

CABLE COMMUNICATIONS SYSTEMS ORDINANCE

Sec. 1 Title.

This ordinance shall be known as the Cable Communications Systems ordinance.

Sec. 2 Definitions.

For the purpose of this ordinance, the following terms, words, phrases and their derivations shall have the meanings set forth. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words “shall” and “will” are always mandatory and not merely directory. The word “may” is permissive. Words appearing in this ordinance which are not defined in this section shall have their common and ordinary meanings.

Access Channel means any program or signal channel available for nonprofit use by government agencies, educational institutions, community groups and individual members of the public under terms established by the franchise agreement.

Administrator is the chief administrative officer of the Grantor or that person designated or provided with the authority to execute this ordinance.

Application shall mean any proposal seeking authority from the Grantor to construct, develop, reconstruct, or redevelop and operate a cable system within the jurisdiction of the Grantor pursuant to this ordinance. It shall include any initial proposal as well as all amendments and informal correspondence related thereto, all subsequent renewal proposals and in each and every instance it shall mean the inclusion of all information requested in this ordinance.

Basic service means at least all of the following:

- (1) The retransmission to all subscribers of all broadcast television channel signals authorized by the Federal communications Commission and provided for in the franchise agreement;
- (2) The cablecasting to all subscribers of programming on the local origination channel and all public, educational, government and community access channels;

Broadcast signal means a television or radio signal that is transmitted over the air and is received by a cable communications system off the air through a microwave or satellite link, and retransmitted to cable system subscribers.

Cablecast means to distribute programs originating locally to subscribers to the cable system.

Cable facility means a nonbroadcast signal that originates within the facilities of the cable communications system.

Cable communications system or “system” means a system of antennas, cables, amplifiers, towers, microwave links, cablecasting studios, and any other conductors, converters, equipment or facilities designed and constructed for the purpose of distributing video programming to home subscribers and for producing, receiving, amplifying, storing, processing or distributing audio, video, digital, or other forms of electronic or electric signals.

Community access group means any nonprofit group or organization designated as eligible to utilize access channels and facilities.

Converter is an electronic device which converts signals transmitted as cable service to a frequency which permits their reception on subscriber's television receivers.

Drop means the cable and related hardware including grounding materials which connect a subscriber's premises to the cable system.

Easement shall mean the right to occupy and use public rights-of-way, including public utility easements for the operation of a cable system.

Education access channel means any channel where local educational institutions are the primary designated programmers.

FCC means the Federal Communications Commission and any legally appointed designee, agent or successor.

Franchise means the rights granted pursuant to this ordinance to construct, own, operate and maintain a system as defined by the ordinance, within the jurisdiction of the Grantor. Any such authorization, in whatsoever form granted, shall not mean nor include any license or permit required for the privilege of transacting and carrying on a business within the jurisdiction of the Grantor as required by other ordinances and laws of the Grantor.

Franchise agreement means a written agreement between the Grantor and the Grantee, including the specifications, franchise applications and other related material establishing the Grantee's rights and responsibilities relating to construction, operation and maintenance of a cable communications system.

Government access channel means any channel where local governmental agencies are the designated programmer.

Grantee means the franchisee, its successors or its delegates acting within the scope of its franchise.

Grantor means the community or its designee.

Gross receipts means all the revenues derived directly or indirectly by a Grantee, its affiliates, subsidiaries, parents and any person in which a Grantee owns any interest from or in connection with the operation of the cable system for the delivery of cable service including, but not limited to, all monthly and subscriber fees for basic service and any premium services, installation and reconnection charges, equipment rental charges for converters, video cassette recorders, video production equipment and video tape programming, advertising revenue and leased channel revenue, provided, however, that this term does not include revenues generated from the sale or lease of capital assets unrelated to the operation of the cable service outside of the community.

Headend means any location which houses the electronic equipment that transmits the necessary signal and services for the cable system, and includes sub-headends and similar facilities.

Installation refers to the complete process of constructing a subscriber drop which connects a television receiver to the cable system.

Leased access or leased access channel means any channel or portion of a channel available for lease and programming by persons or entities other than the Grantee.

Local origination channel means any channel where the Grantee is the primary designated programmer and provides local programs to subscribers.

Parental control lock-out device means a special electronic circuit or other appropriate device designed to permit a subscriber to scramble, block or trap temporarily any signal that cannot be viewed without the use of a code or physical “key” apparatus.

Pay cable or pay television means the delivery of television signals over the cable communications system for a fee or charge to subscribers, over and above the charge for basic service on a per-program, per-channel or other subscription basis.

Person is any natural person, firm, partnership, association, corporation, company or organization of any kind.

Public access channels community access channel or community channel means any channel where any member of the general public or any noncommercial organization may be a programmer, without charge, on a nondiscriminatory basis.

Street is the surface of as well as the space above and below any public street, road, highway, freeway, lane, path, public way or place, alley, court, sidewalk, boulevard, parkway, drive or any easement or extension, now or later held by the Grantor for any public purpose and shall include any other easements or rights-or-way or extensions as may be later held by the Grantor which shall within their proper use and meaning entitle the Grantor and its Grantee to their use.

Theft of service means the unauthorized reception of cable service, and shall include the action of any person who shall intercept or receive or assist in intercepting or receiving any cable service offered over a cable system, unless such actions are specifically or otherwise authorized by a Grantee or authorized by _____

Sec. 3. **Purpose.**

The Grantor finds that the development of the cable communications system has the potential of having great benefit and impact upon its citizens. Because of the complex and rapidly changing technology associated with cable television, the Grantor further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the Grantor or such persons as the Grantor shall designate. It is the purpose of this ordinance and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters and any franchise issued pursuant to this ordinance shall be deemed to include this finding as an internal part. Further, it is recognized that cable communications systems have the capacity to provide not only entertainment and information services to the community residents, but can provide a variety of interactive communication services to institutions and individuals. Many of these services involve municipal agencies and other public institutions, by providing governmental, educational, or health care communications.

