizing the diversity of programs and service to subscribers.
4. Encourage the use of PEG Channels by institutions, groups, and individuals within the Township and Village and provide for the administration, management and operation of the PEG Channels and public access facilities and equipment of the Commission, Township, and Village as provided in this Ordinance, the Franchise Agreement, the Intergovernmental Cable TV Agreement between the Township and Village, as amended, and any Joint Resolution of the Township and Village. *(amended 03.15.01)*
5. Encourage and supervise interconnection of systems.
6. Conduct evaluations of the system as provided by this Ordinance and make recommendations to the Lake Orion Village Council and the Orion Township Board regarding amendments to this Cable Communications Ordinance or to the Franchise Agreement.
7. Review the performance of franchisees under this Ordinance and the Franchise Agreement and make decisions concerning enforcement where appropriate and no Village or Township action is required by this Ordinance, including, but not limited to, draws on the Security Fund, revocation, providing notices of default or violation and the pursuit of all other remedies. *(amended 03.15.01)*
8. Report to the Lake Orion Village Council and the Orion Township Board the following:
  - a. All applications for a franchise.
  - b. All pertinent information regarding the granting of each franchise under this Cable Communications Ordinance.
  - c. All matters which might constitute grounds for revocation of a franchise under this Cable Communications Ordinance and upon which the Commission might choose to take action.
  - d. All resolutions of disputes, after hearing, between franchisee(s) and subscribers, between franchisee(s) and access users, and between access users.
  - e. All information regarding the regulation of rates under this Ordinance and any changes in rates, services or classifications.
  - f. All records and reports which the franchisee is required to submit under this Cable Communications Ordinance.
9. Prepare an annual budget and, prior to adopting same, conduct a public hearing thereon, which budget shall not be effective until approved by joint resolution of the Lake Orion Village Council and the Orion Township Board.
10. Prepare an annual report to the Lake Orion Village Council and the Orion Township Board, including an accounting of all monies received from cable franchise fees and distributed by the Commission. Any funds remaining after distribution to the Township and Village shall be kept by or under the control of the Commission Treasurer to be used by the Commission only, including all interest generated by the investment of those funds. The Commission Treasurer shall draw checks on said account only when a majority of the members of the Commission have authorized such expenditures.
11. Prepare an annual report of the type and amount of use of access channels.
12. Elect a chairman, vice-chairman, treasurer and secretary annually by majority vote of the Commission members.
13. Make recommendations to the Township Board and the Village of Lake Orion Council with regard to franchise renewal pursuant to the requirements hereof.

14. Make recommendations to the Township Board and the Village of Lake Orion Council with regard to possible acquisition of the System by the Township and Village pursuant to the terms and conditions hereof and the franchise agreement.
  15. Approve or reject proposed transfers of ownership or control of the System pursuant to the terms and conditions hereof and the franchise agreement.
  16. Receive, hold in trust, disburse, manage, budget and account for any property, grants, payments, or funds which are to be paid or provided to, or acquired by, the Commission under the Franchise Agreement or as directed or designated by the Township and Village in a Joint Resolution or the Intergovernmental Cable TV Agreement, as amended. *(amended 03.15.01)*
  17. Subject to any restrictions or limitations which may be established by the Township and Village in a Joint Resolution or the Intergovernmental Cable TV Agreement, as amended, to contract for the administration, operation and management of the PEG Channels and the public access facilities and equipment of the Commission, Township and Village. *(amended 03.15.01)*
- F. Meetings. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine, but not less than four (4) times per year. The Board shall adopt rules of procedure and shall keep minutes of its meetings, which shall be a public record.
- G. Binding Effect of Commission Decisions/Appeals. The decisions of the Commission on the matters set forth in Section 5(E) of this Ordinance shall be final and binding, subject to the right of any person feeling aggrieved by a decision of the Commission purporting to revoke a franchise granted hereunder to, within thirty (30) days after such decision is rendered, have the automatic right to appeal such decision to the Oakland County Circuit Court. *(amended 06.19.00)*

## **Section 6 - Selection of Franchisee**

- A. Franchise Applications. Applicants for a franchise shall submit to the Commission written applications utilizing the standardized format provided by the Commission, at the time and place designated by the Commission for accepting applications, and including the designated application fee.
- B. Franchise Processing Costs. For a new franchise award, reasonable costs to be borne by the franchisee shall include, but shall not be limited to, all costs of publication of notices prior to any public meeting provided for pursuant to a franchise, development and publication of relevant ordinances and franchise agreements, fees, and any cost not covered by the application fees, incurred by the Commission in its study, preparation of proposal solicitation documents, evaluation of all applications, including, but not limited to, consultant and attorney fees and Commission staff time. *(amended 06.19.00)*
- C. Award of Franchise. The Township Board shall award the franchise to an applicant only after a public hearing on the application and proposal, notice of which hearing shall be published in a local newspaper of general circulation at least twenty (20) days before the date of the hearing. All contracts, granting or giving any original franchise or extending or renewing or amending any existing franchise, shall be made by ordinance, which ordinance shall be thereafter published in the manner prescribed by law.
- D. Franchise Agreement.
1. The applicant awarded a franchise by ordinance shall execute a Franchise Agreement, agreeing to the terms and provisions of this Ordinance and the standards set by the Commission. Failure of the selected applicant to initiate good faith negotiations toward the end of executing a franchise agreement within thirty (30) days from the Township Board's written demand therefor, or to meet deadlines specified in the Franchise Agreement and this chapter for completion of strand mapping, pole agreements, initial ground-breaking and all wiring phases, after written notice, a hearing and the expiration of the curative periods specified hereunder, shall be grounds for rescission of the authorizing ordinance, revocation of any rights the applicant may have in the franchise and forfeiture of the applicant's Security Fund (except where such violation(s) is not the fault of the franchisee). The franchisee shall, within one hundred twenty (120) days after the execution of the Franchise Agreement, apply for all necessary permits and authorization for the construction of the Cable Communications System.
  2. In addition to those matters required elsewhere in the Ordinance to be included in the Franchise Agreement, the Franchise Agreement shall contain the following express representations of the franchisee that:

- a. It accepts and agrees to all the provisions of this chapter and any supplementary specifications, as to construction, technical standards, operations, maintenance, and rate structures, which the Township Board may include in the Franchise Agreement.
  - b. It recognizes the right of the Township Board in the exercise of its police powers to make reasonable amendments to the franchise ordinance during the term of the franchise upon thirty (30) days notice to the franchisee, or without notice with respect to an emergency amendment. It further recognizes and agrees that the Township Board shall in no way be bound to renew or extend the franchise at the end of any franchise term.
  - c. It recognizes and agrees that it may be considered as a franchise for the purpose of this Ordinance.
  - d. It recognizes and agrees that no franchise shall be exclusive.
3. The Franchise Agreement shall set forth the specific standards which the franchisee must maintain in respect to signal quality requirements and technical standards of construction, operation and maintenance of the system.
  4. The Franchise Agreement shall contain such further conditions or provisions as may be negotiated between the Commission and the franchisee, except that no such conditions or provisions shall be such as to conflict with any provisions of this Ordinance or any other law. *(amended 06.19.00)*

E. Disclosure Requirements.

1. Each applicant for a franchise shall file with its application a sworn statement setting forth in such detail as shall be satisfactory to the Township the identification and description of all relationships which such applicants (or any related parties, as that term is defined in this chapter) may then have, or may have had during the year prior to the date of filing of such application, directly or indirectly, with the Township of Orion, its employees, agents, servants and/or elected or appointed officials, including but not limited to the following:
  - a. Written or oral arrangements or undertakings of any nature whatsoever, including as vendor, vendee, or the provider of services, credit, or counsel or otherwise.
  - b. All lending relationships (whether as borrower or lender).
  - c. All investing relationships (as stockholder, partner, joint venturer, co-adventurer or otherwise, or as the entity, vehicle or recipient of such investment).
  - d. All relationships entailing the granting or holding of security in any property, tangible or intangible, real or personal.
  - e. All relationships in which any valuable consideration shall have been required, offered, received, paid or extended, whether in cash, in kind or in services, and whether contemporaneous or deferred in whole or in part.
  - f. All relationships involving the assertion of any claim of any nature whatsoever, including administrative proceedings or litigation.
2. Each applicant shall affirmatively undertake to advise the Township during the pendency of the application, and prior to its rejection or acceptance, of any additional such relationships which shall come into being, and of the termination or other material change in any such relationships as shall have been required to be disclosed prior thereto.
3. Upon award of a franchise, each franchisee shall have a continuing duty and shall affirmatively undertake to advise the Township of any additional such relationships which shall come into being and of the termination or other material change in such relationships as provided in Section E (1). On each annual anniversary of the Franchise Agreement under which such franchisee shall derive rights pursuant to this Ordinance, the franchisee shall recertify the existence or non-existence of all such relationships (other than as a franchisee pursuant to this Ordinance).

