

BUSINESS REGULATIONS

23.000 **CABLE SYSTEM REGULATORY ORDINANCE NO. 161**

Adopted: March 22, 1999

Effective: April 19, 1999

An Ordinance to provide Cable System Franchise Regulations; to provide for severability; to provide for the repeal of conflicting Ordinances; and to establish an effective date.

A. Title

This Ordinance shall be known and may be cited as the "Cooper Township Cable System Regulatory Ordinance."

B. Definitions

The following words and phrases used in this Ordinance are defined as follows:

Cable Act means the Communications Act of 1934, Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 as they may be amended or succeeded.

Cable service shall have the meaning set forth in the Cable Act and Federal Communication Commission (FCC) regulations.

Cable system or system shall have the meaning set forth in the Cable Act and FCC regulations for "cable television system."

Channel means a frequency band, which is capable of carrying either a video signal, or a number of audio, digital or other non-video signals or some combination of such signals.

Days means calendar days unless otherwise specified.

Franchise fee means the fee payable in exchange for the rights granted pursuant to this Ordinance and the Franchise agreement.

Grantee means the party granted a Franchise by the Township, and shall include the lawful successor, transferee or assignee of such Grantee.

Person means any individual, partnership, association, organization, corporation, or limited liability company or any lawful successor or transferee of such an entity.

Public rights-of-way or streets means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, waterways, easements or other public right-of-way now or hereafter existing in the Township.

Resident means any person residing in the Township.

Sale shall include any sale, exchange, barter or conveyance of any kind.

State means the State of Michigan

Subscriber means any person who or which elects to subscribe to, for any purpose, a service provided by the Grantee by means of or in connection with a cable system.

System facilities means the cable system constructed for use within the Township, including without limitation, the headend (and distribution lines to the headend) even if located outside of the Township, antenna, cables, wires, lines, towers, amplifiers, converters, equipment or facilities located within the corporate limits of the Township designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave or other means, audio, radio, television and electronic signals to and from subscribers in the Township, and any other equipment or facilities located within the corporate limits of the Township intended for the use of the cable system.

Township means the Charter Township of Cooper.

User means a person, utilizing channel or equipment and facilities for purpose of producing and/or transmission of material, as contrasted with receipt thereof in a subscriber capacity.

C. Grant of franchise

1. **Grant.** Subject to the terms and conditions set forth herein, the Township may grant revocable, non-exclusive Franchises to construct and operate cable systems within the Township for the purpose of providing cable services and for such cable systems to occupy or use the public rights-of-way. In exercising rights pursuant hereto, Grantee shall not endanger or interfere with the lives of persons, interfere with any installations of the Township, any public utility serving the Township or any other person permitted to use the streets nor unnecessarily hinder or obstruct the free use of the streets. The grant of one Franchise does not establish priority for use over the other present or future permit or Franchise holders or the Township's own use of the streets. The Township shall at all times control the distribution of space in, over, under or across all streets occupied by the cable services. All rights granted for the construction and operation of the cable services shall be subject to the continuing right of the Township to require such reconstruction, relocation, change or discontinuance, of the appliances used by the cable services in the streets as shall, in the opinion of the Township, be necessary in the public interest.
2. **Non-cable Services.** All rights granted herein to provide cable service shall not be construed to include telephone or other non-cable services (other than internet services, if provided for in the Franchise).

3. **Franchise Binding.** All provisions of this Ordinance, including any subsequent amendments and any Franchise granted hereto shall be binding upon the Grantee, its successors, lessees or assignees.
4. **Privileges Must Be Specified.** No privilege or exemption shall be inferred from the granting of any Franchise unless it is specifically prescribed.

D. Franchise required

No cable system shall be allowed to occupy or use the public rights-of-way or be allowed to operate within the Township without a Franchise.

E. Use of public streets

For the purpose of operating and maintaining a cable system in the Township, the Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the streets, its system facilities and other property and equipment as are necessary to the operation of the cable system, provided that Grantee complies with all design, construction, safety, and performance provisions contained in this Ordinance, the Franchise, and other generally applicable local Ordinances. The Grantee shall also obtain all required pole attachment agreements for use of any utility poles or other utility facilities required in connection with the provision of services. No reference herein, or in any Franchise, to the "Streets" shall be deemed to be a guarantee by the Township that its title to any property is sufficient to permit its use for such purpose, and the Grantee shall, by its use of such terms, be deemed to gain only such rights to use property in the Township as the Township may have the undisputed right and power to give. A Franchise granted pursuant to this Ordinance does not pre-empt authority of the Kalamazoo County Road Commission or State Highway Commission.

