

East Bay Charter Township

6

Cable TV Ordinance

Motion by: _____ Second by: _____ to

Accept

Table

Deny

Roll call vote:

Yes: _____

No: _____

Absent: _____

Abstain: _____

Motion:

Passed

Failed



Fax Cover Sheet

Long Lake Township
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 Traverse City, Mi. 49684
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Send to: <i>SUE COURTADE</i>	From: <i>@.HOFFMAN</i>
Attention:	Date: <i>4-23-09</i>
Fax Number: <i>922-2094</i>	Phone Number: <i>946-4207</i>


- Urgent
- Reply ASAP
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Comments:

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Carol

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Carol Hoffman

From: jyoung@upnorthlaw.com
Sent: Sunday, April 12, 2009 12:41 PM
To: 'Carol Hoffman'
Cc: 'Lauri Broome'
Subject: Cable TV ord - repeal - ROW ordinance

Carol -

Attached are the memo regarding whether the current cable TV ordinance should be repealed and an ordinance to repeal it. In short.....the current cable TV ordinance contains some key provisions that are clearly invalid and some provisions that I think are still valid and enforceable. However, it is really not wise to keep an ordinance that contains a number of valid and invalld provision. It is better to take the valid provisions, improve upon them and place them in a new ordinance. Hopefully, the memo is clear and also explains why a new ordinance is best and what it should contain.

I compared the current ordinance to the required Uniform Franchise Agreement and also to other new right of way use ordinances (called Video Service Provider Ordinances) that I have used or seen used by other communities. Then, I checked with my contacts statewide. The approach that I am recommending is exactly what other communities are doing and what some "big" law firms that specialize in cable TV matters are recommending.

Call if questions. I will have Lauri from our office send a separate statement so you can share the cost among the other townships.

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Kevin A. Elsenheimer
Peter R. WendlingJames G. Young, *Of Counsel*
Lori A. Luckelt, *Of Counsel*+ Harry K. Gojski
+ Eugene W. Smith**MEMORANDUM**

April 13, 2009

TO: Carol Hoffman**FROM:** James G. Young**SUBJECT: Cable Television Franchise Ordinance**

In 2006, the State enacted the Uniform Video Franchise Act (the Act). The Act requires a Uniform Video Franchise Agreement and effectively preempts local cable TV franchise ordinances. As a result, you asked whether the Cable Television Franchise Ordinance is still needed. The Ordinance is a model ordinance and is used by multiple townships in Grand Traverse County.

One significant purpose of the Ordinance was to grant a franchise to cable TV companies for use of public rights of way (ROW) and to regulate certain aspects of cable TV service. As noted above, this purpose has been thwarted by the Act and those portions of the Ordinance are invalid.

Another purpose of the Ordinance was to provide some regulation of the use of ROW. These provisions are arguably still valid and should be placed in a specific ROW-use ordinance.

If the invalid and valid provisions remain in the current Ordinance, then litigation may develop regarding whether various provisions have been preempted by state law or are still valid. It is more efficient and may save time and legal expenses if the provisions of the current Ordinance that focus just on ROW usage are placed in a separate ordinance.

Other communities have followed this approach and have enacted separate ROW-use ordinances. Those ordinances are designed to supplement the Act and the Uniform Video Franchise Agreement. They use terminology consistent with the Uniform Video Franchise Agreement. Since each township already has a Uniform Video Franchise Agreement in place, it makes sense to have a ROW-use ordinance that is coordinated with the Agreement. It is my professional opinion that this is a preferable approach.

It is recommended that:

- A. The current Ordinance be repealed and
- B. A new ROW-use ordinance be drafted which meets the following goals:
 1. Be designed to implement the Act and the Uniform Video Franchise Agreement (the current Ordinance was enacted prior to the Act);
 2. Combine the best concepts from current Ordinance and other, more recent Video Service Provider Ordinances;
 3. Be kept as simple as possible;
 4. Focus just on the use of ROW by Video Service Providers. ("Video Service Providers" is the terminology used in the Uniform Video Franchise Agreement); and
 5. Contain protections for townships that would include, but not be limited to:
 - a. placement of underground lines when other utilities are underground in the area;
 - b. specifying that the Video Service Provider (Provider) pays for the relocation of its equipment when necessitated by road improvements or other construction within the ROW (otherwise, the Provider might assert that the township should pay for relocation since it is requesting the relocation);
 - c. prior approval by the township of construction within the ROW and requiring copies of "as built" plans be provided to the township upon request;
 - d. specifying "priority of use" of the ROW if the construction schedules of the Provider and another entity (such as the State or County) conflict;
 - e. upon failure of the Provider to complete ROW restoration after construction, the right of the township to complete the restoration and indemnification of the township; and
 - f. other provisions such as safety standards, insurance requirements, vacating a street, etc.