**Section 7 - Length, Renewal and Transfer of Franchise***(amended 06.19.00)*

- A. Non-Exclusivity of Franchise. The Township shall award a non-exclusive franchise to construct, erect, operate and maintain in, upon, along, 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 franchise territory poles, wires, cables, underground circuits, manholes, and

other conductors and fixtures necessary for the operation and maintenance of a Cable Communications System, and to furnish and to sell service from such system to the inhabitants of the entire franchise territory pursuant to the terms of this Ordinance. The Township specifically reserves the right to grant a non-exclusive Franchise to any Person at any time. *(amended 06.19.00)*

- B. Length of Franchise. The term of a franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be not more than fifteen (15) years from the effective date of the franchise, as specifically set forth in the Franchise Agreement. The franchise may be terminated sooner pursuant to the provisions of this Ordinance.
- C. Conditions for Initial Franchise Validation.
1. Within one hundred twenty (120) days after the effective date of the franchise, the franchisee shall apply for all necessary permits and authorizations which are required in the conduct of its business, including but not limited to any utility joint use attachment agreement, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of Cable Communications Systems or their associated microwave transmission facilities.
  2. The franchisee shall comply with the requirements of the system construction schedule contained in the Franchise Agreement.
  3. The franchisee shall provide a detailed construction plan indicating progress schedule, area construction maps, test plan, and projected dates for offering service. In addition, the franchisee shall update this information on a monthly basis, showing specifically whether schedules are being met and the reasons for any delay.
- D. Transfer of Ownership or Control.
1. Consent Required. *(amended 06.19.00)* A Franchise and a Cable System in the Township shall not be sold, transferred (as defined below), assigned, or otherwise encumbered, without the prior written consent of the Township or the Commission, such consent not to be unreasonably withheld. Such consent shall not be required for a transfer in order to secure indebtedness such as a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of a Grantee in the Franchise or Cable System but shall include any realization on the security by the recipient, such as foreclosure on a mortgage or security interest.
    - a. The preceding prohibition shall not apply to the replacement or sale of components of a Cable System in the course of ordinary maintenance or day-to-day operation.
    - b. There shall be no transfer or acquisition of control of Grantee or of any entity, at any tier or level, which directly or indirectly controls Grantee, without the prior written consent of the Township or the Commission, such consent shall not be unreasonably withheld. For purposes of this Ordinance and except as provided in Section 7(D)(1), "transfer," "transferred," or "acquisition" shall mean: (i) any form of sale, conveyance, assignment, lease, sublease, merger, pledge, deed, grant, mortgage, transfer in trust, encumbrance or hypothecation, in whole or in part, whether voluntary or involuntary of any right, title or interest of Grantee in or to a Franchise or to a Cable System, (ii) any change in actual working control (by whatever manner exercised) including change in managerial control, or in the effective control of a Grantee, such as that described in 47 C.F.R. § 76.501 and following, including the notes thereto (but excluding footnote 2f), as in effect on January 1, 2000, or (iii) a change in limited partnership, limited liability company or similar interests representing twenty-five percent (25%) or more of an equity interest in a Grantee, including the right to require voting control without substantial additional consideration (such as compared to consideration previously provided).
    - c. If a Grantee seeks to obtain the consent of the Township or the Commission to any transactions or matters described in Section 7(D)(1) or 7(D)(2) (collectively "transfer"), Grantee shall submit an application for such consent to the Township or the Commission and shall submit or cause to be submitted to the Township or the Commission all such documents and information as the Township or the Commission may reasonably request.
      - i. The Township or the Commission shall not unreasonably withhold its consent to any proposed transfer, and may grant its consent outright, may grant such consent with reasonable conditions which it finds are in the public interest and which are lawful or may deny consent, but may not use the transfer to renegotiate the Franchise.

- ii. As specified in the Franchise Agreement, Grantee shall pay on the Township's or Commission's behalf or reimburse the Township or the Commission for all reasonable costs (including consultant's and attorney's fees) incurred by the Township or the Commission due to any proposed transfer.
2. The franchisee shall promptly notify the Commission of any proposed change in, or transfer of, or disposition of, or acquisition by any other party of, control of the franchisee. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change in, transfer of, or acquisition of control of the franchisee shall make the franchise subject to revocation unless and until the Commission shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, disposition, or acquisition of control, the Commission may inquire into the qualifications of the prospective controlling party, and the franchisee shall assist the Commission in any such inquiry.
3. The consent or approval of the Commission to any transfer of a franchise shall not constitute a waiver or release of the right of the Township in and to the streets, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of a franchise.
4. Except as specifically set forth below or in the absence of extraordinary circumstances, no transfer shall affect the Franchise commitment to complete construction in accordance with the terms of the Franchise Agreement. *(amended 06.19.00)*
5. In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to the Franchise Agreement.
6. Nothing contained in this Section 7(D) shall be construed to limit the right of the franchisee to mortgage, pledge or otherwise encumber the personal and real assets, tangible and intangible, of the cable system of every kind and nature, as security for financing transactions entered into between the franchisee and regulated institutions such as banks, insurance companies, finance companies or similar organizations or other lenders (the latter of which, if not regulated institutions, shall be subject to the approval of the Commission), in connection with financing transactions entered into in the ordinary course of the franchisee's business for the limited purposes of:
  - a. The construction, installation and operation of the cable system;
  - b. Purchase and acquisition of the cable system or any components thereof or assets or property to be used in connection therewith;
  - c. Improvements to the cable system; and
  - d. Other operating capital purposes relating to the operation of the cable system itself.

All such secured lenders shall have the right to exercise the usual rights accorded secured parties under applicable statutes and case law and under standard cable loan and security agreements provided that any such lender shall have the right to operate the system through a person with demonstrated ability and experience in the operation of a comparable cable system without prior approval of the Township. Any subsequent transfer of the system shall be subject to the provisions of this Ordinance governing transfers as contained in this Section 7. The loan or security agreement between the franchisee and the lender shall provide that the lender shall at the inception and throughout the term of the loan maintain records so as to identify the outstanding balance and all other amounts due it which are specifically attributable to the Cable Communications System or its assets in the Township; and the lender shall release and terminate all liens, encumbrances and security interest it may have upon the Cable Communications System or its assets upon the payment or satisfaction in full of franchisee's indebtedness under the loan or security agreements which indebtedness is specifically attributable to this cable system. *(amended 06.19.00 to delete Subparagraph 7)*

- E. Franchise Renewal. The franchise may be renewed by the Township Board in accordance with the rules, regulations and procedures set forth in Section 626 of the Cable Communications Policy Act of 1984 and as same may, from time to time, be amended.
- F. Forfeiture or Revocation.

