



Township Ordinances

ORDINANCE 43 CABLE COMMUNICATIONS

An ordinance to promote and encourage the furnishing of a high quality but economical cable communications service to the residents of the township of chocolay and to regulate such service in the public interest.

THE TOWNSHIP OF CHOCOLAY ORDAINS:

Article I – Short Title, Purpose, Necessity of Franchise, and Definitions

Section 1.1 Short Title

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

Section 1.2 Purpose

The purpose of this Ordinance is to promote and encourage the furnishing of a high quality but economical cable communications service to the residents of the Township of Chocolay and to regulate such service in the public interest.

Section 1.3 Necessity of Franchise Agreement

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

Section 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 these definitions may appear in a Franchise Agreement. Words not defined shall be given their common and ordinary meaning as used by the Cable Industry.

Word or Phrase	Definition
Applicant	Person or Company submitting a proposal for a Franchise Agreement of a cable communications system.
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 seperate charge is made.
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 optical transmitters.





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Word or Phrase	Definition
Cable Communications System, Cable System, CATV or System	A system of coaxial cables or other electrical conductors or a 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, receipt, transmission, and distribution of voices, sound signals, pictures, visual images, 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.
Community Specific Cablecasting	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.
Connection	The attachment of the drop to the first radio or television set of the subscriber.
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 T.V. 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 local broadcast signals exist. The converter may also allow reception of additional programming and/or services.
Drop	The cable that connects the subscriber terminal to the the nearest feeder cable of a cable system.
FCC	The Federal Communications Commission and any legally appointed, designated or elected agent or successor.
Feeder	Intermediate line of Cable System that carries signals from truck line to drops.
Franchise	The rights, privileges or power of public concern granted to the Township of Chocolay pursuant and subject to the Michigan Constitution, and all statutes, laws, rules, regulations and cases of the State of Michigan and the United States.
Franchise Agreement	Agreement between cable operator and the Township of Chocolay setting specific rights and responsibilities for the construction and operation of Cable System within the Township of Chocolay.
Franchise or Grantee	A person to whom a cable communications franchise agreement has been granted.
Fraud or Deceit	Shall not be limited to common law fraud and deceit but shall include the meaning of those words under federal securities law.
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 the subscribers.
HUB	One or two or more elements in a large cable system from which trunk lines originate, from which programming and da ta is sent out via trunk lines, and where upstream messages are received and where switching is accomplished. Large Systems have multiple hubs linked to each other and/or to the master headend.
Installation	The connection of the System from feeder cable to the point of connection.





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Word or Phrase	Definition
Interactive System	A two-way operational system. See also "two-way capability".
Local Gross Subscriber Revenues	All gross revenues of the Franchisee from subscribers within the Township of Chocolay, including local gross revenues from pay TV in excess of the fair market value royalty paid by Franchisee therefore, provided, 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 of Chocolay shall be based on the ratio of the number of subscribers who receive basic service or its equivalent in the Township of Chocolay to the number of subscribers outside the Township of Chocolay.
Local Public Access	Refers to the public opportunity to use local channels which are dedicated to that purpose and are not under control of Grantee.
Pay TV	Cable channels that require an additional subscriber fee.
Person	An individual, partnership, corporation, or other entity as the context may indicate.
Producer	A user providing input services to the Cable System for receipt by subscribers.
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 of Chocolay to be in the public's general interest, health, safety and welfare)
Public Property	Any real property owned by any Governmental agency.
Resident	An 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 The Charter Township of Chocolay.
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 or right of way now or hereafter held by the Township of Chocolay which shall, within its property use and meaning in the sole opinion of the Township of Chocolay, entitle Grantee to the 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.
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.





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Word or Phrase	Definition
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.
Township	The Local Government of the Charter Township of Chocolay and all the territory within its corporate limits.
Township Board of Supervisors, the Chocolay Township or the Board	The governing body of the local unit of the Township of Chocolay.
Trunk, Trunk Line	Main line of Cable System that carries signals from headend to extremities of cable system.
Two-Way Capability	Ability of Cable System to conduct signals to the headend, as well as away from it. Two-Way bidirectional systems carry data and audio/visual television signals in either direction (upstream and downstream). This is ca.1.led"interactive".
User	A person or organization utilizing a System channel as a producer, for purpose of production and/or transmission of material, or as a subscriber, for purposes of receipt of material.

Article II – Selection of Franchise Agreement

Section 2.1 Award of Franchise Agreement

The Chocolay Township Board may award a Franchise Agreement to an applicant only after a public hearing on the application and proposed franchise agreement, notice of which hearing shall be published in a local newspaper of general circulation at least twenty (20) days prior to the date of the hearing. The Chocolay Township Board may reject all applications deemed not to be in compliance with this ordinance or may reject applicants for other reasons deemed necessary by the Township Board.

Section 2.2 Franchise Agreement Application – Form and Contents

All applications shall be submitted in writing. All applications shall contain the information call for by this 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 of Chocolay, including the matters to which a response is specifically required by this Ordinance, and including a schedule of projected rates for all charges and fees to subscribers.





