

**TOWNSHIP OF MARION
LIVINGSTON COUNTY, MICHIGAN**

**CABLE TELEVISION
ORDINANCE NO. 1-10-89**

An ordinance governing any franchise to any cable communications system company, its successors and assigns, to operate and maintain a cable communications antenna television system in Marion Township; setting forth conditions accompanying the grant of a franchise; providing for regulations and use of the cable communications system; and prescribing penalties for violation of the franchise provisions.

Be it ordained by the Board of Marion Township:

Section 1: Short Title. This ordinance shall be known and may be cited as the Marion Township Cable Communications System Ordinance.

Section 2: Declaration of Purpose. The purpose of this ordinance is to provide fair regulation of cable television service in the township of Marion in the interest of the public, to promote and encourage adequate, economical and efficient cable television service to the residents of Marion Township, to promote and encourage harmony between cable communications system companies and their subscribers, and to provide for the furnishing of cable communications system service to the residents of Marion Township without unjust discrimination, undue preferences or advantages.

Section 3: Definitions

Township: the township of Marion.

Basic Service: any service tier that includes retransmission of local television broadcast signals.

Board: the board of Marion Township.

Cable Service Area: the territory within the boundaries of Marion Township.

Channel: a six (6) megahertz (MHz) frequency band, which is capable of carrying either one standard video signal, a number of audio, digital or other non-video signals, or some combination of such signals.

Commission: the person or group of people responsible for regulating cable communications systems provided hereunder in the township, whether such commission is elected or appointed by the township board.

Connection: the attachment of the drop to the first radio or television set of the subscriber.

Converter: an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel

selector also permits a subscriber to view all basic service delivered at designated converter dial locations.

Drop: the cable that connects the subscriber terminal to the nearest feeder cable of the system.

FCC: the Federal Communications Commission or its designated representative or assignees.

Franchise: a license to a cable communications system company (grantee), its successors and assigns, permitting them to construct and operate a cable communications system in this community as set forth in the general terms of this ordinance and the specific terms of the franchise. A complete franchise shall be understood to consist of a complete copy of this ordinance to which shall be appended a licensing contract negotiated between the grantee and the township.

Grantee (also Franchisee): any recipient of a cable communications system franchise granted in accordance with the provisions of this ordinance.

Local Gross Revenues: any revenue derived directly or indirectly by grantee, its affiliates, subsidiaries, parent and any person in which grantee has a financial interest of five percent (5%) or more from or in connection with the operation of the system including, but not limited to, basic subscriber service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals, studio rental, production equipment, and local advertising revenues. The term does not include any taxes on services furnished by grantee and imposed directly upon any subscriber or user by the state, township or other governmental unit and collected by grantee on behalf of the said governmental unit.

Ordinance: this corpus and any amendments to it, describing and delimiting the assignment of a franchise to construct and operate a cable communications system in this community.

Person: any person, firm, partnership, association, corporation, company or legal entity of any kind.

Street: the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive, or any easement or right-of-way now or hereafter held by township that shall, within its proper use and meaning in the sole opinion of the township, entitle grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances attachments and other property as may be ordinarily necessary and pertinent to a system.

Subscriber: any person who contracts with the grantee to receive cable communications system service for a fee.

System or Cable Communications System: a system of antennas, cables, wires, lines, towers, waveguides or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic signals located in the township.

User: any person reviewing the grantee's channels for "cable casting" or origination of programs.

Section 4: Priority of Ordinance. In the event of a conflict between the terms of the franchise agreement and the provisions of this ordinance, the provisions of the ordinance shall be deemed paramount.

Section 5: Franchise Required, Non-exclusivity of Franchise, Renewal, Expiration, Service Continuity

