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PART 9 - CABLE TELEVISION SYSTEMS

Article 1: General

Sec. 9.1.01: Purpose

The purpose of this Ordinance is to regulate the construction, maintenance, and operation of Cable Television Systems in the Township of Portland, Ionia County, Michigan and to provide for the granting of franchises for the construction, maintenance and operation of Cable Television Systems.

Sec. 9.1.02: Definitions

- (a) Basic Service means any service tier which includes the re-transmission of local television broadcast signals.
- (b) Board means the Board of Trustees of the Township of Portland.
- (c) CATV Commission means the advisory body created pursuant to this Ordinance to recommend measures in connection with the enforcement and development of this Ordinance.
- (d) “Cable Communications System” also referred to as “cable system,” means a system of antennas, fiber optic cables, transmitters and receivers, coaxial cables and amplifiers, towers, microwave or other wireless transmission links, cablecasting studios, and any other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, amplifying, storing, processing, switching, or distributing audio, video, digital or other forms of electronic or electrical signals sold or distributed to subscribers.
- (e) Franchise is a non-exclusive, limited authorization awarded by ordinance for the construction, maintenance, and operation of a CATV system in the Township.
- (f) Grantee is any holder of a CATV franchise granted pursuant to this Ordinance.
- (g) Gross Revenues means all amounts earned or accrued by Grantee or any entity in any way affiliated with Grantee, in whatever form and from all sources which are in connection with or attributable to the operation of the Cable Television System within Township or Grantee’s provision within Township of Cable Services. Such Gross Revenues shall include the following:
 - A. Gross Revenues shall include, without limitation, all subscriber and customer revenues (including those for basic cable services; additional tiers; premium services; pay per view; program guides; deposits net of any deposits returned to subscribers in the applicable time period; installation, disconnection or service call fees; fees for the provision, sale, rental or

lease of converters, remote controls, additional outlets and other customer premises equipment), revenues from the use of leased access channels, advertising revenues (national, regional or local); leased access rentals, commissions, per inquiry fees and all other moneys or consideration received from home shopping services, entities providing programming used on The Cable Television System or the like.

- B. Gross Revenues, shall include amounts earned or accrued during a period regardless of whether (1) received or not; (2) the amounts are to be paid in cash, in trade, or by means of some other benefit to Grantee or any entity in any way affiliated with Grantee; (3) the goods or services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure; (4) the amounts are characterized, separately identified, or accounted as being for goods, services, or fees to be paid to units of government or government agencies; or (5) the amounts are initially recorded or received by Grantee or by an entity in any way affiliated with Grantee. However, Gross Revenues shall exclude uncollected accounts during the period, computed on a fair basis consistently applied.
 - C. Gross Revenues shall be computed at the level where first received from an entity not in any way affiliated with Grantee and shall not be net of (1) any operating expense; (2) any accrual, including without limitation, any accrual for commission; or (3) any other expenditure.
 - D. Advertising Revenues, Tower Rental revenues, Home Shopping Network revenues or other revenues whose source cannot be specifically identified with a particular subscriber shall be allocated among the units of government served by Grantee from the cable system “headend” serving Township in proportion to the number of subscribers in each.
- (h) Person is any individual, firm, partnership, association, corporation, company or organization.
 - (i) School System shall mean each of the intermediate public school districts within the boundaries of the Township.
 - (j) Subscriber is any person who contracts with the Grantee for, or is in any manner provided with, cable services.
 - (k) Township means the Township of Portland.
 - (l) Transfer or Transferred shall mean any form of sale, conveyance, assignment, lease, sublease, merger, pledge, deed, grant, mortgage, transfer in trust, encumbrance or hypothecation in whole or in part, whether voluntary or involuntary, other than to secure indebtedness, of any right, title or interest of

Company in or to this Franchise or to The Cable Television System, excluding, however, the replacement of portions of the Cable Television System in the course of ordinary operation and maintenance.

- (m) User is any person who is provided the use of the Grantee's CATV System, channels, equipment or facilities.

Sec. 9.1.03: Cable Television Commission

The Board may, by resolution, establish a five-member Cable Television Commission which shall be advisory in nature and which shall make recommendations to the Board on matters pertaining to the enforcement of this Ordinance and on such other matters as may be requested by the Board.

Article 2: Franchise; New Developments; Waiver; Transfer of Rights

Sec. 9.2.01: Franchise Required

No person shall install, construct, maintain or otherwise operate a CATV system in the Township without first having obtained a franchise.

