

**FRENCHTOWN CHARTER TOWNSHIP
ORDINANCE TO REGULATE ACCESS TO AND ONGOING USE
OF PUBLIC RIGHTS-OF-WAY BY TELECOMMUNICATIONS PROVIDERS
Ord. No. 185; Date of Adoption: December 1998**

THE CHARTER TOWNSHIP OF FRENCHTOWN HEREBY ORDAINS:

Section 1. Purpose.

The purpose of this Ordinance is to regulate the access to and ongoing use of Public Rights-of-Way by Telecommunications Providers to ensure and protect the public health, safety, and welfare and to exercise reasonable control of the Public Rights-of-Way pursuant to the Charter, the Michigan Telecommunications Act (Act No. 216 of the Public Acts of 1995, as amended, being MCLA 484.2101 et seq.), other state statutes (including, without limitation, MCLA 247.183), and Article VII, Section 29 of the 1963 Michigan Constitution by (1) minimizing disruption of the Public Rights-of-Way by regulating the access to and ongoing use of the Public Rights-of-Way by Telecommunications Providers and the construction, installation, operation, and use of facilities in the Public Rights-of-Way to provide Telecommunication Services, (2) ensuring that the Township and the public are protected from liability for use of the Public Rights-of-Way by Telecommunications Providers, (3) providing for the payment of non-discriminatory permit fees which do not exceed the fixed and variable costs of granting permits and maintaining the rights-of-way used by Telecommunications Providers, and (4) assisting Telecommunications Providers in understanding the Township's requirements for use of the Public Rights-of-Way and providing a fair and non-discriminatory policy for permitting the use of the Public Rights-of-Way by such providers.

Section 2. Reservation of Rights.

The issuance of a Permit or Permits under this Ordinance and the access to and use of the Public Rights-of-Way by a Telecommunications Provider shall not constitute a waiver of or otherwise adversely affect the following reserved rights:

(1) Rights to Require Franchise. Article VII, Section 29 of the 1963 Michigan Constitution requires that all public utilities obtain a franchise to conduct a local business within the Township. The applicability of this requirement to Telecommunications Providers may be challenged under Section 102(dd) of the Michigan Telecommunications Act which purports to define telecommunications services as not constituting public utility services. Due to this and other legal and regulatory issues, and to avoid the expense and delay of litigation that may be unnecessary, the Township hereby determines that Telecommunications Providers shall not be required at this time to obtain franchises for the transaction of local business within the Township. Telecommunications Providers shall be required to obtain and maintain a Permit for access to and ongoing use of the Public Rights-of-Way and to otherwise comply with the terms of this Ordinance. Such a Permit shall not constitute a franchise. The Township reserves the right to require Telecommunications Providers to obtain a franchise in the future to transact local business within the Township.

(2) Rights Regarding Takings Claim. Certain cable or Telecommunications Providers have initiated or supported legal proceedings in which they contend that federal law grants them the right to physically occupy the rights-of-way and other property of a municipality for the purpose of providing telecommunications service without compensating the municipality for the use or value of the property so occupied or the cost of acquiring and maintaining such property. Municipalities dispute that claim. The Township believes that if such a claim were sustained it would, among other things, constitute an unlawful taking by the United States in violation of the Fifth Amendment of the United States Constitution. The legal issues involved in such disputes have not been finally decided. The Township desires to act on applications for Permits granting access to its Public Rights-of-Way at this time rather than wait for determination of these issues, provided this can be done without waiver or loss of any rights of the Township or a Permittee. Therefore, notwithstanding any other provision hereof, a Permittee is not precluded by this Ordinance from seeking relief from the fee provisions of Section 6 from any court or agency of competent jurisdiction. If a Permittee seeks such relief, the Township reserves the right to assert a takings claim and to take all action it deems necessary in support thereof. Neither this Ordinance nor the issuance or acceptance of a Permit hereunder constitutes or will be claimed to constitute a waiver or relinquishment of any rights or defenses of either the Township or the Permittee in connection with these disputed issues, and the acceptance of a Permit constitutes an acknowledgment and agreement thereto by the Permittee.

