

ORDINANCE NO. 23

This ordinance is to establish a Franchise between the Township of Plainfield and Empire Cable, 18877 W. 10 Mile Rd., Suite 105, Southfield, Michigan 48075 and assign from Empire Cable to Tele-Media franchise.

CABLE TELEVISION FRANCHISE AGREEMENT

Section 1. Definitions

Community Antenna Television System, "CATV," "System" shall mean any facility that in whole or in part, receives and transmits, directly or indirectly, television or radio signals, whether over the air or otherwise, and amplifies or otherwise modifies the signals of transmitting programs broadcasted by one or more television or radio stations as well as the transmitting of any information of any kind whatsoever distributing by wire, or cable, or otherwise to the public.

The term "**Township**" shall mean the Township of Plainfield, Michigan.

The term "**Township Board**" shall mean the Township Board of the Township of Plainfield.

The term "**Company**" shall mean the cable television company.

"**Streets**" shall mean streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other public rights of way and public grounds or waters within or belonging to Township of Plainfield.

The term "**Person**" shall mean any person, firm, corporation, or association, and any other legally recognized entity.

The term "**Residential Subscriber**" shall mean a purchaser of any service delivered over the System to an individual dwelling unit, where the service is not to be utilized in connection with a business, trade, or profession.

The term "**Basic Service**" shall mean the simultaneous delivery by the Company to television receivers (or any other suitable types of telecommunication receivers), of all subscribers in the Township of Plainfield, all signals of over-the-air television broadcasters required by the Federal Communications Commission, (hereafter "F.C.C.") to be carried by a community antenna television system as defined by the F.C.C.; the Company Channels, Public Channels, and additional channels as agreed to by the Company and the Township.

The term "**Additional Service**" shall mean the simultaneous delivery by the Company to television receivers of one or more Channels that are not included in "Basic Service" and which provides services to subscribers beyond the F.C.C. requirements.

The term “**Channel**” shall mean a band of frequencies in the electro-magnetic spectrum which is capable of carrying either one audio-video television signal (commonly 6 MHz) and a number of non-video signals.

The term “**Public Channel**” shall mean a channel on the System which is reserved for carriage of program materials provided by persons who lease channel time from the Company for the presentation of programs in accordance with this Franchise. The Township may lease channel time at no charge to the Township.

The term “**Company Channel**” shall mean a channel on the System which is reserved by this Franchise for the carriage of program material originated by the Company or by other designated persons.

“**F.C.C.**” shall mean the Federal Communications Commission.

The term “**Franchise**” shall mean the grant of authority to the Company to operate a “CATV” System in the Township.

“**Gross Basic Revenues**” shall mean the gross Basic Service Revenues received by the Company.

Section 2. Grant of Franchise

- A. There is hereby awarded to Empire Cable Group, a Michigan partnership, a nonexclusive franchise for the occupation or use of Easements and Right-of-Ways, the streets within the Township for the construction, operation, and maintenance of a Cable Television System.
- B. This franchise shall be effective on the date ratified by the Company in writing after having been awarded by the Township Board in accordance with applicable law. It shall remain effective for (15) fifteen years, unless sooner terminated as herein provided in Section 3 hereof, but may not be transferred, sold or merged with any other company without first obtaining Township Board approval.
- C. Nothing in this Franchise shall effect the right of the Township to grant to any other person a franchise to occupy and use the streets or any part thereof for the construction, operation and maintenance of a CATV or similar facility within the Township, and the Company shall not take a legal position contesting the Township Council’s right to authorize such use of the streets or any part thereof; provided, however, that the Township shall give the Company no less than sixty (60) days notice of the hearing date of any application for any additional franchise, to another, and nothing contained in this franchise shall prohibit the Company from appearing before the Township Board and being heard on any application for any additional franchise to another.

Section 3. Revocation of Franchise

- A. The Franchise granted hereunder shall be subject to the right of revocation by the Township Board by adoption of a resolution at a public hearing at which the Company was determined to have violated the terms or intent of the Franchise, unless within thirty (30) days the Company shall have complied with said terms of intent.

A public hearing will be held and the company will be provided notice of such hearing by certified mail at least thirty (30) days prior to such action at an address on file with the Township of Plainfield

- B. Any Franchise granted hereunder shall be subject to all applicable State and Federal laws, including rules and regulations promulgated by the F.C.C.

Section 4. Limitation of Franchise

This Franchise applies only to the operation of CATV System as provided for herein, and it does not take the place of any other franchise license or permit which might be required by Federal, State or Local Law.

