

Ordinance 1986-3
Cable Communications Ordinance

An Ordinance to promote and encourage the furnishing of Cable Communications Service to the Residents of the Township and to regulate such service in the public interest.

The Township of Ely ordains:

Article 1: Short Title, Purpose, Necessity of Franchise and Definitions

1.1 Short Title

This Ordinance shall be known and cited as the Cable Communications Ordinance.

1.2 Purpose

The purpose of this Ordinance is to promote and encourage the furnishing of cable communications service to the residents of the Township of Ely and to regulate such service in the public interest.

1.3 Necessity of Franchise Agreement

No person, shall own or operate a Cable System, as defined herein, in the Township except by Franchise Agreement granted by the Township, which Franchise Agreement shall comply with all requirements of this Ordinance.

1.4 Definitions

For the purpose of this Ordinance, the words “shall” and “will” are mandatory and “may” is permissive. Further definitions and modifications to their definitions may appear in a Franchise Agreement as used by the Cable Industry.

- 1) Applicant – Person or Company submitting a proposal for a Franchise Agreement of a Cable Communications System.
- 2) Basic Service – All subscriber services provided by the Grantee, including the delivery of audio and visual broadcast signals, covered by the regular monthly charge, if any, paid by all subscribers, excluding optional services for which a separate charge is made.
- 3) Cablecast – To distribute programs (both from broadcasting sources and original programs) through the cable system by means of coaxial cable or other electrical conductors or fiber optic transmitters.

- 4) Cable Communications Service – the business, in whole or in part, of receiving directly or indirectly over the air, and amplifying or otherwise modifying signals, transmitting programs broadcast by one (1) or more signals, sound signals, pictures, visual images, digital signals, telemetry, or any other type of closed circuit transmission by means of electrical or light impulses, whether or not directed to originating signals or receiving signals off the air, and redistributing such signals by wire, cable or other means to members of the public.
- 5) Cable Communications System, Cable System, CATV or System – A system of coaxial cables or other electrical conductors or fiber optical cables and equipment used or to be used to originate or receive television or radio signals directly or indirectly off the air and to transmit them via cable or other means to subscribers for a fixed or variable fee, including the origination, digital signals, telemetry, or any other type of closed circuit transmission by means of electrical impulses, whether or not directed to originating signals or receiving signals off the air.
- 6) Community Specific Cable Casting – Programming or channel allocation which selectively cablecasts to individual communities to meet their unique needs or interests. “Community” refers to any unit with common needs or interests such as individual cities or neighborhoods, school districts or groups with common characteristics.
- 7) Connection – The attachment of the drop to the first radio or television sets of the subscriber.
- 8) Converter – A device, sometimes a box or a digital selector, used to convert television signals of one frequency to another. Cable systems install converters on TV sets in homes where more than twelve channels are carried on a single cable. This converter also protects signals from the interference of strong local signals by converting the cable channel to a channel where no broadcast signals exist. The converter may also allow reception of additional programming and/or services.
- 9) Drop – The cable that connects the subscriber terminal to the nearest feeder cable of a cable system.
- 10) FCC – The Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- 11) Feeder – Intermediate line of Cable System that carries signals from trunk line to drops.
- 12) Franchise – The rights, privileges or power of public concern granted to the Township pursuant and subject to the Michigan Constitution, and all statutes, laws, rules, regulations and cases of the State of Michigan and the United States.

- 13) Franchise Agreement – Agreement between cable operator and the Township setting specific rights and responsibilities of each for the construction and operation of Cable System within the Township.
- 14) Franchise of Grantee – A person to whom a cable communications franchise agreement has been granted.
- 15) Fraud or Deceit – Shall not be limited by common law fraud and deceit but shall include the meaning of those words under federal securities law.
- 16) Headend – The equipment of the antenna site in a master antenna and Cable System. The point of origination that collects all the signals (from the broadcast stations, cable stations, and satellite stations) and sends them to subscribers.
- 17) Hub – One or two or more elements in a large cable system from which trunk lines originate, from which programming and data is sent out via trunk lines, and where upstream messages are received and switching is accomplished. Large systems have multiple hubs linked to each other and/or to the master headend.
- 18) Installation – The connection of the System from feeder cable to the point of connection.
- 19) Interactive System – A two-way operation system. See also “two-way capability”.
- 20) Local Gross Subscriber Revenues – All gross revenues of the Franchise from subscribers within the Township, including local gross revenues from pay TV in excess of the fair market value royalty paid by the Franchisee therefore, providing however, that revenue resulting from sales of tangible property shall not be deemed “local gross subscriber revenues” for the purpose of computing any franchise fee pursuant to this Ordinance. To the extent that the Franchisee’s Books of Account do not reflect the source of any gross subscriber revenues, or where the source thereof may not be reasonably determined, that portion of gross subscriber revenues allocable to the Township shall be based on the ratio of the number of subscribers who receive basic service or its equivalent in the Township to the number of subscribers outside the Township.
- 21) Local Public Access – Refers to the public opportunity to use cable channels which are dedicated to that purpose and are not under control on Grantee.
- 22) Pay TV – Cable channels that require an additional subscriber fee.
- 23) Person – An individual, partnership, corporation, or other entity as the context may indicate.
- 24) Producer – A user providing input services to the Cable System for receipt by subscribers.