If Long Lake and other townships are interested in such a ROW-use ordinance, a draft can be prepared for everyone's review. Let me know the decision of the townships.

CABLE TELEVISION ORDINANCE

FOR

CHARTER TOWNSHIP OF EAST BAY, MICHIGAN

Ordinance No. 2005-2

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CABLE TELEVISION ORDINANCE

Ordinance No. _____

TITLE: CABLE TELEVISION THE CHARTER TOWNSHIP OF EAST BAY ORDAINS:

Section 1. SHORT TITLE. This franchise ordinance shall be known as the "Cable Television Ordinance" or "Ordinance."

Section 2. DEFINITIONS. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number, and words in the plural number include the singular number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

(a) "Applicable Law" means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

(b) "Basic Cable Service" means any Service tier which includes the retransmission of local television broadcast signals. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7), as it may be amended from time to time.

(c) "Cable Service" or "Service" means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522(6), as it may be amended from time to time.

(d) "Cable System" or "System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

(i) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

(ii) a facility that serves Subscribers without using any public Right-of-Way;

(iii) a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c) 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;

(iv) an open video system that complies with 47 U.S.C. § 653 ; or

(v) any facilities of any electric utility used solely for operating its electric utility systems.

(e) "Channel" or "Cable Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.

(f) "Cable Council" means the Cherry Capital Cable Council or its successors or delegations, including representatives of the Member Municipalities as may exist pursuant the Intergovernmental Agreement for Coordinated Regulation of Cable Television.

(g) "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

(h) "Franchise Fee" includes any tax, fee, or assessment of any kind imposed by the Township or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment which is discriminatory against Grantees or Cable Subscribers); capital costs which are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code.

(i) "Grantee" means a person who, in accordance with the provisions of this chapter, executes a franchise with the Township for the nonexclusive privilege to erect, construct, operate, maintain, or dismantle a Cable System in the Township.

(j) "Gross Revenue" means any and all revenue derived by Grantee from the operation of its Cable System to provide Cable Service within the Township including, but not limited to, 1) all Cable Service fees, 2) Franchise Fees (unless otherwise indicated by Township in writing), 3) late fees, returned check fees, 4) Installation and reconnection fees, 5) upgrade and downgrade fees, 6) local, state and national advertising

revenue, 7) home shopping commissions, 8) equipment rental fees, 9) guide revenue, and 10) production charges. Gross Revenues shall include cable modem service only to the extent such service is considered a "Cable Service" under Applicable Law. The term "Gross Revenue" shall not include bad debts or any taxes or fees on Services furnished by Grantee imposed upon Subscribers by any municipality, state or other governmental unit, including the FCC regulatory fee, credits, refunds and any amounts collected from Subscribers for deposits, PEG fees or PEG support. Township and Grantee acknowledge and agree that Grantee will maintain its books and records in accordance with generally accepted accounting principles (GAAP).

(k) "Installation" means the connection of the Cable System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber converter or other terminal equipment.

(l) "Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks, known as the Internet. Consistent with 47 U.S.C. § 230(e)(1), as may from time to time be amended.

(m) "Member Municipalities" means those municipalities that are parties to a then valid and existing Intergovernmental Agreement for Coordinated Regulation of Cable Television which include Acme Township, Bingham Township, Blair Township, East Bay Township, Elmwood Township, Garfield Township, Green Lake Township, Village of Kingsley, Long Lake Township, Paradise Township, Peninsula Township, and Traverse City, Michigan.

(n) "Normal Business Hours" means those hours during which most similar businesses in the Township are open to serve Subscribers. In all cases, "Normal Business Hours" must include some evening hours, at least one (1) night per week and/or some weekend hours.

(o) "Normal Operating Conditions" means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

(p) "Other Programming Service" means information that a Grantee makes available to all Subscribers generally.

(q) "PEG" means public, educational and governmental.