(3) Option to Obtain Consent Agreement. The Township finds that legislative, legal and regulatory issues in connection with use of the Public Rights-of-Way by Telecommunications Providers and the resulting potential for litigation and delay are likely to have an adverse affect on the development of a healthy, competitive telecommunications infrastructure in the community. This would be detrimental to the Township and its residents as well as to Telecommunications Providers. The issues affect, among other things, both the cost to Telecommunications Providers and compensation to the Township for the maintenance and use of its Public Rights-of-Way. In order to promote certainty, encourage competition and avoid litigation, the Township will, at the request and sole option of an applicant or Permittee, consider entering into a consent agreement for use of the Public Rights-of-Way for the provision of Telecommunications Services on terms and conditions mutually acceptable to the Township and the Telecommunications Provider. It is the Township's intent that such an agreement would satisfy the requirement for a Permit under this Ordinance, and would include, among other things, a fee of up to five percent of the applicable gross revenues of the Telecommunications Provider, which would include the Permit fee; an extended term of up to fifteen (15) years; authorization to conduct a local business in the Township pursuant to Article VII, Section 29 of the 1963 Michigan Constitution; and a covenant to abide by the terms of the agreement as a compromise of disputed issues and uncertain outcomes, notwithstanding the resolution of these legislative, regulatory and legal requirements in the future. A Permittee may request a consent agreement at any time.

Section 3. Terms Defined.

The meaning of the terms used in this Ordinance shall be as follows:

- (1) "Affiliate" and "Affiliated" means any entity Controlling, Controlled by or under common Control with a Permittee.

- (2) "Control," "Controlling," and "Controlled" mean effective control, by whatever means exercised, such as those described in Report and Order and Further Notice of Proposed Rule Making in MM Docket 92-264,8 FCC Rcd 6828 (1993) at paragraphs 22-28 (adopting broadcast transfer of control standards as then in effect).
- (3) "Local Exchange Service" means the provision of an access line and usage within a local calling area for the transmission of high quality two-way interactive switched voice or data communication.
- (4) "Permit" means a non-exclusive permit issued pursuant to this Ordinance for access to and ongoing use of Public Rights-of-Way by Telecommunications Providers for wires, poles, pipes, conduits, or other facilities designed or used to provide Telecommunications Services. The term "Permit" does not include any other permits, licenses, or approvals required by the Township or other governmental entities.
- (5) "Permittee" means a Telecommunications Provider which has been issued a Permit pursuant to this Ordinance.
- (6) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.
- (7) "Public Rights-of-Way" means the public rights-of-way, easements, highways, streets, and alleys within the Township.
- (8) "Telecommunications Act" means Act No. 216 of the Public Acts of 1995, as amended from time to time.
- (9) "Telecommunications Provider" means a Person who provides one or more Telecommunications Services for compensation.
- (10) "Telecommunications Services" means regulated and unregulated services offered to customers for the transmission of two-way interactive communication and associated usage. "Telecommunications Services" does not include one-way transmission to subscribers of video programming or other programming services and subscriber interaction for the selection of video programming or other programming services.
- (11) "Telecommunications System" means facilities designed or used to provide Telecommunications Services.
- (12) "Township" means the Charter Township of Frenchtown.
- (13) "Township Board" means the Township Board of the Charter Township of Frenchtown or its designee. This subsection does not authorize delegation of any decision or function that is required by law to be made by the Township Board. In any case in which a hearing is held pursuant to this Ordinance, the Township

Board may conduct the hearing or, in its sole discretion, may by resolution appoint a committee or subcommittee of the Board or a hearing officer to conduct the hearing and submit a proposal for decision to it, pursuant to procedures established by resolution.

- (14) "Township Supervisor" means the Township Supervisor or his or her designee.

Section 4. Permits.