Sec. 9.2.02: Franchise Issuance

- (a) The Board may grant one or more franchises for the construction and operation of a CATV system in the Township after consideration of the applicants for such franchise as may be before it. Any franchise shall be granted subject to this and other Ordinances of the Township and applicable State and Federal laws.
- (b) The Township specifically reserves the right to grant, at any time, such additional franchises for a CATV System as it deems appropriate. Additional franchises shall not be deemed to modify, revoke, terminate or damage any rights previously granted to any other Grantee.
- (c) In the event a License Application is filed proposing a License Territory which overlaps in whole or in part an existing area, a copy shall be served by the applicant by certified mail upon the current licensed Grantee or Grantees. Proof that a copy of the License Application has been served upon the current Grantee(s) shall be provided to the Township. No application for overlapping License Territory shall be processed until proof of service has been furnished in the Township, and no such application shall be granted without public hearing on the request. It is not the intent of this Ordinance to either require or prohibit overbuilding.
- (d) Applications for a new, renewed or amended franchise shall be made in such form as the Township may prescribe by resolution, consistent with the terms of this Ordinance, and Federal or State law; and shall be accompanied by a non-refundable application review fee as the Township may prescribe by resolution.
- (e) Any franchise or franchise renewal and the rights, privileges, authority and responsibilities established shall take effect and be in force from and after final acceptance, and shall not continue in force and effect for a period established by the franchise not to exceed fifteen (15) years from the date of execution, only if within thirty (30) days after the date of the granting of a franchise, the Grantee files with the Township Clerk its unconditional acceptance of the franchise, all required letters of credit, construction bonds and insurance certificates, and pays to the Township Clerk all reasonable costs incurred by the Township in preparing, considering the Cable TV Ordinance, and awarding the franchise or renewal, including legal, engineering, technical, publication, public hearing and other expenses. If a Grantee fails to comply with this subsection, it shall acquire no rights, privileges, or authority whatsoever.

- (f) Grantees shall, within sixty (60) days after the execution of a franchise, apply to the Federal Communications Commission, any State agency, and any appropriate utility companies for all necessary pole line agreements, authorizations or registrations for the construction of a Cable System, and for all permits then normally available. Failure of a Grantee to timely apply for such pole line agreements, authorizations or registrations shall render the franchise null and void and forfeit the Grantee's security.

Sec. 9.2.03: Liability

- (a) A Grantee shall indemnify and hold harmless the Township at all times during the life of a franchise and will pay all damages and penalties which the Township may be required to pay as a result of granting franchise to Grantee.
- (b) A Grantee shall at all times during the life of a franchise carry and require its contractors and subcontractors to carry public liability, property damage, worker's disability, and vehicle insurance in such form and amount as shall be determined by the Township. All required insurance coverage shall provide for thirty (30) day notice to the Township in the event of material alteration or cancellation of such coverage prior to the effective date of such material alteration or cancellation. Failure of the Grantee to provide appropriate insurance certificates to the Township within sixty (60) days after the execution of a franchise shall render the franchise null and void.
- (c) A Grantee shall pay and, through acceptance of a franchise, specifically agrees to pay all reasonable expenses incurred by the Township in defending itself with regard to all damages, penalties, or other claims resulting from granting the franchise, the acts of the Grantee, its employees, contractors, and subcontractors.
- (d) In all instances where Township seeks to obtain indemnification, or any other payment or expenses pursuant to this section, Township shall notify Grantee within ten (10) days or within sufficient time to legally respond if less than ten days, of the receipt of any claim for which it believes Grantee is obligated under the section. Township shall fully cooperate with Grantee in the defense of such claim and shall make available its employees, representatives and records as reasonably necessary to the defense. Township shall not settle or compromise the claim in any way without the written permission of Grantee. Township may employ its own legal representatives at its own expense.

Sec. 9.2.04: New Developments

- (a) Grantee may improve, upgrade and expand its cable television system and cable television services in order to incorporate new developments in the state-of-the-art. Grantee shall not implement or provide services other than cable television services without the express prior consent and approval of the Township; provided, however, that such approval will not be unreasonably withheld.

- (b) In addition to those matters required in a franchise, Grantees recognize:
 - A. It recognizes and agrees that the Township shall in no way be bound to renew or extend the franchise at the end of any franchise term except as set forth in the U.S. Cable Communications Policy Act of 1984, as amended, or as otherwise provided in Federal or State law, rules, or regulations.

 - B. A franchise is a bilateral contract between the Grantee and the Township. To the extent that this Ordinance is an exercise of the police power of the Township, it may be changed or modified without Grantee's consent. Acceptance of a franchise shall not be deemed a waiver of any rights or defenses by a Grantee.

 - C. A Grantee shall at all times comply with all laws and regulations of the State and Federal government or any administrative agency unless released by law. However, if any such State or Federal law or regulation shall require a Grantee to perform any service, or shall permit a Grantee to perform any service, or shall prohibit a Grantee from performing any service, in conflict with the terms of the franchise or of any law or regulation of the Township, then as soon as possible, a Grantee shall notify the Township of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Township or franchise.

 - D. If any provision of the franchise is held by any court of competent jurisdiction to be invalid as conflicting with any Federal or State law, rule or regulation now or hereafter in effect, or is held by such court to be modified in any way in order to conform to the requirements of any law, rule or regulation, said provision may be considered a separate, distinct and independent part of the franchise, and such holding shall not affect the validity and enforceability of all other provisions. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with the law, rules or regulations, said provision shall return to full force and effect and shall be binding on the parties.

- E. If the Township determines that a material provision of a franchise is affected by action of a court or of the State or Federal government, the Township shall have the right to modify any of the provisions to such reasonable extent as may be necessary to carry out the full intent and purpose of the franchise.

Sec. 9.2.05: Guaranty of Parent

The effectiveness of a franchise is expressly conditioned upon the execution and delivery to the Township by each parent of the Grantee of an unconditional guaranty of the timely performance of all obligations of the Grantee, said guaranty to be in a form acceptable to the Township.