Section 5. Construction and Installation of System

Notwithstanding provisions contained herein, the Company shall have the right to:

- A. Lease, rent or in any other lawful manner, obtain the use of towers, poles, lines, cables, and other equipment and facilities from any and all other holders of public licenses and limited to Consumers Power Company, and Century Telephone Company, and to use same on such terms as agreed upon subject to all existing and future resolutions of the Township. The poles used for Company's distribution system shall be those erected and maintained by Consumers Power Company and/or Century Telephone Company when and where applicable, providing mutually satisfactory rental arrangements can be entered into with said companies.

Section 6. Conditions on Street Occupancy

- A. All transmission and distribution structures, lines and equipment erected by the Company within the Township shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways, and public places and to cause minimum interference with the right and reasonable convenience of property owners who adjoin any of the said streets, alleys, or public ways and public places. Cable lines and equipment will not be placed outside State, County, or local road utility easements without prior written permission from property owner.
- B. In the event the Company finds it necessary in the normal course of its business to cause any disturbance to any street, street right-of-way, sidewalk, alley, public way, public paved area, or any other public property the Company shall, before attempting to accomplish such work, request permission of the Township in writing and after having received same, perform work according to specifications which will restore the area in question to as good a condition as it was before, and in the case of any street repair assume the cost of repairs and maintenance for a period of one (1) year. The Company further agrees to pay on demand any costs the Township assumes in the administration of such requests.
- C. If, at any time during the period of this Franchise, the Township shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Company, upon reasonable notice by the Township shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.
- D. Any poles or other fixtures placed in any public way by the Company shall be placed in such manner as not to interfere with the usual travel on such public way.

- E. The Company shall, on the request of any person holding a building-moving permit issued in the Township, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than two (2) weeks advance notice to arrange for such temporary wire changes. The Township, or any other non-profit organization, including Historical Societies, shall be exempt from any charges.
- F. Any trees trimming on public property necessary to prevent branches from coming into contact with system components will be done by the Township or at Township supervision and direction, at the expense of the Company, provided no public utilities does the same.
- G. In all sections of the Township where existing cable, wires, or other like facilities of utility companies are underground, the Company shall place its cables, wire, or other like facilities underground. In any section of the Township where utility companies remove all existing cables, wires, poles or other like facilities and place them underground, the Company shall place its cables, wires, or other like facilities underground.

Section 7. Safety Requirements

- A. The Company shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- B. The Company shall install and maintain its wires, cables, fixtures and other equipment in accordance with all applicable Federal, State, and Local laws and rules and regulations, and in such manner that they will not interfere with any installations of the Township or of a public utility serving the Township.
- C. All structures and all lines, equipment, and connections in, over, under and upon the streets, sidewalks, alleys, and public ways or places in the Township wherever situated or located shall at all times be kept and maintained in good order and repairs.

Section 8. Erection, Removal and Common Use of Poles

- A. No poles or other wire holding structures shall be erected by the Company without prior approval of the Township Board or its designate. However, no location of any pole or wire holding structure of the Company shall be removed or modified by the Company at its own expense whenever the Township Board determines that the public convenience would be enhanced thereby.
- B. Where poles or other wire holding structures already in existence for the use in serving the Township are available for use by the Company, but it does not make arrangements for such use, the Township may require the Company to use such poles and structures if said Township Board determines that the public convenience would be enhanced thereby and the terms of the use available to the Company are just and reasonable.
- C. Where the Township or a public utility serving the Township desires to make use of the poles or other holding structures of the Company, but agreement therefor with the Company cannot be reached, the Township may require the Company to permit such use for such consideration and upon such terms as the Township Board shall determine to be just and reasonable, if Township

Board determines that the use would enhance the public convenience and would not unduly interfere with the Company's operation.

Section 9. Supervision, Inspection, and Removal

The Township shall have the right to inspect all construction or installation work performed subject to the provisions of this Franchise to insure compliance with the terms of this Franchise and all other pertinent provisions of law. At the expiration of this Franchise or upon its termination or cancellation, as provided for herein, the Township shall have the right to require the Company to remove at its own expense all portions of the cable communications systems from all public streets, alleys, ways and area within the Township.