(1) Permit Required. No Person shall use the Public Rights-of-Way to provide Telecommunications Services without a Permit issued pursuant to this Ordinance or a consent agreement under Section 2(3) of this Ordinance. For purposes of this Ordinance, use of the Public Rights-of-Way includes the installation, construction, maintenance, repair, or operation of a Telecommunications System within the Public Rights-of-Way. In addition, a Person providing Local Exchange Service or other local Telecommunications Services is using the Public Rights-of-Way for purposes of this Ordinance whether such Person owns the facilities in the Public Rights-of-Way outright or obtains the use of or access to the facilities from a third party under lease, contract, interconnection, or wholesale for retail or other similar arrangement. Failure to comply with the Permit requirement of this Section shall constitute a violation of this Ordinance. A Person who violates this requirement shall comply with all requirements of this Ordinance. A Person who violates this requirement shall comply with all requirements of this Ordinance applicable to a Permittee and shall pay the annual fee plus late payment charges as provided by Section 6 for the time period in which the violator did not have a Permit plus the actual costs incurred by the Township in enforcing this Ordinance against the Person.

(2) Consent Agreement. If a Telecommunications Provider negotiates a consent agreement with the Township under the provisions of Section 2(3), and the Township determines that the consent agreement substantially satisfies the obligations of a Telecommunications Provider under this Ordinance, giving due regard to any special circumstances involving the Telecommunications Provider, the consent agreement will be deemed to satisfy the requirement of a Permit under this Ordinance and under the Telecommunications Act. When a consent agreement is no longer in effect, the Telecommunications Provider shall be required to comply with all terms and conditions of this Ordinance as it may be amended from time to time.

Section 5. Permit Application Procedures.

(1) Application. A Telecommunications Provider shall apply for a Permit pursuant to this Ordinance. The application shall be made on an application form provided by the Township. Three (3) copies of the application shall be filed with the Township Clerk, and two (2) additional copies each shall simultaneously be filed with the Township Supervisor and Township Attorney.

(2) Required Information. In addition to other information required by the application form or otherwise required by the Township or this Ordinance, the application shall include, without limitation, the following information:

- (a) The name and address of the applicant and each Person exercising Control over the applicant, and if the applicant or any Person or Persons exercising Control is not a natural Person, each of its officers, directors and stockholders beneficially holding more than five percent (5%) of the outstanding voting shares, or its managers, general partners, and/or limited partners or members holding an equity interest of more than five percent (5%).
- (b) Copies of the most recent financial statements of the applicant.
- (c) A description of (i) the applicant's existing and proposed Telecommunications Services in the Township, (ii) the types of existing and proposed wires and other facilities in the Public Rights of Way, and (iii) a statement whether such facilities are owned by the applicant, or if not owned by the applicant, a copy of the agreement or legal instrument granting the applicant the right to the use of or access to such facilities.
- (d) A map setting forth the specific location of the facilities in the Public Rights-of-Way. The map shall identify the location of above ground and underground facilities.

(3) Application Fee. The application will be accompanied by a non-refundable application fee in an amount established by ordinance or resolution of the Township Board. The non-refundable application fee shall be designed to reimburse the Township for the costs of reviewing an application for a Permit and issuance of a Permit in accordance with the procedures of this Ordinance.

(4) Administrative Completeness. An application shall not be deemed to be filed for purposes of the 90-day permit application review period in Section 251(3) of the Telecommunications Act unless and until the application is determined by the Township

Supervisor to be administratively complete. A determination whether the application is administratively complete shall be made by the Township Supervisor within fifteen (15) business days after the application is received by the Township. If the Township Supervisor determines that the application is not administratively complete, the Township Supervisor shall so advise the applicant in writing and shall identify the items which must be furnished by the applicant for an administratively complete application.

(5) Additional Information. The Township Supervisor may request an applicant to submit such additional information which the Township Supervisor deems reasonably necessary or relevant to review the application. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the Township Supervisor. If the applicant fails to provide the requested additional information by the deadline established by the Township Supervisor, the 90-day period for acting on the

application under Subsection (7) below shall be extended by the number of days after the deadline that the information was provided to the Township Supervisor.

(6) Misleading Statements. A Person who provides information to the Township in connection with a Permit application or any other matters under this Section 5 which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall be in violation of this Ordinance, and shall be subject to all remedies for violation of this Ordinance including, without limitation, denial of the requested action and Permit revocation pursuant to Section 13. Each day that a Person fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Ordinance.

(7) Permit Approval or Denial. Failure of the Township to comply strictly with the procedural requirements of this Section 5 for the review of permit applications shall not invalidate the decision or proceedings of the Township as to a permit.