(r) "Right-of-Way" or "Rights-of-Way" means the area on, below, or above any real property in Township in which the Township has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of Township, including other dedicated Rights-of-Way for travel purposes and utility easements.

(s) "Service Area" or "Franchise Area" means the geographic boundaries of the Township and shall include any additions and/or deletions thereto by annexation or other legal means.

(t) "Service Interruption" means the loss of picture or sound on one (1) or more Cable Channels.

(u) "Standard Installation" means any residential or commercial Installation which can be completed using a drop of one hundred twenty-five (125) feet or less.

(v) "Subscriber" means any person who lawfully receives Cable Service via the System.

(w) "Township" means the Charter Township of East Bay, a municipal corporation, in the State of Michigan, acting by and through its Township Board, or its lawfully appointed designee.

(x) "Township Board" means the governing body of the Charter Township of East Bay, Michigan.

(y) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Section 3. NONEXCLUSIVE FRANCHISES. The Township, upon approval of the Cable Council, may grant a nonexclusive franchise for the occupation and use of streets, roads, and Rights-of-Way in the Township for the construction, operation and maintenance of a Cable System. Nothing in this chapter or in any such franchise shall affect the right of the Township to grant other nonexclusive franchises for cable television purposes or for telecommunications purposes. When considering the grant of additional franchises, the Township shall, to the maximum extent permitted by Applicable Law, ensure that the overall franchise terms are not materially more favorable nor less burdensome than those of an existing franchise cable operator in the Township.

Section 4. FRANCHISE BINDING. All provisions of this Ordinance and any franchise shall be binding upon the Grantee, its successors, lessees of the System, or assignees. In the event of a conflict between this Ordinance and the Franchise, the terms of the Franchise shall govern.

Section 5. FRANCHISE REQUIRED. No Cable System shall occupy or use the streets, roads, alleys, or Rights-of-Way of the Township and no cable operator shall operate a Cable System in the Township without an executed franchise granted pursuant to this Ordinance.

Section 6. FRANCHISE DURATION. A cable television franchise may be granted for a maximum of ten (10) years. A franchise may be renewed pursuant to the provisions of this Ordinance and Applicable Laws.

Section 7. FRANCHISE FEE.

(a) During the term of a franchise, Grantee shall pay quarterly to the Township or its delegates a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues.

(b) Township shall submit thirty percent (30%) or 1.5 of the five percent (5%) Franchise Fee payment received from Grantee to the Cable Council for ongoing franchise administration and PEG access operating support based upon approved budgets provided by the Cable Council.

Section 8. BI-ANNUAL SUBSCRIBER REVIEW. Not less than once every two (2) years a Grantee shall solicit and receive Subscriber input regarding the Cable System. A synopsis of such Subscriber input shall be promptly submitted in writing to the Township Clerk and the Cable Council.

Section 9. CHERRY CAPITAL CABLE COUNCIL. In order to ensure that the residents of the Township have the benefit of Cable Service and in order to distribute the costs of regulation, and coordinate regulation and franchising, the Cable Council has been formed under the provisions of the Urban Cooperation Act. MCLA 124.501 et seq; MSA 5.4088(1) et seq. The Township is a party to the Intergovernmental Agreement for Coordinated Regulation of Cable Television. The Township shall retain authority to grant a franchise to a qualified Grantee, but delegates authority for regulating, monitoring, reporting, and complaint processes to the Cable Council including the following functions:

(a) Regulate Basic Cable Service and equipment rates of Cable Service pursuant to FCC certification and procedures.

(b) Review Cable Service rates in accordance with Applicable Law.

(c) Recommend franchise requirements.

(d) Act as liaison between Member Municipalities, Grantee, schools, lessees of Cable Service, Subscribers, and citizens.

(e) Hear and decide citizen and Subscriber complaints and make recommendations as may be set out in the local franchises.

(f) Advise Member Municipalities on laws, regulations and technical aspects of cable television.

(g) Enforce the customer service requirements established by the FCC, this Ordinance or any franchise issued hereunder.

(h) Perform such other functions as may be requested by participating Member Municipalities.

Section 10. FRANCHISE TRANSFER.

(a) No sale or transfer of the franchise, or sale, transfer, or fundamental corporate change of or in Grantee shall take place without the prior written consent of Township which consent shall not be unreasonably withheld.