- A. No person shall construct, install, maintain, or operate a cable communications system in the township of Marion, nor shall any person provide a cable communications system service or acquire ownership or control of a cable communications system company in Marion Township without such person having first obtained a franchise from Marion Township.
- B. Any franchise issued pursuant to this ordinance shall be a non-exclusive franchise for a term of years, not to exceed fifteen (15) years, as the board may approve and shall be issued in a form to be determined by the board.
- C. This franchise may be renewed for a period not less than five (5) years or more than fifteen (15) years subject to the same terms and conditions as contained herein or on such different or additional terms and conditions as may be lawfully specified by the township board.
 - 1. Commencing no later than twenty-four (24) months prior to expiration date of the franchise, the township board shall undertake an evaluation of the franchise and ordinance and the service being offered to the township.
 - 2. Except by mutual agreement of the township and grantee, no earlier than two (2) years and not less than eighteen (18) months prior to the expiration date of the franchise, the grantee may submit a written application for renewal to the township board by registered or certified mail. At that time, after giving public notice, the Township Board shall review the provisions of the franchise and shall evaluate the performance of the grantee. In making this evaluation, the Township Board shall consider relevant factors including, but not limited to, the following:
 - a. technical development, performance and capability of the grantee's cable system;
 - b. programming;
 - c. additional services offered by the grantee;
 - d. cost of service;
 - e. performance of all duties and obligations of grantee as prescribed by the franchise;
 - f. cable industry performances nationwide; and

- g. comments from residents and representatives of community organizations submitted in a manner to be determined by the Township Board.
- 3. After holding a public hearing, the Township Board shall take such actions as it deems appropriate, which may include any of the following:
 - a. If the Township Board determines the grantee's performance to be satisfactory, a new franchise may be granted pursuant to this ordinance.
 - b. In the event the grantee is determined by the Township Board to have performed unsatisfactorily, new applicants shall be sought and evaluated and a franchise awarded in accordance with franchising procedures then in force.
 - c. The Township Board may direct the grantee to remove and dismantle its cable system at the grantee's cost.
 - d. The Township Board shall have the option to require the sale by the grantee and the purchase by the new franchisee of the system at its then fair market value. In the event that the Township Board determines that the existing system is to be used by the new franchisee, the Township Board shall direct in the award of the franchise the sale by the grantee and purchase by the new franchisee of the system at its then fair market value. Upon exercising such option, the Township Board shall proceed to obtain an appraisal of the fair market value of the system to be completed within ninety (90) days of the exercise of its option. No later than sixty (60) days after completion of the appraisal, the successor company shall pay the grantee the fair market value of the system and, upon payment, shall be entitled to title and possession of the system. In the event that the grantee and the successor company cannot agree upon the fair market value of the system, the successor company shall pay the grantee seventy-five percent (75%) of the appraised fair market value of the system within sixty (60) days after completion of the appraisal and, upon payment, shall be entitled to title and possession of the system. In that event, the ultimate amount payable to the grantee shall be determined by action in the Livingston County Circuit Court. As used, in this subsection, "fair market value" shall not include any allocation of value for expectation of renewal of the franchise.
 - e. Absent a timely request from grantee to renew the franchise, the franchise may be terminated at the end of a term.
 - f. The Township Board may, after a public hearing on the application, take action as allowed by law which in its sole discretion it shall deem appropriate and reasonable.
- D. In lieu of renewing or extending a franchise awarded pursuant to this ordinance, the township may:

1. Invite competitive proposals.
2. Purchase the system at fair market value. In the event that the township and grantee are unable to agree upon the fair market value within thirty (30) days of expiration of the franchise, the fair market value shall be determined by arbitration. Either party may demand such arbitration in writing within forty-five (45) days of the expiration of the franchise.

Within ten (10) days after such demand, the other party shall name its arbitrator, of in default thereof, such arbitrator shall be named forthwith by the Arbitration Committee of the American Arbitration Association, and the two arbitrators so selected shall name a third arbitrator within ten (10) days, or in lieu of such agreement on a third arbitrator by the two arbitrators so appointed, a third arbitrator shall be appointed by the Arbitration Committee of the American Arbitration Association.

Each party shall bear its own arbitration costs and expenses.

The arbitration hearings shall be held at the Township Hall on twenty (20) days notice to the parties. The arbitration rules and procedures of the American Arbitration Association shall govern the presentation of evidence therein.

An award rendered by a majority of the arbitrators appointed pursuant to this ordinance shall be final and binding on all parties to the proceedings; or

3. Exercise any other legal option that it deems appropriate.
- E. It shall be the right of all subscribers to receive all available services providing their financial and other obligations to the grantee are honored. In the event that the grantee elects to overbuild, rebuild, modify, or sell the system, or the Township Board revokes or fails to renew the franchise, grantee shall provide to all subscribers continuous, uninterrupted service during the lifetime of the franchise. In the event of purchase by township, or by a successor franchisee, the grantee shall cooperate with the township or the successor franchisee to operate the system during the transition period and the grantee shall maintain continuity of the service to all subscribers.