Section 10. Maps, Plats, and Reports

The Company shall, on or before the first day of April of each year, file with the Township Clerk true and accurate maps or plats, showing the location of all existing and proposed installations, which shall include all receiving and transmitting stations, all trunk lines, whether leased or owned outright, feeder lines, whether leased or owned and attached to such maps or plats shall be a list by address of current subscribers.

Section 11. Carriage of Signals

The Company shall comply with all rules and regulations, both present and future, of the United States Federal Communications Commission and the State of Michigan with respect to the reception, carriage and distribution of signals, and shall not permit the transmission over cable facilities of any programs which are determined to be offensive to the Community moral standards, commonly known as "X-rated."

Section 12. Signal Quality Requirements

- A. The facilities used by the Company shall be capable of distributing color TV signals, and when the signals the Company distributes are received in color by the Company they shall be distributed in color by the Company.
- B. The Company shall produce a picture, whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production television sets in good repair and as good as the "state-of-the-art" allows, and shall transmit signals of adequate strength to product good pictures with good sound at all outlets without causing cross-modulation in cables or interfering with other electrical or electronic systems. For purposes of this Section, the standards to be applied in determining whether or not the Company is producing a good picture or transmitting signals of adequate strength to produce same are those acceptable standards as set forth in the rules and regulations of the Federal Communications Commission relative to community antenna television systems as amended or as shall be amended hereafter.

Section 13. Operation and Maintenance of System

- A. The Company shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as is possible, shall be preceded by notice and shall occur during periods of minimum use of the system.
- B. The Company shall maintain a business office or agent where subscribers may telephone during regular business hours without incurring toll charges, so that complaints regarding cable television operations may be promptly reported to the Company.
- C. The Company shall limit failures to a minimum by locating and correcting malfunctions promptly, but in no event longer than twenty-four (24) hours after receiving notice of same.
- D. Should it be impossible or impractical to correct any system or subscriber outage caused by equipment malfunctions within twenty-four (24) hours or less, then each subscriber whose television reception is so disrupted shall receive a rebate from the Company in an amount of one-thirtieth (1/30) of such subscriber's monthly charge for every additional twenty-four (24) hour period that said subscriber's reception is so disrupted. Said rebate may, at the option of the Company, be in the form of an adjustment to the next monthly charge to subscribers; however, in no event will the rebate be made more than thirty (30) days from the date of the last disruption of television service.
- E. The Township Supervisor as agent of the Township Board shall be the official of the Township having primary responsibility for the continuing administration of this Franchise.
- F. Any complaint procedures implemented by the Township Supervisor in addition to any procedures outlined in this Franchise, shall be given to each subscriber by the Company at the time of initial subscription to the CATV System by the cable operators.

Section 14. Rates

- A. The rates and charges for television and other signals distributed hereunder shall be fair and reasonable and no higher than necessary to meet all costs of service within the Township (assuming efficient and economical management) including a fair rate of return on the original cost within the Township, less depreciation of the properties devoted to service within the Township.
- B. The following is a schedule of rates and charges:
 - 1. Initial tap-in and connection charge for "Basic Service" \$25.00 per subscriber, which shall include fine tuning subscriber set to properly receive the cable signal but not to include repair to said set if needed.
 - 2. Basic Service: \$12.95 per month per subscriber.
 - 3. Pay Service: \$7.00 to \$10.00 per month per subscriber according to service selected.
 - 4. Reconnection after disconnection charge due to subscriber non-payment shall be \$25.00.
 - 5. Other charges of \$3.00 per month per subscriber per additional outlet.
 - 6. \$3.00 per month per subscriber per additional converter.
- C. It will be the policy of the Township of Plainfield Board that the charges noted in (B) above will be in full force and effect for a period of one year after the date of commencement of service.

After the one-year period, the Township will allow the Company to increase charges; however, any subsequent adjustments shall conform to the guidelines set forth in Section 14 (A).

- D. If in the future, the State of Michigan regulates the rates of the Company for the services provided under this Franchise, this Section shall be of no effect during such state regulation to the extent of any conflict therewith.
- E. Where an unusually difficult or abnormal installation is encountered or requested, the Company reserves the right to negotiate additional charges to reasonably recover the Company's costs. There shall, however, be on file, prior to commencement of construction, in the Township President's office a "Criteria of Normal Installation" which will define "normal installation."