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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 the Chocolay Township Board resolution.
- (B) The Township of Chocolay shall be intitled to verify any information furnished by the applicant and/or in response to other requests by the Township of Chocolay for information regarding the applicant and the applicant's affairs. The Township of Chocolay 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 of Chocolay may deem proper.
In such cases the applicant shall furnish the Township of Chocolay 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 applicatant, it being deemed to be in the public interest that the Township of Chocolay 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 of Chocolay or by any officer or agency thereof, shall constitute a fraud upon the Township of Chocolay.

Section 2.3 Criteria for Selection

- (A) 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 of Chocolay regarding such applicaitons. Such award may be based upon the criteria set forth below together with such other factors as the Township of Chocolay may deem relevant. Regardless of the criteria suggested below, the Township of Chocolay's decision to award or not to award a Franchise Agreement is final and an applicant waives objection to the Township of Chocolay's weight or priority of the following factors the Township of Chocolay 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 credibilty 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.





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- (D) The applicant's schedule of rates and the length of time the applicant is committed to maintain such rates.
- (E) The applicant's response to specific local concerns or needs, whether formulated by the Township of Chocolay and made known to applicants or whether ascertained by the applicant.

Article III – Franchise Agreement; Grant of Agreement

Section 3.1 Franchise Agreement

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

Section 3.2 Grant of Franchise Agreement

A Grantee shall be awarded a Franchise Agreement, pursuant to the provisions of Article II, Section 2.1 of this Ordinance, either by resolution of the Chocolay Township Board or by any other means authorized or required by law. The Grantee shall be promptly notified of the award by the Township of Chocolay by written notice thereof, sent by registered or certified mail, which notice shall be accompanied by one or more copies of the Franchise Agreement.

Section 3.3 Term and Other Provisions of Franchise Agreement

- (A) The Franchise Agreement shall provide for a nonexclusive Franchise for a term of not less than fifteen years, which term shall commence as of the date of the Franchise Agreement.
- (B) The Franchise Agreement shall provide for periodic 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 may provide that throughout the term of the Agreement, the Grantee shall pay the Township of Chocolay, 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 of Chocolay shall not be construed as a release of or as an accord and satisfaction regarding any claim of the Township of Chocolay may have for further and additional sums payable by the Grantee or for the performance of any obligation of the Grantee under this Ordinance or the Franchise Agreement.





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(D) The Franchise Agreement shall, in substance, contain the following express undertaking:

1. that the Agreement shall 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 of Chocolay zoned residential/commercial, provided, however, that existing service areas outside residential and commercial areas may be charged for higher basic rates to reflect lower density;
4. that the Agreement 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 Chocolay Township Board;
5. that the Agreement may provide additional tiers and services which will be discussed during the period review sessions as provided in Section 3.3(B) of this ordinance;
6. that the Agreement provides for any sale of Franchise Agreement to be subject to Township of Chocolay 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 of Chocolay 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.

Section 3.4 Negotiated Provisions of Franchise Agreement

The Franchise Agreement shall contain such further conditions or provisions as may be negotiated between the Township of Chocolay and the Grantee except 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.

Section 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 of Chocolay, by resolution of the Chocolay Township Board of Supervisors, to revoke the Franchise Agreement for just cause. Just cause shall include, without limitation:





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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 of Chocolay 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 or substantially all of the property or facilities of the System in contravention of the Franchise Agreement.
 3. The commission of any fraud or deceit upon the Township of Chocolay.
- (B)** Any Franchise Agreement Granted hereunder shall be subject to all applicable provisions of other Chocolay 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 of Chocolay 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 Chocolay 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 insure 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 or 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 of Chocolay at Township option.
 7. To provide for the Township of Chocolay's right to have first option on purchase of the system and equipment located within the Township of Chocolay in the event the system is offered for sale.
- (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.





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Section 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 Chocolay 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 requirements of higher law and any limitations contained in the Franchise Agreement between the Township of Chocolay and the Grantee.

Section 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 attorney fees, incurred by the Township of Chocolay to enforce this Ordinance or Franchise Agreement granted pursuant hereto shall be reimbursed to the Township of Chocolay by the Grantee, in respect of such litigation or part thereof in which the Township of Chocolay is the prevailing party.

Section 3.8 Franchise Agreement Fee Account

The Township of Chocolay may establish through the term of the Franchise Agreement, a separate financial accounting of any Franchise Agreement fees as collected in accordance with the Franchise Agreement to be used for the administration of the Franchise Agreement.

Article IV – Administration and Advisory Board

Section 4.1 Administrator

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

Section 4.2 Advisory Body

The Chocolay Township Board may appoint a cable communications advisory committee to perform such duties and to have such powers as the Chocolay 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 Chocolay Township Board.

Section 4.3 Delegation of Rights and / or Obligations of Chocolay Township

The Township of Chocolay 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 Grantee. Upon receipt of such written





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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 V – Penalty, Severability, Publication and Effective Date

Section 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.

Section 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 Five Hundred (\$500.00) Dollars, or by imprisonment for a period of not more than ninety (90) days, or by both fine and imprisonment.

Section 5.3 Injunctive Relief

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

Section 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 of Chocolay, and should any provision or 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 of Franchise Agreement granted pursuant hereto.

Section 5.5 Publication and Effective Date

This Ordinance shall be published in the Mining Journal, a newspaper of general circulation within the Township of Chocolay 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 of Chocolay 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.





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DATED : February 4, 1985

Dates of Publication in the *Mining Journal*

8. February 5, 1985
9. March 4, 1985