Section 6: Franchise; Application; Contents; Issuance; Transfer

- A. The application for such franchise to install, construct, maintain or operate a cable communications system in the township of Marion or to furnish a cable communications service therein shall be made in writing to the Township Board in such form as may be prescribed, shall include a description and map of the territory within the township of Marion in which the cable communications system is to be installed, constructed, maintained or operated or cable communication service is to be provided, shall be accompanied by a showing of the applicant's legal, financial, technical and other qualifications to be a franchisee hereunder, and shall contain:

1. In establishing legal qualifications, if other than a single individual, a certified copy of the partnership agreement, articles of association, or articles of incorporation, as the case may be, and also, if a foreign corporation, a certified copy of its authorization to do business in the State of Michigan;
 2. In establishing financial qualifications, a copy of applicant's current balance sheet as of a date not more than sixty (60) days prior to the date of the application shall be furnished, if a loan or other credit arrangement is to be consummated to finance the establishment and operation of the proposed facilities, full particulars relative thereto shall be disclosed, including the identity of the creditor;
 3. In establishing technical qualifications, a statement of the arrangements to ensure the rendition of good service, including the type and kind of facilities to be employed, the technical standards to be followed, the maintenance and repair facilities to be used, the number and description of technical personnel, including copies of any contracts, agreements or arrangements relating to any of the above;
 4. A statement as to the location of the proposed antenna site or sites and the location of any places of business in the township of Marion;
 5. A statement as to any affiliated corporations or business organizations engaged in providing cable communications service or interlocking directorships of applicant with any other business engaged in providing cable communications service;
 6. A detailed statement as to the arrangements by which applicant proposes to construct its cable communications facilities and system including the adequacy and feasibility of such construction arrangements, and shall be accompanied by a fee of \$2,500.
- B. Upon the filing of such an application, the Township Board shall consider the application and may request such additional information as it may deem necessary to establish the legal, financial, technical and other qualifications of the applicant to provide a cable communications system in the township.
- C. If the Township Board determines that the applicant possesses the necessary qualifications, legal, financial, technical and otherwise, to reasonably assure applicant's ability to satisfactorily install, construct, maintain or operate a cable communications system or to furnish a cable communications system to the public in the township of Marion, the board may issue applicant a non-exclusive franchise therefore in the township of Marion, provided that such franchise shall not be issued until:
1. the franchise application has been on file and available for public inspection in the office of the township clerk for at least thirty (30) days, and

2. the board has, thereafter, held a public hearing on such application after due notice of the time and place of such hearing has been given the public.
- D. In determining whether such a franchise shall issue, the board shall take into consideration, among other things, the suitability of the applicant, the financial responsibility of the applicant, and the ability of the applicant to perform efficiently the service for which the franchise is requested, including the prior experience, if any, of the applicant in providing cable communications systems or furnishing cable communications service.
 - E. No franchise granted hereunder may be sold, transferred or assigned unless such transaction is first approved by the board after receipt of a written application therefore containing the same information as to transferee as would be required of an original applicant. This provision does not apply to transfers to wholly-owned subsidiaries, limited partnerships, or to mortgaging the system.

Section 7: Franchise Fees; Payment of Fees; Reporting; Records

- A. During the term of any franchise granted pursuant to this ordinance, the grantee of such franchise shall pay to the township an annual franchise fee of five percent (5%) of local gross revenues derived by said grantee from operations within the township, unless a grace period is granted by the board during initial phases of operations upon a showing of hardship by the franchise grantee.
- B. Such franchise fee shall be paid annually during the existence of the franchise on or before a date thirty (30) days subsequent to each anniversary date of said franchise at the office of the township treasurer during regular business hours. If the treasurer's office is closed on said thirtieth day, then payment may be made during regular business hours on the next following day on which the office is open for business.
- C. Payment of the annual franchise fee shall be accompanied by a statement setting forth in detail the computation of said franchise fee and said statement shall be certified under oath by the franchise grantee or an officer of grantee authorized to act on grantee's behalf.
- D. The township shall have the right to inspect at all reasonable times the customer records of any person granted a franchise hereunder from which its franchise fee payments are computed and shall have the right of audit and recomputation of any and all franchise fees paid. No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the township may have for further or additional sums payable as a franchise fee under this ordinance or for the performance of any other obligation hereunder.