F. Term of franchise

The term of the Franchise shall commence upon execution of the Franchise by the Township and the Grantee and shall continue for a period specified in the Franchise, unless sooner terminated as provided herein. As it relates to public rights of way and Township-owned property, the Grantee shall have no property right upon the expiration of the Franchise term.

G. Franchise nonexclusive

A Franchise granted pursuant to this Ordinance shall be nonexclusive and shall not affect the right of the Township to grant to any other person a right to occupy or use the streets, or portions thereof, for the construction and operation of a cable system within the Township or the right of the Township to permit the use of the streets or public grounds of the Township for any purpose whatever. By accepting a Franchise, the Grantee thereby acknowledges the Township's right to make such grants and permit such uses. Additional franchises, taken as a whole, shall be neither more favorable nor less burdensome than franchises previously granted. No privilege or power of eminent domain is bestowed on Grantee by the grant of a Franchise.

H. Right of condemnation reserved

Nothing in this Ordinance or a Franchise shall limit any right the Township may have to lawfully acquire by eminent domain or otherwise any property of Grantee.

I. Township's right to perform public works

Nothing in this Ordinance or a Franchise shall prevent the Township or any governmental authority from performing or carrying on, directly or indirectly, any public works or public improvements. Should the cable system in any way interfere with the construction, maintenance or repair of such public works or public improvements, the Grantee shall, at its own cost and expense, protect or relocate its cable system, or part thereof, as reasonably directed by the Township or any governmental authority (so long as other similarly-situated users of rights of way are treated in a similar fashion).

J. Emergency removal of plant

If, in case of fire or other disaster, it becomes necessary in the reasonable judgment of the Township to cut or move any portion of the cable facilities, the Township shall have the right to do so at the sole cost and expense of Grantee. The Township shall first endeavor to provide notice to Grantee and request that Grantee conduct the necessary work, if possible. The Grantee shall bear all costs of reinstallation, repair, and other costs resulting from or arising out of the emergency cutting or removal of the cable system.

K. Removal or abandonment

Upon termination of the Franchise by passage of time or otherwise, and unless Grantee transfers the cable system to a subsequent Grantee approved by the Township, Grantee shall remove its supporting structures, poles, transmission and distribution systems, and all other appurtenances from the public rights-of-way and shall restore any property, public or private, to its original condition prior to the installation, erection, or construction of the cable system. Restoration of Township property shall be in accordance with the directions and specifications of the Township and all applicable law. Said removal and restoration shall be at the Grantee's expense. If such removal and restoration is not completed within twelve (12) months after the notice by the Township, delivered in writing to Grantee, all of the Grantee's property remaining in the affected public rights-of-way shall, at the option of the Township, be deemed abandoned and shall, at the option of the Township, become the property of the Township. In the event the Grantee fails or refuses to remove its system or satisfactorily restore all areas, the Township may perform such work and collect the cost thereof from the Grantee. No surety on any bond shall be discharged until the Township has certified to the Grantee in writing that the system has been dismantled, removed, and all other property restored to the satisfaction of the Township. This section (requiring removal or abandonment) shall not apply if Grantee is lawfully no longer a cable system operator and if: (i) the plant is in continuous use; (ii) removal and abandonment is addressed by other laws, regulation or otherwise, and (iii) the Grantee has received all lawfully required local, state or federal authority to so operate.

