

**ARTICLE 11**  
**PROVISIONS REGARDING**  
**CABLE COMMUNICATIONS SYSTEMS**

**1101 PURPOSES**

The purposes of this Article are to provide for the franchising and regulation of cable television within the Township of Whitehall, provide for a cable communications system that will meet the current needs of the Township and that can be improved and upgraded to meet future needs, provide for the payment of fees and other valuable consideration to the Township for the use of the public ways and for the privilege to construct and operate cable communications systems, provide for the regulation by the Township of certain rates to be charged to subscribers for certain cable communications services, provide for the development of cable communications as means to improve communication between and among the members of the public and public institutions of the Township, and to provide remedies and prescribe penalties for violation of this Article and any franchise granted hereunder.

**1102 APPLICABILITY**

This Article is applicable to any application for a cable franchise filed on or after the date of adoption of this General Code and to any such franchise granted hereafter and to any franchise renewed hereafter.

**1103 DEFINITIONS**

For the purpose of this Article, the following terms, phrases, words, and their deviations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meanings. Provided further that any word or term which is used in this Article and which is not specifically defined in this Article but is defined in FCC Rules or Regulations shall have the meaning given to such word or term in the FCC Rules and/or Regulations.

A. "Act" shall mean the Federal Communications Act of 1934, as amended,

specifically including the amendments contained in the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102-385.

B. "Application" shall mean a proposal seeking authority to construct and operate a cable television system within the Township pursuant to this Article. It shall include the initial proposal plus all related subsequent amendments and correspondence with the Township.

C. "Associated Equipment" shall mean equipment used by a subscriber to receive basic service cable programming regardless of whether such equipment is also used to receive other tiers of regulated programming service and/or unregulated tiers of programming service(s). Associated equipment includes, but is not limited to:

1. Converter boxes;
2. Remote control units;
3. Connections for additional television receivers; and
4. Other cable home wiring.

D. "Basic service" shall mean subscriber cable television services which includes the delivery of local television broadcast signals, access channels, leased channels, and local origination channels, as covered by the regular monthly charge paid by all subscribers to any service tier, excluding premium services, two-way services and FM radio services.

E. "Cable Act" shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. §§521 et seq., as amended from time to time.

F. "Cable Commission" or "Commission" shall mean a governmental or an intergovernmental authority that may be established by local legislative action that shall have the authority to police the provisions of an Agreement and make recommendations for enforcement or improvement on behalf of the Township in an advisory manner. "Cable Commission" and "Commission" may include the "Township."

G. "Cable communication system" shall mean a non-broadcast facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, under common ownership and control, that distributes or is designed to distribute to subscribers cable television services, institutional services, or other communications services, but such term shall not include:

1. A facility or combination of facilities that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way;

3. A facility of a common carrier which is subject, in whole or in part, to the provision of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers;

4. An open video system that complies with 47 U.S.C. §573; or

5. Any facilities of any electric utility used solely for operating its electric utility system.

H. "Cable television services" shall mean the one-way (and two-way, if applicable) transmission of video programming and associated non-video signals to subscribers together with subscriber interaction, if any, which is provided in connection with the video programming and associated non-video signals.

I. "Connection" shall mean the attachment of the drop to the radio or television set or other communications device of the subscriber.

J. "Construction," "Construction is Completed," "Construction has been Completed," and "Construction shall be Completed" shall mean that strand has been put up and all necessary cable, including trunk and feeder cable, has been lashed; for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all applied housings and modules have been installed, including modules for return path signals if proposed, that power supplies have been installed and all bonding and grounding has been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the head ends or hubs has been completed and all necessary processing equipment has been installed; and that any and all other construction necessary for the system to be ready to deliver cable television service to subscribers in a safe and reliable manner has been completed consistent with the terms of this franchise and industry standards. The term "completion of construction" does not include marketing and installation of subscriber service.