Section 8: Standard of Service; Technical and Performance Standards; Test and Compliance Procedures; Operation and Maintenance

- A. Any cable communications system company granted a franchise pursuant to this ordinance shall furnish reasonably adequate service and facilities to the public and its

cable communications system shall be installed, constructed, maintained and operated in accordance with the accepted standards of the industry, in conformity with the state of the art and any standards of operation or maintenance for a cable communications system which may be established or issued by the Federal Communications Commission. It is the intention of the board that any person granted a franchise to furnish a cable communications system service to the public within the Township of Marion shall possess the financial and technical qualifications necessary to provide a cable communications system that will assure its subscribers high quality service.

- B. System technical and performance standards promulgated by the FCC relating to cable communications systems contained in Sub-part K of Part 76 of the FCC's rules and regulations relating to cable communications systems shall be followed. Any requirements of the township, including permits, licenses, and applicable ordinances, shall be adhered to. The results of any tests required by the FCC shall be filed with the township within ten (10) days of the conduct of such tests.
- C. Grantee shall provide proof of performance tests and system maintenance tests in accordance with standards established by the FCC and tests shall be paid for by the grantee. Such proof of performance tests will be provided to the township on a periodic basis.
- D. The grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Insofar as possible, interruptions shall be preceded by notice and shall occur during periods of minimum use of the system.

Section 9: Rates; Rate Changes

- A. All regulated rates and changes shall be subject to regulations by the township in a manner to be provided by it.
- B. Rates and charges charged by grantee for monthly service and installation and other charges hereunder shall be uniform, fair and reasonable, and designed to meet all necessary costs of service, including a fair rate of return.
- C. Grantee shall maintain rates for all basic services constant until 24 months after completion of construction of 100% of the service area. This guarantee applies to installation charges as well.
- D. Service requests for maintenance or repair of the system shall be performed at no charge to a subscriber. If such maintenance or repair is required as a result of damage caused by subscriber, grantee may charge according to its actual cost for time and material.
- E. A change in any regulation rate, when not inconsistent with applicable requirements of the FCC or other lawful authority, may be initiated by grantee. Any such rate change shall be subject to approval by the township in accordance with provisions of this section and the following paragraphs.

1. No rate change may be made without approval by majority vote of the Township Board.
2. No rate changes shall be approved that would result in different rates or charges for service to similarly situated subscribers in the rate territory.
3. No rate or charge change, which in the reasonable opinion of the township is substantial, will be approved unless all of the standards and prerequisites for review have been made, all pursuant to this section.
4. The standards for reviewing a proposed rate change will include at least the following:
 - a. The ability of grantee to render system services and to derive a reasonable profit there from under the existing rate schedule and proposed rate schedule;
 - b. The revenues and profits derived from system services;
 - c. The quality of the service offered by grantee;
 - d. A fair rate of return on net investments;
 - e. A fair rate of return with respect to investments having similar risks to that of providing cable communications services;
 - f. Capital expenditures by grantee in providing updated technology and service to subscribers;
 - g. Such other factors as township may deem relevant.
5. No rate of increase request shall be approved until 24 months after construction is completed.
6. The procedures to be followed in changing a rate or charge shall include at least the following:
 - a. A proposal for a rate change will be submitted to the township.
 - b. The proposal shall be supported by statistical and other proof indicating that the existing rate or charge is inadequate and that the proposed increases are required to enable the grantee to render service to fulfill its obligations under this franchise and to derive a reasonable profit there from.
 - c. The application shall include (or grantee shall provide at the request of the township) current information including financial information with at least the following from grantee or its parent company concerning the cost of serving the rate territory:
 - (i) Balance sheet;
 - (ii) Income statement;
 - (iii) Statement of sources and application of funds;
 - (iv) Detailed supporting schedules of expenses, income, assets and other items as may be required by township;