L. Transfer of ownership or control

1. **Transfer of Franchise.** A franchise, in whole or in part, shall not be assigned, transferred, leased, sold, or disposed of in any manner, nor shall title to the cable system, legal or equitable, pass to or vest in any other person without the prior written consent of the Township.
2. **Transfer of Ownership.** The Grantee shall not sell, transfer, or dispose of twenty-five percent (25%) or more, at any one time, of the ownership or control of Grantee, or forty percent (40%) or more cumulatively over the term of the franchise of such interest to another person, or group of persons acting in concert, without first obtaining the written consent of the Township. Grantee need not, however, obtain said consent from the Township when the sale, transfer or disposition is to a person which is then under common control with the Grantee, provided that prior to such sale, disposition or transfer the Grantee provides to the Township verifiable information establishing that such other person has the financial, legal, and technical ability to fully perform all obligations of the Franchise.
3. **Transfer of Control.** No change, directly or indirectly, in the control of the Grantee or of any person holding a controlling interest in Grantee shall take place without the prior written consent of the Township.
4. **Township Approval.** For the purpose of determining whether it shall consent to such transfer the Township may inquire into the legal, financial, and technical qualifications of the prospective transferee or controlling party, as well as its ability to comply with the Franchise and applicable Township ordinances. The Grantee shall provide the Township with all reasonably required information, provided the Township serves Grantee with written notice of the required information within sixty (60) days of receiving Grantee's request for transfer on notice of change in control (unless a shorter time is established by Federal Law, in which case said shorter time shall apply). The Township reserves the right to impose reasonable conditions on the transferee as a condition of the transfer to ensure that the transferee is able to meet existing ordinances. Every transfer of ownership or control shall make the Franchise subject to cancellation unless and until the Township issues its written consent.
5. **No Waiver of Township Property Rights.** The consent of the Township to a transfer of the Grantee shall not constitute a waiver or release of the rights of the Township in and any property owned by the Township or to public rights of way, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Ordinance and the Franchise.
6. **Signatory Requirement.** Any approval by the Township of transfer of ownership or control shall be contingent upon the prospective party becoming a signatory to the Franchise agreement.

7. ***Notification of Sale.*** In the event the Grantee places its system for public sale, Grantee, or its designee, shall notify the Township, at the same time it notifies other prospective purchasers, of that fact. The Grantee shall also advise the Township of the proposed terms and conditions of such a sale, to the extent they have been made public, so long as the Township can commit to Grantee that such information shall be kept as confidential as Grantee requires other prospective purchasers.
8. ***Time Frame for Township Review.*** The Township shall act upon any transfer request within a reasonable time, but in no event more than allowed by Federal law.
9. ***"Grantee."*** For the purpose of subsection (c) immediately above (regarding transfers of control), "grantee" shall be deemed to include not only the name grantee but also its subsidiaries, parents or affiliated companies, associations or organizations as well as all persons having any title or interest in the system.

M. Assumption of ownership or control

Any financial institution having a pledge of a franchise granted pursuant to this Ordinance or of the assets of a cable system for the advancement of money for the construction and/or operation of the cable system may notify the Township that it will take control and operate the cable television system. If the financial institution takes possession of the cable system the Township shall take no action to effect a termination of this Franchise without first giving to said institution written notice thereof and a period of six (6) months thereafter (unless otherwise provided herein below) to allow the financial institution or its agent(s) to continue operating as the Grantee under this Franchise and to request the Township, and for the Township to determine whether, to consent to the assignment of the Grantee's rights, title, interest and obligations under this Franchise to a qualified operator. The financial institution shall be entitled to such possession and other rights granted under this paragraph until such time that the Township determines whether to consent to such assignment (the "extended time"). If the Township finds that such transfer, after considering the factors set forth in the section above regarding transfer of ownership or control, is acceptable to the Township, the Township will consent to the transfer and assign the rights and obligations of such Franchise. During the six (6) month period or extended time, the financial institution shall enjoy all the rights, benefits and privileges of the Grantee under this Franchise, and the Township shall not disturb such possession by the financial institution, provided the financial institution complies in all respects with the terms and provisions of this Franchise and the Ordinance. The various rights granted to the financial institution under this paragraph are contingent upon the lender's continuous compliance with the terms and provisions of this Franchise and the Ordinance during the entire aforementioned six (6) month period or extended time, if applicable.

N. Right to purchase

In the event the Grantee (a) forfeits or surrenders, or the Township terminates the Franchise for cause, pursuant to provisions of this Ordinance and the Franchise, or (b) the Franchise is lawfully not renewed at the normal expiration of the Franchise term, the Township shall have the right, directly or as an intermediary, to purchase the Franchised cable system or effect the ownership of the system to another person. Any such acquisition or transfer shall be in full accordance with the Federal Cable Act.

O. Franchise renewal

A Franchise, once granted, shall be subject to renewal or non-renewal in accordance with applicable federal law.

