

VILLAGE OF EMPIRE

ORDINANCE NO. 67

**CABLE TELEVISION
ORDINANCE**

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Section 1. NONEXCLUSIVE FRANCHISES.

The Village, upon approval of the Council, may grant a nonexclusive franchise for the occupation and use of streets, roads, and airways in the Village for the construction, operation and maintenance of a cable system. Nothing in this ordinance or in any such franchise shall affect the right of the Village to grant other nonexclusive franchises for cable television purposes or for telecommunications purposes.

Section 2. FRANCHISE REQUIRED

No cable system shall occupy or use the streets, roads, alleys, rights of way, or airways of the Village and no cable operator shall operate a cable system in the Village without an accepted franchise granted pursuant to this Ordinance.

Section 3. FRANCHISE DURATION.

A cable television franchise may be granted for a maximum of _____ years.

Section 4. FRANCHISE FEE

A franchise fee shall be negotiated and agreed upon in the franchise. The terms and amounts of the franchise fee may vary between franchises.

Section 5. ANNUAL SUBSCRIBER REVIEW.

Not less than once in each calendar year a franchise holder shall solicit and receive subscriber input regarding all activities of the cable system. A synopsis of such subscriber input shall be promptly submitted in writing to the Village Clerk and the Leelanau Peninsula Cable Council.

Section 6. FRANCHISE CANCELLATION.

The Village may cancel a cable television franchise at any time prior to the date of expiration upon a finding, made after thirty days notice of the proposed cancellation and a public hearing, that the franchise holder has failed to cure one or more of the following defects during a sixty-day period following written notice by the Village Administrator to the franchise holder

of such a defect:

- (a) A substantial breach, whether by act or omission, of any material terms or conditions of this chapter or the franchise;
- (b) A material misrepresentation of fact in the application for or negotiation of the franchise;
- (c) Insolvency of the franchise holder, inability or unwillingness of the franchise holder to pay its just debts when they accrue or application of the franchise holder for adjudication as a bankrupt; or
- (d) Consistent failure to provide subscribers or users with service in accordance with this ordinance, the franchise or applicable Federal, State or local laws or regulations.

Section 7. LEELANAU PENINSULA CABLE COUNCIL.

In order to ensure that the residents of this area have the benefit of the best and most economical cable television service and in order to distribute the costs of regulation, and coordinate regulation and franchising, the Leelanau Peninsula Cable Council has been formed under the provisions of the Urban Cooperation Act. MCLA 124.501 et seq; MSA 5.4088(1) et seq. The participating franchising authorities shall each individually select their cable television franchisee, but may delegate monitoring, reporting, and complaint processes to the Council. The functions of the Council shall include the following:

- (a) Regulate basic service tier and equipment rates of cable television pursuant to Federal Communications Commission (FCC) certification and procedures.
- (b) Review cable rates and file complaints with FCC if needed.
- (c) Recommend franchise requirements to franchising authorities.
- (d) Act as liaison between franchising authority, cable company, schools, lessees of cable service, subscribers, and citizens.
- (e) Hear and decide citizen and subscriber complaints and make recommendations as may be set out in the local franchises.
- (f) Advise franchising authorities on laws, regulations and technical aspects of cable television.
- (g) Enforce the customer service requirements established by the FCC, this Ordinance or any franchise issued hereunder.
- (h) Perform such other functions as may be requested by a participating franchising authority.

Section 8. FRANCHISE TRANSFER.

A franchise issued under this ordinance shall not be transferable or assignable without the consent of the Village, except as otherwise provided in the franchise agreement. A

franchise holder shall not sell, transfer or otherwise change more than ten percent of the ownership in the franchise without prior written notification to the Village Clerk.

Section 9. BONDS AND INSURANCE.

(a) Prior to operating or constructing a franchise holder shall file a bond with the Leelanau Peninsula Cable Council in an amount set forth in the franchise agreement to ensure compliance with this ordinance.

(b) The franchise holder shall pay, and by its acceptance of the franchise expressly agrees to pay, all damages and penalties which the Village may legally be required to pay as a result of the franchise holder's negligence in the construction, operation or maintenance of the system authorized herein. However, the Village shall provide prompt notice to the franchise holder of such a claim, afford the franchise holder the opportunity to defend, settle or otherwise resolve the claim in the franchise holder's discretion and assist the franchise holder therein in any reasonable way, upon the request of the franchise holder. The franchise holder shall carry and pay the cost of liability insurance in support of its undertaking, to hold the Village harmless from loss sustained on account of the negligence of the franchise holder, for injury to or death of persons and injury to or destruction of property. The amount of such insurance shall be established by the franchise.