Sec. 9.2.06: Acceptance of Agreement and Incorporation of Application and Ordinance by Reference

Upon execution of a franchise by Grantee, Grantee agrees to be bound by all of its terms and conditions and accepts unconditionally the franchise and promises to comply with and abide by all of their terms, provisions and conditions. The Grantee also agrees to provide all services set forth in its application and proposal, to provide cable television services within the confines of the Township of Portland and by its acceptance of the franchise, the Grantee specifically grants and agrees that its application and proposal is thereby incorporated by reference and made a part of this agreement. In addition, the Grantee specifically agrees that this Ordinance of the Township of Portland is incorporated by reference and made a part of the franchise. In the event of a conflict between the application and proposal of the Grantee, and the Ordinance and the Franchise, that provision which provides the greatest benefit to the Township, in the opinion of the Board, shall prevail.

Sec. 9.2.07: Waiver

A Grantee agrees not to oppose intervention by the Township in any suit or proceeding to which the Grantee is a party. A Grantee agrees to abide by all provisions of this Ordinance and its franchise and further agrees that it will not at any future time set up as against the Township any claim that the provisions of this Ordinance or its franchise are unreasonable, arbitrary, or void.

Sec. 9.2.08: Transfer of Rights

- (a) Prior approval of the Township shall be required where ownership or control of more than forty (40%) percent of the right of control of a Grantee is acquired by a person or group of persons acting in concert, none of whom already owns or controls forty (40%) percent or more of the right of control, singularly or collectively, of the Grantee. This subsection shall not be deemed to restrict the transfer by bequest or descent of stock of the Grantee or the assignment of the franchise as security for loans.

- (b) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of forty (40%) percent of Grantee.
- (c) No initial franchise nor any part or portion thereof granted hereunder may be sold, transferred or assigned until the facilities, equipment and personnel which the Grantee has agreed to provide and install pursuant to the franchise are one hundred (100%) percent completed and operational for a minimum period of two (2) years.
- (d) Grantee shall not transfer, sell or assign any portion of its interest in the franchise or in its CATV System without prior approval of the Township. The Grantee shall have the responsibility:
 - A. To show to the satisfaction of the Township whether the proposed purchaser, transferee, or assignee (the "proposed transferee"), which, in the case of a corporation, shall include all officers, directors, employees and all persons having a legal or equitable interest in five (5%) percent or more of its voting stock, or any of the proposed transferee's principals:
 - (1) has ever been convicted or held liable for acts involving moral turpitude (including, but not limited to, fraud, misrepresentation to any Federal or State agency, violation of any securities law), or is presently under an indictment, investigation or complaint charging such acts;
 - (2) has ever had a judgment in an action for fraud, deceit or misrepresentation entered against it, her, him, or them by any court of competent jurisdiction;
 - (3) has pending any legal claim, lawsuit or administrative proceeding arising out of or involving a CATV System which is not of a routine nature and may have a material impact on the operation of the cable system.
 - B. To establish to the satisfaction of the Township the financial solvency of the proposed transferee by submitting all current financial data for the proposed transferee and such other appropriate data as the Township may reasonably request.
 - C. To establish to the satisfaction of the Township that the financial standing of the proposed transferee is such that the proposed transferee shall be able to maintain and operate the Cable System for the remaining term of the franchise.

- (e) Any proposed transferee shall execute an agreement, in a form and containing conditions approved by the Township, that it will assume and be bound by all of the provisions, terms and conditions of the franchise and all applicable Federal, State and local laws and further, that the transferee shall be liable and obligated under said documents.
- (f) Nothing in any approval by the Township of an authorization of any transfer or assignment of any ownership interest shall be construed to waive or release any rights of the Township in and to the streets, public ways and public places of the Township or as a release of any of the Township's police powers, or as an exercise of eminent domain.
- (g) The occurrence of any event which constitutes either an act of bankruptcy by the Grantee as defined in the Federal Bankruptcy Act; or placement of the Grantee into receivership or the issuance of any order to the Grantee or any of its stockholders by a government agency or court of competent jurisdiction to divest any interest related to the CATV System or the entry of any judgment against the Grantee which, in the opinion of the Township, impairs the Grantee's credits or Grantee's failure to meet its financial obligations on a continuing basis, shall be deemed an unauthorized transfer and assignment under the provisions of this subsection and shall be deemed a material breach and default of the franchise and subject the Grantee to the revocation and termination provisions of the franchise.
- (h) The occurrence of an unauthorized transfer or assignment may, at the option of the Township, terminate the franchise and accelerate all of the obligations and rights thereunder, including but not limited to the right of the Township to purchase the Cable System. The Grantee shall notify the Township of any occurrence which constitutes an unauthorized transfer and of the entry of any judgment against it within twenty-four (24) hours of knowledge of such occurrence. From and after any of the occurrences enumerated, the Grantee shall not make, execute or enter into any deed, deed of trust, mortgage, contract, conditional sales contract or any loan, lease, pledge, sale, pole agreement or any other agreement or hypothecation concerning any of the facilities or property, real or personal, of the CATV System without the written approval of Township, such approval not to be unreasonably withheld.

Sec. 9.2.09: Review, Renewal, Termination & Cancellation

- (a) To provide for technological, economic, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the CATV System and to achieve a continuing, advanced, modern system for the Township, the Township and the Grantee shall comply with the following provisions:
 - A. Prior to the granting of or renewal of a franchise, or at any other time as the Township deems necessary, a public hearing shall be held for the

purpose of reviewing and commenting on, among other items, the following: services, rate structure, free or discounted services, application of new technologies, system performance, services provided, programming, subscriber complaints, user complaints, rights of privacy, amendments to the franchise, underground processes, and developments in the law. Either the Township or the Grantee may select additional topics for discussion at any regular or special review hearing.