K. "Converter" shall mean an electronic device which may serve as an interface between a system and a subscriber's television receiver or other terminal equipment and which may perform a variety of functions, including signal security, de-scrambling electronic polling, frequency conversion and channel selection. Such a device may also be called a "set-top box."

L. "Dedication" shall mean those dedications and easements for public roadways and utilities and other right-of-ways maintained for the benefit of the public and controlled by the Township; the terms, conditions, or limitations of which are not inconsistent with the erection, construction, or maintenance of a cable television system, its structures, or equipment.

M. "Drop" shall mean the cable that connects a subscriber's premises to the nearest feeder line of the cable system.

N. "Easement" shall mean a right to use all public right-of-ways, including public utility easements.

O. "Existing Rates" shall mean the rates for basic service and associated equipment charged by a Grantee on the initial date of regulation by the Franchising Authority.

P. "FCC" shall mean the Federal Communications Commission or any legally appointed or designated agent or successor.

Q. "FCC Rules and/or Regulations" shall mean any and all rules and/or regulations which the FCC promulgates and/or adopts pursuant to the Act.

R. "Feeder Line" shall mean the coaxial, fiber optic, or other approved cable running from the trunk line to line extenders and taps for the purpose of interconnecting with individual subscribers.

S. "File" shall mean the delivery, by mail or otherwise, to the appropriate office, officer, or agent of the Township of any document or other instrument which this Agreement requires the Grantee to file with the Township. The date of receipt by the Township shall be considered the file date.

T. "Force majeure" shall mean acts of God, strikes, acts of a public enemy, wars, blockades, insurrections, riots, unusual delays in transportation, reasonable inability of Grantee to procure materials, and earthquakes or any other natural causes beyond Grantee's reasonable control and which could not have been reasonably anticipated. The settlement of strikes or labor disturbances shall be

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

U. "Franchise" shall mean the non-exclusive right and authority to construct, maintain, and operate a cable communications system through use of the public streets, dedications, public utility easements, other public right-of-ways, or public places in the Township pursuant to a contractual agreement executed by the Township and a Grantee.

V. "Franchising authority" shall mean the Township Board.

W. "Grantee" shall mean any operator of a cable television system that is subject to regulation by the Franchising Authority.

X. "Gross revenues" shall mean all revenue from the cable communications system derived directly or indirectly by Grantee, its affiliates, subsidiaries, parent, and any other persons in which Grantee has a financial interest in association with the provisions of cable communications services within the Township. Gross revenues shall include, but not be limited to, basic service monthly fees, studio rental, production equipment and personnel fees, reconnection fees, leased channel fees, converter rentals, advertising revenues, and copyright fees. Gross revenues shall also include, value at retail price levels, the value of any goods, services, or other remuneration in non-monetary form, received by Grantee or others described above in consideration of performance by the Grantee or others described above of any advertising or other service in connection with the cable system. Gross revenues shall not include any taxes on services furnished by Grantee payable to the State of Michigan or any other governmental unit and collected by Grantee on behalf of said governmental unit, or any revenues from the provision of cable communication services outside the Township.

Y. "Installation" shall mean the connection of the system at the subscriber's premises.

Z. "Person" shall mean an individual or legal entity, such as a corporation or partnership.

AA. "Premium service" shall mean pay television offered on a per channel or per program basis.

BB. "Rate Increase" shall mean an increase in rates for basic service and/or

associated equipment including among other increases in rates that are the result of reductions in programming provided under the basic service.

CC. "Service tier" shall mean a specific set of cable subscriber services which are made available as, and only as, a group for purchase by subscribers at a separate rate for the group.

DD. "Street" or "public way" shall mean the surface of and the space above and below any public street, road, highway, path, sidewalk, alley, court, or easement now or hereafter held by the Township for the purpose of public travel or public utilities and shall include public easements or right-of-ways.