1. Grounds for Revocation. The Township, acting through the Commission, reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise in the following circumstances, each of which shall represent a default and breach under this Ordinance and the Franchise Agreement:
  - a. If the franchisee should default in the performance of any of its material obligations under this Ordinance or under the terms and conditions of such other documents or agreements as may, from time to time, be entered into by and between the Township and the franchisee.
  - b. If the franchisee should fail to provide or maintain in full force and effect the liability and indemnification coverages or the Security Fund as required herein.
  - c. If any court of competent jurisdiction, or any federal or state regulatory body by rules, decisions, or other action determines that any material provision of the franchise documents, including this Ordinance, is invalid or unenforceable prior to the commencement of system construction.
  - d. If the franchisee should willfully violate any orders or rulings of any regulatory body having jurisdiction over the franchisee relative to this franchise, unless such orders or rulings are being contested by the franchisee in a court of competent jurisdiction or an administrative proceeding.
  - e. If the franchisee ceases to provide services for any reason within the control of the franchisee over the Cable Communications System. The franchisee shall not be declared at fault or be subject to any sanction under any provision of this Ordinance in any case in which performance of any such provision is prevented for reasons beyond the franchisee's control. A fault shall not be deemed to be beyond the franchisee's control if committed by a corporation or other business entity in which the franchisee holds a controlling interest, whether held directly or indirectly.
  - f. If the franchisee attempts to fraudulently evade any of the provisions of this Ordinance or the Franchise Agreement or practices any fraud or deceit upon the Township.
  - g. If the franchisee's construction schedule is delayed for more than eighteen (18) months later than the schedule contained in the Franchise Agreement and Township finds that the delay was not excusable.
  - h. If the franchisee becomes insolvent or unable to pay its debts, or is adjudged a bankrupt.
2. Procedure Prior to Revocation.
  - a. The Commission is to make written demand that the franchisee do so comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the franchisee continues for a period of thirty (30) days following such written demand, or if compliance requires more than thirty (30) days and the franchisee has not commenced to comply in good faith, the Commission may place its request for termination of the franchise upon its next regularly scheduled meeting agenda. The Commission shall cause notice to be served upon such franchisee, at least ten (10) days prior to the date of such meeting, a written notice of its intent to request such termination, and the time and place of the meeting, notice of which shall be published at least once, ten (10) days before such meeting in a newspaper of general circulation within the franchise area.
  - b. The Commission shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal or neglect by the franchisee was with just cause.
  - c. If such failure, refusal or neglect by the franchisee was with just cause, the Commission shall direct the franchisee to comply within such time and manner and upon such terms and conditions as are reasonable.
  - d. If the Commission shall determine such failure, refusal or neglect by the franchisee was without just cause, then the Commission, on behalf of the Township and Village of Lake Orion, may, by resolution, declare that the franchise of such franchisee shall be terminated and the Security Fund forfeited unless there be compliance by the franchisee within such period as the Commission may fix.
- G. Procedures in the Event of Termination or Expiration.

1. Disposition of Facilities. In the event a franchise expires, is revoked, or otherwise terminated, the Commission may order the removal of the system facilities from the franchise area within a reasonable period of time as determined by the Commission. Franchisee may at its option abandon its underground plant in place.
  2. Restoration of Property. In removing its plant, structures and equipment, the franchisee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the franchisee's removal of its equipment and appliances without affecting the electrical or telephone cable wires, or attachments. The Township shall inspect and approve the condition of the public ways and public places; and cables, wires, attachments and poles after removal. The liability and indemnity insurance and the Security Fund provided herein shall continue in full force and effect during the period of removal and until full compliance by the franchisee with the terms and conditions of this Section.
  3. Restoration by Township, Reimbursement of Costs. In the event of a failure by the franchisee to complete any work required by Subsection (1) above and/or Subsection (2) above, or any other work required by Township law or ordinance within the time as may be established and to the satisfaction of the Township, the Township may cause such work to be done and the franchisee shall reimburse the Township the cost thereof within thirty (30) days after receipt of any itemized list of such costs or the Township may recover such costs through the Security Fund provided by franchisee. The Township shall be permitted to seek legal and equitable relief to enforce the provisions of this Section.
  4. Township's Right Not Affected. The termination and forfeiture of any franchise shall in no way affect any of the rights of the Township under the franchise or any provision of law.
- H. Purchase of Cable System. (amended 06.19.00) If at any time a Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the Township shall have the option to purchase the Cable System, pursuant to Section 627 of the Federal Cable Act, or successor provision.
1. For purposes of this Section 7(H), the price for the Cable System shall be determined as follows:
    - a. In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself.
    - b. In the case of revocation for cause, the equitable price of Grantee's Cable System. Such matter as the harm to the Township from Grantee's breach of the Franchise might be taken into account in determining the equitable price.
- I. Right to Require Removal of Property. At the expiration of a term for which the franchise is granted, or upon its revocation or expiration, as provided for herein, the Township shall have the right to require the franchisee to remove, at its own expense, all portions of the Cable Communication System from all streets and public ways within the franchise area; provided, however, that the franchisee shall have the right to abandon its underground plant in place.
- J. Transfer to Township and Village. Upon exercise of its right to purchase (together with the Village of Lake Orion) and the payment of any purchase price, or any portion thereof as specified by the terms of the Franchise Agreement, and the service of official notice of such action upon the franchisee as set forth hereinabove, the franchisee shall immediately transfer to the Township and the Village of Lake Orion possession and title to all facilities and property, real and personal, of the Cable Communications System, free from any and all liens and encumbrances not agreed to be assumed by the Township and the Village of Lake Orion in lieu of some portion of the purchase price. The franchisee shall execute such warranty deeds or other instruments of conveyance to the Township as shall be necessary for this purpose.
- L. Franchise Extension. The term of a Franchise and Franchise Agreement may be extended for a period not to exceed one (1) year on terms and conditions that are set forth in a Franchise Extension Agreement that is approved by resolution of the Board of Trustees. Any such extension shall not be considered as a Franchise award or renewal, with the Franchise designated as revocable during the extension term for the purposes of Public Act 322 of 1996, as amended, if applicable. (amended 01.06.00)

## **Section 8 - Design and Construction Provisions**

- A. System Design. The Cable Communications System shall be constructed in accordance with the design requirements contained in the Franchise Agreement.

- B. Geographical Coverage. The franchisee shall design and construct the cable system in such a manner as to have the eventual capability to pass by every single family dwelling unit, multiple-family dwelling unit, school and public agency within the area of the franchise. Service shall be provided to subscribers in accordance with the schedules and line extension policies specified in the Franchise Agreement. Cable system construction and provision of service shall be non-discriminatory, and the franchise shall not delay or defer service to any section of the franchise area on the grounds of economic preference.
- C. Cablecasting Facilities. The franchisee shall provide cablecasting facilities in accordance with the requirements of the Franchise Agreement.
- D. System Construction Schedule.
1. The franchisee shall comply with the requirements of the system construction schedule contained in the Franchise Agreement.
  2. The franchisee shall provide a detailed construction plan indicating progress schedule, area construction maps, test plan, and projected dates for offering service. In addition, the franchisee shall update this information on a monthly basis, showing specifically whether schedules are being met and the reasons for any delay.
- E. Provision of Service. After service has been established by activating trunk cables for any area, the franchise shall provide service to any requesting subscriber within that area within thirty (30) days from the date of request.
- F. Undergrounding of Cable. The undergrounding of cable is encouraged. In any event, cables shall be installed underground at the franchisee's cost where all existing utilities are underground. Previously installed aerial cable shall be undergrounded and relocated in concert, and on a cost-sharing basis, with other utilities, when such other utilities may convert from aerial to underground construction.
- G. New Development Undergrounding. In cases of new construction or property development where utilities are to be placed underground, upon request by the franchisee, developer or property owner shall give franchisee reasonable notice of the particular date on which open trenching will be available for franchisee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the franchisee's expense. Franchisee shall also provide specifications as needed for trenching.
- Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if franchisee fails to install its conduit, pedestals and/or vaults, and laterals within five (5) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five (5) day period, the cost of new trenching is to be borne by franchisee.
- H. Underground at Multiple-Dwelling Units. In cases of multiple-dwelling units serviced by aerial utilities, franchisee shall make every effort to minimize the number of individual aerial drop cables giving preference to undergrounding of multiple drop cables between the pole and the dwelling unit. The burden of proof shall be upon the franchisee to demonstrate why undergrounding of drop cables is technically or economically unfeasible.
- I. Street Occupancy.
1. Franchisee shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities whether on public property or on privately-owned property until the written approval of the Township is obtained. Franchisee shall install all underground cable in conduit, when passing under streets and in certain other limited circumstances upon the reasonable request of Grantor to accommodate a specific concern related to the health, safety, and welfare of the public. However, no location of any pole or wire holding structure of the franchisee shall be a vested interest and such poles or structures shall be removed or modified by the franchisee at its own expense whenever the Township determines that the public convenience would be enhanced thereby.
  2. Franchisee shall notify the Road Commission for Oakland County at least ten (10) days prior to the intention of the franchisee to commence any construction in any streets. The Township shall cooperate with the franchisee in granting any permits required, providing such grant and subsequent construction by the franchisee shall not unduly interfere with the use of such streets and that proposed construction shall be done in accordance with the pertinent provisions of the ordinances of the Township.

3. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times, shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The franchisee shall, at all times, employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the franchisee shall be placed in such a manner as not to interfere with the usual travel on such public way.
4. Franchisee shall, at its own expense, and in a manner approved by the Township, restore to Township standards and specifications any damage or disturbance caused to the public way as a result of its operations or construction on its behalf.
5. Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Township to remove any of the franchisee's facilities, no charge shall be made by the franchisee against the Township for restoration and repair.
6. Franchisee shall have the authority to trim trees occupying public property or space, or trees whose branches overhand onto public property or space, at its own expense, as may be necessary to protect its wires and facilities, subject to the supervision and direction of the Township. Trimming of trees on private property shall require written consent of the property owner.
7. The franchisee at its expense shall protect, support, temporarily disconnect, relocate, or remove any property of franchisee when, in the opinion of the Township, the same is required by reason of traffic conditions, public safety, street vacation, freeway or street grade, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks, or any other type of structure or improvements by governmental agencies whether acting in a governmental or a proprietary capacity, or any other structure or public improvement, including but not limited to movement of buildings, redevelopment, or any general program under which the Township shall undertake to cause any such properties to be located beneath the surface of the ground. Nothing hereunder shall be deemed a taking of the property of franchisee and the Township shall be entitled to no surcharge by reason of anything hereunder.
8. Upon failure of the franchisee to commence, pursue or complete any work required by law or by the provisions of this Ordinance to be done in any street, within the time prescribed and to the satisfaction of the Township, the Township may, at its option, cause such work to be done and the franchisee shall pay to the Township the cost thereof in the itemized amounts reported by the Township to the franchisee within thirty (30) days after receipt of such itemized report.
9. The franchisee shall make no paving cuts or curb cuts unless absolutely necessary, and only after written permission has been given by the Township.

J. Construction and Technical Standards.

1. Construction Standards.
  - a. Township Codes and Permits. The franchisee shall comply with all applicable Township construction codes and permit procedures. The Township shall be entitled to charge reasonable permit and inspection fees to recover the special non-recurring inspection costs imposed by the construction of the cable system. The cost of the Township's inspection of construction of the System (other than individual installations) shall be deducted from any prepayment of franchise fees by the franchisee, if made. The cost of the inspection of individual installations (as required by the National Electrical Code) at the rate of Seven Dollars (\$7) per inspection may be passed on to subscribers by the franchisee.
  - b. Compliance with Safety Codes. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970 and any amendments thereto as well as all state and local codes where applicable.
  - c. Compliance with Electrical Codes. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical Code, as amended, and all applicable state and local codes.

- d. Antennas and Towers. Antenna supporting structures (towers) shall be designed for the proper loading as specified in Electronics Industry Association's R.S. 222-A specifications.
  - e. Compliance with Aviation Requirements. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local codes and regulations.
  - f. Construction Standards and Requirements. All of the franchisee's plant and equipment, including but not limited to, the antenna site, head-end and distribution system towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the Township may deem proper to make, or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.
  - g. Safety, Nuisance, Requirements. The franchisee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.
2. Technical Standards. The franchisee shall submit, within sixty (60) days after the effective date of the Franchise Agreement, a detailed test plan describing the methods and schedules for testing the Cable Communications System on an ongoing basis to determine compliance with the provisions of the Franchise Agreement. This test plan shall call for the annual FCC Proof of Performance Test. In addition to the FCC Proof of Performance Test, franchisee shall conduct any and all additional tests required of it pursuant to the terms and conditions of the Franchise Agreement. The franchisee shall submit to the Township a copy of the FCC Proof of Performance, and the other tests mandated by the Franchise Agreement, as soon as such tests have been completed.
  3. Special Tests. At any time after commencement of service to subscribers the Township may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant non-compliance, and such tests shall be limited to the particular matter in controversy. The Township shall endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to the franchisee or to the subscriber.
- K. Areawide Interconnection.
1. Interconnection Required. The Grantee shall interconnect public usage channels of the Cable Communication System with any or all other cable systems in adjacent areas, upon the directive of the Township. Interconnection of Systems shall be capable of interactive transmission and reception of program material, and may be done by direct cable connection, microwave line, satellite, or other appropriate method.
  2. Interconnection Procedure. Upon receiving the directive of the Township to interconnect, the franchisee shall immediately initiate negotiations with the other affected system or systems. The cost shall be borne by both franchisees, in the proportion of number of channels received to total number of channels transmitted and received, under the assumption that benefits accrue primarily through receipt of additional channels. In the case of regional or statewide interconnection, the same principal shall apply.
  3. Relief. The franchisee may be granted reasonable extensions of time to interconnect or the Township may rescind its order to interconnect upon petition by the franchisee to the Township. The Township may grant said request if it finds that the franchisee has negotiated in good faith and has failed to obtain an approval from the system of the proposed interconnection, or that the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates.
  4. Cooperation Required. The franchisee shall cooperate with any interconnection corporation, regional interconnection authority or local, county, state or federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the franchise territory.
  5. Initial Technical Requirements to Assure Future Interconnection Capability.

- a. All Cable Communications Systems receiving franchises to operate within the franchise territory shall use the same frequency allocations for commonly provided television signals so far as is technically and economically feasible.
- b. To the maximum extent possible, the franchisee shall provide local origination and access equipment that is compatible throughout the area so that videocassettes or videotapes can be shared by various systems.

## **Section 9 - Franchise Fee and Rates**

### **A. Franchise Fee. (amended 06.19.00)**

1. Grantee shall pay the Township or its designee throughout the term of a Franchise an amount equal to five percent (5%) of Grantee's Gross Revenues attributable to the Township. Once per calendar year the Township by resolution may elect to reduce such percentage to a smaller percentage, and by resolution in a subsequent calendar year may change or revoke such election. Such payments shall be made quarterly, and are due within thirty (30) days after the end of each calendar quarter.
  - a. The payment for the fourth calendar quarter shall be accompanied by a written annual report to the Commission, verified by an officer of Grantee containing an accurate statement in summarized form of Grantee's Gross Revenues and the computation of the payment amount for the entire calendar year.
  - b. The Commission may audit Grantee to verify the accuracy of Franchise Fees paid to the Township. All records reasonably necessary for such audit will be made available by Grantee at a location in or near the Township. Any additional amount due the Township shall be paid within thirty (30) days of the Commission's submitting an invoice for such sum, and if such sum shall exceed four percent (4%) of the total Franchise Fee which the audit determines should have been paid for any calendar year, Grantee shall pay the Commission's cost of auditing that calendar year as well. However, the period of limitation for recovery of any Franchise Fee payable hereunder shall be three (3) years from the date on which payment by the Franchisee is due.
2. Other Payments. The preceding fees and payments are in addition to all sums which may be due the Township for property taxes (real and personal), income taxes, license fees, permit fees or other fees, taxes or charges which the Township may from time to time impose.
  - a. Grantee shall pay the Township's cost of newspaper publication associated with adoption of this Franchise. It is agreed such costs do not constitute a Franchise Fee or any part thereof.
3. Interest. All sums not paid when due shall bear interest at a rate which is one percent (1%) over the prime rate then being charged by Comerica Bank (or its successor), and computed monthly, and if so paid with interest within thirty (30) days of due date, shall not constitute an Event of Default.
4. Acceptance of Grantor. No acceptance of any payment by the Township 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 as a franchise fee under this Ordinance or for the performance of any other obligation of the franchisee.
5. Payment due the Township under this provision shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payment no later than thirty (30) days after the dates listed in the previous sentence. Each payment shall be accompanied by a brief report showing the basis for the computation and such other relevant facts as may be required by the Township
6. Following the issuance and acceptance of the franchise, the franchisee shall initiate franchise fee payments to the Grantor in accordance with the terms and conditions of this Ordinance and the franchise agreement. In the event that the franchise agreement provides for an initial prepayment of franchise fees, such prepayment shall be credited against the actual franchisee fee earned and payable to Grantor until such prepayment is exhausted.

