

ORDINANCE #34
TO AMEND ORDINANCE #11 CASS CABLE T.V.

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE
TO TOWN & COUNTRY CABLE TV AND TELECOMMUNICATIONS
LLC,

A MICHIGAN CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO
BUILD, CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELE-
VISION SYSTEM IN THE TOWNSHIP OF GOLDEN AND SETTING
FORTH CONDITIONS ACCOMPANING THE GRANTING OF THIS
FRANCHISE:

SECTION 1 -- TITLE

This Ordinance shall be known and may be cited as Cable TV Ordinance.

SECTION 2 -- DEFINITIONS

For the purpose of this Ordinance, and when not inconsistent with the context, words used herein in the present tense include the future; words in plural include the singular, and vice versa. The word “shall” is always mandatory. The captions supplied herein for each section are for convenience only. Said captions have no force of law, are not part of the Sections, and are not to be used in construing the language of the section. The following terms and phrases, as used herein, shall be given the meaning set forth below:

(A) “Basic Cable Service” is any service tier which includes the retransmission of local television signals.

(B) “Cable Television System “ or “CATV” system or “Cable System” is a facility consisting of a set of closed Transmission paths and associated signal generation, reception, and control equipment designed to provide video and other programming and information to subscribing members of the public.

(C) “Township” is the Township of Golden, a Municipal corporation under the laws of the State of Michigan.

(D) “Grantee” is Town & Country Cable TV and Telecommunications LLC, a corporation organized and existing under laws of the State of Michigan, and it is the grantee of rights under this franchise.

(E) “Township Board” is the Township Board of the Township of Golden or its designated representative.

(F) “Federal communications commission” or “FCC” is the present Federal Agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

(G) “Person” is any individual, firm, partnership, association, corporation, company or organization of any kind.

(H) “Regular Subscriber Services” shall include the carriage of required broadcast signals and non-broadcast services, but shall not include “ancillary” or “auxiliary” services, which include, but are not limited to, advertising, leased channels, and programming supplied on a per program or per channel basis, if any.

SECTION 3 -- GRANT OF AUTHORITY

There is hereby granted by the Township to Grantee the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over, or under the streets, alleys, public utility easements, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the Township, all

poles, wires, cables underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the township of a cable television system for the transmission of television signals and all other signals, including those permitted by the FCC, either separately or upon or in conjunction with any public utility maintaining the same in the Township, with all of the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby include the right in, over, under and upon the streets, sidewalks, alleys, public utility easement and public grounds and places in the Township to install, erect, operate or in any way acquire the use of, as by leasing or licensing, all lines and equipment necessary to a cable television system and the right to make connections to subscribers and the right to repair, replace, enlarge and extend said lines, equipment

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and connections. The rights herein granted for the purpose set forth shall not be exclusive, and the Township reserves the right to grant a similar use of said streets,

alleys, public utility easements, public ways and places to any person at any time during the period of this franchise.

Grantee shall, at its own expense, move or relocate any of Grantee's installations at the request of the Township whenever or wherever Grantee's installations are found by the Township to interfere with its streets, street grade, sewer or water installation or any proposed changes thereof or extensions thereto. This Ordinance shall not be construed as to deprive the Township of any rights or privileges which it now has or may hereafter have to regulate the use and control of its streets. The Township must approve any plans before construction begins.

All construction of the Grantee, including installations, shall conform to the statutes of the State of Michigan and nationally accepted electric safety codes. Grantee shall provide the Township with a map designating the location of cable television facilities; said map shall be available for public examination and shall be corrected annually by Grantee to show all extensions and changes in said facilities.

SECTION 4 -- POLICE POWERS

Grantee shall at all times during the term of this franchise be subject to all lawful exercise of the police power of the Township. The right is hereby reserved to the Township to adopt, in addition to the provisions herein contained and any other existing applicable ordinances, such additional applicable ordinances as it shall find

necessary in the exercise of its police power; provided, however, that such additional ordinances shall be reasonable, shall not conflict with or alter with the laws of the State of Michigan, the laws of the United States of America, or the rules, regulations and policies of the FCC.