EE. "Subscriber" shall mean a recipient of cable communications services or other services provided over a cable communications system.

FF. "Township" is the Township of Whitehall, Michigan. "Township" may include "Cable Commission" or "Commission".

GG. "Township Board" shall mean the governing body of the Township of Whitehall.

HH. "White Lake Area" shall mean all those governmental units in the vicinity of White Lake; specifically the City of Montague, City of Whitehall, Blue Lake Township, Fruitland Township, Montague Township, Whitehall Township, and White River Township.

#### **1104 DESIGNATION OF THE CABLE FRANCHISING AUTHORITY**

The Township Board is hereby designated as the cable Franchising Authority for the Township and shall execute the powers, duties and responsibilities given to the cable Franchising Authority in this Article, the Act and the FCC Rules and/or Regulations.

#### **1105 GRANTEES**

A. A Grantee shall comply with all duties and obligations imposed upon the Grantee by the Act, FCC Rule and/or Regulations, and this Article.

B. A Grantee has the burden of proving that it has submitted existing rates or a proposed rate increase that complies with the Act and FCC rules and regulations.

#### **1106 REQUIREMENT OF A FRANCHISE**

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

#### **1107 GRANT OF FRANCHISE**

The Township may grant one (1) or more cable system franchises, and each such franchise shall be awarded in accordance with and subject to the provisions of this Article. No person may construct or operate a cable system in the Township without a franchise granted by the Township. No person may be granted a franchise without having entered into a franchise agreement with the Township pursuant to this Article.

#### **1108 TERM**

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

#### **1109 USE OF PROPERTY**

A. A franchise grants to Grantee the authority to use the Township's public streets, sidewalks, easements, and other right-of-ways for the purposes of this agreement. No property right is bestowed by a franchise.

B. A franchise shall authorize the use of the public ways for installing cables, wires, lines, and other facilities in order to operate a cable television communications system but shall neither expressly nor impliedly be deemed to authorize the Grantee to provide service to, or, install cables, wires, lines or other equipment or facilities upon private property without an applicable easement or the owner's consent, or to utilize publicly or privately owned utility poles or conduits without a separate agreement with the owners thereof.

#### **1110 NON-EXCLUSIVE**

The grant of authority for use of the Township's public streets, sidewalks, easements, and other right-of-ways is not exclusive and does not establish priority for use over other franchise holders, permit holders, or the Township's own use of public property. A Grantee shall respect the rights and property of the Township and other authorized users of public streets, sidewalks, easements, and right-of-



ways. Disputes over the use of the public streets, sidewalks, easements, and other right-of-ways shall be submitted to the Township for resolution, which decision shall be final.

#### **1111 FILING OF APPLICATIONS**

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

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

#### **1112 CONTENT OF APPLICATIONS**

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

- A. Identification of the ownership of the applicant, if not a natural person, including the names and addresses of all persons with one (1) percent or more ownership interest and the ultimate controlling natural persons and identification of all officers and directors and any other primary business affiliation of each.
- B. An indication of whether the applicant, or any entity controlling the applicant, including any officer of a corporation or major stockholder thereof, has been adjudged bankrupt, has had a cable franchise revoked, or been found guilty by any court or administrative agency in the United States of: (1) a violation of a security or antitrust law; or (2) a felony or any other crime involving moral turpitude. Identify any such person or entity and fully explain the circumstances.
- C. A demonstration of the applicant's technical, legal, and financial ability to construct and operate the proposed cable facility.
- D. A description of the physical facility proposed, including channel capacity



(one-way and two-way if any), the areas to be served, a summary of technical characteristics and head and access facilities.

E. A description of how any construction will be implemented, identification of areas having above ground or below ground cable facilities, the proposed construction schedule and a description (where appropriate) of how service will be converted from any existing facility to a new facility.

F. A description of the services to be provided over the system, including identification of television signals (both broadcast and non-broadcast) to be carried and all non-television services to be provided initially. Where service will be offered by tiers, identify the signals and/or services to be included on each tier.