For these purposes to the extent practicable, the following goals underlie these regulations contained herein:

- (a) The cable communications system should be capable of accommodating both the present and reasonably foreseeable future communications needs of the community.
- (b) The cable communications system should be improved and upgraded if necessary during the franchise term so that the new facilities necessary for the operation of this system shall be integrated to the maximum extent possible with existing facilities.
- (c) The cable communications system authorized by this ordinance shall be responsive to the needs and interests of the community, and shall provide a wide diversity of information sources and services to the public.

- (d) That the public, educational, and governmental needs for access to the cable communications system are met.

Sec. 4. Franchise required.

No Person shall own or operate a cable communications system in the jurisdiction without first making application and receiving approval for a franchise in the form of a franchise agreement between the Grantor and the Grantee which shall comply with all of the terms and specifications contained in this ordinance. Franchise agreements shall authorize the use of public easements for the construction and operation of cable communication systems but they shall not convey any property rights to Grantee. No franchise agreement shall either expressly or impliedly be deemed to restrict the granting of subsequent agreements nor shall any franchise agreement create any right to renewal. The failure to obtain a franchise agreement as required by this ordinance shall constitute a misdemeanor.

Sec. 5. Application process.

Applications shall be reviewed in accordance with the procedures of this section. Persons seeking to obtain a franchise may at any time file a written application with the Grantor's administrator or designee in conformity with the minimum requirements of this section. The Grantor reserves the right to issue more specific requests for proposals (RFP) from time to time as circumstances may require, in which case, all information specified must be supplied.

- (1) *Basic information.* In order to be reviewed in accordance with this section, all applications must include an application fee as set by the Grantor or the Grantor's designee and present the following detailed information:
 - (a) The applicant's legal name and principal business address.
 - (b) A listing of the applicant's officers, directors, and/or other principals with sufficient biographical information to permit the Grantor to evaluate the expertise of the applicant.
 - (c) A listing of stockholders or other equity investors or owners having a minimum of two (2) percent interest at the time of the application and an indication of the person having control of the application together with conformed copies of any articles of incorporation and bylaws.
 - (d) A complete set of financial statements prepared by an independent firm of certified public accountants with certification by a financial officer of the applicant which include a profit and loss statement and balance sheet covering the operation of the current system for the past two (2) years in the case of a renewal application or covering any other cable communication system(s) which the applicant has owned for the past two (2) fiscal years of operation in the case of an initial application.
 - (e) A consolidated statement of net worth containing sufficient detailed information such that, when reviewed together with the required financial statements, the Grantor would be able to readily determine the financial responsibility of the applicant.
 - (f) A general description of the status of the current system or proposed design for any planned new system with detailed maps for construction or reconstruction showing where the applicant has used or will use public right-of-way, antenna/tower locations, trunk and feeder design, channel capacity, extent of two-way capability, addressability and microwave facilities.
 - (g) A detailed description of currently existing or proposed video production capability together with the proposed plans for developing the usage of such capability.
 - (h) A description of the cable services to be provided over the system and where service is to be offered in packages or tiers, some designation of the services available on each tier as well as any technical devices required to receive such services.
 - (i) A detailed discussion of the specific plans which the applicant intends to pursue in order to meet the future cable-related needs and interests of the community.
 - (j) In the case of renewal applications, a detailed statement of the activities of the Grantee which meet or

exceed the requirements of any current franchise.

(k) A sworn statement by the chief executive officer of the applicant, certifying the truth of all information contained in the application.

(2) *Review Procedure.* Upon receipt, the applicant shall be reviewed. If the application does not appear to be complete, it shall be returned to the applicant with an indication of what additional information is required.

The review shall consider the relevant strengths and weaknesses of every applicant on its own merits. The service record of the applicant in other communities, as well as the past service record within the jurisdiction - - in the case of a renewal application - - shall be relevant criteria among others. In particular, the review may focus upon the demonstrated ability of an applicant to develop new and advanced uses of its technology, its plans to develop community interest and usage of the technology, the price/value relationship between current or proposed services and the satisfaction of the subscribers or probable subscribers, the strength of on-site management as well as any other criteria which the Grantor deems relevant.

Public hearings. The Grantor shall not execute a franchise agreement for a term of years in compliance with this ordinance unless legal, financial, technical and operational qualifications of the Grantee are established as well as the adequacy and feasibility of the proposed contractual arrangements. Where an applicant demonstrates that it can provide cable services deemed to be in the best interest of the community, the application may be approved. Following a preliminary determination that an application appears to be in the best interest of the community, the Grantor shall notify the applicant of the date and time set for a public hearing on the proposed contractual arrangements and the findings of the Grantor to date. This hearing shall be preceded by public notice published at least ten (10) days prior to the hearing in a newspaper of general circulation within the community. If the Grantor approves the findings made at this public hearing it may grant a franchise to the applicant in the form of a franchise agreement which shall constitute a contract between the Grantor and the Grantee.

(3) *Negotiated Provisions of the Franchise Agreement.* The franchise agreement shall contain such further conditions or provisions as may be negotiated between the Grantor and the Grantee.

(4) *Grantee Acknowledgement.* A Grantee shall acknowledge its acceptance of a franchise agreement by written affidavit in a form approved by the Grantor wherein it shall be recited that the Grantee has reviewed in detail the terms and conditions contained therein with legal counsel of its choice and that it is satisfied and accepts such terms as its negotiated agreement to provide cable service and that it knowingly accepts all business risks.

Sec. 6 Franchise requirements.