SECTION 5 -- INDEMNIFICATION

Grantee shall save the Township, its officers, agents and employees harmless from all losses sustained by the Township on account of any suit, judgment, execution,

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claim or demand whatsoever against the Township resulting from the construction, installation, operation or maintenance of its cable television system in the Township; and for this purpose Grantee shall carry property damage and personal

injury insurance with some responsible insurance company or companies qualified to do business in the State of Michigan. The amounts of such insurance to be carried for liability due to property damage shall be Five Hundred Thousand Dollars (\$500,000.00) as to any one occurrence; and against liability due to injury to or death of a person, One Million Dollars (\$1,000,000.00) as to any one occurrence. The Township shall notify Grantee, in writing, within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the Township on account of any negligence as aforesaid on the part of Grantee. Where any such claim or demand against the Township is made by suit or other legal action, written notice thereof shall be given by the Township to Grantee not less than five days prior to the date upon which an answer to such legal actions is due or within ten (10) days after the claim or demand is made upon the Township, whichever notice period yields Grantee the larger amount of time within which to prepare an answer. Failure by the Township to notify Grantee properly in accordance with the foregoing of any such claim, suit, or demand against the Township shall release grantee from its obligation to indemnify the Township as provided herein.

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SECTION 6 -- CONSTRUCTION AND MAINTENANCE

(A) All structures, lines and equipment erected by Grantee within the Township shall be so located as to cause minimum interference with the proper use of streets, alleys, public utility easements and other public ways and places and to cause minimum interference with the rights of reasonable convenience of property owners, and Grantee shall comply with all reasonable, proper and lawful ordinances of the Township now or hereafter in force. Existing poles, posts, conduit, and other such structures of electric power system, telephone company, or other public utility located in the Township shall be made available to Grantee for the leasing or licensing upon reasonable terms and rates and shall be used to the extent practicable in order to

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minimize interference with travel and avoid unnecessary duplication of facilities. To the extent that existing poles, conduits, and other such structures are not available, or are not available under reasonable terms and conditions, including excessive cost or unreasonable limitation upon the use of Grantee's cable television system, Grantee shall have the right to purchase, lease, or in any other manner acquire land, rights-of-way, or public utility easements upon or under

which to erect and maintain its own poles, conduits, and other such structures as may be necessary for the construction and maintenance of its cable television system.

(B) In case of any disturbance by Grantee of pavement, sidewalk, driveway or other surfacing, Grantee shall, at its own cost and expense and in a manner approved by the Township, replace and restore all paving, sidewalk, driveway or surface so disturbed in as good condition before said work was commenced.

(C) In the event that at any time during the period of this franchise the Township shall lawfully elect to alter or change any street, alley, public utility easement, or other public way requiring the relocation of Grantee's facilities, then in such event Grantee, upon reasonable notice by the Township shall remove, relay and relocate the same at its own expense; provided, however, that where public funds are available for such relocation pursuant to law, Grantee shall not be required to pay the cost.

(D) Grantee shall, on the request of any person holding a building moving permit issued by the Township, temporarily raise or lower its lines to permit the moving of the building. The expense of such temporary removal shall be paid by the person requesting the same, and Grantee shall have the authority to require such payment in advance.

(E) Grantee shall have the authority to trim trees and / or shrubs upon and / or overhanging all streets, alleys, public utility easements, sidewalks and public places of the Township so as to prevent the braches of such from coming into contact with Grantee's facilities.

(F) All poles, lines, structures and other facilities of Grantee in, on, over and under the streets, sidewalks, alleys, public utility easements and public grounds or places of the Township shall be kept by Grantee at all times in a safe and substantial

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condition. All equipment, lines, poles, structures, cable and other facilities installed in the Township as being a part of the system installed within the individual residences or commercial buildings of the Township, shall remain the sole property of Grantee, unless so otherwise stated.