- B. Public notice of the public hearing shall be given by advertisement twice in a newspaper of general circulation at least one (1) week prior to the public hearing and at the sole expense of the Grantee. In addition, if the Grantee's CATV system is completed, Grantee shall televise notice of the public hearing at least one (1) week prior to the public hearing on at least one (1) of the channels referred to in Section 9.05.01(j) of this Ordinance.
- (b) After holding a public hearing, the Township may take such actions as it deems appropriate, including the grant or denial of a franchise or franchise renewal, by written decision and based upon the factors outlined below if applicable:
 - (1) Technical developments and performance of the Grantee's CATV System;
 - (2) Local programming (i.e. access channels and local origination);
 - (3) Additional services if offered by the Grantee;
 - (4) Cost of service;
 - (5) Performance of all obligations of Grantee as prescribed by franchise and ordinance including, but not limited to, programming, facilities, equipment and personnel available to subscribers and users for all forms of community communications;
 - (6) Cable industry performance nationwide;
 - (7) Comments from residents and representatives of the community and community organizations.
 - (c) Absent a timely request from Grantee to renew a franchise, the franchise shall terminate at the end of its initial or renewal term.

Sec. 9.2.10: Purchase Option

The Township may exercise an option to purchase the CATV System at the expiration, termination or revocation of the franchise. The purchase price to be paid by the Township shall be the fair market value of the System as a going concern.

Sec. 9.2.11: Removal

- (a) Upon expiration, termination or revocation of a franchise, if the franchise is not renewed and if neither the Township nor an assignee purchase the CATV System, the Grantee may remove any underground cable from the streets which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of cable to be removed. The Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets along the extension of cable to be removed, except as hereinafter provided. The Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the Township based upon a determination, in the sole discretion of the Township, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the Township to remove cable or conduit shall be mailed to the Grantee not later than thirty (30) calendar days following the date of expiration of the franchise. A Grantee shall file written notice with the Township Clerk not later than thirty (30) calendar days following the date of expiration, termination or revocation of the franchise of its intention to remove cable intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the Township. Removal shall be completed not later than twelve (12) months following the date of expiration of the franchise. Underground cable and conduit in the streets which is not removed shall be deemed abandoned and title thereto shall be vested in the Township.
- (b) Upon expiration, termination or revocation of a franchise, if the franchise is not renewed and if neither the Township nor an assignee purchase the System, the Grantee, at its sole expense, shall, unless relieved of the obligation by the Township, remove from the streets all above-ground elements of the Cable Television System, including but not limited to amplifier boxes, pedestal mounted terminal boxes, and cable attached to or suspended from poles, which are not purchased by the Township or its assignee.
- (c) The Grantee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable ordinance of the Township, shall conduct and complete the work of removal in compliance with all such applicable ordinances, and shall restore the streets to the same condition they were in before the work of removal commenced. The work of removal shall be completed not later than one (1) year.

Article 3: Construction

Sec. 9.3.01: Construction Provisions

(a) Service Availability and Line Extensions. All existing residential households within the Cable Service Territory will be provided with access to service from the System as set forth in the Schedule of Service Areas as stated in each Franchise, provided that access to service can be provided from streets or Public Property and all such permission as may be required from property owners is reasonably and timely available without cost to Grantee, and that service to multiple dwelling units need be provided only on terms acceptable to Grantee. In addition to construction set forth in the Franchise, areas with occupancy densities of more than [twenty-five (25) homes] per mile which are contiguous to the system will be provided with access to service to the extent service is economically feasible and technically possible. In areas with less than twenty-five (25) homes per mile, service shall be offered in conformance with Grantee's service extension policies.

(b) Construction Requirements. Grantee shall make use of existing poles and other facilities available to Grantee. Grantee may erect its own poles and install its own conduit, with approval of the Township, which approval shall not be unreasonably withheld. All poles and conduit installed within the Cable Service Territory shall be made available for attachment or use by Grantee, at just and reasonable rates.

In case of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Grantee reasonable notice of not less than thirty (30) days prior to such construction or development, and of the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Easements required to bring service to the development shall be provided by the developer or property owner.

(c) Construction Codes and Permits. Grantee shall obtain any required permits from Township before commencing construction involving the opening or disturbance of any street or public property. The Township shall cooperate with the Grantee and use its best efforts in granting any permits required. Grantee shall arrange its lines, cables and other appurtenances, on any street or public property, in such a manner as to cause no unreasonable interference with the usual and customary use of said street or public property of any person.

(d) Repair of Streets and Public Property. Any and all streets or public property which are disturbed or damaged during the construction, operation or maintenance of the System shall be promptly repaired by Grantee, at its expense and to the condition, or substantially similar condition, prior to the disturbance or damage.

- (e) Movement of Facilities. In the event it is necessary to temporarily move or remove any of Grantee's wires, cables, poles, or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets of Township, upon thirty (30) days prior notice by Township to Grantee, Grantee shall move at the expense of the person requesting the temporary removal such of his facilities as may be required to facilitate such movements. Grantee may require such expense payments be made in advance of performing any work.