G. The proposed rates to be charged, including rates for each service tier, as appropriate, and charges for installation, converters, and other services.

H. Information as necessary to demonstrate compliance with all relevant requirements contained in this Article.

I. A demonstration of how the proposal is reasonable to meet the future cable-related community needs and interest. In particular, the application should describe how the proposal will satisfy the needs as analyzed in any recent community needs assessment commissioned by the Township.

J. A demonstration that the proposal is designed to be consistent with all federal and state requirements.

K. Pro forma financial projections for each year of the franchise term. The projections shall include a statement of income, balance sheet, statement of sources and uses of funds schedule of capital additions. All significant assumptions shall be explained in notes or supporting schedules that accompany the projections.

L. A complete list of all cable communications systems in which the applicant, or a principal thereof, holds an equity interest.

M. An affidavit of the applicant or duly authorized officer thereof, certifying, in a form acceptable to the Township the truth and accuracy of the information contained in the application and acknowledging the enforceability of application commitments.

N. In the case of an application by an existing franchisee for a renewed franchise, a demonstration that said franchisee has substantially complied with the

material terms of the existing franchise and with the application law.

O. Other information that the Township, or its agents, may request of the applicant.

### **1113 APPLICANT REPRESENTATIVES**

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

### **1114 CONSIDERATION OF APPLICATIONS**

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

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

C. In the course of considering an application for a renewed franchise, the Township Board shall hold a public hearing, following at least 30 days prior notice, in which the public and the franchisee seeking renewal shall be offered an opportunity to speak, offer evidence and question witnesses. Based on the record of such hearing and the application (including any negotiations relative thereto), the Board shall determine whether to grant a renewed franchise and shall issue a written opinion stating the reasons for its decision.

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

#### **1115 ACCEPTANCE**

A franchise and its terms and conditions shall be accepted by a Grantee by written instrument, in a form acceptable to the Township Board and filed with the Township within thirty (30) days after granting of the franchise by the Township. In its acceptance, the Grantee shall declare that it has carefully read the terms and conditions of this Article and the franchise and accepts all of the terms and conditions of this Article and the franchise and agrees to abide by same. In accepting a franchise, a Grantee shall indicate that it has relied upon its own investigation of all relevant facts, that it was not induced to accept the franchise and that it accepts all reasonable risks related to the interpretation of the franchise.

#### **1116 NON-TRANSFERABILITY OF RIGHTS**

A. A franchise issued pursuant to this Article shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consideration, or otherwise hypothecated in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any person or entity, or the controlling interest in any corporation holding a franchise hereunder be changed, without the prior consent of the Township, which shall not be unreasonably withheld. Such a transfer of control is not limited to major interest holders but includes actual working or de facto control by minor interest holders in whatever manner exercised. Every change, transfer, or acquisition of control of Grantee shall make the franchise subject to cancellation unless and until the Township shall have consented. Change in control by virtue of inheritance shall not come into the provisions of this section. A rebuttable presumption that a change in controlling interest has occurred shall arise upon the acquisition or accumulation by any

person or group of persons of five percent (5%) of the voting shares of the Grantee, except where such person or group of persons own fifty percent (50%) or more of the voting stock, singularly or collectively, before such acquisition or accumulation.

B. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the Township may inquire into all qualifications of the prospective controlling party, and Grantee shall assist the Township in any such inquiry. The Township may require any reasonable conditions which it deems necessary at the time of review to ensure that the cable communications system will comply with the provisions of this agreement for the balance of the term of the franchise.

C. Any unauthorized transfer in violation of this section shall be deemed a material breach in default of this agreement and shall subject the Grantee to all applicable penalties and remedies prescribed in this agreement and to all other remedies, legal and equitable, which are available to the Township.