(c) The franchise holder shall comply with the Worker's Compensation Law of Michigan.

(d) Any insurance policy or bond shall contain a provision that it shall not be altered, terminated or otherwise allowed to expire prior to sixty days after written notice to that effect is given to the Village Clerk.

Section 10. ABANDONMENT.

Upon the expiration, revocation or nonrenewal for any franchise granted pursuant to this chapter, if facilities are not salvaged within a reasonable time, title to all such property shall pass to the Village.

Section 11. AUTHORIZATION FOR USE OF RIGHT OF WAYS.

A franchise granted pursuant to this chapter shall confer upon the holder named therein the nonexclusive right to erect, install, construct, reconstruct, replace, remove, repair, maintain and operate in, upon, under, above, across and from the streets, easements and rights of ways, all necessary towers, poles, wires, cables, coaxial cables, transformers, amplifiers, underground conduits, manholes and other television or radio conductors and fixtures for the installation, construction, maintenance and operation of a cable system or for the furnishing of a cable television service.

Section 12. CONSTRUCTION IN RIGHT OF WAYS; APPROVAL REQUIRED.

Prior to the erection or installation of any towers, poles, guys, anchors, underground conduits, manholes or fixtures for use in connection with the installation, construction, maintenance or operation of a system under a franchise granted pursuant to this ordinance, the franchise holder desiring to erect or install such facilities for use in connection with its system shall first submit to the Village Clerk for approval, a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map indicating the proposed location of such facilities. Such erection or installation shall not be commenced until the same is approved by the Village. Such approval shall not be unreasonably withheld.

Section 13. JOINT POLE ATTACHMENTS.

Upon written request of a public or municipality, a franchise holder shall grant it reasonable attachment space on its facilities within the right of way at a reasonable rental charge. The utility shall pay costs incurred in providing attachment space, including the costs of rearranging the franchise holder's wires, cables or equipment and replacement costs if required.

Section 14. UNDERGROUND FACILITIES.

In areas or portions of the Village where all transmission or distribution facilities of both public utilities providing telephone service and electric service are underground, or are required to be underground, any franchise holder shall likewise install, construct, maintain and operate its transmission and distribution facilities in like manner underground.

Section 15. CONSTRUCTION STANDARDS; SAFETY.

All construction, installation, maintenance and operation of any cable system or of any facilities employed in connection therewith shall be in compliance with applicable provisions of the National Electrical Safety Code, as prepared by the National Bureau of Standards, the National Electrical Code, of the National Fire Protection Association, the Bell Telephone Systems Code of Pole Line Construction, any standards issued by the Federal Communications Commission or other Federal or State regulatory agencies in relation thereto. Each system installed, constructed, maintained or operated shall be so designed, constructed, installed, maintained and operated as not to endanger or interfere with the safety of persons or property.

Section 16. STREET OPENINGS; BARRICADES AND WARNING LIGHTS.

Any opening or obstruction in, disturbance of or damage to a street, alley, public right of way or public place by any person in the exercise of any right granted pursuant to a franchise shall be properly guarded by barriers, lights, signals and warnings so as to prevent danger to any person or vehicle using such street, alley, public right of way or public place and shall be promptly repaired, at the franchise holder's expense, all in a manner specified and approved by the Village. Such approval shall not be unreasonably withheld.

Section 17. RELOCATION OF FACILITIES.

A cable operator or a person acting under a cable operator shall, at its expense, and without reimbursement from the Village, upon request of the Village relocate, remove, temporarily disconnect, protect or support facilities in the streets, alleys, easements, public right of ways or public places. A franchise holder shall also, at the request of a private party holding an appropriate permit issued by a governmental entity, temporarily raise or lower its transmission or distribution wires or cables to permit the moving of any building or other structure, provided that the actual expense of such temporary raising or lowering shall be paid in full by the party requesting the same. Such requests shall be made not less than 30 days in advance of the activity requested, unless an emergency situation exists.

Section 18. COSTS FOR WORK BY GOVERNMENTAL ENTITY.

If, after reasonable notice and opportunity to correct, a cable operator or any person acting under a cable operator fails to commence, pursue or complete any work required by law or this ordinance to be done in any street, alley, public right of way, easement or public place, the appropriate governmental entity may cause such work to be done, and such cable operator shall pay to the governmental entity the cost thereof within thirty days of receipt of an itemized statement of such cost.

Section 19. BASIC RATE REGULATION.

(a) Authority. The Federal Communications Commission (FCC) pursuant to the Cable Act of 1992 has determined that regulation of cable rates is to be done jointly by the FCC and local governments with local governments being generally responsible for regulating the rates of the basic service tier and equipment used to receive that tier. The FCC approval for the Village's regulation of basic rates jointly with other franchising authorities through the Leelanau Peninsula Cable Council is pending and subject to that approval the Council shall regulate basic rates within this Village.