Sec. 9.3.02: Condition of Street Occupancy

- (a) The poles, wires, and appurtenances of a Grantee's system shall be located, erected, and maintained upon existing utility facilities wherever feasible. A Grantee shall use underground equipment in all cases where other utilities use underground equipment and in all cases where Township ordinance requires underground installation.
- (b) A Grantee shall be allowed, subject to appropriate regulation, to set its own poles, anchors, guys, and similar facilities within public rights-of-way within the Township when necessary and upon the securing of permits from the Township.
- (c) All facilities erected by a Grantee within the Township shall be so located as to cause minimum interference with the proper use of public rights-of-way and public places and to cause minimum interference with the rights and convenience of adjoining property owners.
- (d) In case of disturbance or damage to any street, sidewalk, alley, public way, or other public property, a Grantee shall at its own expense promptly and in a manner acceptable to the Township replace, repair, and otherwise restore such disturbance or damage.
- (e) If, at any time during the term of a franchise, the Township shall properly elect to undertake public building or construction, altering the grade, alignment, or location of any street, sidewalk, alley, or public way, a Grantee promptly shall, upon reasonable notice from the Township, remove and relocate its facilities at Grantee's expense in a manner acceptable to the Township.
- (f) A Grantee shall at all times employ ordinary care and shall install and maintain industry standards and services for preventing failures and accidents which would cause damage, injuries, or nuisance to the public.

Sec. 9.3.03: Technical Standards

- (a) Each Grantee shall construct, install and maintain its Cable Television System in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements, and technical standards equivalent to those established by the Federal Communications Commission. Each Grantee shall, upon request, provide to the Township written reports of the Grantee's annual proof of performance tests conducted pursuant to Federal Communications Commission standards and requirements.
- (b) Each Grantee shall at all times comply with the National Electrical Safety Code (National Bureau of Standards); National Electrical Code (National Bureau of Fire Underwriters); applicable Federal, State and local regulations; and codes and other ordinances of the Township. In the event of conflict amongst any such codes, regulations, and ordinances, the most protective requirements shall apply.
- (c) In any event, the CATV System shall not endanger or interfere with the safety of persons or property within the Township or other areas where the Grantee may have equipment located.
- (d) All working facilities, conditions, and procedures, used or occurring during construction of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.
- (e) Construction, installation and maintenance of a Cable Television System shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the Township following accepted industry construction procedures and practices and working through existing committees and organizations.
- (f) All cable and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration.
- (g) Any antenna structure used in the Cable Television System shall comply with construction, marking and lighting of antenna structures, required by the United States Department of Transportation.
- (h) RF leakage shall be checked at reception locations for emergency radio services to prove no harmful interference signal combinations are possible. Radiation shall be measured adjacent to any proposed aeronautical navigation or communication radio sites to prove no harmful interference to air navigational reception.
- (i) A Grantee shall develop an adequate preventive maintenance policy for inspection by the Township.

Sec. 9.3.04: Maps, Records., and Reports

- (a) A Grantee, upon request by the Township, shall provide the Township with current maps of its existing and proposed installations.
- (b) A Grantee, upon request by the Township, shall file with the Township Clerk a copy of its annual financial reports, including its annual income statement applicable to its operations within the Township, a balance sheet, and a statement of its properties devoted to CATV operations. A Grantee shall submit such other reasonable information as may be requested by the Township with respect to its property and revenues, expenses or operations within the Township.
- (c) A Grantee shall, upon the request of the Township, furnish a current listing of its users, officers, owners, partners, shareholders, bondholders, and those of any guarantor.
- (d) An accurate and comprehensive file shall be kept by the Grantee of all subscriber and user service complaints regarding the Cable System. A procedure shall be established by the Grantee by the time of installation of the system to quickly and reasonably remedy complaints to the satisfaction of the Township. Complete records of Grantee's actions in response to all service complaints shall be kept for a period of one (1) year.
- (e) A current independent polling service opinion survey report which identifies satisfaction and dissatisfaction among subscribers and users with cable services, facilities, equipment and personnel offered by the Grantee shall be submitted to the Township on or before March 31st every third year.
- (f) Grantee shall submit to the Township such other information or reports in such form and at such times as the Township may reasonably request.
- (g) Subject to the privacy rights of Section 9.6.02 of this Ordinance and to Federal and State laws and regulations, a Grantee shall keep open books and records. The Township shall have the right to inspect at any time during normal business hours all books, records, maps, plans, income tax returns, financial statements, service complaint logs, performance test results and other like materials of the Grantee which relate to the operation of the CATV System. Access to the aforementioned records shall not be denied by the Grantee on the basis that the records contain proprietary information.
- (h) A Grantee shall allow the Township to make inspections of any of the Grantee's facilities and equipment at any time upon one (1) day notice or, in case of emergency, upon demand without notice.
- (i) The refusal, failure, or neglect of the Grantee to file any of the records or reports required to be provided to the Township under this Section shall be deemed a

material breach of the franchise, and shall subject the Grantee to all penalties and remedies, legal or equitable, which are available to the Township under the franchise or the ordinance.

- (j) Any material false or misleading statement or representation knowingly made by the Grantee in any report required under the franchise shall be deemed a material breach of the franchise, and shall subject the Grantee to all penalties and remedies, legal or equitable, which are available to the Township.