- B. Refunds to Subscribers and Programmers. If the franchisee fails to provide any material service requested by a subscriber or programmer in accordance with the standards set forth in this Ordinance and the Franchise Agreement the franchisee shall promptly refund all deposits or advance charges paid for the service in question by the subscriber or programmer. This Section shall include discontinuance of service for each twenty-four hour period, as well as lack of service after payment for initial hookup except where failure to provide service is beyond the control of franchisee as defined in Section 10(P) hereof.

**Section 10 - Administration and Regulation** *(amended 06.19.00)*

A. Performance Review. *(amended 06.19.00)*

1. Unless waived by resolution of the Township Board in writing, the franchisee shall, in accordance with the Franchise Agreement, at its expense, conduct a postcard survey or other comparable survey with questions mutually agreeable to the franchisee and the Commission. Such survey shall be designed to elicit constructive criticism and identify unmet needs amongst both subscribers and non-subscribers in the franchise area. All postcards or other survey materials are to be returned to the Commission directly. *(amended 06.19.00)*
2. Special review sessions may be held at any time during the term of the franchise, providing both the franchisee and the Township agree on the time, place and topics to be reviewed. All such review sessions shall be open to the public and public notice of the review sessions shall be given in accordance with the provisions of Section 10(L).
3. The following topics shall be discussed at every scheduled review session:

- Judicial and Federal Communications Commission Rulings
- Rate Structures
- Application of New Technology or New Developments
- System Performance
- System Extension Policy
- Services Provided
- Customer Complaints
- Privacy and Human Rights
- Amendments to the Ordinance
- Interconnection
- Underground Progress
- Public Governmental Educational Access Programs and Performance
- Studio Facilities and Services
- Insurance
- New Services

Other topics may be added by either party. Members of the general public may also request discussion of additional topics.

4. The Township at its discretion may utilize the services of a consultant to gain additional information for use during the review sessions and/or rate hearings. The franchisee shall cooperate with such consultant and the Township in all aspects of the performance review. *(amended 06.19.00)*
5. The Commission shall, at the conclusion of all review sessions, issue a public report to the Township Board announcing its findings and recommendations for enforcement of or modifications to this Ordinance or the Franchise Agreement.

**B. Security Fund.**

1. Within the time period specified in the Franchise Agreement, a Franchisee shall deposit with the Commission and maintain on deposit throughout the term of the Franchise, the amount specified in the Franchise Agreement as security for *(amended 06.19.00)*:
  - a. The faithful performance by it of all of the provisions of this Ordinance and the Franchise Agreement.
  - b. Compliance with all orders, permits and directions of the Commission or any agency, commission, board or department of the Township having jurisdiction over its acts or defaults under the Franchise Agreement.
  - c. The payment by the franchisee of any claims, liens and taxes due the Township which arise by reason of the construction, operation or maintenance of the system.

Such amount may be posted either in cash or through an unconditional, irrevocable letter of credit drawn for the mutual benefit of the Township and the Village of Lake Orion. Such irrevocable letter of credit is to contain terms and conditions acceptable to the Commission and franchisee which are reasonably intended to carry out the provisions hereof. Such irrevocable letter of credit is to be drawn upon a bank with its principal office in the Detroit metropolitan area acceptable to the Commission.

2. Within thirty (30) days after notice to it that any amount has been withdrawn from the Security Fund, the franchisee shall pay to or deposit with the Commission an amount of money in the full amount withdrawn or have the irrevocable letter of credit re-issued in an amount equal to that which existed prior to any such drawing.

Failure to effect timely restoration of the Security Fund shall constitute a material breach of the Franchise Agreement.

3. The following procedures are to be completed prior to a draw being made upon the Security Fund:
  - a. The Commission is to make written demand that the franchisee do so comply with any such requirements, limitation, term, condition, rule or regulation deemed cause for it to draw upon the Security Fund. If the failure, refusal or neglect of the franchisee continues for a period of thirty (30) days following such written demand, or if compliance requires more than thirty (30) days and the franchisee has not commenced to comply in good faith, the Commission may place its intent to make a draw on the Security Fund upon its next scheduled meeting agenda. The Commission shall cause notice to be served upon such franchisee, at least ten (10) days prior to the date of such meeting, a written notice of its intent to draw on the Security Fund and the time and place of the meeting.
  - b. The Commission shall hear any persons interested therein, and shall determine, in its discretion, whether or not any failure, refusal or neglect by the franchisee was with just cause.
  - c. If such failure, refusal or neglect by the franchisee was with just cause, the Commission shall direct the franchisee to comply within such time and manner and upon such terms and conditions as are reasonable.
  - d. If the Commission shall determine such failure, refusal or neglect by the franchisee was without just cause, then the Commission may, by resolution, authorize its Chairman to make a draw on the Security Fund in the amount determined by the Commission to be appropriate.

4. The Security Fund required pursuant to this Section shall become the property of the Township and Village of Lake Orion in the event that the franchise is rescinded or revoked by reason of the default of the franchisee. In the event that the Security Fund is provided in cash and is forfeited, all interest which is accrued thereon shall be the property of the Township and Village of Lake Orion. The franchisee, however, shall be entitled to the return of such Security Fund, or any portion thereof, as remains on deposit at the expiration of the term of the franchise, provided that there is then no outstanding uncured default on the part of the franchisee. Interest earned by the investment of the Security Fund shall be returned to the franchisee at the expiration of the franchise term, provided that there is then no outstanding default on the part of the franchisee.

5. The payment of an amount from the Security Fund shall not necessarily constitute a cure of any violation or act of non-compliance. The rights reserved to the Commission with respect to the Security Fund are in addition to all other rights of the Township and Village of Lake Orion whether reserved by the Ordinance or authorized by the law, and no

action, proceeding or exercise of a right with respect to such Security Fund shall affect any other right the Township and Village of Lake Orion may have.

6. It is understood and agreed that the franchisee shall be obligated to provide only one Security Fund (whether in cash or via an irrevocable letter of credit) for the mutual benefit of the Township of Orion and the Village of Lake Orion. The rights of the Township and the Village of Lake Orion with regard to the Security Fund shall be governed, in all respects, by this Ordinance and, where applicable, by the terms and conditions of the Intergovernmental CATV Agreement to be entered into, by, and among the Township and Village of Lake Orion.

C. Insurance.

1. The franchisee shall maintain throughout the term of the franchise, insurance insuring the Township and the franchisee in the minimum amount of:
  - a. Workers' Compensation. As required by all applicable federal, State, Maritime, or other laws including franchisee's liability with a limit of at least One Hundred Thousand Dollars (\$100,000) for each occurrence.
  - b. Comprehensive General Liability and Extended Coverage Endorsement. Including non-ownership and hired car coverage as well as owned vehicles, with minimum limits as follows: bodily injury for each person, One Million Dollars (\$1,000,000) and each occurrence One Million Dollars (\$1,000,000); property damage for each occurrence, Five Hundred Thousand Dollars (\$500,000).
  - c. Excess Liability. Bodily injury and property damage, Five Million Dollars (\$5,000,000) for each occurrence.
2. Certificates evidencing such insurance policies along with written evidence of payment of required premiums shall be filed and maintained with the Township Clerk during the term of the franchise. Such certificates may be changed from time to time to reflect any increase in liability limits. There shall be no decrease in liability limits. The franchisee shall immediately advise the Township of any litigation that may develop that would affect this insurance. (*amended 06.19.00*)
3. Neither the provisions of this Section nor any damages recovered by the Township thereunder, shall be construed to limit the liability of the franchisee under any franchise issued hereunder or for damages.
4. All insurance policies maintained pursuant to a Franchise shall name the Township and the Additional Insureds as additional insured parties, and contain an endorsement that in substance reads as follows: *"It is hereby understood and agreed that at least thirty (30) days prior written notice shall be given to the Township and the Commission by the insurer of any intention not to renew this policy or to cancel, replace, or materially alter same, such notice is to be given by registered mail."* (*amended 06.19.00*)