Amended by Ordinance No. 185-1, January 11, 2000

(8) Conditions. The Township Board may impose conditions on a Permit to protect the public health, safety and welfare. Without limitation, these conditions may include the posting of a bond by the Telecommunications Provider in an amount which shall not exceed the reasonable cost to ensure that the Public Rights-of-Way are returned to their original condition during and after the Telecommunications Provider's access and use.

(9) Modification. The Township Board may, in its discretion, grant a modification of a specific requirement of Section 7, 8, 9 or 11 of this Ordinance if the applicant requests such modification in its application for a Permit and if the applicant demonstrates that: (a) there are exceptional or extraordinary circumstances which warrant a modification, (b) the modification will not be detrimental to the public health, safety, and welfare, and (c) the modification will not impair the intent and purposes of this Ordinance and its several Sections. The application shall describe the applicant's request for a modification and the reasons for the

request with specific Township. A modification granted by the Township Board pursuant to this Section shall expire upon the expiration of the Permit or earlier if so determined by the Township Board. A modification shall modify only those requirements expressly set forth in the approval of the Township Board and shall not modify any other provisions of this Ordinance. If a request for a modification is denied by the Township Board, the Telecommunications Provider shall comply with all requirements of this Ordinance without exception.

(10) Waiver. The Township Board shall grant a waiver of any requirement of this Ordinance if an applicant or Permittee requests a waiver and the Township Board finds that (a) unless waived the requirement will prohibit or have the effect of prohibiting the ability of the applicant or Permittee to provide any Telecommunications Service within the meaning of Section 253(a) of the Federal Telecommunications Act, 47 USC, Section 253(a), (b) the requirement is not within the scope of any state or local authority referenced in Section 253(c) of the Federal Telecommunications Act, 47 USC, Section 253 (c), and (c) the requirement is not

necessary to protect the public safety and welfare or safeguard the rights of consumers. A request for a waiver may be included in an application for a Permit. A request for a waiver shall include a detailed statement of the facts and circumstances forming the basis for the request. If the request is made in connection with an application for a Permit, the provisions of Sections 5(4) through 5(7) shall apply to the request, except that submission of a request for a waiver shall constitute consent that the time periods provided in Section 5(7) for holding a public hearing and acting on an application are extended by ninety (90) days. Sections 5(1), 5(3), and 5(6) shall apply to a waiver request that is not made in connection with a Permit application, and the request may be denied for violation of or failure to comply with any of those provisions. Section 5(7) shall also apply to such a request, with the exception of the 75 and 90 day time periods set forth in that Section, but the Township Board may by resolution establish different or additional procedures for conducting the public hearing and acting on the request.

Section 6. Annual Permit Fees.

(1) Establishment of Annual Fees; Payment. In addition to the non-refundable application fee set forth in Section 5(3) and any other fees for other permits or authorizations required by the Township, a Permittee shall pay an annual fee in an amount established by ordinance or resolution of the Township Board. The annual fee may be modified from time to time by ordinance or resolution of the Township Board. The amount of the annual fee shall not exceed the fixed and variable costs to the Township in maintaining the Public Rights-of-Way used by a Telecommunications Provider unless otherwise permitted by law. The annual fee shall be payable quarterly as follows:

1st quarter (Jan. 1 - March 31)	-	April 30
2nd quarter (April 1 - June 30)	-	July 31
3rd quarter (July 1 - Sept. 30)-		October 31
4th quarter (Oct. 1 - Dec. 31) -		January 31

When a Permit is issued during a calendar year, the annual fee shall be prorated for the balance of the calendar year. In the event that a quarterly payment is not paid when due, the Permittee shall pay a late payment charge of the greater of \$100 or interest at the rate of one percent (1%) over the prime rate then charged by First Chicago-NBD Bank or its successor and computed monthly. A Person who violates this Ordinance by failing to obtain a Permit shall pay the annual fee plus late payment charges, as required by this Section, for the time period in which the violator did not have a Permit plus the actual costs of the Township in enforcing this Ordinance against the Person.