(b) No such consent shall be required, however, for a transfer in trust, by mortgage, or by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the franchise or Cable System to secure indebtedness. Grantee shall not be required to obtain approval from the Township if such sale, transfer or assignment is to an entity controlling, controlled by, or under common control with the Grantee. However, Grantee shall provide written notice to Township explaining such internal reorganization.

(c) The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Laws, either FCC Form 394 or all contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof. Township shall have such time as is permitted by Applicable Law to review a transfer request.

(d) In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to this section be approved without any new Grantee becoming a signatory to the franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the Township including, but not limited to, any adequate guarantees or other security instruments required by the Township.

(e) The approval of any sale, transfer or assignment pursuant to this section shall not be deemed to waive any rights of Township to subsequently enforce noncompliance issues relating to the franchise even if such issues predate the approval, whether known or unknown to Township.

Section 11. BONDS AND INSURANCE.

(a) Prior to operating or constructing, a Grantee shall file a bond with the Cable Council in an amount set forth in the franchise to ensure compliance with this Ordinance.

(b) The Grantee shall pay, and by its acceptance of the franchise expressly agrees to pay, all damages and penalties which the Township may legally be required to pay as a result of the Grantee's negligence in the construction, operation or maintenance of the System authorized herein. However, the Township shall provide prompt notice to the Grantee of such a claim, afford the Grantee the opportunity to defend, settle or otherwise resolve the claim in the Grantee's discretion and assist the Grantee therein in any reasonable way, upon the request of the Grantee. The Grantee shall carry and pay the cost of liability insurance in support of its undertaking, to hold the Township harmless from loss sustained on account of the negligence of the Grantee, for injury to or death of

persons and injury to or destruction of property. The amount of such insurance shall be established by the franchise.

(c) The Grantee shall comply with the Workers' Compensation Law of Michigan.

(d) Any insurance policy or bond shall contain a provision that it shall not be terminated, cancelled or otherwise allowed to expire without first providing thirty (30) days written notice to the certificate holder/obligee.

Section 12. ABANDONMENT. Upon the expiration, revocation or non-renewal of any franchise granted pursuant to this Ordinance, if facilities are not salvaged within a reasonable time, title to all such property shall pass to the Township.

Section 13. AUTHORIZATION FOR USE OF RIGHT-OF-WAYS. A franchise granted pursuant to this Ordinance shall confer upon the holder named therein the nonexclusive right to erect, install, construct, reconstruct, replace, remove, repair, maintain and operate in, upon, under, above, across and from the streets, easements and Right-of-Ways, all necessary towers, poles, wires, cables, coaxial cables, transformers, amplifiers, underground conduits, manholes and other television or radio conductors and fixtures for the Installation, construction, maintenance and operation of a Cable System or for the furnishing of a Cable Service.

Section 14. CONSTRUCTION; APPROVAL REQUIRED. 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 System under a franchise granted pursuant to this Ordinance, the Grantee desiring to erect or install such facilities for use in connection with its System shall first submit to the Township Clerk for approval, a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map indicating the proposed location of such facilities. Such erection or installation shall not be commenced until the same is approved by the Township. Such approval shall not be unreasonably withheld.

Section 15. JOINT POLE ATTACHMENTS. Upon written request of a public utility or municipality, a Grantee shall grant it reasonable attachment space on its facilities within the Right-of-Way at a reasonable rental charge. The utility shall pay costs incurred in providing attachment space, including the costs of rearranging the Grantee's wires, cables or equipment and replacement costs if required.

Section 16. UNDERGROUND FACILITIES. In areas or portions of the Township where all transmission or distribution facilities of both public utilities providing telephone service and electric service are underground, or are required to be underground, any Grantee shall likewise install, construct, maintain and operate its transmission and distribution facilities in like manner underground.

Section 17. CONSTRUCTION STANDARDS; SAFETY. All construction, Installation, maintenance and operation of any Cable System or of any facilities employed in connection therewith shall be in compliance with the National Electric Safety Code as well as all

other applicable standards issued by the FCC, or other local, state or federal regulatory agencies in relation thereto. Each System installed, constructed, maintained or operated shall be so designed, constructed, installed, maintained and operated as not to endanger or interfere with the safety of persons or property.

Section 18. STREET OPENINGS; BARRICADES AND WARNING LIGHTS.