D. Indemnification. (*amended 06.19.00*) Franchisee shall, at its sole cost and expense, indemnify and hold harmless the Township, the Commission, and all subsidiary entities of the Township, now existing or hereinafter created, and their respective elected or appointed officials, officers, boards, commissions, attorneys, agents, representatives and employees (hereinafter referred to as "Indemnitees"), from and against:

1. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants), whether legal or equitable, which may be imposed upon, incurred by or be asserted against one or more of the Indemnitees by reason of any act or omission of the Franchisee, its personnel, employees, agents, contractors, subcontractors or Affiliates, resulting in personal injury, bodily injury, or death to any person or damage to, loss of, or destruction of tangible or intangible property, libel, slander, invasion of privacy, and any unauthorized use of any trademarks, trade name, copyright, patent, service mark, or any other right of any person, firm, entity, organization, association, partnership or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance or condition of the Cable System (including those arising from any matter contained in or resulting from the transmission of programming over the System; but excluding any programming provided by the Indemnitees which is transmitted over the Cable System or use of the Emergency Alert System by the Indemnitees; and including any claim or lien arising out of work, labor, materials or supplies provided or supplied to the Franchisee, its contractors or subcontractors), the provision of Cable Services, or the Franchisee's failure to comply with any Federal, State or local statute, ordinance or regulation.

2. Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses, (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses, and consultants) which are imposed upon, incurred by, or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to the Franchisee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the Cable System or provision of Cable Services, and, upon the written request of the Township, the Franchisee shall cause such claim or lien covering the Township's Property to be discharged or bonded within thirty (30) days following such request.
  3. Franchisee's obligation to indemnify Indemnitees under this Ordinance shall not extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the negligence or willful misconduct of one or more Indemnitees.
- E. Foreclosure. Upon the foreclosure or other judicial sale of all or a substantial part of the Cable Communications System, or upon the termination of any lease covering all or a substantial part of the Cable Communication System, the franchisee shall notify the Township of such fact, and such notification shall be treated as a notification that a change in control of the franchisee has taken place, and the provisions of this Ordinance governing transfer or change in control of the franchise shall apply.
- F. Receivership. The franchise granted pursuant hereto shall, at the option of the Township, cease and terminate ninety (90) days after the appointment of a receiver, or trustee, to take over and conduct the business of the franchisee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said ninety (90) days.
- G. Other Petitions and Applications. Upon the request of the Township, copies of all petitions, applications, communications and reports submitted by the franchisee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications operations authorized pursuant to the franchise, shall be provided to the Township no later than the filing date for such petitions, applications, communications and reports. *(amended 06.19.00)*
- H. Nondiscrimination Requirements.
1. The franchisee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, handicap, national origin or sex. The franchisee shall comply at all times with all applicable federal, state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination.
  2. The franchisee shall strictly adhere to the equal employment opportunity requirements of the FCC and federal, state and local regulations, as amended from time to time.
- I. Compliance with State and Federal Laws. Notwithstanding any other provisions of this Ordinance to the contrary, the franchisee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof. If any such state or federal law or regulation shall require the franchisee to perform any service, or shall permit the franchisee to perform any service in conflict with the terms of the franchise or of any law or regulation of the Township, then as soon as possible following knowledge thereof, the franchisee shall notify the Township Board of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Township or the franchise. The Township Board shall review the possible conflict and determine what action, if any, it shall take regarding the point of possible conflict.
- J. Theft of Service and Tampering.
1. No person shall intentionally or knowingly:
    - a. Damage or cause to be damaged any wire, cable, conduit, equipment, apparatus or appurtenance of franchisee or commit any act with intent to cause such damage.
    - b. Tap, tamper with or otherwise connect any wires or device to a wire, cable, conduit, equipment, apparatus or appurtenances of the franchisee with the intent to obtain or send a signal or impulse from the cable system without authorization from or compensation to franchisee, or to obtain or send cable television or other communication service with intent to defraud the franchisee of any lawful compensation to which it is otherwise entitled.

As provided for in Act No. 287, Public Acts of 1982, MCLA Sec. 750,540(c) - Telecommunication Service: Fraudulently Avoiding Charge - Use of Sale of Equipment Penalty.

2. Each day's violation of this Section shall be considered a separate offense.

K. Approval of Township Building Official. Where provisions of this Ordinance require approval of the Township Building Official, he shall grant approval only upon his determination that the proposed construction, installation or other activity for which approval is required will not endanger or adversely affect the public health, safety, or welfare.

L. Public Notice. Unless otherwise specifically set forth in this Ordinance, minimum public notice of any public hearing relating to a franchise shall be by publication, at least once per week, in a local newspaper of general circulation beginning fifteen (15) days prior to the meeting, and by announcement, in a format approved by the Township Board, on at least two channels of the Cable Communications System between the hours of 7:00 p.m. and 9:00 p.m. for five (5) consecutive days prior to the hearing.

M. Remedies for Franchise Violations. If the franchisee fails to perform any obligation under the franchise, or fails to do so in a timely manner, the Township may at its option and in its sole discretion, subject to all of the provisions of this Ordinance and the Franchise Agreement pertaining to notices, curative periods and hearings:

1. Assess against the franchisee monetary damages up to the limits established in the Franchise Agreement for material franchise violations, which the franchisee hereby agrees to pay, said assessment to be levied against the Security Fund, hereinabove provided, and collected by Township immediately upon said assessment. Township and franchisee agree that the amount of such assessment shall be deemed, without proof, to represent liquidation of damages actually sustained by Township by reason of the franchisee's failure to perform. Such assessment shall not constitute a waiver by the Township of any other right or remedy it may have under the franchise or under applicable law, including without limitation, its right to recover from franchisee such additional damages, losses, costs and expenses, including actual attorney fees, as may have been suffered or incurred by the Township by reason of or arising out of such breach of the franchise.
2. For violations considered by the Township to have materially degraded the quality of service, order and direct the franchisee to issue rebates or reduce its rates and/or charges to subscribers, in an amount solely determined by the Township to provide monetary relief substantially equal to the reduced quality of service resulting from the franchisee's failure to perform.
3. Require the franchisee to cure all defaults and breaches of its obligations hereunder before the franchisee is entitled to increase any rate or charge to subscribers hereunder.
4. Terminate the franchise, for any of the causes stated in Section 7 (F) above.
5. No remedy shall be imposed by the Township against the franchisee for any violation of the franchise without the franchisee being afforded due process of law as provided for in Section 10(N).

The Township may, in its sole judgment and discretion, impose any or all of the above enumerated measures against the franchisee, which shall be in addition to any and all other legal or equitable remedies it has under the franchise or under any applicable law.

N. Procedure for Remedying Franchise Violations. In the event that the Township determines that the franchisee has violated any provision of the franchise, any rule or regulation promulgated pursuant hereto or any applicable federal, state, or local law, the Township may make a written demand on the franchisee that it remedy such violation. If the violation, breach, failure, refusal or neglect is not remedied to the satisfaction of the Township within thirty (30) days following such demand, or franchisee has not commenced to cure, the Township shall determine whether or not such violation, breach, failure, refusal, or neglect by the franchisee was excusable or inexcusable, in accordance with the following procedure:

1. A public hearing shall be held and the franchisee shall be provided with an opportunity to be heard upon thirty (30) days written notice to the franchisee of the time and the place of the hearing provided and the allegations of franchise violations.