A franchise agreement executed pursuant to this ordinance shall incorporate the terms and conditions set forth in this ordinance whether or not such terms and conditions are fully reproduced therein, which incorporation shall commit a Grantee to be bound by the rules and regulations established in accordance with the provisions of this section and all other sections of this ordinance.

(1) *Franchise term.* The maximum term for any franchise agreement between the Grantor and a Grantee shall be fifteen (15) years and the minimum term shall be one year. The Grantor shall approve the term which it deems to be in the best interest of the community and in furtherance of the public health, safety and convenience according to all of the facts and circumstances of each application.

(2) Each applicant for a franchise to provide cable service shall, in its application, define the initial service area and provide a line extension and drop policy for extending areas outside of the initial service area.

Upon execution of a franchise agreement, the Grantee shall proceed as soon as may be practical to construct or reconstruct the cable system so as to be in compliance with this ordinance and any franchise agreement. The failure or neglect to complete construction, reconstruction or maintenance within the allotted time or any extension, shall render any franchise agreement voidable upon written notice from the Grantor of its intention to cancel the contract.

(3) *Franchise fee.* As compensation for the use of the streets, public ways and places, and other facilities, for the construction, operation, maintenance, modification or reconstruction of a cable system, and for the Grantor's costs of maintenance, improvement and supervision thereof, and for the Grantor's costs of establishing and conducting the regulatory activities required by virtue of the granting of a franchise pursuant to this ordinance, the Grantee shall pay to the Grantor five (5) percent of its annual gross receipts for the term of its franchise agreement or any portion thereof while it is operating a cable system in accordance with this ordinance.

(a) The Grantor expressly reserves the right to negotiate a lower percentage fee in any franchise agreement in the event that it determines that such a lower percentage is in the best interest of the community.

(b) The franchise fee set forth in any franchise agreement shall be due and payable on a monthly basis. The Grantee shall prepare a monthly report stating its gross receipts by revenue category for the immediately preceding month. This gross receipts report shall be submitted to the administrator or the Grantor designee with the franchise fee percentage payment no later than the close of business on the 30th day of the month following the reporting period.

(c) At the end of any calendar year the franchise fees paid by a Grantee shall be adjusted to account for any under or over payments. In no event shall the franchise fees paid to the Grantor exceed five (5) percent of the gross receipts derived from any twelve-month period of operation of the cable system, including the time value of money, which would have lawfully been collected if such fees had been paid per annum in arrears. The Grantee shall be solely responsible for determining the amount of its monthly payments in this regard. To the extent that overpayments occur, any amounts paid in excess of that which was due, shall be deemed to be credited to the following month's payment. The failure to remit the full balance due in any month shall be cured at year end by a complete audit. The Grantee shall submit complete financial statements to the Grantor no later than April 15th of each year of operation, prepared by an independent certified public accountant, detailing its operation by month for the preceding calendar year. Interest on any under paid amounts shall accrue from the date such payments were due until they are paid at the maximum allowable rate under Michigan law.

(d) Nothing in this section shall in any way restrict or nullify any liquidated damage provisions relating to nonpayment of franchise fees on a timely basis contained elsewhere in this ordinance or in a franchise agreement and nothing in this section shall restrict the authority of the Grantor to tax the Grantee in the ordinary course of its operations solely because of its status as a franchisee.

(4) *Indemnification.* Each applicant for a franchise to own and operate a cable system in the community shall agree in its application to indemnify the Grantor against liability for any and all claims arising out of the application process, renewal process, installation, operation, maintenance, construction or reconstruction, extension or removal of the cable system. The agreement to indemnify the Grantor shall be stated in every franchise agreement executed and shall expressly include a reference to the reimbursement of all expenses incurred by the Grantor in defending itself in the event that any claims are made against it by way of lawsuit or otherwise. The Grantor shall notify the Grantee or applicant within thirty (30) days following the receipt of any claim of demand for which the Grantee or applicant would be liable according to its indemnification responsibilities. Any such notice will be given in writing to the person, and at the place, named in the franchise agreement or application for a franchise.

(5) *Insurance.* In order to provide for the general welfare and convenience of the public and to protect the interests of the Grantor, every applicant for a franchise shall indicate its ability to obtain insurance in a form and amount which satisfies this section.

The Grantor shall not execute a franchise agreement in accordance with this ordinance unless and until an approved Grantee provides adequate proof of insurance, together with written proof of payment of all such premiums as may be required to put the coverage described *in* full force and effect, it shall be the duty of every Grantee to file annually with the Grantor proof of insurance coverage including copies of policies.

(a) Each Grantee shall obtain and shall keep in **full** force and effect at all times during the term of any franchise agreement or extension thereof, a policy of broad form comprehensive general liability insurance which includes personal injury liability, and blanket contractual liability. Said policy shall provide the following minimum coverages for the benefit of the Grantor:

1. To maintain insurance of not less than one million dollars (\$1,000,000.00) for personal injury or death to any one person, and three million dollars (\$3,000,000.00) for personal injury or death of two (2) or more persons in any one occurrence, as well as three million dollars (\$3,000,000.00) for damage to property resulting from any one occurrence.

2. To furnish the Grantor a bond for the faithful performance of its obligations under the contract if awarded under this ordinance, in an amount not less than ten thousand dollars (\$10,000.00).

These coverage limits may be achieved in the primary policy, or in combination with an umbrella/excess liability policy. If umbrella or excess policies are used, the policy shall include a "broad as primary" endorsement.