2) Option to Pay Annual Fee Based Upon Gross Revenues. A Permittee, at its option, may elect to pay an annual fee of one percent (1%) of its annual Gross Revenues as set forth below, in lieu of and in full satisfaction of the annual fee established by the Township Board pursuant to Section 6(1). Permittees may elect this annual fee option for administrative convenience in computing the fee or for any other reason.

- (a) An election shall be made within forty-five (45) days of applying for a Permit or at least sixty (60) days before the start of any calendar year after issuance of a Permit.
- (b) Any election, once made, shall continue in effect until the end of the next three calendar years, such that an election made in a permit application in 1999 would continue in effect through the end of the year 2002.
- (c) An election shall be made on a form provided by the Township. Copies of the form shall be submitted in the manner provided in Section 5(1). The Permittee shall supply all information requested on the form and any additional information that the Township Supervisor deems reasonably necessary or relevant, including information on Affiliates of the Permittee relating to the requirements of Sections 6(2)(e), 6(2)(f), 6(2)(g), and 6(3). After providing notice and an opportunity to be heard the Township may reject or revoke an election for failure to comply with this subsection.
- (d) The annual fees shall be paid quarterly by the same due dates as are set forth in Section 6(1) above.
- (e) An election shall apply to all Affiliates of a Permittee. In making its election, a Permittee shall expressly affirm that it has the authority to bind, and does bind, its Affiliates to the obligations of this Section 6(2) including Section 6(2)(f) and the audit and records provisions of Sections 6(2)(g) and 6(3).
- (f) For purposes of this Section 6(2), "Gross Revenues" is defined in Appendix A.
- (g) If a Permittee or any Affiliate of a Permittee refuses to pay the fees due under this option or prohibit or effectively prohibit the Township from auditing the Permittee or its Affiliates under Section 6(3) to verify the accuracy of annual fees, then the Township at its option may revoke the election for all or any portion of the time period in question. The annual fees computed under Section 6(1) shall then become immediately due and payable, less a credit for any sums paid by the Permittee or its Affiliates, plus the late payment charges set forth in Section 6(1) and any additional sums due under the last sentence of Section 6(3).

(3) Records. All records (including those of Affiliates) reasonably necessary to verify the accuracy of annual fees paid by the Permittee under either Section 6(1) or Section 6(2) shall be made available by a Permittee at a location within the Township or within twenty (20) miles of the Township's boundaries. The Township, by itself or in combination with other municipalities, reserves the right to audit any Permittee (or any Affiliate of a Permittee) to verify the accuracy of annual fees paid or to be paid to the Township. Any additional amount due the Township shall be paid within thirty (30) days of submission of an invoice. If the additional amount due exceeds two percent (2%) of the total annual fee which the audit determines should

have been paid for a calendar year, the Permittee shall pay the Township's costs in connection with the audit within thirty (30) days of submission of an invoice.

(4) Other Payments. The non-refundable application fees and the annual fees established pursuant to this Ordinance shall be in addition to any tax, charge, fee, or payment due, or to become due, to the Township by a Permittee under any Township Ordinance or the laws of the State of Michigan.

(5) Misleading Statements. A Person who provides information to the Township in connection with any matter under this Section 6 which contains an untrue statement of a material fact or omits a material fact necessary to make the information not misleading shall be in violation of this Ordinance, and shall be subject to all remedies for violation of this Ordinance including, without limitation, rejection or revocation of an election under Section 6(2) and Permit revocation pursuant to Section 13. Each day that a Person fails to correct an untrue statement of a material fact or the omission of a material fact necessary to make the information not misleading shall constitute a separate violation of this Ordinance.

Section 7. Duration of Permit; Renewal.

A Permit shall remain in effect until December 31 following the fifth anniversary of the issuance of the Permit (unless the Permit expires pursuant to Section 8(11) or the Permit is earlier revoked pursuant to Section 13). Applications for renewal of Permits shall be filed in the same manner as original applications in Section 6 and shall be filed with the Township not less than one hundred twenty (120) days before the expiration of the Permit. The Township expressly reserves all rights to approve, approve with conditions, or deny applications for Permit renewals pursuant to this Ordinance and to impose additional conditions on renewed Permits.

Section 8. Permit Terms and Requirements.