(G) Grantee shall extend its distribution system so as to service the people with in the franchised area. However, Grantee shall not be required to extend such distribution system to any potential subscriber who is located in an isolated area, or less than thirty-five (25) permanent residential homes per mile, from the main

trunk system, unless Grantee can be guaranteed a fair rate of return as per industry standards by the subscribers who request the extension of the distribution of system into such areas.

(H) Should any construction be necessary for Grantee to provide the cable television service authorized by this franchise, a significant portion of such constructions (at least 20%) shall be accomplished within one (1) year after the effective date of this Ordinance, or, if FCC certification is required to implementation of the cable television service authorized by this franchise, within one (1) year after the effective date of the grant by the FCC of the necessary certification.

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SECTION 7 -- APPLICABLE LAW

Cable Company shall at all times during the life of this Agreement be subject to all lawful exercise of police powers of the Township and to such reasonable regulation by Township as Township shall hereinafter provide, provided that such regulation by Ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted. Cable Company shall comply with all local, State and Federal laws, statues, codes, rules, ordinances, or regulations applicable to its business, including, but not limited to the regulations of the Federal Communications Commission and the Cable Communications Act of 1984 as amended.

At all times the Cable Company shall obtain the proper permits from the Oceana County Road Commission, Great Lakes Electric Cooperative, Consumers Energy,

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Verizon Telephone Company or other utility companies and enter into such necessary Agreements for the installation, maintenance, and operation of its CATV System.

Cable Company understands that it is subject to the provisions of the Golden Township Zoning Ordinance and must obtain a Zoning Permit and be subject to a site plan review of its receiving and transmitting facilities and building prior to the construction thereof.

SECTION 8 -- FRANCHISE TERM

This franchise shall take effect and be in full force from and after acceptance by Grantee as provided in Section 13, and the same shall continue in full force and effect for a term of Twenty (20) years. The Township reserves the right to revoke this franchise and all rights and privileges of the Grantee hereunder at the will of the Township Board. Such revocation shall be by resolution duly adopted after thirty (30) days notice to the Grantee. This condition would only take effect if the Grantee does not fulfill its obligations.

SECTION 9 -- FORFEITURE

If Grantee should violate any of the terms, conditions, or provisions of this franchise or if Grantee should fail to comply with any reasonable provisions of any ordinance of the Township regulating the use by Grantee of the streets, alleys, public utility easements or public ways of the Township, and should Grantee further continue to violate or fail to comply with the same for a period of thirty (30) days or such longer period specified by the Township as is reasonable under the circumstances, after Grantee shall have been notified in writing by the Township to cease and desist from any such violation or failure to comply so specified, then

Grantee may be deemed to have forfeited and annulled and shall thereby forfeit and annul all the rights and privileges granted by this franchise; provided, however, that such forfeiture shall be declared only by written decision of the Township Board after an appropriate public proceeding before the Township Board affording Grantee due process and full opportunity to assess the evidences used in rendering said declaration and to be heard in response to any such notice of violation or failure to comply; and

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provided further that the Township Board may, in its discretion and upon a finding of violation or failure to comply, impose a lesser penalty than forfeiture of this franchise

or excuse the violation or failure to comply upon a showing by Grantee of mitigating circumstances. Grantee shall have the right to appeal any finding of violation or failure to comply and any resultant penalty to any court of competent jurisdiction. In the event that forfeiture is imposed upon Grantee, it shall be afforded a period of six (6) months within which to either remove its equipment and facilities or to sell, transfer, or convey this cable television system to a qualified purchaser at an equitable price based on the fair market value of the franchise itself and the cable system as a going concern. Reasonable extensions of

time in which to affect a said sale, transfer or conveyance shall be granted by resolution of the Township board. During this six month period, which shall run from the effective date of the final order or decision imposing forfeiture, including any appeal, Grantee shall have the right to operate this cable television system pursuant to the provisions of this franchise.

SECTION 10 -- SURRENDER RIGHT

Grantee may surrender this franchise at any time upon filing with the Township Board of the Township a written notice of its intention to do so at least three (3) months before the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties and liabilities of Grantee in connections with this franchise shall terminate. This section shall not relieve Grantee of any of its liabilities incurred prior to the date of surrender of its franchise.