P. Franchise fees

1. ***Fee.*** The Grantee of any Franchise hereunder shall pay to the Township a Franchise fee in an amount as designated in the Franchise, which sum shall be five percent (5%) of the gross annual receipts, or in a greater amount if allowed by Federal law and approved by the Township. The obligation to pay such fees shall commence as of the effective date of the Franchise. Once every twelve months, the Township shall be furnished by the Grantee a statement of said payments certified by an officer of Grantee, reflecting the total amounts of annual gross revenues and the above charges and computations for the period covered by the payment.
2. ***Franchise Fee in Addition to Other Tax or Payments.*** Payment of the Franchise fee made by Grantee to the Township shall not be considered in the nature of a tax, but shall be in addition to any and all taxes which are now or may be required hereafter to be paid by any Federal, State, or Local law.
3. ***Acceptance by the Township.*** No acceptance of any payment by the Township shall be construed as a release or as an accord and satisfaction of any claim the Township may have for further or additional sums payable as a Franchise fee under this Ordinance or for the performance of any other obligation of the Grantee.
4. ***Failure to Make Required Payment.*** In the event that any Franchise payment or re-computed amount is not paid on or before the date it is due, Grantee shall pay as additional compensation an interest charge, computed from such due date, equal to the commercial prime interest rate of the Township's primary depository bank during the period that such unpaid amount is owed.
5. ***Payments to be Made Quarterly.*** The Franchise fee and any other cost or damages assessed shall be payable quarterly to the Township. The Grantee shall file a complete and accurate verified statement of all gross revenue within the Township during the period for which said quarterly payment is made, and said payment shall be made to the Township not later than forty-five (45) days after the expiration of each calendar quarter. Quarterly computation dates are the last day in the months of March, June, September and December.

6. ***The Township's Right to Inspection.*** The Township shall have the right to inspect the Grantee's income records and the right to audit and to re-compute any amounts determined to be payable under this Ordinance. Audits shall be at the expense of the Grantee if such audit determines that the Grantee has underpaid the Franchise fees by five percent (5%) or more. Any additional amount due to the Township as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the Township which notice shall include a copy of the audit report.

Q. Forfeiture or revocation

1. ***Grounds for Revocation.*** Subject to the limitations and procedures set forth below, the Township reserves the right to revoke any Franchise granted hereunder and rescind all rights and privileges associated with the Franchise in each of the following circumstances, each of which shall represent a default and breach under the Ordinance and the Franchise:
 - a. The Grantee shall be in default in the performance of any of the material obligations under this Ordinance, the Franchise, or under such documents, contracts and other terms and provisions entered into by and between the Township and the Grantee.
 - b. The Grantee violates any orders or rulings of any regulatory body having jurisdiction over the Grantee relative to this Ordinance or the Franchise, unless Grantee has initiated a timely challenge to such order or ruling with an appropriate tribunal.
 - c. The Grantee attempts to evade any of the provisions of this Ordinance or the Franchise or practices any fraud or deceit upon the Township or cable subscribers.
 - d. The Grantee's initial or rebuild construction schedule is delayed later than the schedule contained in the Franchise or beyond any extended date set by the Township.
 - e. The Grantee becomes insolvent or is adjudged bankrupt.
 - f. The Grantee fails to restore service to substantially all of the system after ninety-six (96) consecutive hours of interrupted service, except when approval of such interruption is obtained from the Township.
 - g. The Grantee materially misrepresents facts in the application for or negotiation of the Franchise or any extension or renewal thereof.
 - h. The Grantee ceases to provide cable services over the cable system for any reason within the control of the Grantee.

2. ***Effect of Circumstances Beyond Control of Grantee.*** The Grantee shall not be declared at fault or be subject to any sanction under any provision of this Ordinance in any case, in which performance of any such provision is prevented by reasons beyond the Grantee's control (E.g. riots, floods, acts of nature, strikes) so long as the Grantee performs as soon thereafter as reasonably possible.
3. ***Effect of Pending Litigation.*** Pending litigation or any appeal to any regulatory body or court having jurisdiction over the Grantee shall not excuse the Grantee from the performance of its obligations under this Ordinance or the Franchise unless there is a Court or Regulatory Body order to the contrary.
4. ***Procedure Prior to Revocation.***
 - a. The Township shall make written demand upon the Grantee that it cure its failure, refusal or neglect. If the failure, refusal or neglect of the Grantee continues for a period of thirty (30) days after said demand, or longer in cases where the Township reasonably determines that compliance or correction requires a longer cure period, the Township may place a request for termination of the Franchise upon a Township Board meeting agenda. The Township shall cause to be served upon such Grantee at least seven (7) days prior to the date of such Township Board meeting, a written notice of this intent to request such termination. Notice of the Township's intent and the time and place of the meeting shall be published by the Township at least once, seven (7) days before such meeting in a newspaper of general circulation within the Township.
 - b. At said meeting, the Township Board shall receive testimony or other evidence from any interested person, including the Grantee, and shall thereafter determine, in its discretion, whether any failure, refusal or neglect by the Grantee has occurred which warrants revocation of the Franchise.
 - c. If the Township Board determines such a failure, refusal or neglect has occurred but that it was with just cause, as defined by the Township, the Township Board may direct the Grantee to comply within such time and manner and upon such terms and conditions as the Township Board deems reasonable.
 - d. If the Township Board determines such failure, refusal, or neglect by the Grantee was without just cause, the Township Board may, by resolution, declare that the Franchise of the Grantee shall be terminated and bond forfeited unless there be compliance by the Grantee within a specified number of days, not to exceed sixty (60).
5. ***Disposition of Facilities.*** In the event a Franchise is revoked or otherwise terminated, the Township may purchase the system under the procedures set forth above or order the removal of the system facilities, which removal shall be consistent with the removal requirements set forth herein.