Any opening or obstruction in, disturbance of or damage to a road, street, alley, public Right-of-Way or public place by any person in the exercise of any right granted pursuant to a franchise shall be properly guarded by barriers, lights, signals and warnings so as to prevent danger to any person or vehicle using such road, street, alley, public Right-of-Way or public place and shall be promptly repaired, at the Grantee's expense, all in a manner specified and approved by the government having jurisdiction. Such approval shall not be unreasonably withheld.

Section 19. RELOCATION OF FACILITIES.

A Grantee or a person acting under a Grantee shall, at its expense, and without reimbursement from the Township, upon request of the Township relocate, remove, temporarily disconnect, protect or support facilities in the roads, streets, alleys, easements, public Right-of-Ways or public places. A Grantee shall also, at the request of a private party holding an appropriate permit issued by a governmental entity, temporarily raise or lower its transmission or distribution wires or cables to permit the moving of any building or other structure, provided that the actual expense of such temporary raising or lowering shall be paid in full by the party requesting the same. Such requests shall be made not less than thirty (30) days in advance of the activity requested, unless an emergency situation exists.

Section 20. COSTS FOR WORK BY GOVERNMENTAL ENTITY.

If, after reasonable notice and opportunity to correct, a Grantee or any person acting under a Grantee fails to commence, pursue or complete any work required by law or this Ordinance to be done in any road, street, alley, public Right-of-Way, easement or public place, the appropriate governmental entity may cause such work to be done, and such Grantee shall pay to the governmental entity the cost thereof within thirty (30) days of receipt of an itemized statement of such cost.

Section 21. REGULATION OF SERVICE RATES.

Township reserves the right to regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System in accordance with applicable federal law, in particular 47 C.F.R. Part 76 subpart N. In the event the Township chooses to regulate rates it shall, in accordance with 47 C.F.R. § 76.910, obtain certification from the FCC, if applicable. The Township shall follow all applicable FCC rate regulations and shall ensure that appropriate personnel are in place to administer such regulations. Township reserves the right to regulate rates for any future Services to the extent permitted by law.

Section 22. CUSTOMER SERVICE STANDARDS.

(a) Grantee shall comply with the customer service obligations set forth in this Ordinance and such authority for enforcement is hereby delegated to the Cable Council. The Grantee shall comply with the standards and requirements for customer service set forth in 47 C.F.R. § 76.309 and §§ 76.1601-1604, and shall comply with all applicable regulations relating to customer service obligations, including any

amendments to FCC regulations should FCC regulations change during the term of a Franchise. Should FCC regulations change, or for other good cause shown, the Grantee may petition Township for modification of the requirements of Section 22(c) approval of which shall not be unreasonably withheld.

(b) Grantee shall maintain a convenient local customer service and bill payment location, or a substantial equivalent, in the area served by the Cable Council for receiving Subscriber payments, handling billing questions, equipment replacement and customer service information.

(c) At a minimum, Grantee shall comply with the following customer service obligations:

i. Cable System office hours and telephone availability:

(1) Grantee will maintain a local, toll-free or collect call telephone access line, which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

a. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

b. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

(2) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(3) The Grantee shall not be required to acquire equipment and/or perform surveys to measure compliance with the telephone answering standards above unless an historical record on complaints indicates a clear failure to comply.

(4) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(5) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

ii. Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(1) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(2) Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.

(3) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

(4) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(5) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

iii. Communications between Grantee and Subscribers:

(1) Notifications to Subscribers:

a. Grantee shall provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

i. Products and Services offered;

ii. Prices and options for programming Services and conditions of subscription to programming and other Services;

iii. Installation and Service maintenance policies;

iv. Instructions on how to use the Cable Service;

v. Channel positions of the programming carried on the System; and

vi. Billing and complaint procedures, including the address and telephone number of the Township.

b. Subscribers will be notified of any changes in rates, programming Services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the changes are within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by this Section 22(c)(iii)(1). Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or Township on the transaction between the operator and the Subscriber.

c. All programming decisions remain the discretion of Grantee in accordance with the Franchise, Grantee shall comply with rules regarding notice to customers in accordance with 47 C.F.R.: § 76.1603.

(2) Billing:

a. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

b. In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

(3) Refunds: Refund checks will be issued promptly, but no later than either:

a. The Subscriber's next billing cycle following resolution of the request or thirty (30) days; whichever is earlier, or

b. The return of the equipment supplied by Grantee if Service is terminated.