2. If, after notice is given and, at the franchisee's option, a full public proceeding is held, the Township determines that such violation, breach, failure, refusal or neglect by the franchisee was excusable as provided in Section 10(P) below, the Township shall direct the franchisee to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as the Township may direct.
  3. If, after notice is given, and at the franchisee's option, a full public proceeding is held, the Township determines that such violation, breach, failure, refusal or neglect was inexcusable, then the Township may assess a remedy in accordance with Section 10(M) above.
- O. Remedies for Delay in Construction. The Township may, at its sole option, apply any or all of the following remedies in connection with delays in system construction:
1. Reduction in the duration of the franchise on a month-for-month basis for each month of delay exceeding six (6) months.
  2. Forfeiture of construction bonds and/or assessment of monetary damages up to the maximum per day and per incident limits specified in the Franchise Agreement, levied against the Security Fund for delays beyond the construction schedule set forth in the franchise agreement.
  3. Termination of the franchise within one (1) year after award of the franchise if the franchisee has failed to initiate system construction.
  4. Termination of the franchise for other delays exceeding eighteen (18) months.
- P. Force Majeure; Franchisee's Inability to Perform. In the event franchisee's performance of any of the terms, conditions, obligations or requirements of the franchise is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided the franchisee has notified the Township in writing within thirty (30) days of its discovery of the occurrence of such an event. Such causes shall include, but shall not be limited to: (1) Acts of God; (2) emergencies declared by competent government authority; (3) third party labor disputes, and (4) other causes beyond franchisee's control and which franchisee could not reasonably have foreseen.
- Q. Penalties and Charges to Tenants for Service Prohibited. The owner of any multiple-unit residential dwelling or his agent or representative shall not penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communication service from franchisee operating under a valid and existing cable communications franchise issued by Orion Township.
- R. Solicitation of Subscribers. The franchisee or its agents or employees shall not solicit subscribers to the Cable Communications System by any misleading, threatening or harassing means. Harassment shall include the following actions when undertaken with the purpose of soliciting a cable communications subscription:
1. Entry into a dwelling unit without an oral invitation to do so.
  2. A telephone call to a dwelling unit between the hours of 10:00 p.m. and 7:00 a.m.
- Any franchisee shall submit its initial marketing materials to the Commission prior to its initial marketing effort; provided, however, that the Commission shall have no right to edit or modify such marketing materials.
- S. Rights of The Charter Township of Orion. Any franchise granted under this Cable Communications Ordinance is made subject to all applicable provisions of law relating to Orion Township and ordinances thereof; and specifically subject to the rights and powers of Orion Township and limitations upon the cable communications company holding such franchise as are set forth in the statutes of the State of Michigan which are herein incorporated by reference and such cable communications company shall abide by and be bound by said rights, powers and limitations. In all cases of conflict between the Township and the franchisee, the language of this Ordinance shall be construed in the manner most favorable to the Township.
- T. Severability. If any section, subsection, 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.

## **Section 11 - Operation**

**A. Subscriber Privacy.**

1. No signals of a cable communications channel shall be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement to be signed by the subscriber acknowledging his full understanding of the provisions of the request and permitting the activity to occur. No penalty shall be invoked for a subscriber's failure to provide such authorization. The authorization shall be revocable at any time by the subscriber without penalty. Such authorization is required for each type or classification of subscriber terminal signal planned; provided, however, that the franchisee may keep such records of viewing or purchasing of services by individual subscribers as are necessary for the billing of the individual subscriber for such services.
2. The franchisee shall not monitor or tabulate any records or test results in any manner that would reveal the economic status, commercial product preferences or opinions of individual subscribers or their families without express written consent. The franchisee shall not maintain or tabulate any data on the political, religious, moral or social preferences or opinions of individual subscribers or their families.
3. The franchisee, or any of its agents or employees, shall not, without the specific written authorization of the subscriber involved, sell, or otherwise make available to any party:
  - a. Lists of the names and addresses of such subscribers.
  - b. Any list which identifies the viewing habits of subscribers.
4. The franchisee shall be constantly alert to possible abuses of any legal right of privacy or other legal rights of any subscriber, programmer or general citizen resulting from any device or signal associated with the Cable Communications System. The possibility of such abuse shall be discussed at every scheduled review session.
5. Devices such as electronic locks, scramblers, warning lights and others designed to inhibit signals originating from a subscriber terminal shall be provided by the franchisee for all two-way system subscribers. Such devices shall additionally be provided as other privacy problems are identified, the technology becomes available, and reasonable financial arrangements can be made.

**B. Continuity of Service.**

1. It shall be the right of all consumers and programmers to receive all available services insofar as their financial and other obligations to the franchisee are honored. In the event that the franchisee elects to overbuild, rebuild, renovate, modify or sell the system, or the Township gives notice of intent to terminate or fails to extend or renew this franchise, the franchisee shall use reasonable efforts to ensure that all consumers and programmers receive continuous, uninterrupted service regardless of the circumstances.
2. In the event of a change of franchisee, or in the event a new operator acquires the system, the franchisee shall cooperate with the Township and the new franchisee or operator in maintaining continuity of service to all consumers and programmers; provided that it can do so on terms and conditions acceptable to both the Township and the franchisee.
3. In the event the franchisee fails to operate the system for seven (7) consecutive days without prior joint approval of the Commission and the Township or without just cause, the Township may, at its option, operate the system or designate an operator until such time as the franchisee restores service under conditions acceptable to the Township or a permanent operator is selected.

**C. Customer Service Standards.**

1. The franchisee shall:
  - a. Office/Phone. Grantee shall maintain a local office, or "virtual office" and bill payment locations. All Subscribers shall be able to access, from their homes, a local telephone number or toll-free number twenty-four (24) hours a day, seven (7) days a week to register complaints and/or billing questions. If Grantee maintains a "virtual office", it will dispatch technicians to the homes of customers with converter or remote problems, at no charge to the customer, within twenty-four (24) hours Monday through Friday. Grantee will deliver and retrieve converters or remotes from

customers' homes at no charge. If a customer contacts Grantee on Saturday, Sunday or holidays, Grantee will dispatch a technician to the home within forty-eight (48) hours. Customer bill payment locations will be open during Normal Business Hours and Grantee will use commercially reasonable efforts to ensure they will be conveniently located. *(amended 06.19.00)*

- b. Have a locally listed telephone which shall be staffed so that complaints and requests for repairs or adjustments may be received at any time.
  - c. Designate such office as the place where all notices, directions, orders and requests may be served or delivered under this Ordinance.
  - d. Provide for regular billings of accounts.
2. The franchisee shall furnish each subscriber at the time service is installed with written instructions that clearly set forth procedures for placing a service call, or requesting an adjustment. Said instruction shall also include the name, business address and business telephone number of a designated Township employee whom the subscriber can call or write for information regarding terms and conditions of the franchisee's franchise if the franchisee fails to respond to the subscriber's request for installation, service or adjustment within a reasonable period of time.
  3. The franchisee shall provide service response and repair seven (7) days a week, for all complaints and request for repairs or adjustments by the end of the next calendar day after the day on which the complaint or request for repair or adjustment was made.
  4. The franchisee shall use reasonable efforts to only interrupt system service during those hours when cable is least likely to be viewed. Whether service interruptions are due to emergency situations or routine testing, maintenance and repair, the franchisee will work to keep all disturbances to a minimum. Franchisee will warn system subscribers of disruptions in service, via character generator, whenever possible. Services may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance and repair, without notification, any night except Friday, Saturday or Sunday or the night preceding a holiday.
  5. Log of Service Complaints. Grantee shall maintain a written log of all Subscriber service complaints or an equivalent stored in computer memory and capable of access and reproduction in printed form of all Subscriber service complaints. Service complaints shall include Subscriber calls regarding picture quality, system outages, billing, installation and repair. Such log shall list the date and time of such complaints, identifying (to the extent allowed by law) the Subscribers and describing the nature of the complaints and when and what actions were taken by Grantee in response thereto. Such log shall be kept at Grantee's local office reflecting the operations to date for a period of at least three (3) years, and shall be available for the Commission's inspection during Normal Business Hours. *(amended 06.19.00)*