(a) Each Grantee shall obtain and shall keep in full force and effect at all times during the term of any franchise agreement or extensions thereof, all risk liability damage insurance (excluding only flood and earthquake coverage) covering losses arising with respect to the following real and personal property incidental to the operation of its cable system: All buildings, offices, studios and other realty or personal property ordinarily contained therein; all headend electronics or any subheadends; all earth stations, antenna towers, microwave transmission towers and all vehicles. No physical damage insurance shall be

required for (b) Each Grantee shall obtain and shall keep in full force and effect at all times during the term of any franchise agreement or extensions thereof, all risk liability damage insurance (excluding only flood and earthquake coverage) covering losses arising with respect to the following real and personal property incidental to the operation of its cable system: All buildings, offices, studios and other realty or personality ordinarily contained therein; all headend electronics or any subheadends; all earth stations, antenna towers, microwave transmission towers and all vehicles. No physical damage insurance shall be required for the distribution system (neither trunk, feeder, or drop lines), amplifiers or passive hardware or converters. It shall be the sole responsibility of any Grantee to pay for all premiums due from the coverage outlined in this section.

- (b) Each policy of insurance required by this section shall contain a ninety (90) day cancellation or nonrenewal provision which shall expressly require the carrier to give written notice to the Grantor administrator ninety (90) days prior to cancellation, nonrenewal or material alteration of coverage.
- (c) Any policy of insurance issued pursuant to the requirements of this section, shall only satisfy this ordinance if it shall be issued by a responsible and nonassessable insurance carrier duly authorized to do business in the State of Michigan, which company must have been rated at least B+ by Best's during each of the preceding five (5) years.
- (d) Nothing in this section shall be construed to excuse a Grantee from the faithful performance of its obligations under any franchise agreement or to limit its liability under any provision of this ordinance.

(6) *Security fund.* Prior to the execution of a franchise agreement, the Grantee shall provide and maintain a security fund for the period and in the sum specified in the franchise agreement, as security for the faithful performance by it of all the provisions of this franchise, and compliance with all orders, permits and directions of any agency of the Grantor having jurisdiction over its acts or defaults under the franchise, and the payment by the Grantor of any claims, liens and taxes due the Grantor which arise by reason of the construction, operation or maintenance of the system. The security fund may be assessed by the Grantor for purposes including, but not limited to, the following:

1. Failure of the Grantee to pay the Grantor sums due under the terms of the franchise;
2. Reimbursement of costs borne by the Grantor to correct franchise violations not corrected by the Grantee, after due notice;
3. Liquidated damages assessed against the Grantee due to default or violation of franchise requirements, which result in financial damages to the Grantor;
4. Liquidated damages assessed against the Grantee due to revocation pursuant to Franchise requirement (10) Termination.

(a) The letter of credit shall both contain the following unrestricted endorsement:

"The drawee acknowledges that this letter of credit may not be cancelled by the surety under any circumstances without written authorization from the Shepherd Village Council President.

The statement of the clerk of the Grantor in the following form shall be sufficient to draw against the said letter of credit upon presentment:

I (We) certify that _____ now holds Franchise to operate a cable television system within the _____, and _____ is now in material breach of its agreements with the Grantor.

(b) *Use of the Performance Bond and Letter of Credit.* Prior to drawing upon the letter of credit or performance bond for the purpose described in this section, the Grantor shall notify the Grantee in writing that payment is due and the Grantee shall have ten (10) days from the receipt of the written notice to make a full and complete payment. If the Grantee does not make the payment within ten (10) days, the Grantor may withdraw the amount thereof, with interest and penalties, from the letter of credit or the performance bond.

(c) *Notification.* Within three (3) days of a withdrawal from the letter of credit or performance bond, the Grantor shall send to the Grantee, by certified mail, return receipt requested, written notification of the amount, date and purpose of such withdrawal.

(d) *Replenishment of Letter of Credit and Performance Bond.* No later than thirty (30) days after mailing to the Grantee by certified mail notification of a withdrawal pursuant to paragraph B.

above, the Grantee shall replenish the letter of credit or performance bond in an amount equal to the amount so withdrawn unless Grantee has challenged such withdrawal and/or the basis thereafter. Failure to make timely replenishment of such amount to the letter of credit and/or performance bond shall constitute a violation of this ordinance.

(7) *Liquidated damages.* In order to facilitate an orderly regulatory framework and to provide for the common interests of the Grantor and the Grantee, any franchise agreement executed pursuant to this ordinance shall contain negotiated dollar amounts to serve as fixed and liquidated damages for the violation of this ordinance or of the franchise agreement. The ordinance violations which are to be specified in detail in the franchise agreement shall be those for which ongoing monitoring and enforcement are unduly burdensome for the Grantor and which are such that it would be impossible to determine the actual dollar value of damage to the Grantor or the public. Similarly the franchise agreement violations which are to be specified for purposes of liquidated damages shall be those which are not ordinarily capable of being cured by compensatory or punitive damages at law. It being the express purpose of this section to identify the common interests of the Grantor and the Grantee in such a way as to forestall resort to termination of the contract as a remedy for material breaches of same or this ordinance and to thereby protect the investment of the Grantee and to insure continuity of service for the community.

(a) The liquidated damages specified in a franchise agreement shall serve as the primary pecuniary remedy for the specified violations. However, nothing in this section shall prevent or bar the Grantor from pursuing any remedies at law or in equity where a material breach of a franchise agreement persists notwithstanding the payment of liquidated damages.

(8) *Regulatory Authority*

(a) *Governing Requirements.* At all times during the term of the franchise, Grantee shall comply with all laws, rules or regulations of the Grantor, state or Federal Government, their regulatory agencies or commissions which are now applicable or may be applicable hereafter to the construction and operation of the cable communications system, including without limitations, all laws, ordinances, or hereafter enacted; provided that any law, regulation or ordinance hereafter enacted shall not materially affect the rights under the franchise. Nothing herein shall be deemed a waiver of Grantee's right to challenge the validity of any such law, rule or regulation. The Grantee shall comply with new laws and regulations, such as the American with Disabilities Act.