D. Grantee shall notify the Township of any occurrence which constitutes an unauthorized transfer or of the entry of any judgment, petition, or order within four (4) days of the occurrence of such event.

#### **1117 LETTER OF CREDIT**

A. Grantee shall deposit with the Township a cash bond or Letter of Credit from a financial institution chosen by the Grantee and approved by the Township in the amount of Five Thousand and 00/100 dollars (\$5,000.00). The Letter of Credit may not be revoked or terminated until completion of the system plus an additional sixty (60) days except with written approval of the Township. Thereafter, a Three Thousand Five Hundred and 00/100 dollar (\$3,500.00) cash bond shall be maintained. The form and content of such cash bond or Letter of Credit shall be approved by the Township Board. The cash bond or Letter of Credit shall be used to insure the faithful performance by Grantee of all provisions of this Article, compliance with all orders, permits, and directions of any agency, authority, board, department, division, or office of the Township having jurisdiction over its acts or defaults under the license, and the payment by Grantee of any costs, claims, liens, liquidated damages, and taxes due the Township which arise by reason of the construction, operation, or maintenance of the system, or breach or termination of the franchise.

B. If Grantee fails to make timely payment to the Township or its designee of any amount due as a result of this Agreement, or of any other written agreements between Grantee and the Township, or fails to make timely payment to the

Township of any taxes due, or fails to repay the Township for damages, costs, or expenses which the Township shall be compelled to pay by reason of any default of Grantee, or fails to comply with any provisions of this franchise which the Township reasonably determines can be remedied by a draw on the irrevocable Letter of Credit, the Township may draw upon the Letter of Credit in the amounts sufficient to repay the Township, with interest.

#### **1118 PAYMENT OF FEES AND COSTS**

A. Grantee in consideration of the privilege granted under this franchise for the use of public ways and the privilege to construct and operate a cable television system, shall pay to the Township not more than five percent (5%) of its total revenues for the entire term of the franchise, as shall be specified in the franchise.

B. Grantee shall file with the Township, by the end of each year, a financial statement showing the total revenues received by Grantee during the preceding calendar year. Grantee shall pay the yearly portion of the franchise fee to the Township on or before the time such financial statement is due to be filed. Grantee shall also file, no later than one (1) month after the end of its fiscal year, a statement of its total basis service revenues for the preceding fiscal year, audited by an independent public accountant, certified in the State of Michigan, if so requested by the Township. Grantee shall bear the cost of such audit. Any franchise fee payment in adjustment for any shortfall of the total annual payment for the year shall be made at that time. Adjustments for any overpayment shall be by credit to subsequent yearly payments.

C. In the event the franchise is revoked or otherwise terminated prior to its expiration date, the Grantee shall file with the Township, within ninety (90) days of the date of revocation or termination, an audited financial statement showing the gross revenues received by the Grantee since the end of the previous year and shall make adjustments at that time for the franchise fees due up to the date of revocation or termination.

D. Nothing in this Article shall limit the Township's authority to tax Grantee.

E. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Township may have for further or additional sums payable under the provisions of this Article. All amounts paid shall be subject to auditing and revision by the Township.

F. Failure to comply with this section shall constitute a material breach of the

Article and shall subject the Grantee to all measures, legal or equitable, whether available to the Township under this Article or otherwise.

#### **1119 FORFEITURE AND TERMINATION**

In addition to all other rights and powers retained by the Township under this Article and any franchise issued pursuant thereto, the Township reserves the right to forfeit and terminate the franchise and all rights and privileges of the franchises, with or without cause, by majority vote of the Township Board after at least thirty (30) days written notice, with reasons if any, and an opportunity to appear and make arguments at the public hearing before the Township Board.

#### **1120 FORECLOSURE**

A. Upon the foreclosure or other judicial sale of all or a substantial part of the cable communication system facilities, or upon the termination of any lease covering all or a substantial part of the cable communications system, or upon the occasion of additional events which effectively cause termination of the systems operation, Grantee shall notify the Township of such fact and such notification or the occurrence of such terminating events shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this agreement governing the consent of the Township to such change in control of Grantee shall apply.