R. Regulatory authority

1. ***On-Going Regulation.*** The Township shall exercise appropriate regulatory authority under the provisions of this Ordinance and applicable law. The Township Supervisor or other designee of the Township shall provide day-to-day administration and enforcement of the provisions of this Ordinance and any Franchise granted hereunder.
2. ***Change in Law or Regulation.*** In the event that any actions of the state or federal government or any agency thereof, or any court of competent jurisdiction upon final adjudication, substantially reduces the power or authority of the Township under this Ordinance or the Franchise, or if in compliance with any local, state, or federal law or regulation, the Grantee finds conflict with the terms of this Ordinance, the Franchise, or any law or regulation of the Township, then as soon as possible following knowledge thereof, the Grantee shall notify the Township of the reduction or the point of conflict. The Township may then notify the Grantee that it wishes to negotiate those provisions which are affected in any way by such reduction or conflict. Thereafter, the Grantee shall negotiate in good faith with the Township in the development of alternate provisions which shall fairly restore the Township to the maximum level of authority and power permitted by this Ordinance or the Franchise. 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 this Ordinance and the Franchise subject to applicable state and federal law.
3. ***Authority.*** The Township reserves the right to exercise the maximum plenary authority, as may at any time be lawfully permissible under state or federal law, to regulate the cable system, the Franchise and the Grantee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the Township, the Township may, without the approval of the Grantee, engage in any such additional regulation as may then be permissible, whether or not contemplated by this Ordinance or the Franchise.
4. ***Right of Inspection of Records.*** Subject to appropriate protection of confidential material, the Township shall have the right to inspect all books, records, reports, maps, plans, financial statements, and other like materials of the Grantee which relate to the operation of this Ordinance, the Franchise and applicable law and regulation at any time during normal business hours.
5. ***Right of Inspection of Cable Facilities and Property.*** At all reasonable times, and after reasonable notice, the Township shall have the right to inspect all cable facilities, and property situated within the Township (and, as it relates to headends or distribution lines, without the Township) and installation work performed in the public rights-of-way.

6. ***Right to Test.*** Unless prohibited by law or modified by the Franchise, and after providing Grantee with reasonable notice, the Township may make such tests of Grantee's cable system as are reasonably necessary to ensure compliance with this Ordinance and the Franchise. Such tests shall be performed in such a fashion as to minimize disruption within Grantee's cable system.
7. ***Expense Reimbursement to Township.*** The Grantee shall reimburse the Township for all reasonable costs and expenses incurred by the Township in connection with the initial granting (but not transferring) of a franchise, including, but not limited to, consultant fees, attorneys' fees, publication fees, travel expenses and all other direct costs. Such payment shall be made within thirty (30) days after the Township furnishes the Grantee with a written, detailed statement of such expenses.