(b) *Change in Law or Regulation.* Notwithstanding any other provisions of this ordinance to the contrary, the Grantee shall at all times comply with all laws and regulations of the local, state and federal government. In the event that any actions of the state or federal government or any agency thereof, of any court of competent jurisdiction upon final adjudication, substantially reduce in any way the power or authority of the Grantor under this ordinance or 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 Grantor, then as soon as possible following thereof, the Grantee shall notify the Grantor of the point of conflict believed to exist between such law or regulation and the law or regulations of the Grantor, this ordinance and the franchise. The Grantor, at its option, may notify the Grantee that it wishes to negotiate those provisions which are affected in any way by such modification in regulations or statutory authority. Thereafter, the Grantee shall negotiate in good faith with the community in the development of alternative provisions which shall, to the extent permitted by law, materially maintain the rights of the community as established under the terms of this ordinance and the franchise. The community shall have the duty, based upon the results of such negotiations, 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 and the agreement reached in negotiations.

(c) *Reservation of Rights for Regulation.* The Grantor reserves the right to exercise the maximum plenary authority, as may be lawfully permissible, to regulate the cable communications system, the franchisee and the Grantee. Should applicable legislative, judicial or regulatory authorities at any time permit regulation not presently permitted to the Grantor, the Grantor may without approval of the Grantee engage in any such regulation as may then be permissible, whether or not contemplated by this ordinance or the franchise including without limitations, regulations regarding franchise fees, taxes, programming, rates charged to subscribers and users, consumer protection, or any other similar or dissimilar matter.

(d) *Right of Inspection of Records.* The Grantor shall have the right to inspect all books, records, reports, maps, plans, financial statements of the Grantee and any parent company to the extent such materials are relevant to the Grantee's performance of its obligations under this ordinance and the franchise, and other like materials of the Grantee, at any time during normal business hours upon twenty-four (24) hours prior notice to the Grantee.

(e) *Right of Inspection of Cable Facilities.* The Grantor shall have the right to inspect all cable facilities or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this ordinance and other pertinent provisions of the law.

(f) *Franchise Nonexclusive.* Any franchise granted pursuant to this ordinance shall be nonexclusive. The Grantor specifically reserves the right to (1) grant at any time such additional franchises for a cable communications system as it deems appropriate, and/or (2) build, operate and own such cable communications system or systems as it deems appropriate.

(g) *Expense Reimbursement to Grantor.* The Grantee shall pay the Grantor a sum of money which will, when added to any application fees received, reimburse all reasonable costs and expenses incurred by it in connection with the granting of an initial franchise, including, but not limited to, consultant fees, attorney's fees, publication fees, travel expenses and all other direct costs. To the extent allowed by law, the Grantee shall pay the Grantor a sum of money which will, reimburse all reasonable costs and expenses incurred by it in connection with the direct costs. To the extent allowed by law, the Grantee shall pay the Grantor a sum of money which will, reimburse all reasonable costs and expenses incurred by it in connection with the extending or renewing a franchise, including, but not limited to, consultant fees, attorney's fees, publication fees, travel expenses and all other direct costs. The Grantor shall submit a detailed schedule of all such costs. Such payment shall be made within thirty (30) days after the Grantor furnished the Grantee with a written statement of such expenses.

(9) *Reports required.*

(a) *Annual Reports Required.* The Grantee shall file the following reports which shall be submitted 90 days after the end of the Grantee's fiscal year with the Grantor administrator:

(1) *Facilities Report.* An annual report setting forth the physical miles of cable plant construction, reconstruction and cable plant in operation. The report shall also indicate modifications to the headend and other areas of system operations (billing, converters, equipment for new services).

(2) *Financial Reports.* The following financial report for the franchise area shall be submitted annually to the Grantor 90 days after the end of the Grantee's fiscal year:

(i) An ownership report, indicating all persons, who are any time during the preceding year did control or benefit from an interest in the franchise of 1% or more.

(ii) An annual, fully audited and certified financial statement from the previous calendar year, including subscriber revenue from each category of service and every source of non-subscriber revenue.

(iii) An annual list of officer and members of the Board of Grantee and of any parent corporation.

(3) *Operational Report.* The following system and operational report shall be submitted annually to the Grantor 90 days after the end of the Grantee's fiscal year:

(i) A report on the system's technical tests and measurements as set forth herein and in the franchise.

(ii) A report of new services added and a projection for services planned for the future.

(iii) A report on support provided by the Grantee for public, educational, governmental channels and other public benefit projects.

(iv) A compilation of the monthly reports to provide year end analysis.

(b) *Monthly Reports Required.* The Grantee shall provide a monthly operational report which will provide a concise overview of the following system activity:

(1) A subscriber report indicating end of month subscriber numbers for all levels of service, an analysis of disconnects and a review of revenues from all other services.

(2) A gross receipt report, which shall state the gross receipts by revenue category for the immediately preceding month.

(3) A technical summary of cable system service log indicating the types of service problems, the length of time between detection and resolution and the action taken to correct the problems.

(4) A statement of current status of video production equipment provided by the Grantee. Report shall also indicate maintenance issues and any equipment in need of replacement.

(c) *Additional Reports.* The Grantee shall prepare and furnish to the Grantor at the times and in the form prescribed, such additional reports with respect to the operation, affairs, transactions or property, as may be reasonably necessary and appropriate to the performance of any of the rights, functions or duties of the Grantor in connection with this ordinance or the franchise.

(10) *Termination.* In the event that a Grantee causes or creates a material breach of a franchise agreement executed pursuant to the ordinance, or violates the provisions of this ordinance in a significant and material manner, the Grantor may elect to terminate any franchise granted hereunder. Any termination for cause shall be made by resolution of the Grantor stating that such cancellation is for cause, and the specific reasons alleged to constitute such cause, and the Grantee shall have the right to appear before the Grantor at a duly noticed and scheduled public meeting to present its position with regard to the finding made under this section. A material breach shall include, but shall not be limited to the following:

(a) Any uncured violation of a material provision of a franchise agreement or this ordinance which is not cured within a period of thirty (30) days following receipt of written notice of same by the Grantee.