SECTION 11 -- TRANSFERS

All of the rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successors of the Township and the successors and assigns of Grantee; and the same shall not be assigned or transferred without the written approval of the Township Board, which approval shall not be unreasonably withheld; provided, however, that this Section shall not prevent the assignment or hypothecation of the franchise by Grantee as

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security for debt without such approval; and provided further that transfers or assignments of this franchise between any parent and subsidiary corporation or between entities of which at least fifty (50%) percent of the beneficial ownership is held by the same person, persons, or entities shall be permitted without the prior approval of the Township Board.

SECTION 12 -- NO SALES OR REPAIRS.

As a condition of this franchise, Grantee agrees that it shall not engage in the business of sales or repair of television receivers owned by its subscribers; nor shall it be responsible for the operating condition of said receivers; provided, however, that this paragraph shall not apply to converters, decoders, home interactive terminals and other such devices as may be used in furnishing any programming or service via Grantee's cable television system.

SECTION 13 -- EFFEVTIVE DATE

This ordinance shall become effective when all terms and conditions are accepted by both Grantee and Township and shall then be and become a valid and binding contract between the Township and Grantee.

SECTION 14 -- UNLAWFUL ACTS

(A) It shall be unlawful for any person to intercept or assist in intercepting or receiving, whether physically, electrically, acoustically, inductively or otherwise any television signals, radio signals, pictures, programs, sounds or any other information, impulses or intelligence transmitted over Grantee's cable system without full payment to Grantee or its lessee by all parties receiving service. For purposes of this provision "assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacture or distributor for unauthorized reception of any communications service offered over a cable system.

(B) It shall be unlawful for any person, without the consent of Grantee, to willfully tamper with, remove, or injure any cable, wires, or other equipment used for

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the distribution of television signals, radio signals, pictures, programs, sounds, or any other information, impulses, or intelligence transmitted over Grantee's cable system.

(C) It Shall be a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for a term not to exceed six (6) months, or both, for any person to violate any of the provisions of this section.

(D) The prohibitions, penalties and remedies set forth in the Section are in addition to the prohibitions, penalties and remedies for theft of cable service provided by Federal and State law.

SECTION 15 -- SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Federal or State court or administrative or governmental agency of competent jurisdiction, specifically including the FCC, such portion shall be deemed a separate, distinct and independent

provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 16 -- RATES, DEPOSITS

In its rates, charges, service facilities, rule, regulations, or in any other respect, Cable Company shall not make or grant any preferences or advantage to any person nor subject any person to any prejudice or disadvantage with same classifications of service. The Company shall have the right to establish different classifications of service for residential and commercial users and to adopt charges and rate schedules to which any subscriber within said classifications shall be entitled.

Cable Company shall provide an initial rate and service schedule to the Township. These rates and service schedule shall be effective for twelve months after Cable Company's CATV System is operational. In the event Cable Company becomes liable for the payment of copyright royalties, as a result of action by Congress of the United States the total amount of such royalty payment may be passed through to the subscriber, on a prorated basis, in the form of increased rates. Likewise, future addition of programming options will increase rate accordingly.

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Grantee shall maintain records of all users and other complaints regarding the quality of service, equipment, malfunction and similar matters. Grantee shall make every good faith effort to respond to all such complaints within 72 hours after receipt of same, excluding Sundays and Holidays. Written records of all such complaints and resolution of the same shall be maintained by Grantee for a 12-month period after origination of same and shall include notation of the reasons why any response was made later than said 72-hour period. All such records shall be open to inspection by the Township board or its designee at any reasonable time.

Township President

Attest:

Township Clerk

Dated this _____ day of _____, 20 ____

Effective Date

This Ordinance shall be effective 30 days after the publication thereof. Passed and Approved by the Golden Township Board on Nov.9th, 2004 And published in the Oceana Herald-Journal issue Nov. 25th, 2004.