- (v) Statement of current and projected subscribers;
 - (vi) A current list of rates and charges of similar systems, with similar franchise requirements.
- d. Township will notify the grantee and schedule a hearing on the request within three (3) weeks from the date of receipt of the application and the determination by the township of its completeness. Township may extend time for receipt of evidence and hiring and reporting of consultant for a period of up to two (2) months. Grantee will notify the public through written notification of the date, place and time of the hearing. Township will publish notice ten (10) days prior to hearing in its official newspaper.
 - e. After closing the public hearing, the township will have six (6) weeks within which to make its determination. Any approved change in rates or charges shall become effective upon the date determined by the township, but in no event shall that date be later than three (3) months after the close of the public hearing.
- 7. Township may utilize a rate consultant to advise it on proposed rate changes and to assist in maintaining uniform rates within the territory. A rate consultant may be any person who has sufficient background and experience, in the sole opinion of the township, to properly evaluate and analyze rates and charges. The expense of any rate consultant shall be born by grantee.
 - 8. Any time limit may be waived only if township and grantee consent.

Section 10: Local Operations and Service

- A. Every person granted a franchise pursuant to this ordinance shall have a business office located in Livingston County staffed for the purpose, among others, of receiving and investigating complaints, dealing with its subscribers, receiving payment for service and otherwise conducting business. The business office shall have a toll-free telephone number, and shall be staffed during weekdays from 10:00 a.m. to 5:00 p.m.
- B. The grantee shall, without charge for installation, maintenance, or service, make one installation of its cable communications system to the township hall, any other township building designated by the township, each public and parochial school, and each public library in the township serviced by its cable communications system. Such installation shall be made at all locations as shall be requested by the respective unit of government or educational institution.
- C. In the event of an emergency or disaster, the grantee shall, upon request of the township supervisor or his/her designated agent, make available its facilities to the township for emergency use for the duration of the emergency or disaster. The grantee shall be indemnified and held harmless from any liability, loss, claim, or demand resulting from such emergency use by the township.

Section 11: Indemnity; Proof of Insurance; Effective Date of Franchise

- A. Every franchisee shall, within thirty (30) days of the granting of a franchise, pursuant to this ordinance, file with the township clerk, and at all times thereafter maintain in full force and effect for the term of the franchise, at its expense, a corporate surety bond, or such other surety arrangements as the board may approve, in the amount of fifty thousand dollars (\$50,000) conditioned upon the faithful performance by such franchisee of its obligations under its franchise as herein set forth, and upon the further condition that if such franchisee shall fail to comply with any one (1) or more material provisions of this ordinance or franchise agreement, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the township as a result thereof, including the full amount of any compensation, indemnification, or cost of removal of any property of such franchisee as provided in this ordinance plus attorney's fees and costs, up to the full amount of the bond, said condition to be a continuing obligation for the duration of any franchise granted under this ordinance and any renewal thereof and thereafter until such franchisee has liquidated all of its obligations with the township that may have arisen under the franchise or from the exercise of any privilege or right granted thereby. Any bond provided under this section shall provide that at least thirty (30) days prior notice of any intention not to renew, to cancel or to make a material change therein shall be filed with the township. Nothing herein shall be construed to excuse faithful performance by any franchisee or in any way to limit its liability for damages or otherwise.
- B. Any franchise, within thirty (30) days of the grant of a franchise pursuant to this ordinance, shall file with the Marion Township Clerk, in addition to the bond as hereinbefore set forth:
1. An indemnity agreement to indemnify, defend and save the township harmless from and against any or all claims, suits, actions or liability for damages that may arise in any way from the grant of a franchise to such franchisee, or its operation there under in the township in defending itself against any claim, action or suit;
 2. Proof of a general comprehensive liability insurance policy issued by a company licensed to do business in Michigan, protecting the township, its officers, boards, commissions, agents and employees against liability for loss or damage for personal injury, death and property damage, occasioned by the installation, construction, maintenance or operation of a cable communications system in the township with a minimum liability limits of one million dollars (\$1,000,000) for personal injury or death for each occurrence, and five hundred thousand dollars (\$500,000) for damages to property resulting from any one (1) occurrence and said policy shall contain a provision that a written notice of cancellation, or material change or reduction in coverage, shall be given to the township clerk at least thirty (30) days in advance of the effective date thereof, and proof of adequate insurance as required by the Michigan Workmen's Compensation Law applicable to it.
- C. No franchise hereunder shall be effective until the provisions of subsections A and B above have been fully complied with and failure to file with the township within thirty

(30) days after grant of a franchise, the bond, indemnity agreement, proof of a general comprehensive liability insurance policy and proof of adequate workmen's compensation insurance, or any of them, as required by subsections A and B above shall render the franchise null and void without notice or further proceedings.