(b) Any attempts to sell, transfer or dispose of the capital assets related to the cable system without giving written notice of such attempts ninety (90) days prior to same to the Grantor administrator.

(c) Any attempt to evade the provisions of this ordinance by deceit, fraud or misrepresentation.

The foregoing action shall only be mitigated by circumstances beyond the control of the Grantee. Simple negligence, mistake or neglect shall not excuse such actions. A Grantee shall at all times be solely responsible for proving the existence of circumstances beyond its control.

(11) *Rate Regulation.* The community shall comply with rules of the Federal Communications Commission set forth in Subpart N (Cable Rate Regulation) of Part 76 (Cable Television Service) of ordinance I of Title 47 of the Code of Federal Regulation regarding the regulation of cable television rates for basic service and associated equipment, as amended.

After a cable operator has submitted for review its existing rate for the basic service tier and associated equipment costs of a proposed increase in these rates, *the* clerk or the Grantor designee shall post a public notice of the rates and costs giving interested parties, including the cable operator, a reasonable opportunity to file written comments which shall be available in the office of the community clerk for public inspection and copying during normal business hours.

The community shall comply with procedures set forth in 76.938 regarding confidential business information submitted by the cable operator in a rate regulation proceeding.

A cable operator which willfully or repeatedly fails to comply with a rate decision or refund order directed specifically at the cable operator shall be subject to a monetary forfeiture as determined by the community following the procedures set forth in 47 USC §503.

Sec. 7. **Programming.**

Concurrently with the activation of the cable communications system in the community, the Grantee shall provide all services to subscribers as described herein.

- (1) The system shall carry programming as specified in the franchise. Any such change in program or services offered shall comply with the conditions and procedures contained in the franchise, and shall be reported to the clerk of the Grantor or other designee of Grantor at least thirty (30) days prior to the proposed implementation. The Grantee shall use its best effort to ensure diversity of programming.
- (2) *Basic Service Tier.* A basic service tier shall be offered to subscribers throughout the term of the ordinance and the franchise to the extent required by law.
- (3) *Access.* The Grantee shall provide the number of access and community channels specified in the franchise agreement executed pursuant to this ordinance. All residential subscribers who receive all or any part of the total services offered on the system shall also receive all access channels at no additional charge. These channels shall be activated upon system activation and thereafter maintained as needed. The Grantee

shall establish rules and regulations for the use of community access channels which shall be approved by the Grantor before implementation and thereafter shall not be altered or amended without the approval of the Grantor. In preparing these rules, the Grantee shall:

- (a) Provide an equal opportunity for community use of access service.
 - (b) Present a needs assessment of the community to be served and provide a plan to meet those needs.
 - (c) Develop a plan to allocate to the Grantor a reasonable use and fair schedule of channel time and use of equipment and facilities so that the Grantor can send and receive programming fitted to its needs. Such plan shall be approved by the Grantor before implementation and thereafter shall not be altered or amended without approval of the Grantor.
 - (d) Describe all equipment and facilities and any charges for their use.
 - (e) Comply, at minimum, with the requirements of the Grantor now or hereafter adopted or determined regarding access channels
- (4) *Program Guide.* The Grantee shall provide a program guide which shall be delivered in electronic form.
 - (5) *Institutional Network.* The Grantee shall provide an institutional network as specified in the franchise.
 - (6) *Emergency Override.* The Grantee shall, without charge provide, service and maintain public 'emergency transmission facilities in the community, as described in the franchise.

Sec. 8. Minimum design requirements.

In order to provide for a technologically advanced cable system which will satisfy the communication needs of the community, all applicants for a franchise shall agree to provide certain minimum design features in their applications. Nothing in this section shall be construed to limit or in any way discourage the development of more extensive systems or better facilities and equipment. The Grantor is expressly authorized to negotiate any state of the art improvements with applicants which will serve to ensure that the Grantor maintains a modern cable system.

(1) *Channel Capacity.* All applicants for a franchise shall agree to construct and maintain the following minimum channel capacities:

- (a) A cable system constructed to provide sufficient bandwidth capacity such that, when used with an appropriate converter device at a subscriber's receiver, it shall enable the reception of a minimum of fifty-four (54) downstream video channels and four hundred (400) megahertz on a single cable.
- (b) A cable system having at least thirty-six (36) activated video channels at all times.

(2) *Allocation of Public Benefit Channel Capacity.* All applicants for a franchise shall provide a percentage of system channel capacity to support the cablecasting of public, educational and governmental access programming.

(3) *Community Installations.* Cable service shall be provided to every school building, fire station, city hall, community center, library, police station and other public buildings with not less than one outlet on each floor at no cost to the user.

(4) *Parental Control Devices.* All applicants shall make available upon request by any subscriber, a converter or other device capable of removing from a subscriber's service both the video and audio of any channel which the subscriber considers offensive. The Grantee shall inform subscribers of this capability in writing and the appropriate device shall be installed and maintained at no additional cost to the subscriber. Grantee may charge a deposit.

(5)*Video Production Capability.* All applicants shall purchase and maintain video production capability within the cable system for the production of local programming. ownership of such equipment shall remain with the Grantee, and the maintenance of such facilities and equipment shall be the responsibility of the Grantee. Whenever it is necessary to replace equipment, the Grantee shall replace such equipment with new equipment reflecting advances in the state of the art, provided that such equipment is compatible with the balance of the system. The franchise agreement shall specify the type, quality and quantity of equipment with a cash value of the proposed equipment package. This package shall provide character generated services. The Grantor reserves the right to specify equipment which best suits the needs of the communities. All Grantees shall purchase and maintain such video production capability as to be able to produce both live and video-taped programming from remote points in the cable system including all necessary equipment to transmit upstream signals to the headend for immediate processing and retransmission downstream to subscribers. The Grantor shall designate remote points for live cablecasting in the franchise agreement, which points may be changed by the Grantor from time to time upon thirty (30) days' prior written notice to the Grantee.