B. In the event that a secured creditor of the Grantee forecloses upon the Grantee's interest in the system and proceeds to operate the system by receivership or otherwise, such action shall not be deemed grounds for termination of the franchise agreement.

#### **1121 RECEIVERSHIP**

A. The Township shall have the right to cancel this franchise one hundred twenty (120) days after the appointment of a receiver to take over and conduct the business of Grantee, unless such receivership shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Within one hundred twenty (120) days after the election or appointment, such receiver shall have fully complied with all of the provisions of this franchise and remedies and defaults thereunder; and

2. Within said one hundred twenty (120) days, such receiver shall have executed an agreement, duly approved by the Court having jurisdiction, whereby such receiver assumes and agrees to be bound by each and every provision of



this franchise as granted to Grantee except where expressly prohibited by Michigan law.

B. Grantee shall immediately notify the Township Board in writing if:

1. Grantee files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors;

2. Grantee files an answer admitting the jurisdiction of the court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or,

3. Grantee is adjudicated bankrupt, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver or trustee of all or any part of its property including all or any part of the cable system.

C. In the event that a secured creditor of the Grantee forecloses upon the Grantee's interest in the system and proceeds to operate the system by receivership or otherwise, such action shall not be deemed grounds for termination of the franchise agreement.

#### **1122 REMOVAL OF CABLE COMMUNICATIONS SYSTEM**

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

#### **1123 RATES**

A. The initial rates which the Grantee shall charge shall not be increased for a period of two (2) years from the date of granting of a franchise or renewal.

B. The Township reserves the right to reasonably regulate by ordinance or resolution the rates for any services or equipment, as allowed by state and federal



law. Such rates and charges subject to regulation shall be just and reasonable, considering Grantee's costs, including reasonable return on investment over the remaining term of the franchise, and shall not give preference or advantage to any subscriber or class of subscribers. Fees and charges subject to regulation by the Township pursuant to state and federal law shall not be increased without prior approval of the Township. The Township shall promptly respond to any request for an increase in fees and to charges subject to such regulation.

C. Rates and charges not regulated by the Township may be changed by Grantee following a minimum thirty (30) days prior written notice to the Township and each subscriber.

#### **1124 SUBMISSION OF EXISTING RATE SCHEDULE**

A. The Grantee shall submit a written schedule of its existing rates to the Franchising Authority when Grantee submits the application for consideration of a franchise.

B. Existing rates will be reviewed at the public hearing for the consideration of the application for a franchise. The existing rates identified in the submitted schedule(s) of rates shall go into effect 30 days from the date of receipt of the schedule(s) unless the Franchising Authority disapproves the rate or extends the time period for conducting the review.

#### **1125 REGULATION OF RATE INCREASES**

A. A Grantee cannot institute a rate increase charged to its subscribers unless the Grantee complies with the Act, FCC Rules and/or Regulations and this Article

B. A Grantee which proposes a rate increase must submit the proposed rate increase(s) request to the Franchising Authority.

#### **1126 FRANCHISING AUTHORITY RATE INCREASE REVIEW**

A. Unless the time for conducting the public hearing and entering a decision is extended by the issuance of a Tolling Order by the Franchising Authority pursuant to this Article, the Franchising Authority shall conduct a public hearing and render a decision upon the Grantee's proposed rate increase request within 30 days of the Franchising Authority's receipt of a proposed rate increase request. If the time for holding the public hearing is extended, the public hearing should be held and decision rendered, before the extended time period expires.

B. A proposed rate increase requested by a Grantee will become effective after thirty (30) days have elapsed from the date the Franchising Authority received the proposed rate increase request unless the Franchising Authority disproves the proposed rate increase or; extends the time period for conducting the review of the proposed rate increase.