- 25) Public Access Channels – Channels which are dedicated to the public interest, according to the following categories:
- A. community
 - B. education
 - C. local government
 - D. health and medical
 - E. other (as determined by the Township to be in the public’s general interest, health, safety and welfare).
- 26) Public Property – Any real property owned by any Governmental agency.
- 27) Resident – And individual, partnership, corporation, or other entity as the context may indicate, who has a permanent or temporary residence, dwelling, abode, domicile, or place of business within Ely Township.
- 28) Street, Highway – The surface of and the space above and below any public street, road, highway, freeway, land path, public way, alley court, sidewalk, boulevard, parkway, drive or any easement of right of way now or hereafter held any the Township which shall, within its proper use and meaning in the sole opinion of the Township entitle Grantee to use thereof for the purpose of installing, or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.
- 29) Subscriber – A person who pays an installation charge and/or monthly fee to a cable system operator for connections to the System and for programs and services carried by or through the Cable.
- 30) Subscriber Terminal – The point at which a fixture, clamping screw, bracket or similar device facilitates the completion of the connection of extension wiring from the franchisee’s distribution cable to a subscriber’s premises.
- 31) Township – The Local Government of the Township of Ely and all the territory within its corporate limits.
- 32) Township Board of Supervisors, the Township Board, or the Township – The governing body of the local unit of the Township of Ely.
- 33) Trunk, Trunk Line – Main line of Cable System that carries signals from headend to extremities of the cable system.

34) Two- Way Capability – Ability of Cable System to conduct signals to the headend, as well as away from it. Two-way bi-directional systems carry data and audio/visual television signals in either direction (upstream and downstream). This is called “interactive”.

35) User – A person or organization utilizing a System channel as a producer for purposes of production and/or transmission of material, or as a subscriber, for purposes of receipt of material.

Article 2: Selection of Franchise Agreement.

2.1 Award of Franchise Agreement.

The Township Board may award a Franchise Agreement to an applicant only after a public hearing on the application, notice of which hearing shall be published at least 20 days prior to the date of the hearing. The Township Board may reject all applicants deemed no to be in compliance with this Ordinance.

2.2 Franchise Agreement Application – Form and Contents.

All applications shall be submitted in writing. All applications shall contain the information called for by this Ordinance in the manner prescribed by this Ordinance.

A. Such information may include without limitation the following:

1. Information regarding the identity of the applicant
2. Biographical data of the applicant’s principal owners and proposed management including the experience of such persons in the cable communications field.
3. A detailed description of the System and facilities proposed for the Township, including the matters to which a response is specifically required by this Ordinance, including a schedule of projected rates for all charges and fees to subscribers.
4. A detailed timetable for the construction and commencement of operation of the System, including the matters to which a response is specifically required by this Ordinance.

The application may consist of a format which may be adopted by Township Board Resolution.

B. The Township shall be entitled to verify any information furnished by the applicant and/or in response to other requests by the Township for information regarding the applicant and the applicant’s affairs. The Township may exercise such right by requiring reports from the applicant and/or from third parties having knowledge of the applicant, or by conducting such other kinds of investigation as the Township may deem proper. In such cases the applicant shall furnish the Township with such written authorization regarding release of information as may be necessary to carry out the intent and purpose of the foregoing provisions. All of the foregoing provisions shall also be applicable to a Grantee as well as an applicant, if being deemed to be in the public interest that the Township remain knowledgeable regarding the Grantee and the operation of the System throughout the term of the franchise agreement.

C. For an applicant, or any person on behalf of an applicant, to make an untrue statement of material fact or with the intent to mislead, fail to make known a material fact when responding to any request for information by the Township or by any officer or agency thereof, shall constitute a fraud upon the Township.

2.3 Criteria for Selection.

The award of a Franchise Agreement to an applicant shall be based upon the information contained in the application and such other relevant information as may be obtained by the Township regarding such applications. Such award may be based upon the criteria set forth below together with such other factors as the Township's decision to award or not to award a Franchise Agreement is final and an applicant waives objection to the Township's weight or priority of the following factors or any other factors the Township may deem relevant.