S. Bonds, insurance and indemnification.

1. ***Performance Bond.*** At the Township's election and as specified in the Franchise, the Grantee shall obtain and maintain during the entire term of any Franchise and any extensions and renewals thereof, at its cost and expense, and file with the Township, a construction bond and a performance bond in amounts specified in the Franchise to guarantee the faithful performance of the Grantee of its obligations. Such bonds must be issued by a surety licensed to do business in the State of Michigan and be of a form and contain terms and conditions as required by the Franchise.
2. ***Letter of Credit.*** At the Township's election and as specified in the Franchise, the Grantee shall, in addition to or in place of said bonds, obtain, maintain, and file with the Township an irrevocable letter of credit from a financial institution acceptable to the Township and licensed to do business in the State in an amount specified in the Franchise, naming the Township as beneficiary. The conditions upon which the Township may draw upon the letter of credit shall be established in the Franchise.
3. ***Security Fund.*** At the Township's election and as specified in the Franchise, the Grantee shall, in addition to or in place of said bonds and letters of credit, deposit with the Township, within thirty (30) days after execution of the Franchise, the sum specified in the Franchise, as further security for the faithful performance by Grantee of the provisions of the Franchise and compliance with all orders, permits, and directions of any agency of the Township and the payment of all claims, liens, fees, liquidated damages or taxes to the Township arising by reason of the construction, operation, maintenance, or repair of Grantee's cable system. The conditions upon which the Township may draw upon said fund shall be established in the Franchise.
4. ***Liability and Insurance.*** Each Franchise granted shall require the Grantee obtain and keep in effect reasonable policies of insurance, the amounts of which shall be specified in the Franchise. At the Township's request, Grantee shall furnish copies of any of all policies which are in effect from time to time.

5. ***Indemnification.*** Each Franchise granted shall require that the Grantee, at its sole cost and expense, fully indemnify, defend and hold harmless the Township, its agents, officials, and employees against any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorney fees, which arise out of or through the acts or omissions of Grantee and its agents, officials or employees. Such indemnification shall not extend to lawsuits, claims, demands, liabilities, losses or expenses, including court costs and reasonable attorney fees, which arise from the acts or omissions or gross negligence of the Township or its agents, officials or employees.

T. Design and construction provisions

1. ***Compliance with Construction and Technical Standards.*** Grantee shall construct, rebuild, install, operate and maintain its system in a manner consistent with State, Federal and local laws and ordinances, (FCC) technical standards, and the Franchise. Unless the Franchise specifies otherwise, the System shall be designed, constructed, operated and maintained for 24-hours-a-day continuous operation.
2. ***Township Approval of Construction Plans.*** Other than for repairs or replacements, prior to the erection of any towers or poles or the placement of conduits or the upgrade or rebuild of the cable system under this Ordinance, to the extent any of the above acts occur within the public rights of way, the Grantee shall first submit to the Township for approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all such facilities. No such work shall be commenced by any person until said approval has been received from the Township.
3. ***Contractor Qualifications.*** Any contractor proposed for work of construction, installation, operation, maintenance, and repair of system equipment must be properly licensed under laws of the State and Township Ordinances, if any.
4. ***Minimum Interference.*** The Grantee's system and associated equipment erected by the Grantee within the Township shall be so located as to cause minimum interference with the proper use of streets and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets.
5. ***Township Maps.*** The Township does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In public rights-of-way, where necessary, the location shall be verified by excavation.
6. ***Quality of Construction.*** Construction, installation, operation, and maintenance of the cable system shall be performed in an orderly and workmanlike manner, in accordance with then current technological standards and the manufacturer's specifications. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations belonging to the Grantee shall be arranged in parallel and bundled with due respect for aesthetic and engineering considerations.

7. **Construction Standards.** The construction, installation, operation, maintenance, and/or removal of the Cable System shall meet all applicable standards within the National Electrical Code, National Electrical Safety Code, AT&T Manual of Construction Procedures (Blue Book), Bell Telephone Systems Code of Pole Line Construction, All Federal, State and Municipal Construction Requirements, including FCC Rules and Regulations and Utility Construction Requirements. The system, once in place, does not have to be improved to conform to standards which are thereafter created unless those standards so require.
8. **Right to Inspection of Construction.** The Franchise shall ensure that the Township has the right to inspect all construction or installation work performed subject to the Franchise.
9. **System Construction Schedule.** The Franchise shall specify the rebuild or the initial construction timetable.
10. **Extension of Service.** Unless the Franchise states to the contrary, the Grantee shall provide service to all dwelling units and commercial entities requesting service within the Township.