C. If the Franchising Authority allows rate increases to go into effect at the end of the respective tolling period through inaction and then subsequently disapproves any portion of such rates, then refunds may not be ordered unless a brief written order is issued by the Franchising Authority before the end of the respective tolling period, directing the Grantee to keep an accurate accounting of all its customers and the amounts paid by each as a result of said rates.

#### **1127 TOLLING ORDER**

A. If the Franchising Authority is unable to determine, based upon the material submitted by the Grantee that the existing rates or proposed rate increase(s) are reasonable or if the Grantee has submitted a cost of service showing, then the Franchise Authority may toll the 30 day deadline for an additional 90 days in cases not involving cost of service showings or for an additional 150 days in cases involving cost of service showings.

B. In order for the Franchising Authority to toll the 30 day period, the Franchising Authority must issue an order explaining that additional time and/or information is necessary in order for the Franchising Authority to act upon the existing rates or the proposed rate increase. Said order must be in writing, by resolution adopted within said 30 day period.

C. The Franchising Authority shall send a copy of the tolling order to the Grantee by First Class Mail within 7 days after the effective date of the decision.

#### **1128 PUBLIC HEARING**

A. During the public hearing on the review of a Grantee's existing rates or on review of a proposed rate increase, the Franchising Authority shall provide the Grantee and all other interested persons with the opportunity to comment on the rates either in person, in writing, or by agent.

B. The Franchising Authority may conduct as many public hearings as necessary to carry out the provisions of the Act, FCC Rules and Regulations and this Article.

## 1129 PUBLIC HEARING NOTICE

A. The Franchising Authority shall send, by First Class Mail, a written notice of the date, time and location of the public hearing to the Grantee which submitted the existing rates or proposed rate increase for review no less than 7 days before the date of the public hearing.

B. The Franchising Authority shall cause to be published in a qualified newspaper of general circulation within the Township, a notice of the public hearing on the existing rate schedule(s) or proposed rate increase request no less than 7 days before the public hearing. Said notice shall:

1. State that the Grantee has submitted the existing rate schedule(s) or proposed rate increase request to the Franchising Authority for review pursuant to this Article.
2. State the location and times at which the public may examine the submitted schedule(s) of existing rates or proposed rate increase request.
3. State the date, time and location at which the Franchising Authority will conduct the public hearing
4. State that all interested person shall have an opportunity to comment on the rates at the public hearing, and/or to submit written comments on or before the date of the public hearing to the Franchising Authority.

## 1130 FRANCHISING AUTHORITY DECISION ON REVIEW OF EXISTING RATES OR PROPOSED RATE INCREASES.

The Franchising Authority shall issue a written order supported by its reasons, by resolution which:

1. Approves the Grantee's existing rate or proposed rate increase; or
  2. Disapproves the Grantee's existing rate or proposed rate increase;
- or
3. Approves, in part, and disapproves, in part, the Grantee's existing rate or proposed rate increase; and/or
  4. Orders a rate reduction; and/or
  5. Prescribes a reasonable rate; and/or

6. Determines that a refund hearing should be held pursuant to this Article; and/or

7. Orders any further appropriate relief permitted by this Article, the Act or the FCC Rules and/or Regulations.

### **1131 REFUND HEARING**

A. If the Franchising Authority determines that the subscribers to a Grantee may be entitled to a refund pursuant to FCC Rules and Regulations (specifically 47 CFR 76.942), the Franchising Authority shall include a notice in its decision issued pursuant to this Article, that the Franchising Authority will hold a public hearing to consider ordering the Grantee to make a refund to subscribers.

B. The Franchising Authority shall then conduct a public hearing to determine whether to order a refund to subscribers and the amount of the refund.

C. The Franchising Authority shall send, by First Class Mail, to the Grantee, written notice of the date, time and location of the public hearing. Said notice must be sent no less than 7 days before the public hearing.