Section 12: Termination, Revocation or Surrender of Franchise

- A. Any franchise granted pursuant to this ordinance will be terminated and cancelled without further proceedings one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a franchisee, whether in receivership, reorganization, bankruptcy or other action or proceedings unless such receivership or trusteeship shall have been vacated prior to the expiration of such period; provided, however, that such receiver or trustee may apply for a transfer or assignment of such franchise, as hereinbefore provided, within sixty (60) days of the appointment of such receiver or trustee, if duly approved by the court having jurisdiction in the premises, and provided further, in case of a foreclosure or other judicial sale of the plant, property or facilities of a franchisee, with or without the appointment of a receiver or trustee, including or excluding the franchise granted under this ordinance, such franchise as granted will be terminated and cancelled without further proceedings upon thirty (30) days written notice of termination served upon the franchisee and the purchaser thereof, unless within such thirty (30) day period the purchaser shall apply to the township for a transfer or assignment to it of the same as hereinbefore provided.
- B. Any franchise granted pursuant to this ordinance is revocable at will by the board prior to its expiration where the franchisee has failed substantially to comply with any material provision or requirement of this ordinance or a franchise agreement granted pursuant of this ordinance. The board shall give a written notice containing full particulars as to the provision or requirement with which compliance is claimed deficient and allow such franchisee sixty (60) days to comply with the terms of the ordinance or franchise agreement. At the expiration of such sixty (60) days, such franchise will be deemed terminated and revoked unless such franchisee shall request a hearing before the board upon its alleged failure to substantially comply with any material provision or requirement of this ordinance or franchise agreement. Said hearing shall be stenographically recorded and, at the conclusion thereof, the board, if it finds that the franchisee has not substantially complied with any provision or requirement of this ordinance or franchise agreement, may terminate and revoke the franchise. Such franchisee shall have the same rights of an appeal from an adverse decision as are granted by the statutes of Michigan for appeals from the actions of administrative agencies.
- C. Any person granted a franchise pursuant to this ordinance may surrender it by written notice of intent to surrender its franchise filed with the township clerk not less than six (6) months prior to the surrender date. On the surrender date specified in such notice, all rights, privileges and authority under said franchise shall terminate; provided, however, that said person shall have a period of six (6) months thereafter to remove its towers, poles, wires, cables, fixtures or other components of the cable communications system from the streets, alleys, public rights-of-way, or public places. At the expiration

of such six (6) month period, any property not removed by such person shall become the property of the township, without further act, to do with as it may choose. Any cost incurred by the township in removing said property from the streets, alleys, public rights-of-way, or public places shall be a claim against such person under the performance bond required by this ordinance.

Section 13: Commencement of Construction; Territory; Maps

- A. Any person granted a franchise pursuant to this ordinance shall commence construction or installation of its cable communications system within twelve (12) months after the effective date of the franchise as provided therein and shall have, within eighteen (18) months after the effective date of such franchise, sufficient construction completed to provide cable communication service to subscribers within at least twenty percent (20%) of the franchise area as specified in the franchising agreement.
- B. The franchising agreement shall specify the territory to be served by the cable communications system, and shall further specify a timetable for extending the cable communications system to all areas of the territory.
- C. The franchisee shall file with the township clerk true and accurate maps of all existing and proposed installation.

Section 14: Hearing and Determination of Complaints; Procedure

- A. The board or any person or department designated by it shall, upon its own motion or upon complaint of any person or subscriber of a franchisee, after complainant having caused a written complaint to be delivered to the franchisee and after satisfaction not having been received within three (3) business days of delivery, have authority to hear and determine all complaints concerning the rates, charges, rules, regulations, practices, quality of service rendered, equipment furnished, or any other matter relating to the service or operation of the cable communications system.
- B. The board may require the franchisee to keep and supply to the township a record of complaints received and the response to and resolution thereof.