(b) FCC Regulations. All regulations established by the FCC will be followed and shall take precedence over the following rate regulation rules and those rules shall be interpreted to be in conformity with the FCC regulations.

(c) Rules. The regulation of rates for the basic service tier and equipment (hereinafter referred to as rates) of all cable system operators shall be governed by the following:

- (i) Rates shall not be charged unless approved by the Leelanau Peninsula Cable Council (Cable Council) or the FCC pursuant to federal law and regulation.
- (ii) Before approving any rate the Cable Council shall hold at least one public hearing.
- (iii) Notice of all public hearings to consider rates shall be published in advance at least 3 and not more than 14 days before the hearing.

- (iv) Publication of notice of a rate hearing shall be done in the Leelanau Enterprise.
- (v) Advance written notice of a rate hearing shall also be given by mail to the affected cable operator and anyone filing a written request for such notice with the Cable Council within the 12 months preceding the scheduled hearing date.
- (vi) At the public hearing any interested person may appear in person or in writing and present evidence and opinion to the Cable Council on the issues.
- (vii) A cable operator or other person requesting a change in rates or establishment of a new rate (applicant) shall have the burden of justifying the request by substantial evidence and shall have the burden of going forward with the evidence.
- (viii) Only the Cable Council, the cable operator, applicant or other person recognized by the Cable Council as a substantially interested party may cross-examine witnesses.

(d) Basic Tier and Equipment. The franchise shall establish the basic service tier and equipment used to receive that tier.

Section 20. CUSTOMER SERVICE STANDARDS.

(a) The Federal Communication Commission's customer service obligations shall be enforced locally and such authority for enforcement is hereby delegated to the Leelanau Peninsula Cable Council. Title 47 CFR, Section 76.309.

(b) In addition, the following customer service obligations are hereby established.

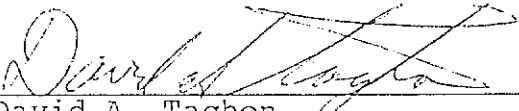
- (i) Dispute Resolution Procedure. The cable operator shall establish a procedure for resolving subscriber complaints that includes an opportunity for a meeting in a designated community in Leelanau County with an employee of a cable operator having authority to resolve the dispute.
- (ii) Advance Notice to Leelanau Peninsula Cable Council of Brochure. At least 30 days prior to sending any brochure or written material describing the general offerings or services of the cable operator, other than program or event specific advertising, copies shall be filed with the Leelanau Peninsula Cable Council for its review and comment.
- (iii) Before starting litigation to enforce the penalty provisions of this Ordinance for a violation of this section, the Council shall give a cable operator 30 days advance written notice and an opportunity to correct the violation of the customer service obligation. If not so corrected or, if in the

Council's opinion another similar violation occurs, no such notice need be further given before seeking a remedy or imposing a penalty.

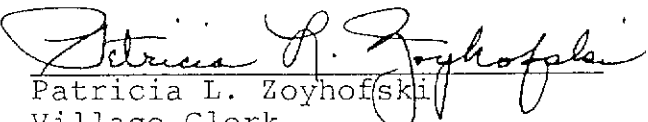
Section 21. PENALTY.

If any provision of this Ordinance is violated by a franchise holder, cable operator, or other person or entity, such violation shall be subject to a penalty of \$500 per day for each day in violation, the cost of all litigation including actual attorneys fees, and the costs of all corrective measures and damages resulting from violation of the Ordinance. Such penalty shall be in addition to the enforcement of any bond or insurance which may be available to remedy the violation.

The foregoing Ordinance was adopted by the Village Council of the Village of Empire on the sixteenth of November, 1993, and shall take effect _____.

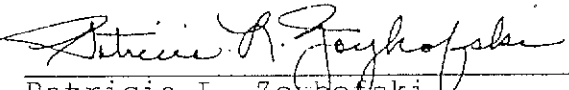


David A. Taghon
Village President




Patricia L. Zoyhowski
Village Clerk

The foregoing ordinance was re-adopted by the Council of the Village of Empire on the twenty-first of December, 1993, and shall take effect _____.
(Re-adoption due to statutory publication requirements)



Patricia L. Zoyhowski
Village Clerk

The foregoing ordinance was re-adopted by the Council of the Village of Empire on the eighteenth of January, 1994 and shall take effect January 26, 1994.
(Re-adoption due to statutory publication requirements)



Patricia L. Zoyhowski
Village Clerk