### **1132 REFUND HEARING – DECISION**

A. At any refund hearing the Grantee may appear in person, by agent or in writing to comment upon whether the Franchising Authority should order a refund.

B. Members of the public may also comment at the refund hearing in person, by agent or in writing.

C. At the conclusions of the refund hearing, the Franchising Authority shall issue a written order, by resolution:

1. Denying a refund; or
2. Ordering the Grantee to implement a refund.

### **1133 NOTICE OF FRANCHISING AUTHORITY DECISIONS**

A. All decisions of the Franchising Authority issued pursuant to this Article shall be:

1. In writing, by resolution, supported by its reasons; and

2. Effective as of the date of the Franchising Authority makes the decision.

B. Notice of all decisions of the Franchising Authority issued pursuant to this Article shall be published in a qualified newspaper of general circulation in the Township no less than 15 days after the effective date of the decision. Said notice shall include:

1. A summary of the Franchising Authority's written decision;
2. A statement that copies of the Franchising Authority's decision are available for public inspection;
3. A statement as to the location at which, and times during which, the public may inspect copies of the Franchising Authority's decision.

C. The Franchising Authority shall send, by First Class Mail, a copy of the Franchising Authority's decision to the Grantee not more than 7 days after the effective date of the Franchising Authority's decision.

#### **1134 PROPRIETARY INFORMATION AND PRODUCTION OF DOCUMENTS**

The Franchising Authority may require the Grantee to produce documents needed to make rate decisions. Requests that proprietary information be held confidential shall be supported by the Grantee and be handled in a manner analogous to the procedures and criteria set forth in 47 CFR 0.459.

#### **1135 RECORDS**

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

#### **1136 PUBLIC DROPS**

A. Grantee shall provide, without charges, one (1) drop to any four (4) school district buildings and to any four (4) municipal buildings as determined by two way modulators limited to the public governmental/school access channel. A character generator, purchased by the Cable Commission, shall be installed by Grantee at a location and time to be determined by the Commission with an additional unit provided to the School District if a second public access channel is provided.

B. The cable television system installed by Grantee shall include an emergency alert audio override capability which will permit designated officials of the Commission to override by remote control the audio of all channels for the purposes of public notification of emergency conditions only. The Commission shall pay for all costs, excluding installation and the monthly dedicated phone line charge which shall be paid for by Grantee, associated with the emergency alert audio override.

#### **1137 PARENTAL CONTROL**

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

#### **1138 LOCAL REGULATORY FRAMEWORK**

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

#### **1139 AVAILABILITY OF FACILITIES**

The Grantee shall supply its facilities to all residents of the Township who may request this service where there is a population density of twenty (20) homes per mile of service, and Grantee shall maintain a centrally located business office within the White Lake area open at all reasonable business hours to all persons in the Township who desire the services of the licensee.

#### **1140 SERVICE OF NOTICE**

A. All notices required to be given to the Township under any provision of this Agreement shall be in writing and shall be deemed served when delivered by hand or mailed by certified mail, return receipt requested, to the Township Clerk.

B. All notices required to be given to the Grantee under any provision of this Article shall be in writing and shall be deemed served when delivered by hand or mailed by certified mail, return receipt requested, to Grantee's address for service of notice.

C. Grantee shall maintain with the White Lake area an address for service of notice by mail.

#### **1141 SEVERABILITY**

A. Should any section of this General Code, or any portion thereof be held invalid, unconstitutional, pre-empted, or otherwise rendered unenforceable by any court of competent jurisdiction, legislation, or administrative agency, any such partial invalidity of this General Code shall not affect the remaining portions hereof.

B. The provisions of this Article are hereby declared to be separable and if any Clause, sentence, word, section, or provision is declared void or unenforceable for any reason, by any court of competent jurisdiction, it shall not affect any portion of the Article other than said part or portion thereof.