Section 15. Capacity and Commencement of System

- A. The Company shall complete or commence the installation of cables, amplifiers, and related equipment within the Township (as indicated on strand prints) within twelve (12) months of effective date of this Ordinance.
- B. Initial channel capacity of the System shall be as follows:
 - VHS and UHF Channels..... ALL
(As required by the F.C.C. Standards of 1972 as revised in 1984)

 - Public Channels.....1

 - Company Channels..... REMAINDER

The initial channels authorized in this subsection shall be subject to allocation or reallocation subject to approval by the Township Board as to the proper allocations to be made in light of the developments in the "State-of-the-Art," the use of CATV as communications, educational and entertainment media, and subject to the regulations of the F.C.C.

- C. The Company shall provide "Basic Service" to one outlet on each floor of all existing or future police and fire stations if said stations become permanently operative twenty-four (24) hours per day, and all public and private schools located within 30 feet of the Company's cables in the Township without any charge thereof.
- D. In the operation of its system, the Company shall not interfere in any way with signals of any electrical system located in buildings which house any part of the system, and shall not deprive an inhabitant of any building, by contract or otherwise, of any existing right to use an individual or master antenna for the purpose of receiving television signals.
- E. Company shall provide a switching mechanism as part of the basic installation fee that will allow subscribers to change from company cable leads to existing roof-top antennas without physically changing the leads from one to another at the receiver.

Section 16. Liability Insurance and Indemnification

- A. The Company shall maintain throughout the term of Franchise, liability insurance insuring the Township and the Company with regard to all damages for which the Township and/or the Company may be liable, including but not limited to, damages arising out of copyright infringements and all other damages arising out of the installation, operation, maintenance or removal of the cable communications system that is the subject of this Franchise, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

- B. The liability insurance referred to in subparagraph (A) of the Section shall be in the following minimum amounts:
1. \$500,000.00 for bodily injury or death to any person, within limits, however, of \$1,000,000.00 for bodily or death resulting from any one accident.
 2. \$500,000.00 for property damage resulting from any one accident.
 3. \$500,000.00 for infringement of copyright.
 4. \$500,000.00 for all other types of liability.
- C. The Company shall pay, and by its acceptance of this franchise, the Company agrees that it will pay as a result of granting this Franchise, and the Company shall save the Township harmless from any and all liability arising out of this Franchise, the granting of the same or the operation of the System hereunder. The Company shall pay for the expenses incurred by the Township in defending itself with regard to all damages and penalties which the Township may be required to pay as a result of granting this Franchise, including, but not limited to, all reasonable investigations, witness and attorney fees.
- D. The Township board shall annually review the above insurance, and if it is determined that the insurance coverage is inadequate, additional insurance may be requested as reasonably determined by the Township Board and shall be provided by the Company.

Section 17. Annual Franchise Fee

Commencing one year from the effective date of this Agreement, and each year thereafter, the Company shall pay to the Township Treasurer a Franchise Fee equal to 3 ½ percent (%) of the Company's gross basic service revenues derived from basic cable services during the preceding calendar year, along with a detailed statement of revenues received from the service that year within the Township. Said fees will be due and payable to the Township within ninety (90) days of the calendar year-end.

Section 18. Separability

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

Section 19. Plan of Extension

Within ninety (90) days after receiving a valid Franchise, Company shall place on file with the office of the Township Clerk a map (scale: 1" – 300' or 200')

Said map shall show the following:

1. All Township streets.
2. Municipal limits
3. The location of all transmission lines with approximate dates of completion.

Empire Cable Group will provide cable TV service to all areas with (30) thirty year around homes per mile contiguous from existing cable plant.

IN WITNESS THEREOF THIS RESOLUTION AND AGREEMENT ON BEHALF OF THE TOWNSHIP OF PLAINFIELD BY ITS LOCAL BOARD AND EMPIRE CABLE GROUP LTD IS HEREBY ENTERED INTO AND AGREED UPON THIS 29TH DAY OF JULY 1988.

EMPIRE CABLE GROUP LTD

(signed by Christopher M. Blossen, CEO/Partner)

PLAINFIELD TOWNSHIP

(signed by Donna D. Chrivia, Supervisor)

**A RESOLUTION CONSENTING TO THE ASSIGNMENT OF THE FRANCHISE
FOR THE OPERATION AND MAINTENANCE OF A COMMUNITY
ANTENNA TELEVISION SYSTEM IN THE
TOWNSHIP OF PLAINFIELD, MICHIGAN
FROM EMPIRE CABLE GROUP TO
TELE-MEDIA COMPANY OF SAGINAW BAY, LIMITED PARTNERSHIP**