Sec. 9.3.05: Construction, Performance Bond and Letter of Credit

- (a) A Grantee shall, within thirty (30) days of the execution of the franchise, file with the Township Clerk, an irrevocable letter of credit, corporate surety bond, or the equivalent, which is acceptable to the Township with a company authorized to do business in the State of Michigan in the amount of One Hundred Thousand Dollars (\$100,000.00), and also the Grantee shall obtain and maintain, at its cost and expense, an irrevocable letter of credit, corporate surety bond, or the equivalent, which is acceptable to the Township with a company authorized to do business in the State of Michigan in the amount of Four Hundred Thousand Dollars (\$400,000.00). The purpose of the irrevocable letter of credit, corporate surety bond, or the equivalent is to guarantee the timely construction and full activation of the CATV system. The irrevocable letter of credit, corporate surety bond, or the equivalent shall be for the purpose of allowing recovery by the Township of any and all damages, loss or costs suffered by the Township resulting from the failure of the Grantee to satisfactorily complete and fully activate the CATV System throughout the Township.
- (b) At that point in time when the Grantee can show to the satisfaction of Township that energized trunk cable passes seventy-five percent (75%) of homes within the area to be served in the Township, the Grantee may have the irrevocable letter of credit, corporate surety bond, or the equivalent terminated after written approval from the Township and subject to subsection (c) below.
- (c) When the CATV System is completed to the satisfaction of the Township, the irrevocable letter of credit, corporate surety bond, or the equivalent may be reduced to Ten Thousand Dollars (\$10,000.00) and maintained for the duration of the franchise to secure Grantee's obligations under the franchise.
- (d) The irrevocable letter of credit, corporate surety bond, or the equivalent, shall contain the following endorsement:

“It is hereby understood and agreed that this bond or letter of credit may not be canceled by the surety or holder. Should the surety or holder decide that this shall not be renewed, this decision shall be evidenced to Portland Township in writing not less than sixty (60) days prior to the expiration of the bond or letter of credit.”

Article 4: Rates and Fees

Sec. 9.4.01: Rates

The provisions hereafter shall be subject to applicable Federal or State laws, rules or regulations.

- (a) The Township expressly reserves the right, upon reasonable notice and opportunity for comment by Grantee, to regulate whatever rates for the provision of cable services and service charges that the Township is not preempted from regulating by law. The Township may adopt by resolution procedural guidelines for regulating rates subject to the U.S. Cable Communication Policy Act of 1984, as amended.
- (b) The Grantee may not deny, delay, interrupt or terminate existing cable service or the use of existing channels, facilities and equipment to subscribers or users because the Township denies a request for a rate or service charge increase unless such delay, interruption or termination is approved by the Township.
- (c) No rate or service charge of any kind that the Township lawfully regulates shall be charged or collected from subscribers or users by a Grantee without the written approval of Township. Violation of this subsection shall be a material breach of the franchise.
- (d) Grantees may request rate or service charge increases at any time. However, initial rates and service charges for regulated services shall remain in force for a minimum of thirty-six (36) months from and after the date of execution of an initial franchise unless otherwise released by the Township.
- (e) Grantee shall file with the Township on or before December 31st of each year a full schedule of all subscriber and user rates and service charges.
- (f) Subscribers and users shall be notified of all increases in rates and service charges at least thirty (30) days before the effective date. Notice shall be filed with the Township Clerk before the effective date.
- (g) Grantees shall not discriminate on the basis of age, race, creed, color, religion, national origin, sex or marital status. Nothing in this Ordinance shall be construed to prohibit the reduction or waiving of charges in conjunction with city-wide promotional campaigns for the purpose of attracting subscribers or users, or the establishment of bulk rates for apartments, condominiums and commercial customers.

- (h) Grantees shall provide subscriber with itemized bills. Grantees may not require subscribers to pay for any cable service more than one (1) month in advance. Grantees shall require no other advance payment other than those required for security deposits. This subsection shall not be construed to prohibit an advance payment for installation of services.
- (i) In the event that a subscriber fails to pay as properly due and owing a rate or service charge, a Grantee may disconnect the subscriber's service outlet, upon giving ten (10) days written notice.
- (j) If a Grantee collects a deposit or advance charge of any service or equipment requested by a subscriber or user, the Grantee shall provide such service or equipment within five (5) days of the collection of the deposit or charge or it shall refund such deposit or charge within two (2) days. Nothing in this subsection shall be construed:
 - A. to relieve Grantees of any responsibility to subscribers or users under any contractual agreements into which it enters with them or
 - B. as limiting a Grantee's liability for fines or penalties which may be imposed under this Ordinance or any franchise for violation or breach of any of their provisions or
 - C. as limiting a Grantee's liability for damages because of its failure to provide the service for which the deposit or charge was made.
- (k) In the event that a subscriber terminates any cable service prior to the end of a prepaid period, the immediate effective pro rata portion of any prepaid rate which represents payment for services which are no longer to be rendered shall be refunded promptly, but in no case more than forty-five (45) days after receipt of the request for termination.
- (l) A Grantee shall not charge a security deposit greater than the equipment's actual cost to the Grantee. Any security deposit collected by a Grantee shall be returned to the subscriber upon termination of service by the subscriber and return of such equipment undamaged, with allowance for reasonable wear and tear, and payment of any outstanding balance due and payable.
- (m) On or after the effective date of this Ordinance, basic service shall be subject to up to a fifteen percent (15%) discount for Township residents who submit a written request and who qualify for the property tax exemption available under MCL 211 .7u or who meet one of the following qualifications:
 - A. Head of household and age 65 or over; or

- B. Head of household and handicapped. A person is considered handicapped for these purposes if the person is receiving supplemental security income payments from the Social Security Administration because of disability under Title 16 of the Social Security Act.