- (1) Non-Exclusive; Additional Permits. A Permit shall be non-exclusive. The Township expressly reserves the right to approve, at any time, additional Permits for access to and ongoing use of the Public Rights-of-Way by Telecommunications Providers and to enter into agreements and grant franchises for such access and use. The issuance of additional Permits, entry into agreements, or grant of franchises shall not be deemed to amend, modify, revoke, or terminate the terms and conditions of any permits previously issued to Telecommunication Providers.
- (2) Expansion Requests. A Permit approved by the Township Board shall authorize access to and ongoing use of the Public Rights-of-Way described in the Permit, subject to strict compliance with the conditions of the Permit, the requirements of this Ordinance, and any other applicable requirements of a Township Ordinance or applicable state and federal law. The Permittee shall not use any Public Rights-of-Way not expressly authorized by the Permit. Any use of the Public Rights-of-Way (including any installation, construction, maintenance, repair, or operation of a Telecommunication System within the Public Rights-of-Way) to provide Telecommunications Services shall be performed only as authorized by

the permit. A Permittee may, however, expand its Telecommunications System to Public Rights-of-Ways not described in its Permit by obtaining approval of an amended Permit from the Township. Such approval may be granted in writing by the Township Supervisor in response to a written request from the Permittee for expansion to specific portions of named Public Rights-of-Way. The Township Board may establish by resolution a non-refundable application fee for such a request. The Township Supervisor may grant, grant with conditions, or deny such request. The Township Supervisor shall not unreasonably deny any request. A denial of any request may be appealed to the Township Board which shall make the final decision. Any expansion into additional Public Rights-of-Way shall be subject to all terms and conditions of the original Permit and this Ordinance including, without limitation, the application of the annual fee to the expanded Public Rights-of-Way used by the Permittee.

- (3) Construction Permit. A Permittee shall not commence construction upon, over, across or under the Public Rights-of-Way in the Township without first obtaining a construction permit as required under applicable Township Ordinances, for construction within the Public Rights-of-Way.
- (4) Lease or Use of Facilities; Overlashing. A Permittee shall not lease, sublease, license or otherwise allow the use of wires, conduit, poles or facilities in the Public Rights-of-Way by a Person who is required to obtain a Permit under Section 4 of this Ordinance or is required by law to obtain the Township's permission or consent to transact local business in the Township, and who lacks such Permit, permission or consent. A Permittee shall not allow the property of a third party or non-Telecommunications System wires or any other facilities to be overlashed, affixed or attached to any portion of a Permittee's Telecommunications System; or allow other actions with a similar result without the written consent of the Township Supervisor.
- (5) "As Built" Maps. Without expense to the Township, a Permittee shall provide the Township with "as-built" maps, records and plans showing its Telecommunications System or portions thereof within the Township, including those of Affiliates used by the Permittee, and maps and descriptive information of facilities of other Persons used by the Permittee. The Township Supervisor may waive part or all of this requirement if satisfactory records of the location of the Telecommunications System were previously provided to the Township. The "as built" maps, records and plans shall be provided within thirty (30) days of the completion of the Telecommunications System and any extensions, additions, or modifications to the Telecommunications System. In addition to the foregoing, a Permittee, without expense to the Township, shall, upon forty-eight (48) hours notice, give the Township access to all "as-built" maps, records, plans and specifications showing its Telecommunications System or portions thereof within the Township. Upon request by the Township, a Permittee shall inform the Township as soon as possible (but no more than one business day after the request) of any changes from previously supplied maps, records, or plans and

shall mark up maps provided by the Township so as to show the location of its Telecommunications System.