Section 15: Construction of Facilities; Right to Use Streets; Restrictions; Disposal; Duties

- A. A franchise granted pursuant to this ordinance shall confer upon the grantee named therein the non-exclusive right to erect, install, construct, reconstruct, replace, remove, repair, maintain and operate in or upon, under, above, across and from the streets, avenues, highways, sidewalks, bridges and other public ways, easements, and rights-of-way, as existing as of the date of the grant of said franchise, in and belonging to the township, all necessary towers, poles, wires, cables, coaxial cables, transformers, amplifiers, underground conduits, manholes and other television and/or radio conductors and fixtures for the installation, construction, maintenance and operation of a cable communications system (including audio, video and FM radio signals) or the furnishing of a cable communications service.

- B. Prior to the erection or installation of any towers, poles, guys, anchors, underground conduits, manholes or fixtures for use in connection with the installation, construction, maintenance or operation of a cable communication system under a franchise granted pursuant to this ordinance, the franchisee desiring to erect or install such communications system shall first submit to the Township Board for approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required by the board, together with a map indicating the proposed location of such facilities. No erection or installation of any tower, pole, guy, anchor, underground conduit, manhole, or fixture for use in a cable communications system shall be commenced by any person until approval therefore has been received from the Township Board, provided further that such approval shall not be unreasonably withheld.
- C. Upon the expiration, termination or revocation of any franchise granted pursuant to this ordinance, or should any franchise grantee wish otherwise to dispose of any tower or pole erected or installed for use in connection with a cable communications system, the township retains the first right and option to purchase in place such towers or poles as it may require for fair value. Further, upon expiration, termination or revocation of any franchise granted pursuant to this ordinance, title to all underground conduit and manholes erected or installed for use in the cable communications system under the rights conferred in this ordinance shall pass to the township.
- D. In areas or portions of the township where transmission or distribution facilities of either or both public utilities providing telephone service or electric service are underground, or may be placed underground, any franchisee shall likewise install, construct, maintain and operate its transmission and distribution facilities in a like manner underground to the maximum extent feasible as determined by existing technology and conditions, subject to the approval of the township as hereinbefore stated.
- E. All construction, installation, maintenance and operation of any cable communications system or of any facilities employed in connection therewith shall be in compliance with the provisions of the National Electrical Safety Code as prepared by the National Bureau of Standards, the Bell Telephone System's Code of Pole Line Construction, any standards issued by the Federal Communications Commission (FCC) or other federal or state advisory agencies in relation thereto. **Every cable communications system installed, constructed, maintained and operated as not to endanger or interfere with the safety of persons or property in the township.???**
- F. Any opening or obstruction in, disturbance of or damage to the streets, alleys, public rights-of-way or public places by any franchisee in the exercise of any right granted pursuant to this ordinance shall be properly guarded by adequate barriers, lights, signals and warnings as to prevent danger to any person or vehicle using such streets, alleys, public rights-of-way or public place and shall be properly and promptly repaired, all in a manner specified and approved by the township at such franchisee's expense.

- G. Any franchisee owning or maintaining a cable communications system or facilities therefore in or on the streets, alleys, public rights-of-way or public places in the township shall, at its expense and without reimbursement from the township, upon request of the township, protect, support, temporarily disconnect, relocate or remove from the street, alley, public right-of-way or public place, any property of such franchisee when required by reason of traffic conditions, public safety, street vacation, freeway or street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, tracks, construction or change of the transmission or distribution facilities of any telephone or electric public utility or other public improvements. Any such franchisee shall also, at the request of any private party holding an appropriate permit issued by the township, temporarily raise or lower its cable communications transmission or distribution wires or cables to permit the moving of any building or structure, provided that the actual expense of such temporary raising or lowering shall be paid in full by the party requesting same.
- H. If any franchisee shall fail to commence, pursue or complete any work required by law or by the provisions of this ordinance as hereinbefore set forth to be done in any street, alley, public rights-of-way or public place, the Township of Marion may cause such work to be done and such person shall pay to the township the cost thereof within thirty (30) days of the receipt of an itemized statement of such cost.