The Grantee shall have the right to verify a subscriber's eligibility for the exemption as a precondition to receiving the discounted basic cable service rate. For purposes of this subsection, basic service shall consist of at least thirty (30) full service channels.

Sec. 9.4.02: Franchise Fee Payments by Grantee

- (a) A Grantee shall pay to the Township for use of its streets, public places and other facilities, as well as for their maintenance, improvements, and supervision, a monthly computed franchise fee in an amount of zero (0) to five (5) percent of the gross revenue received by Grantee. Payments due the Township under the terms of this subsection shall be paid on or before the 25th day of the month following each calendar quarter. The Township shall be furnished a certificate with each payment reflecting the gross revenue, deductions and computations for the period covered by the payment. The maximum allowable franchise fee shall be reviewed upon any Federal Communications Commission amendments relating to the regulation of and allowable rate revisions.
- (b) Franchise fee payments shall be in addition to any other tax, charge, fee, or payment due the Township by a Grantee.
- (c) Not less than annually, a Grantee shall provide the Township with an unqualified opinion of an independent certified public accountant certifying the accuracy of the monthly franchise fee payments paid within the preceding twelve (12) months. Said certification shall be prepared in accordance with generally accepted accounting standards as established by the Financial Accounting Standards Board (FASB).

Article 5: General Capabilities and Services

Sec. 9.5.01: General Capability

In furtherance of the general policy that the services provided be innovative and modern, a Grantee will actively pursue a continuous policy of incorporating new technical developments as economically feasible into the system to reflect the "state of the art." Further, should a Grantee, its parent, its subsidiary or a related company provide a service to any other community which it or they service within the State of Michigan, the same service shall be provided in the Township. Township may waive this requirement upon an affirmative demonstration by the Grantee that such service would be impractical or unfeasible in the Township due to population, density or other relevant factors.

Each CATV System shall, at minimum:

- (a) Distribute in color and in stereo all television signals which it so receives;
- (b) Make available to subscribers, upon request, an RF switch (an A-B switch) permitting conversion from cable to antenna reception; and
- (c) Have at least 36 activated television channels (five hundred fifty 550 megahertz) on a cable system capable of carrying 77 television channels or a combination of video, FM, audio or digital information.
- (d) Fiber optic technology shall be used whenever financially and technically feasible in the subscriber and institutional networks.
- (e) Provide adequate facilities, equipment and personnel for public, educational and governmental access channels, including equipment to program the government access channel from the Township Hall.
- (f) A Grantee may sell or use for program origination any unused access channels to provide local information, entertainment, and advertising under rules approved by the Township.
- (g) At the request of the Board, the cable system shall be interconnected with other cable systems within or contiguous to the Township so as to enable each cable system to carry and cablecast the public, educational, and governmental access programming of the other cable systems. Interconnection of cable systems may be done by direct cable connection, microwave link, satellite, or other appropriate method.
- (h) A Grantee shall, without charge for installation, maintenance, or service, make installations of its CATV system and provide basic service to the Township Hall, police stations, fire stations, other public buildings, each public and parochial school, and each public library in the Township.

Installations, including five multiple outlets, shall be made at reasonable locations in each building as shall be required by the Township and schools.

- (i) In the event of an emergency or other urgent community need, a Grantee shall, upon request of Township, make available its facilities to the Township for the duration of the emergency. Each Cable Television System shall include an emergency alert capability which will permit the Township in times of emergency, to override by remote control, the audio and video of all channels simultaneously. Each Cable Television System shall include the capability to activate and control the emergency alert from the Township headquarters for Civil Defense, Disaster and Emergency Services.
- (j) Every Cable Television Franchise issued pursuant to this Ordinance shall provide for sufficient channels as may be determined by the Township for public, educational and Township access channels, capable of carrying digital, video and audio transmissions pursuant to the provisions of the Cable Communications Policy Act of 1984, Section 611 (47 USC 531).
- (k) This Ordinance shall not be construed to limit the authority of the Grantee to make payments in support of the use of public, educational and governmental access channels.
- (l) Use of facilities and equipment for public, educational and governmental access upon the Cable Television System shall be made available, without rental, or other like charges whatsoever, for use during reasonable hours in connection with the production of public, educational and governmental access programming to be cablecast upon the Cable Television System. Personnel for training and assistance shall be available during normal business hours. First-time users shall not be required to make a deposit; however, Grantee may charge any user its cost of repairing any equipment damaged by abuse or negligence and may demand payment and a deposit of an equal amount prior to re-issuing equipment to the same user. A Grantee shall establish such reasonable rules and procedures, designed to promote the utilization of such public, educational and governmental access programming and subject to the approval of the Township, which approval shall not be unreasonably withheld.
- (m) Grantee shall make all reasonable efforts to coordinate the cablecasting of public, educational and/or governmental access programming upon the CATV System at the same time and upon the same channel designations as such programming is cablecast upon other cable television systems within the area.