WHEREAS, on July 5, 1988, the TOWNSHIP BOARD of the Township of Plainfield, Michigan (the "Board") entered into a Cable Television Franchise Agreement ("Agreement") with EMPIRE CABLE GROUP, a Michigan general partnership ("Empire"), providing for the granting of a non-exclusive franchise to operate and maintain a community antenna television ("CATV") system and to engage in the business of providing CATV service within the Township of Plainfield (the "Franchise");

WHEREAS, TELE-MEDIA CORPORATION OF DELAWARE ("TMCD") is a Delaware corporation engaged in the business of owning and operating CATV systems throughout the continental United States;

WHEREAS, Robert E Tudek ("Tudek") and Everett I. Mundy ("Mundy") each own fifty percent (50%) of the stock of TMCD;

WHEREAS, TELEMEDIA COMPANY OF SAGINAW BAY, LIMITED PARTNERSHIP, a Michigan limited partnership ("TMC-SB"), was formed on August 25, 1988 for the purpose of constructing, owning and operating CATV systems located in various communities within the State of Michigan;

WHEREAS, Tudek, Mundy and TELE-MEDIA HOLDING CORPORATION, a Pennsylvania corporation ("TMHC"), are the general partners of TMC-SB;

WHEREAS, Tudek and Mundy each own fifty percent (50%) of the stock of TMHC;

WHEREAS, TMHC is an affiliate of TMCD;

WHEREAS, on or before January 15, 1989, TMCD, together with Tudek and Mundy, will acquire all the assets, tangible and intangible, of Empire as they may relate to the CATV systems owned by Empire serving the Townships of Mentor, Big Creek, Comins and Elmer and the City of Rose City and their environs, located in Oscoda and Ogemaw Counties, Michigan and the unbuilt franchises to serve the Townships of Plainfield, Wilber, Grant, Rose, Cummings and Hill located in Ogemaw and Iosco Counties, Michigan.

WHEREAS, pursuant to Section 2B of the Agreement, the prior written approval of the Board is required to transfer or assign the Franchise;

WHEREAS, Empire desires to assign all of its right, title and interest in, to and under the Agreement to Tudek and Mundy as tenants in common who in turn, and simultaneously therewith, shall assign the Agreement to TMC-SB;

WHEREAS, the Board desires to consent, in accordance with Section 2B of the Agreement, to the transfer and assignment of the Agreement from Empire to Tudek and Mundy and, simultaneously therewith, to the assignment of the Agreement from Tudek and Mundy to TMC-SB;

WHEREAS, TMC-SB desires to assume, perform and be bound by all the obligations, liabilities, covenants, conditions and restrictions to be done, kept or performed by, or imposed upon Empire under the Agreement that arise from and after the date of the assignment of the Agreement from Empire to TMC-SB;

NOW, THEREFORE, BE IT RERSOLVED by the Board of the Township of Plainfield, as follows:

Section 1.

Consent is hereby given by the Board to the assignment by Empire to Tudek and Mundy as tenants in common of all of Empire's right, title and interest in, and duties and obligations under, the Agreement.

Section 2.

Consent is also hereby given by the Board to the simultaneous assignment by Tudek and Mundy to TMC-SB of all of their right, title and interest in, and duties and obligations under, the Agreement.

Section 3.

Consent is also hereby given by the Board to the assignment, for collateral security purposes, of the right to conduct the business of a CATV system under the Agreement by the holder thereof to a financial lending institution as collateral security for the repayment of indebtedness incurred in connecdtion with the acquisition and/or operation of CATV systems.

Section 4.

The consents granted by this Resolution shall be null and void unless the assignee of the Agreement, TMC-SB files a written acceptance of the Agreement, acknowledged before a Notary Public, with the Board within sixty (60) days after assignment of the Agreement to TMC-SB. Such acceptance shall acknowledge that the assignee agrees to be bound by and to comply with the provisions of the Agreement, and shall be in such form and have such content as to be satisfactory to and approved by the Board.

Section 5.

Except as hereby modified, the Agreement is in all other respects ratified and confirmed, and all of the terms and conditions thereof shall remain in full force and effect. The Board hereby confirms that the Agreement is validly existing, not in default, and in full force and effect.

Section 6.

This resolution shall take effect and be force from the earliest period allowed by law.

PASSED this 14th day of September, 1988

TOWNSHIP OF PLAINFIELD

(signed by Donna D. Chrivia, Township Supervisor)

ATTEST:

(signed by Elaine J. Bielby and C. H. Riedel)