Section 16: Records; Reports. The franchisee shall file annually with the Township Clerk not less than sixty (60) days after the end of the franchisee's fiscal year, a copy of its report to stockholders, an annual income statement applicable to its operations during the preceding twelve (12) month period, a balance sheet, and a statement of its properties devoted to cable communications system operations by categories, giving its investment in such properties on the basis of original cost less applicable depreciation. These reports shall be prepared or approved by a Certified Public Accountant. The franchisee shall further submit other reasonable information as the Township Board shall request with respect to the franchisee's properties and expenses related to its cable communications system operations within the Township of Marion.

Section 17: Termination of Service

- A. Upon termination of service to any subscriber, the franchisee shall promptly, upon the subscriber's request, remove all of its facilities and equipment from the premises of such subscriber. Pole service to the dwelling may remain intact upon written permission of the owner.
- B. After a forty-five (45) day grace period of non-payment of monthly charges, franchisee shall have the right to terminate service to the premises of a subscriber.
- C. If any subscriber of the franchisee of less than one (1) year terminates service because of the franchisee's failure to render service to such subscriber of the type and quality provided for herein, or if service to a subscriber of less than one year is terminated without good cause or because the franchisee ceases to operate the cable communications system for any reason except expiration of the franchise, the franchisee shall refund to such subscriber an amount equal to the initial tap-in and

connection charges paid by him/her divided by twelve (12) and multiplied by a number equal to twelve (12) minus the number of months the subscriber has been served by the system.

Section 18: The Township Rights in Franchise

- A. Additional Regulations: The right is hereby reserved by the township to adopt, in addition to the provisions contained in this ordinance and the franchising agreements hereunder granted and in other existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.
- B. The township shall have the right to inspect the books, records, maps, plans, income tax returns, and other materials of the franchisee at any time during normal business hours.
- C. The township shall have the right, during the life of this franchise, to install and maintain free of charge upon the poles of the franchisee such wire and pole fixtures necessary for alerting system for police, fire or other service in the public interest, on the condition that such wire and pole fixtures do not interfere with the present or future operation of the cable communications system of the franchisee. The township shall hold the franchisee harmless from any liability, loss, claim or demand arising out of the township's use of said poles.
- D. The township shall have the right to supervise all construction or installation work performed subject to the provisions of this ordinance and the franchise and make such inspections as it shall find necessary to insure compliance with the terms of this ordinance, the franchise and other applicable laws.

Section 19: Miscellaneous

- A. New Developments: The township may amend any franchise or this ordinance when necessary to enable the franchisee to take advantage of any developments in the "state of the art" of cable communications systems providing the franchisee an opportunity to serve its customers more effectively, efficiently or economically.
- B. Section headings as set forth in this ordinance are for convenience only and shall not be a part of this ordinance, nor be used to construe or define any provision thereof.
- C. Amendment of Franchise: After published notice, public hearings and deliberations of the township, a franchise may be amended upon majority vote of the Township Board and the written consent of grantee.
- D. Variance Applications and Procedure
 - 1. Variance applications made by the grantee and, except as provided under (2) of this section, shall be based upon one of the following:

- a. The requested variance is a minor deviation from this franchise and is consistent with this franchise in the sole judgment of the township.
 - b. Application of the provision of the franchise would result in a substantial hardship to the applicant and to grant a variance would not be detrimental to other affected parties.
 - c. Due to expense or delay, it would be unreasonable to perfect such change by ordinance amendment.
 - d. Undue delay, expense or other adverse results will not occur by approval of the required variance.
 - e. If a variance is because of technical or cost reasons, the variance will result in equal or better system, in sole discretion of the township.
 - f. Because of technical or other reasons, a variance cannot be granted and further review will be required by the township.
2. A variance shall not result in a deviation from the requirements of the FCC or any other rule of law.
 3. A variance application shall be made in accordance with the following procedures:
 - a. Applications shall be filed with the Township Clerk on a form prepared by the Township Clerk.
 - b. The Township Clerk shall review the application within fourteen (14) calendar days.
 - c. The Township Board shall receive a report of the findings of the Township Clerk and shall act on a request within thirty (30) days.
 - d. If the variance is not approved by two-thirds (2/3) of the Township Board, the variance shall be deemed denied.
 4. Variance approvals shall not be unreasonably withheld.

Section 20: Severability. This ordinance is declared to be severable, and should any word, phrase, sentence, provision or section hereof be hereafter declared unconstitutional or otherwise invalid, the remainder of this ordinance shall not thereby be affected, but shall remain valid and in full force and effect.

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.