- (6) No Recourse. A Permittee shall have no recourse whatsoever against the Township for any loss, cost, expense or damage arising out of the failure of the Township to have the authority to grant all or any part of a Permit or the authority to grant permission to use all or part of the Public Rights-of-Way. A Permittee expressly acknowledges that on accepting a Permit it did so relying on its own investigation and understanding of the power and authority of the Township.
- (7) No Inducement. By acceptance of a Permit, a Permittee acknowledges that it has not been induced to obtain the Permit by any understanding or promise or other statement, whether verbal or written, by or on behalf of the Township or by any third Person concerning any term or condition of a Permit not expressed in this Ordinance.
- (8) Acceptance of Terms and Conditions. Permittee acknowledges by the acceptance of a Permit that it has carefully read its terms and conditions and does accept all of such terms and conditions.
- (9) No Priority. A Permit does not establish any priority of use of the Public Rights-of-Way by a Permittee over any present or future Permittees or parties having agreements with the Township or franchises for such use. In the event of any dispute as to the priority of use of the Public Rights-of-Way, the first priority shall be to the public generally, the second priority to the Township, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between Permittees, other Permit holders, parties having agreements with the Township, and franchisees, as determined by the Township in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- (10) Future Use by Township. A Permittee acknowledges, by accepting a Permit, that it obtains no rights to or further use of the Public Rights-of-Way other than those expressly granted herein. Each Permittee acknowledges and accepts as its own risk that the Township may make use in the future of the Public Rights-of-Way which a Permittee is using or in which a Permittee's Telecommunications System is located in a manner inconsistent with the Permittee's use of such Public Rights-of-Way and that in such event the Permittee will not be entitled to compensation from the Township.
- (11) Expiration of Permit. Unless the Township grants an extension, a Permit shall expire one (1) year from the date of issuance unless prior thereto the Permittee either (1) commences construction, installation, or operation of its Telecommunications System within the Public Rights-of-Way authorized by the Permit and diligently pursues completion of construction or installation, or (b) commences use of the Public Rights-of-Way to provide Telecommunications Services as authorized by the Permit.

Section 9. Use of Public Rights-of-Way By Permittee.

- (1) No Burden on Public Rights-of-Way. A Permittee and its contractors and subcontractors and a Permittee's Telecommunications System shall not unduly burden or interfere with the present or future use of any of the Public Rights-of-Way within the Township. A Permittee shall erect and maintain its Telecommunications System so as to cause minimum interference with the use the Public Rights-of-Way and with the rights and reasonable convenience of property owners. Permittee's cables and wires shall be suspended or buried so as to not endanger or injure Persons or property in the Public Rights-of-Way. If the Township in its reasonable judgment determines that any portion of the Telecommunications System constitutes an undue burden or interference, the Permittee at its sole cost and expense shall modify its Telecommunications Systems or take such other actions as the Township may determine are in the public interest to remove or alleviate the burden, and the Permittee shall do so within the time period established by the Township.
- (2) Restoration of Property. A Permittee and its contractors and subcontractors shall immediately restore, at the Permittee's sole cost and expense and in a manner approved by the Township, any portion of the Public Rights-of-Way that is in any way disturbed, damaged, or injured by the construction, operation, maintenance or removal of the Telecommunications System to as good or better condition than that which existed prior to the disturbance. In the event that the Permittee, its contractors or subcontractors fail to do so within the time specified by the Township, the Township shall be entitled to complete the work and the Permittee shall reimburse the Township for the costs of doing so.
- (3) Easements. Any easements over or under private property necessary for the construction or operation of a Telecommunications System shall be arranged and paid for by the Permittee. Any use or intrusion on private property without an easement or other instrument evidencing permission of the property owner shall constitute a trespass by the Permittee and a violation of this Ordinance. Any easements over or under property owned by the Township other than the Public Rights-of-Way shall be separately negotiated with the Township.
- (4) Tree Trimming. A Permittee may trim trees upon and overhanging the Public Rights-of-Way so as to prevent the branches of such trees from coming into contact with its Telecommunications System. The Permittee shall minimize the trimming of trees to trimming only those trees that are essential to maintain the integrity of its Telecommunications System. No trimming shall be done in the Public Rights-of-Way without previously informing the Township.
- (5) Pavement Cut Coordination/Additional Fees. A Permittee shall coordinate all construction work in the Public Rights-of-Way with the Township's program for street construction, rebuilding, resurfacing and repair (collectively, "Street Resurfacing"). A Permittee shall meet with the official of the Township primarily responsible for the Public Rights-of-Way at least twice per year to this end.