## **Section 12 - Landlord and Tenant Relationship**

- A. The Township hereby declares that this Ordinance has as one of its principal objectives, the lawful public purpose of rapidly developing and maximizing the educational, community service, cultural and public safety potential of cable television in order to benefit all of the residents of the Township. The Township further finds that the public interest and necessity require that no owner of any multiple-unit residential dwelling (nor his agent or representative) be permitted to directly or indirectly prevent any resident of such dwelling from receiving Cable Communication Service installation, maintenance and services from a franchisee operating under a valid franchise issued by the Township.
- B. In order to provide the opportunity for the residents of any multiple-unit residential dwelling to obtain service from a franchisee, such franchisee may negotiate an agreement with the owner of that dwelling or, failing agreement, may request that the Township exercise its power of eminent domain for the necessary public purpose of enabling the franchisee to serve residents of that multiple-unit residential dwelling. Upon request of such franchisee, the Township may commence condemnation proceedings in accordance with applicable law. In the event of such proceeding, in preparing its good faith offer of just compensation, the Township may consider:
  1. The amount and fair market value of space occupied by the franchisee's cable and related facilities. The fair market value of the space shall be assessed in light of the prior use, if any, of that space, together with any evidence of non-speculative alternative uses;

2. The present value of any funds that the owner will reasonably expend over time in ensuring that the franchisee conforms to all laws, regulations and reasonable conditions necessary to assure the safety, convenient functioning, and appearance of the multiple-unit residential dwelling;
  3. The continued physical availability of other space on the premises for the installation of alternative modes of television program reception or delivery;
  4. As an offset to the amounts set forth in Paragraphs (1) and (2) hereof, any increase in the fair market value of the multiple unit residential dwelling attributable to the availability of the franchisee's service to the property's tenants; and
  5. Any other reasonable, non-speculative factors which the Township may find relevant. The requesting franchisee shall indemnify the Township for all expenses and costs incurred by the Township in the condemnation proceedings as well as for the full amount of the condemnation award made to the owner if such condemnation proceedings are completed or otherwise settled.
- C. Notwithstanding anything to the contrary set forth in this Ordinance or the Franchise Agreement, the franchisee shall be permitted to charge each resident of a multiple-unit residential dwelling an additional charge, above and beyond the service rate for a single family dwelling as specified in the Franchise Agreement, solely to defray the exact additional per-resident cost to the franchisee of compensating the owner for access to the multiple-unit residential dwelling. Any such additional charge shall be subject to the approval of the Township. Such additional charge shall not be included in the computation of franchise fees due to the Township pursuant to this Ordinance or the Franchise Agreement.
- D. Notwithstanding any other language in this Section or elsewhere in this Ordinance, the franchisee shall not be obligated to provide service to any multiple-unit residential dwelling so long as the owner of that dwelling demands compensation from the franchisee in an amount that is unreasonable or imposes financial or other conditions that would, in the franchisee's reasonable business judgment, render provision of Cable service to that dwelling uneconomic. Should the franchisee subsequently agree to render service to such multiple-unit residential dwelling, there shall be no installation charges to the residents of such dwelling beyond those set forth in the Franchise Agreement. The franchisee shall not be obligated, in such circumstances, to request the Township to institute condemnation proceedings.
- E. Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall penalize, charge, or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident or discriminate in any way against such tenant or resident who requests or receives Cable Communications Service from a company operating under a valid and existing cable communication franchise issued by the Township. Any person convicted of violating any provision of this Section is subject to a fine of not more than Three Hundred Dollars (\$300) for each offense.
- F. No person shall resell, without the express written consent of both the franchisee and the Township, any cable service, program or signal transmitted by a franchisee operating under a franchise issued by the Township.
- G. Nothing in this Section shall prohibit a person from requiring that Cable Communication System facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning and appearance.
- H. Nothing in this **Article** shall prohibit a person from requiring a franchisee from agreeing to indemnify the owner, or his agents or representatives, for damages or for liability for physical damages caused by installation, operation, maintenance, or removal of cable television facilities.

### **Section 13 - Inconsistent Ordinances Repealed**

Ordinance No. 71 of the Charter Township of Orion, entitled "Cable Communications Ordinance" and all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

**Section 14 - Violation and Penalties** *(repealed Section 6(F); amended 08.15.94)***A. Municipal Civil Infraction / Payment of Fine.**

Any person, firm, or corporation violating a provision of this Ordinance, upon an admission or a finding of responsibility for such violation, shall be deemed responsible for a municipal civil infraction as that term is defined and used in MCL 600.101, *et seq.*; MSA 27A.101, *et seq.*, as amended, and shall pay a civil fine as prescribed by ordinance or as determined by the district court, district court judge, or district court magistrate.

**B. Costs.**

A person, firm, or corporation ordered to pay a fine under Subsection A shall be ordered by the district court judge or magistrate to pay costs of not less than Nine Dollars (\$9) or more than Five Hundred Dollars (\$500), which costs may include all expenses, direct or indirect, to which the Township of Orion has been put in connection with the violation of the Ordinance up to the entry of the court's judgment or order to pay fines and costs.

**C. Additional Writs and Orders.**

A person who admits or is found responsible for violation of this Ordinance shall comply with any order, writ, or judgment issued by the district court to enforce this Ordinance pursuant to Chapter 83 and Chapter 87, of the Revised Judicature Act, MCL 600.101, *et seq.*; MSA 27A.101, *et seq.*, as amended.

**D. Default on Payment of Fines and Costs.**

A default in payment of a civil fine, costs, or damages, or expenses ordered under Subsection A or B or an installment of the fine, costs, or damages or expenses as allowed by the court, may be collected by the Township of Orion by a means authorized for the enforcement of a judgment under Chapters 40 or 60 of the Revised Judicature Act, MCL 600.101, *et seq.*; MSA 27A.101, *et seq.*, as amended.

**E. Failure to Comply with Judgment or Order.**

If a defendant fails to comply with an order or judgement issued pursuant to this section within the time prescribed by the court, the court may proceed under Subsection G.

**F. Failure to Appear in Court.**

A defendant who fails to answer a citation or notice to appear in court for a violation of this Ordinance is guilty of a misdemeanor, punishable by a fine of not more than Five Hundred Dollars (\$500) plus costs and/or imprisonment not to exceed ninety (90) days.

**G. Civil Contempt.**

1. If a defendant defaults in the payment of a civil fine, costs, or other damages or expenses, or installment as ordered by the district court, upon motion of the Township of Orion or upon its own motion, the court may require the defendant to show cause why the defendant should not be held in civil contempt and may issue a summons, order to show cause, or bench warrant of arrest for the defendant's appearance.
2. If a corporation or an association is ordered to pay a civil fine, costs, or damages or expenses, the individuals authorized to make disbursements shall pay the fine, costs, or damages or expenses, and their failure to do so shall be civil contempt unless they make the showing required in this subsection.
3. Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on his or her part to make a good faith effort to obtain the funds required for payment, the court shall find that the default constitutes a civil contempt and may order the defendant committed until all or a specified part of the amount due is paid.
4. If it appears that the default in the payment of a fine, costs, or damages or expenses does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment or revoking the fine, costs, or damages or expenses.

5. The term of imprisonment on civil contempt for nonpayment of a civil fine, costs, or damages or expenses shall be specified in the order of commitment and shall not exceed one (1) day for each Thirty Dollars (\$30) due. A person committed for nonpayment of a civil fine, costs, or damages or expenses shall be given credit toward payment for each day of imprisonment and each day of detention in default of recognizance before judgment at the rate of Thirty Dollars (\$30) per day.
6. A defendant committed to imprisonment for civil contempt for nonpayment of a civil fine, costs, or damages or expenses shall not be discharged from custody until one of the following occurs:
  - a. Defendant is credited with an amount due pursuant to Subsection G(5).
  - b. The amount due is collected through execution of process or otherwise.
  - c. The amount due is satisfied pursuant to a combination of Subdivisions G(6)(a) and (b).
7. The civil contempt shall be purged upon discharge of the defendant pursuant to Subsection G(6).

**Section 15 - Effective Date**

This Ordinance shall take effect immediately upon publication in a newspaper of general circulation in the Charter Township of Orion.