A. The experience of the applicant in the cable communications field and the credentials of its owners and managers.

B. The applicant's financial resources, including both present financial condition and the availability of committed funding to finance the applicant's proposed System; and the specificity and credibility of the applicant's projections of the revenue and expenses attributable to the construction and operation of the system.

C. The applicant's System design including channel capacity and ability to provide a broad range of services in conformity with the highest quality standards of the cable industry.

D. The applicant's response to specific local concerns or needs, whether formulated by the Township and made known to applicants or whether ascertained by the applicant.

3.1 Franchise Agreement.

The Franchise Agreement shall be in such form and contain such terms and provisions as shall be approved by the Township Board. The Agreement may be adopted and amended by resolution of the Township Board or by any other mode of adoption or amendment authorized or required by law.

3.2 Grant Franchise Agreement.

A. The Franchise Agreement shall provide for a nonexclusive Franchise for a term of not less than fifteen years, which terms shall commence as of the date of the Franchise Agreement.

B. The Franchise Agreement shall provide for review sessions. Topics for discussion and review at the review sessions shall include but shall not be limited to, services provided, rate structure, applications of new technologies, system performance, extensions, subscriber

complaints, rights of privacy, amendments to the Franchise Agreement, and developments in the law.

C. The Franchise Agreement provides that throughout the term of the Agreement the Grantee shall pay the Township a Franchise fee. The Grantee shall take any action with respect to any federal or state agency which may be necessary or appropriate to make the payment and receipt of such fees lawful. Acceptance of any payment by the Township shall not be construed as a release of or as an accord and satisfaction regarding any claim of the Township may have for further and additional sums payable by the Grantee or for the performance of any other obligation of the Grantee under this Ordinance or the Franchise Agreement.

D. The Franchise Agreement shall be in substance, contain the following express undertaking:

- 1) that the Agreement may define and provide a basic service for a minimum time period;
- 2) that the Agreement may provide an optional tier of channels available to subscribers in addition to the basic service;
- 3) that the Agreement may provide full basic service to all areas within the Township zoned residential/commercial, provided however that existing service areas outside residential and commercial areas may be charged for higher basic rated to reflect lower density;
- 4) that the Agreement may provide there will be no changes in the basic service within a minimum time period, unless changes are made by reason of circumstances beyond Grantee's control, as reviewed and/or approved by the Township Board;
- 5) that the Agreement may provide additional tiers and services which will be discussed during the period review sessions as provided in 3.3B of this Ordinance;
- 6) that the Agreement provides for any sale of Franchise Agreement to be subject to Township review;
- 7) that the Agreement provides that the Grantee accepts all provisions of this Ordinance and waives any claim that any provision hereof is unreasonable, arbitrary, invalid, or void;
- 8) that the Agreement recognizes the right of the Township to make reasonable amendments to this Ordinance during the term of any Franchise Agreement upon sixty (60) days prior written notice to the Grantee, or without notice with respect to emergency amendments.

3.4 Negotiated Provisions of Franchise Agreement.

The Franchise agreement shall contain such further conditions or provisions as may be negotiated between the Township and the Grantee except that no such conditions or provisions shall conflict with any provisions of this Ordinance or other law. In the case of such conflict, the provisions of this Ordinance or other law shall prevail over the conflicting provision of the Franchise Agreement.

3.5 Rights Reserved by the Township.

A. Any Franchise Agreement granted pursuant to this Ordinance shall be subject to the right of the Township, by resolution of the Township Board to revoke the Franchise Agreement for just cause. Just cause shall include, without limitation:

1) A material violation by Grantee of any provision of the Franchise Agreement or this Ordinance, or any rule, order, or determination of the Township made pursuant thereto, where such violation shall remain uncured for a period of thirty (30) days subsequent to receipt by Grantee of written notice of the violation.

2) Any attempt by Grantee to dispose of all substantially all of the property of facilities of the System in contravention of the Franchise Agreement.

3) The commission of any fraud or deceit upon the Township.

B. Any Franchise Agreement granted hereunder shall be subject to all applicable provisions of other Township ordinances, general law statutes, Charter, and any amendments thereto, whether made prior to or after the inception of the Franchise Agreement.

C. Any Franchise Agreement granted hereunder may be subject to additional rights of the Township, but not limited to the following:

1) To require proper and adequate extension of plant and service and maintenance thereof at the highest practical standard of efficiency.

2) To establish reasonable standards of service and quality of products, and to prevent unjust determination in service or rates.