Sec. 9.5.02: Service to Customers

- (a) A CATV System shall be designed for operation twenty-four (24) hours per day and shall endure service interruptions only for good cause and for a reasonable time. Interruptions of service shall be for the shortest possible time.
- (b) A Grantee shall maintain an office either in the Township or within a municipality contiguous with the Township which shall be open to the general public during normal business hours. Office hours shall be no less than 8:30 a.m. to 5:30 p.m., Monday through Friday, and extended hours one evening per week and Saturdays if the demand and use so warrant.
- (c) Grantee shall have a publicly listed, local, telephone number. A Grantee shall employ an operator, maintain a telephone answering device, or otherwise be able, twenty-four (24) hours per day, each day of the year, to receive subscriber calls. A written log shall be maintained by a Grantee listing all service complaints, their disposition, and all service interruptions affecting five (5) or more subscribers. Said log shall be available for inspection by the Township upon reasonable notice.
- (d) A Grantee shall maintain an installation and repair service capable of making installations within seven (7) days and repairs within forty-eight (48) hours after a request.
- (e) Upon failure of a Grantee to remedy a loss of service within twenty-four (24) hours of receipt of notification of such loss, the Grantee shall rebate one- thirtieth (1/30) of the regular monthly charge to each subscriber so affected, for each twenty-four (24) hours or fraction thereof, until service is restored unless restoration is prevented by cause beyond the control of the Grantee upon notice to Grantee identifying the loss by channel, date and time.
- (f) Any change made by a Grantee in its programming (channels carried), except those of an emergency nature beyond Grantee's control, shall not become effective until the Grantee has notified its subscribers at least thirty (30) days in advance. Notification must be made in writing to each subscriber.
- (g) The Township may regulate provisions for the handicapped, including closed captioned programming equipment, bills and notices in large type or Braille. Such regulation shall be made after notice to Grantee and a public hearing by the Board.

Sec. 9.5.03: Parental Lock-Out

The Grantee shall at no charge and upon written request, if technically feasible, install a trap which allows a "parental guidance" or "lock-out" device which permits the subscriber, at subscriber's option, to eliminate comprehensible video and audio reception of any channel.

Sec. 9.5.04: Continuity of Service

It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify or sell the CATV System or the Township terminates, revokes or fails to renew the Franchise within a reasonable time, or the Township elects to purchase the CATV System, the Grantee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances for a period of time not to exceed six (6) months, during which time the relative rights and obligations of the parties as reflected in this Ordinance shall continue in full force and effect. In the event of purchase by the Township, or a change of Grantee, the current Grantee shall cooperate with the Township in maintaining continuity of service to all subscribers subject to the conditions and qualification of the immediately preceding sentence. In the event that interruption of service is required by the Grantee for modification, repairs or the like, the interruption shall be as brief as possible and at times when the viewing audience is at a minimum. Records of such interruptions shall be kept.

Article 6: Rights; Liability for Libel

Sec. 9.6.01: Right of Privacy

A Grantee shall not transmit any signal to or from any dwelling or any other building without the express authorization of the owner of said dwelling or other building. Where said owner has leased said dwelling or other building or a portion thereof, said express authorization shall be obtained from the lessee and not from the owner. No personally identifiable subscriber information shall be made public without the specific written permission of the subscriber.

Sec. 9.6.02: Rights of Residents

- (a) An owner or operator of an apartment building, condominium, nursing home, or any other rental facility may not interfere with or charge a fee for the installation of cable facilities for the use of a lessee of said property or premises, except that such owner or operator may require:
 - A. Installation to conform to reasonable conditions necessary to protect the safety, appearance and functioning of the premises;
 - B. The Grantee, occupant, or tenant to pay for the installation, operation or removal of such facilities;
 - C. The Grantee, occupant or tenant to agree to indemnify the owner or operator for any damages caused by installation, operation or removal of such facilities.
- (b) It shall be unlawful for the Grantee to reimburse or offer to reimburse any person, or for any person to demand or receive reimbursement from a Grantee, for the placement upon the premises of such person of Grantee's facilities necessary to connect such person's premises to the distribution lines of Grantee to provide cable service to said premises.
- (c) A landlord may not discriminate in the amount of rent charged to tenants or occupants who receive cable services and to those who do not.
- (d) A Grantee may not take actions which would diminish or interfere with the privilege of any tenant or other occupant of any such building to use or avail himself of master or individual antenna equipment.

Sec. 9.6.03: Liability of the Grantee in Libel Action

The Grantee or its agents shall not, in an action for slander or for publishing a libel, be held liable in damages for or on account of any defamatory matter uttered, telecast, cablecast, or published over the facilities of the Grantee by any person whose utterance, telecast, cablecast, or publication is not, under the provisions of any law of the United States or any regulation, ruling or other of the Federal Communications Commission, subject to censorship or control by the Grantee.

Article 7: Miscellaneous

Sec. 9.7.01: Severability

If any law, ordinance, regulation or court decision shall render any provision of this Ordinance invalid, the remaining provisions of the Ordinance shall remain in full force and effect.

Sec. 9.7.02: Conflict Provision

In the event of any conflict between this Ordinance and other ordinances or the franchise agreement, this Ordinance shall control.

Sec. 9.7.03: Governing Law

This Ordinance and franchises granted pursuant hereto shall be construed pursuant to the laws of the State of Michigan.

Sec. 9.7.04: Effective Date

This Ordinance shall take effect one day after its publication in a newspaper of general circulation in the Township of Portland.