(4) Credits: Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

(5) Upon request, Grantee shall provide Township with a quarterly compliance report specific to the System in the Service Area, which report shall describe in detail Grantee's compliance with the provisions of this section and any additional customer service requirements contained in the Franchise.

iv. In addition to the customer service standards set forth above, the following customer service obligations are hereby established.

(1) Dispute Resolution Procedure. The Grantee shall establish a procedure for resolving Subscriber complaints that includes an opportunity for a meeting in Traverse City with an employee of the Grantee having authority to resolve the dispute. The procedure shall also include an appeal after such meeting to the Cable Council who shall hear all sides of the dispute and may render a nonbinding recommendation that includes an opportunity for a meeting in Traverse City with an employee of the Grantee having authority to resolve the dispute. The procedure shall also include an appeal after such meeting to the Cable Council who shall render a non-binding decision.

(2) Advance Review Notice to Cable Council of Brochure and Subscriber Review. Grantee will endeavor to provide any locally-produced customer-oriented materials or communications, including the bi-annual Subscriber Review included in Section 8, to the Cable Council prior to sending material or communications to Subscribers for the purpose of review and notice.

Section 23. SUBSCRIBER CONTRACTS. Grantee shall file with Township any standard form residential Subscriber contract utilized by Grantee. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with Township and shall be available for public inspection.

Section 24. REFUND POLICY.

(a) If a Grantee's Cable Service is interrupted or discontinued for twenty-four (24) or more consecutive hours, Subscribers will be credited pro.rata for such interruption, upon request. Credits must be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted. For this purpose, every month will be assumed to have thirty (30) days.

(b) In the event a Subscriber establishes or terminates Service and receives less than one (1) full month of Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing.

Section 25. FRANCHISE ENFORCEMENT.

(a) If the Township believes that the Grantee has not complied with the terms of the Franchise, the Township shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Township shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

(i) The Grantee shall have thirty (30) days, or such longer period of time as Grantee can reasonably demonstrate is necessary, from receipt of the Violation Notice to (i) respond to the Township, contesting the assertion of noncompliance, or (ii) to cure such default.

(ii) If the Grantee fails to respond to the Violation Notice received from the Township, or if the default is not remedied within the cure period set forth above, the Township shall schedule a public hearing if it intends to continue its enforcement procedure. The Township shall provide the Grantee at least ten (10) to fourteen (14) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Township in accordance with Applicable Law. The Grantee shall have the right to present evidence and to challenge the validity of the alleged noncompliance. The Township shall determine if the Grantee has committed a violation and shall make written findings of fact relative to its determination.

(iii) In the event the Township, after the hearing set forth in subparagraph (ii) above, determines that the Grantee is in default of any provision of the Franchise, the Township may:

(1) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages or determine damages of up to Five Hundred and No/100 Dollars (\$500.00) per day for each day of violation. Such damages may be determined by Township on Grantee or drawn by Township from any bond or other security posted by Grantee under any franchise granted hereunder; or

(2) In the case of a substantial default of a material provision of the franchise, seek to revoke the franchise following the procedure in paragraph (b) below.

(iv) If a violation is found, the Grantee shall have the right to appeal such decision to any court of competent jurisdiction.

(b) Procedures for Revocation.

(i) Township shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee an additional thirty (30) days subsequent to receipt of the revocation notice in which to correct the violation or to provide adequate assurance of performance in compliance with the

Franchise. In the revocation notice Township shall provide Grantee with the basis of the revocation.

(ii) Grantee shall be provided the right to a public hearing, in addition to the public hearing required under Section 25(a)(ii) above, affording due process before the Township Board prior to the effective date of revocation, which public hearing shall follow the thirty (30) day notice provided in subparagraph (a)(i) above. Following conduct of the public hearing Township shall provide Grantee with written notice of its decision together with written findings of fact.

(iii) Only after the public hearing and upon written notice of the determination by Township to revoke the franchise may Grantee appeal said decision with an appropriate state or federal court or agency.

(iv) During the appeal period, the franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the franchise would endanger the health, safety and welfare of any person or the public.

The effective date of this Ordinance shall be the 30th day following publication according to law.

I hereby certify the above ordinance was introduced on 6-13, 2005, at a regular meeting of the Charter Township of East Bay Board and was enacted at a regular meeting of the Charter Township of East Bay Board held on 7-11-, 2005, at the Township Hall, Charter Township of East Bay, Michigan.


Township Clerk