U. Use of streets

1. **Underground Installation.** In areas where either telephone or electric utility facilities are above ground at the time of installation, Grantee may install its service above ground, provided that at such time as those other facilities are required to be placed underground by the Township or are placed underground, the Grantee shall likewise place its services underground (without additional cost to the Township or to the individual subscribers so served within the Township). Where not otherwise required to be placed underground by this Ordinance or the Franchise, the Grantee's system shall be located underground at the request of the adjacent property owner, provided that the excess cost over the aerial location shall be borne by the property owner making the request. All cable passing under the roadway shall be installed in conduit.
2. **Pedestals.** In any cases which pedestals housing mini-hubs, switching or other equipment, are to be utilized, such equipment must be completely buried beneath streets or sidewalks if similar facilities of both electric and telephone utilities are or will concurrently be so buried. Any pedestals or other equipment to be located in the public rights of way shall comply with then-existing Township and utility equipment installation requirements. No pedestal or other equipment which will occupy more than six (6) square feet of the public right of way shall be so placed until the Township so consents. All such buried equipment shall be shown in plan and cross-section on the design plans for permits. Notwithstanding the foregoing, none of the provisions of this subsection shall apply to Grantee unless such requirements are uniformly and universally applied to all providers of any telecommunications or utility services.

3. **Permits.** Prior to construction or alteration, either above or below ground, the Grantee shall, to the extent required by law or regulation, file plans with the appropriate Township departments, enter into use agreements with the utility companies, obtain all construction permits and receive written approval of the Township before proceeding.
4. **Construction Notice.** Grantee shall give appropriate notice to the Township and affected residents within a reasonable period of time of planned major system construction or excavation work, but in no event shall such notice be given less than five (5) days before such commencement.
5. **Restoration to Prior Condition.** If the Grantee's actions result in any disturbance of pavement, sidewalk, driveway or soil, the Grantee shall, at its own expense and in a manner approved by the Township, replace and restore said surface in as good a condition as before said disturbance occurred. Such restoration shall be undertaken and completed as soon as practicable.
6. **Private Property.** Grantee shall repair or replace all private property, both real and personal, damaged or destroyed as a result of the construction, installation, operating or maintenance of the Cable System at its sole cost and expense and as soon as practicable.
7. **Cooperation with Building Movers.** The Grantee shall, on the request of any person holding a building moving permit issued by the Township, temporarily raise or lower its wire to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than thirty (30) working days' advance notice to arrange for such temporary wire changes.
8. **Tree Trimming.** Grantee may, at its own expense, trim trees or other vegetation owned by the Township (or which exist within the right of way) to prevent branches, leaves or roots from touching or otherwise interfering with its wires, cables, or other structures as approved by the Township and consistent with Township ordinances; Grantee shall remove any such trimmings within a reasonable time.
9. **Easements.** All necessary easements over and under private property shall be obtained by the Grantee.
10. **Construction and Installation Manual.** Grantee shall provide the Township with a copy of Grantee's manual which sets forth the specifications, standards and procedures for construction and installation of its Cable System. Said manual shall, at a minimum, establish procedures to ensure quality work and provide for the safety and protection of residents and property.
11. **Equipment Changes.** Unless the Township agrees to the contrary in writing, any substitution or changes in hardware components over the items specified in the Franchise must be of equivalent or better capability as that originally specified.

12. ***Encumbrance.*** Grantee shall not open, disturb or encumber, at any one time, any more public rights-of-way than may reasonably be necessary to enable Grantee to economically install or repair its facilities; nor shall Grantee permit any public rights-of-way to remain open, disturbed or encumbered for a longer period of time than is reasonably necessary.
13. ***Vacation.*** If a public right-of-way is vacated, eliminated, discontinued, or closed, all rights of Grantee under this Franchise to use same shall terminate and Grantee at its expense shall immediately remove the telecommunications and/or cable system from such public right-of-way unless Grantee obtains any necessary easements from the affected property owners to use the former public right-of-way.
14. ***Disconnect and Relocation.*** Grantee shall protect, support, temporarily disconnect, relocate or remove its system facilities which exist within the public rights of way if, in the reasonable judgment of the Township, it is necessary for the public safety or to facilitate street construction or other public improvements. Such acts shall be at the Grantee's sole cost and expense so long as the same policy is imposed upon all other users of the rights of way.
15. ***Underground Construction.*** Grantee shall comply with all state, federal and local laws and ordinances regarding underground construction, including that which relate to MISS DIG. If Grantee damages any Township water, sewage or drainage lines, or any other Township property, during the course of construction, Grantee shall be responsible for the cost of repair, which sums may be recovered from bonds provided by the Grantee for the benefit of the Township.