(6)*Leased Access Channels.* Every Grantee shall at all times comply with the provisions of the Cable Act of 1984 pertaining to the availability and use of leased channel space.

Sec. 9 Guidelines for providing cable service.

In addition to the minimum design requirements established by this ordinance, it is the intention of the Grantor to provide for minimum procedures for the delivery of cable service to subscribers as a matter of the general welfare and convenience. To this end, absent some circumstances beyond the control of the Grantee. In case of a disconnect for nonpayment of service charges, a Grantee shall not disconnect cable service for delinquent payment without first sending written notice of such pending disconnection to the delinquent subscriber at least ten (10) days prior to the physical disconnection of service.

(4)*Protection of Subscriber Privacy Mandatory.* Grantee shall at all times protect the privacy of subscribers, as provided in this ordinance and other applicable Federal, State and local laws.

(5)*Theft of Service.* Nothing in this section shall prohibit a Grantee from immediately disconnecting any person who shall illegally attempt to receive cable service; however, in the event of a theft of service problem, a Grantee shall make all reasonable efforts to ascertain that the occurrence is not the result of a prior billing problem prior to disconnection.

(6)*Prohibition Against Providing Television Services.* A Grantee shall not sell television or radio receiving sets or parts to its CATV subscribers except that it may repair and service to the extent necessary to establish the validity of its CATV signal. As converters or other parts become necessary for the reception of any and all channels, or for additional outlets of FM service the Grantee shall provide converters to all subscribers on a deposit basis, sale or rental.

(7)*Customer Service Standards.*

(a) Definitions. When used in this subparagraph

1. Normal business hours means those hours during which similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

2. Normal operating conditions means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade of the cable system. Each applicant for a franchise shall maintain certain records, and administer certain procedures in compliance with this section.

(1) *Business office.* A Grantee shall maintain a reasonably convenient business office with established office hours for responding to billing or service related problems. The Grantor maintains the right to vary this requirement if it is deemed advisable.

(2)*Policy Statement.* A Grantee shall adopt and maintain a written set of rules and regulations for the conduct of its business such that, upon request, any member of the general public may receive such rules prior to subscribing for cable service. At a minimum, a Grantee shall address each of the items set forth in this section in a way which satisfies all requirements stated herein. A written notice of the availability of these polices shall be given to each subscriber at the time of initial installation.

(a) In case of any disturbance of pavement, sidewalk, driveway, or other surfacing, Grantee shall, at its own expense and in a manner approved by the Grantor engineer, replace and restore all paving, sidewalk, driveway or surfacing of any street or alley disturbed, in as good condition as before said work was commenced, and shall maintain the restoration in an approved condition for a period of five (5) years.

(b) In the event that at any time during the existence of a franchise, the Grantor shall lawfully widen, realign, or otherwise alter pavement, change the grade of any water main, fire hydrant, sewer or appurtenances, the Grantee and anyone acting for it in connection with the use of the streets, upon reasonable notice by the Grantor, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(c) In conduit districts now or later established by ordinances of the Grantor, and as amended or altered, and in such other areas of the Grantor in which telephone lines and electric utility lines are underground, all of Grantee's lines, cable and wires shall be underground.

(3) *Service Disconnection Procedure.* Upon receipt of notice of a request to disconnect service, written or oral, a Grantee shall proceed to close the subscriber's account and remove all equipment from the subscriber's premises. Subscribers shall have the right to have cable service disconnected without charge unless otherwise specified in the FCC rules. A refund of unused service charges shall be paid to the customer within sixty (60) days from the date of termination of service. In any event all such requests shall be completed within ten (10) days of the receipt of same

3 Service interruptions mean the loss of picture or sound on one or more cable channels.

(b) Exceptions. Nothing in this Section is intended to prevent or prohibit:

1. The Grantor and a cable operator from agreeing to customer service requirements that exceed the standards set forth in this Section.
2. The Grantor from enforcing throughout the franchise term pre-existing customer service requirements that exceed the standards set forth in this Section and are contained in current franchise agreements.
3. The Grantor from enacting or enforcing any consumer protection law.
4. The establishment or enforcement of any Section or regulation concerning customer service that imposes customer service requirements that exceed or address matters not addressed by the standards set forth in this section.

(c) *Customer Service Standards.* A cable operator is subject to the following customer service standards certified quarterly by the cable operator:

1. The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to subscribers 24 hours a day, seven days a week. Trained company representatives shall be available to respond to customer telephone inquiries during normal business hours.
2. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquires received after normal business hours must be responded to by a trained company representative on the next business day.
3. Under normal operating conditions, telephone answer time by a company representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90% of the time under normal operating conditions measured on a quarterly basis.
4. Under normal operating conditions, the customers may receive a busy signal less than 3% of the time measured on a quarterly basis.

5. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.
6. Under normal operating conditions, each of the following five standards will be set no less than 95% of the time measured on a quarterly basis:
 - (a) Standard installations will be performed 7 business days after an order has been placed. Standard installations are those that are located not more than 125 feet from the existing distribution system.
 - (b) Excluding conditions beyond the control of the operator, a cable operator shall be working on service interruptions promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.
 - (c) The appointment window for installations, service calls, and other installation activities will be either a specific time or, at maximum, a 4-hour block during normal business hours. The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.
 - (d) A cable operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
 - (e) If a cable operator representative is running late for an appointment and will not be able to keep the appointment as scheduled, the customer will be contacted, the appointment rescheduled, as necessary, at a time which is convenient for the customer.
7. The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:
 - (a) Products and services offered;
 - (b) Prices and options for programming services and conditions of subscription to programming and other services;
 - (c) Installation and service maintenance policies;
 - (d) Instructions on how to use the cable service;
 - (e) Channel positions of programming carried on the system; and
 - (f) Billing and complaint procedures, including the address and telephone number of the cable operator and of the Municipal Building.
8. All subscribers shall receive a monthly bill. Bills shall be clear, concise and understandable. Bills must be fully itemized with itemizations including; but not limited to, basic and premium service charges and equipment charges. Bills shall clearly delineate all activity during the billing period, including operational charges, rebates and credits. In case of a billing dispute, a cable operator must respond to a written complaint from a subscriber within 30 days.
9. Refund checks shall be issued promptly, but not later than:
 - (a) The customer's next billing cycle following resolution of the request or 30 days, whichever is earlier; or
 - (b) The return of the equipment supplied by the cable operator if service is terminated.
10. Credits will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(d)Enforcement. The Grantor may pursue any and all legal and equitable remedies against the cable operator(including, without limitation, all remedies provided under a cable operator's consent agreement with the community) for failure to comply with the Act, the FCC Rules, any orders or determinations of the community pursuant to this section, any requirements of this Section, or any rules or regulations promulgated hereunder. Subject to applicable law, failure to comply with the Act, the FCC Rules, any orders or determinations of the community pursuant to this Section, any requirements of the Section, or any rules and regulations promulgated hereunder,

shall also be sufficient grounds for revocation or denial of renewal of a cable operator's consent agreement.

Sec. 10 Franchise renewal.

Under completion of the term of any franchise granted under this ordinance, the Grantor may in its discretion grant or deny renewal of the franchise of the Grantee in accordance with the provisions of the Cable Act.

Sec. 11 Transfer of ownership.

In no event shall a Grantee of a franchise executed pursuant to this ordinance transfers any rights granted therein or engage in a transfer of fifty (50%) percent or more of ownership or control without first receiving the prior written approval of the Grantor. Any transfer, encumbrance or other disposition of any controlling interest in the Grantee shall constitute an immediate material breach and violation of this ordinance subjecting the franchise to termination unless written notice of any such attempt is given to the Grantor at least one hundred twenty (120) days prior to any such attempted action.

Sec. 12 Purchase of cable system by Grantor.

In the event that a franchise is not renewed or is terminated for cause, the Grantor shall have the absolute right, which right shall be made a part of every franchise agreement by reference to this section, to buy the cable system if it chooses to do so. If the Grantor elects to buy the system the price shall be determined at fair market value with no value attributed to the franchise per se but with the system valued as a going concern not at depreciated book value. The Grantor and the Grantee shall each appoint an appraiser, the two of which shall appoint a third appraiser or if they cannot agree, a Circuit Judge from the appropriate jurisdiction shall, acting in an administrative capacity, appoint a third appraiser. The three appraisers shall independently evaluate the value of the system. The average of the three appraisals shall be deemed the purchase price. Each party shall pay the costs of its appraiser and one half of the cost of the third appraiser.

Sec. 13 Removal of cable system.

In the event that a franchise terminates for any reason and the Grantee has not sold or otherwise transferred ownership of the cable system to the Grantor or a third party, the Grantee shall forthwith remove its facilities from all public easements. If the Grantee fails to take prompt action in this regard, the Grantor may proceed to remove the system and charge the security fund or the Grantee directly.

Sec. 14 Delegation of Authority of Grantor.

The Grantor reserves the right to delegate from time to time any of its rights or obligations under the franchise to any body or organization. Any such delegation shall be effective upon written notice thereof to the Grantee. Upon receipt of such notice the Grantee shall be bound by all terms and conditions of the delegation not in conflict with the franchise. Any such delegation or revocation thereof, no matter how often made, shall not be deemed to be an amendment to the franchise or require the Grantee's consent.

Sec 15 Regional interconnect.

The Grantor shall retain the right to require a Grantee to interconnect its cable system with any other communications facilities in the service area.

Sec. 16 Separability.

(1) Any other provisions of this ordinance to the contrary notwithstanding, a Grantee shall at all times comply with all laws and regulations of the federal, state, county and Grantor governments and all administrative agencies thereof; provided, however, that if any law or regulation shall prohibit a Grantee expressly from performing a service required hereunder, such that it would be in conflict with the terms of this ordinance or the provisions of the Grantor's Code of Ordinances, then as soon as such a conflict becomes known to the Grantee, the Grantee shall notify the Grantor in writing of what it believes the conflict to consist of and in particular what law or regulation it believes to be in conflict with this ordinance or the Grantor's Code of Ordinances, and the Grantee shall be thereby excused from performance hereunder, provided that it acts in good faith reliance thereon, pending an authoritative resolution of such conflict.

(2) If any provision of this ordinance or any related ordinances is held by any court of by any federal, state or county agency of competent jurisdiction to be invalid as conflicting with any federal, state, or county law, rule or regulation, said provision shall be considered a separate, distinct and independent part of this ordinance such other ordinance, and such holding shall not affect the validity and enforceability of any other of these. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changes, so that the provisions which had been held invalid or modified is no longer in conflict with the laws, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall be binding on the parties, provided that the Grantor shall give the Grantee thirty (30) days,' written notice of such change before requiring compliance with said provision.

(3) If the Grantor determines that a material provision of this ordinance or any related ordinances is affected by such action of a court or of the federal, state or county government, the Grantor shall have the right to modify any of the provisions herein or in such related ordinances to such reasonable extent as may be necessary to carry out the full intent and purpose of this ordinance. This ordinance shall take effect thirty (30) days after its adoption by the Shepherd Village Council:

Adopted: November 20, 1995

Published: December 13, 1995

Effective: December 21, 1995