3) To require continuous and uninterrupted service to the public in accordance with the terms of the Franchise Agreement throughout the entire period thereof.

4) To impose such other regulations as may be determined by the Township Board to be conducive to the safety, welfare and accommodation of the public.

5) Through its appropriately designated representatives to inspect all construction or installation work performed subject to the provisions of the Franchise Agreement and this

Ordinance, and to make such inspections as it shall find necessary to ensure compliance with the terms of the Franchise Agreement, this Ordinance, and other pertinent provisions of law.

6) At the expiration of the term for which a Franchise Agreement is granted pr upon termination and cancellation as provided therein, to require the Grantee to remove at Grantee's sole expense and all portions of the System from the public ways within the Township at Township option.

D. Any Franchise Agreement granted hereunder shall require Grantee to safeguard the privacy of all subscribers with regard to the Cable Communications Services and System. The Grantee shall be required to safeguard and keep all individual home subscriber information.

3.6 Procedure for Termination.

Any termination or cancellation of the Franchise Agreement prior to the expiration of the term thereof shall be made by resolution of the Township Board only after a Public Hearing thereon. Grantee shall be entitled to thirty (30) days written notice of such hearing and the notice shall specify with reasonable particularity the grounds upon which the contemplated termination is based. Any such termination shall be subject to any requirement of higher law and any limitation contained in the Franchise Agreement between the Township and the Grantee.

3.7 Contravention of Ordinance.

Any breach by the Grantee of the Franchise Agreement, in addition to constituting a breach of contract, shall constitute a violation of this Ordinance. The costs of any litigation, including attorned fees, incurred by the Township to enforce this Ordinance or Franchise Agreement granted pursuant hereto shall be reimbursed to the Township by the Grantee, in respect of such litigation or part thereof in which the Township is the prevailing party.

3.8 Franchise Agreement Fee Account.

The Township may establish through the term of the Franchise Agreement, a separate financial accounting of any Franchise Agreement to be used for the administration of the Franchise Agreement.

Article 4: Administration and Advisory Board.

4.1 The Township Board may appoint an Administrator who shall serve at the pleasure of the Board and who shall be responsible for the continuing administration of any Franchise Agreements on the part of the Township. The Township shall provide written notice to Grantee of the initial appointment of the Administrator. and any subsequent appointments.

4.2 Advisory Body.

The Township Board may appoint a cable communications advisory committee to perform such duties and to have such powers as the Township Board may determine. The composition and terms of office of the members of the committee, as well as the duties and powers of the Committee shall be determined and established by resolution of the Township Board.

4.3 Delegations of Rights and/or Obligations of Township.

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

Article 5: Penalty, Severability, Publication and Effective Date.

5.1 Franchise Agreement May Provide Liquidated Damage Provisions.

The Franchise Agreement may include a liquidated damages clause providing for stipulated recovery of damages for any material violation of the Franchise Agreement granted pursuant to this Cable Communications Ordinance.

5.2 Penalties.

Any person violating any of the provisions of this Cable Communications Ordinance shall, upon conviction thereof, be punished by a fine of not more than \$500 or by imprisonment for a period of not more than ninety (90) days, or by both fine and imprisonment.

5.3 Injunctive Relief.

Notwithstanding the existence of any criminal remedy as hereinbefore provided, any Cable Communications system or Cable Communications service in violation of any provision of this Ordinance shall constitute a nuisance per se, and the Township shall be empowered to seek injunctive relief in a Court of appropriate jurisdiction to enjoin such violations and abate such nuisance.

5.4 Severability.

All provisions and sections of this Ordinance, and any Franchise Agreement granted pursuant hereto shall be liberally construed to protect and preserve the peace, health, safety and welfare of

the inhabitants of the Township, and should any provision of section of this Ordinance or Franchise Agreement granted pursuant hereto be held unconstitutional, invalid, or otherwise unenforceable, such holding shall not be construed as affecting the validity of any of the remaining provisions or sections of this Ordinance or Franchise Agreement granted pursuant hereto.

5.5 Publication and Effective Date.

This Ordinance shall be published in the Mining Journal, a newspaper of general circulation within the Township and qualified under State law to publish legal notices, within thirty (30) days after its adoption, and the same shall be recorded in the Ordinance Book of the Township and such recording authenticated by the signatures of the Supervisor and the Township Clerk.

This Ordinance shall become effective thirty (30) days after publication subsequent to final adoption.

Adopted: June 19, 1986

Published: June 27, 1986

Effective Date: June 27, 1986

Kenneth A. Tuominen
Ely Township Supervisor

Elise Petro
Ely Township Clerk