V. Conduit

1. ***Approval for Conduit.*** No conduit shall be installed by the Grantee without prior approval of the Township with regard to location and any other pertinent aspect.
2. ***Use of Existing Conduit.*** Where conduit already exists for use and is available for use by the Grantee, but Grantee does not make arrangements for such use, the Township may require the Grantee to use such conduit if it determines that the public convenience would be enhanced thereby and if a similar demand is made upon electric or telephone entities with similar underground facilities, and if Grantee is able to gain access under commercially reasonable terms.

W. Service provisions

1. ***Programming.*** Concurrently with the activation of the cable system in the Township, the Grantee shall provide at all times the following services to its subscribers:
 - a. A basic service tier.

- b. Access channels for government, educational, and public access, the number of which shall be specified in the Franchise.
 - c. If Grantee offers an electronic and/or printed channel guide to subscribers and is capable of providing local program listings, and listings of local access programs are provided by the Township in a timely manner, the Grantee shall ensure that the Township-provided listings are carried on a daily basis. Additional costs of providing these services may be passed through to subscribers.
 - d. Services, facilities and equipment for public, educational, and government access, as specified in the Franchise.
2. ***Institutional Network.*** The Grantee shall provide a separate institutional network, equipment, and/or services and capacity, in addition to the residential subscriber network, as specified in the Franchise.

X. Operation after termination or expiration of franchise

- 1. ***Subscription Rights.*** It shall be the right of all subscribers to receive continuous, uninterrupted service insofar as their financial contractual and legal obligations to the Grantee are honored.
- 2. ***Failure to Provide Continuity.*** In the event the Grantee fails to operate the system for seven (7) consecutive days without prior approval of the Township or without just cause, the Township may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the Township or a permanent operator is selected. If the Township is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the Township for all reasonable costs or damages in excess of revenues from the system received by the Township that are the result of the Grantee's failure to perform.
- 3. ***Extended Operation.*** In the event the Franchise is terminated, or upon its expiration, the Township may require the Grantee to continue operation for a period not exceeding twelve (12) months after the date of the Grantee's termination or expiration. Grantee shall remove, at its own expense, its system facilities from all public rights of way and shall maintain bonds until the conclusion of all operations under that Franchise and this Ordinance, including said removal of facilities.

Y. Nondiscrimination required

Grantee shall not illegally discriminate in providing service to the public nor against any employee or applicant for employment because of race, color, religion, sex, national origin or age.

Z. Initial franchise applications

1. ***Invitation of Any Applications for a Franchise, Public Notice of "Request for Proposals."*** The Township may charge an application fee and require applicant to pay all related costs and expenses for the initial Franchise process. The Township may invite applications for a cable television Franchise by means of a public notice advertising the availability of its "Request for Proposals."
2. ***Request for Proposals.*** Prior to inviting any applications for any cable television Franchise, the Township shall prepare a "Request for Proposals" that shall contain at least the following:
 - a. A description of the cable television system and services desired by the Township including any system specifications established by the Township.
 - b. A statement specifying the form that all applications shall follow.
 - c. A statement indicating the amount of the application fee (if any) to be submitted with the application, and the manner in which such fee is to be submitted.
 - d. A statement that all applications must contain the information required by the "Request for Proposal".
 - e. The closing date for the submission of applications.
 - f. The name, address, and telephone number of the Township official(s) who may be contacted for further information.
3. ***Franchise Application.*** Any applicant for a Franchise shall complete the Township's Request for Proposal and provide the information required therein.
4. ***Requirement for Public Hearing on Reasonable Notice.*** The Township shall conduct a public hearing before granting a Franchise. The hearing shall be preceded by fourteen (14) days' notice to the Franchise applicant, to any existing Grantee, and to the public, and shall be conducted in a fashion to insure that all interested persons have an opportunity to speak. Every person who has applied for a Franchise shall appear at the hearing either in person or by authorized representative. The application of any applicant not so appearing shall not be further considered, except for good cause shown.
5. ***Township Discretion.*** In accordance with this Ordinance and other applicable law, the Township, at its discretion, may reject or award any application for a Franchise.

AA. Miscellaneous provisions

1. *Assigns.* All provisions of this Ordinance shall apply to the Grantee, its successors, and assigns, as such may be approved by the Township in accordance with this Ordinance.
2. *Resale.* No person shall resell, without the written consent of the Grantee, any cable service, program, or signal transmitted by a Grantee.

BB. Severability

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, said portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

CC. Repeal of conflicting ordinances

All ordinances, or parts of ordinances, in conflict herewith are hereby repealed.

DD. Effective date

This Ordinance took effect on April 19, 1999. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.