The goals of such coordination shall be to require a Permittee to conduct all work in the Public Rights-of-Way in conjunction with or immediately prior to any Street Resurfacing planned by the Township, and to prevent the Public Rights-of-Way from being disturbed by a Permittee for a period of years after such Street Resurfacing.

In addition to any other fees or payments required by this Ordinance, a Permittee shall pay to the Township the sum of One Thousand Two Hundred Fifty Dollars (\$1,250.00) for each fifty feet (50') cut into or excavation of any Public Rights-of-Way, or portion thereof, which was subject to Street Resurfacing within eighteen (18) months prior to such cut or excavation. This fee is in addition to and not in lieu of the obligation to restore the Public Rights-of-Way and is in addition to all other fees required by this Ordinance.

- (6) Marking. A Permittee shall mark any installations of its Telecommunications System which occur after the effective date of this Ordinance as follows, unless the Township Supervisor gives prior approval indicating otherwise:
- (a) Aerial portions of its Telecommunications System shall be marked with a marker on its lines on alternate poles which shall state the Permittee's name and provide a toll-free number to call for assistance.
 - (b) Direct buried underground portions of its Telecommunications System shall have (i) a conducting wire placed in the ground at least several inches above the Permittee's cable (if such cable is non-conductive), (ii) at least several inches above that a continuous colored tape with the Permittee's name and a toll-free phone number and a statement to the effect that there is buried cable beneath, and (iii) stakes or other appropriate above-ground markers with the Permittee's name and a toll-free number indicating that there is buried telephone cable below.
 - (c) Portions of its Telecommunications System located in conduit, including facilities of others used by a Permittee, shall be marked at each manhole with the Permittee's name and toll-free telephone number to call for assistance.
- (7) Compliance with Laws. A Permittee shall comply with all laws, statutes, ordinances, rules and regulations regarding the installation, construction, ownership and use of its Telecommunications System, whether federal, state or local, now in force or which hereafter may be promulgated (including, without limitation, any ordinance requiring the installation of additional conduit when a Permittee installs underground conduit for its Telecommunications System). Before any installation is commenced, the Permittee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the Township or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. A Permittee shall comply in all respects with applicable codes and industry

standards, including but not limited to the National Electrical Safety Code (latest edition) and the National Electric Code (latest edition). A Permittee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.

- (8) Street Vacation. If the Township vacates or consents to the vacation of Public Rights-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of a Permittee's facilities in the vacated right-of-way, the Permittee shall, as a condition of the Permit, consent to the vacation and move its facilities at its sole cost and expense when ordered to do so by the Township or a court of competent jurisdiction. The Permittee shall relocate its facilities to such alternate route as the Township, acting reasonably and in good faith, shall designate.
- (9) Relocation. If the Township requests a Permittee to relocate, protect, support, disconnect, place underground or remove its facilities because of street or utility work, or other public projects, the Permittee shall relocate, protect, support, disconnect, place underground or remove its facilities, at its sole cost and expense, to such alternate route as the Township, acting reasonably and in good faith, shall designate. The work shall be completed within the time period designated by the Township.
- (10) Public Emergency. The Township shall have the right to sever, disrupt, dig up or otherwise destroy facilities of a Permittee, without any prior notice, if such action is deemed necessary by the Township Supervisor, Police Chief, or Fire Chief or their designees because of a public emergency. Public emergency shall be any condition which, in the opinion of any of the officials named, poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, major watermain breaks, hazardous material spills, etc. The Permittee shall be responsible for repair at its sole cost and expense of any of its facilities damaged pursuant to any such action taken by the Township.
- (11) Miss Dig. If eligible to join, a Permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL Section 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- (12) Use of Existing Facilities; Undergrounding. A Permittee shall utilize existing poles conduits, and other facilities wherever practicable, and shall not construct or install any new, different, or additional poles or other facilities unless expressly authorized by the Permit. Where utility wiring is located underground, either at the time of initial construction or subsequent thereto, a Permittee's Telecommunications System shall also be located underground unless otherwise expressly authorized by the Permit. All undergrounding shall be at the sole cost and expense of the Permittee.

- (13) Underground Relocation. If a Permittee has its facilities on poles of Consumers' Energy Company or another public utility company and Consumers' Energy Company or any other public utility company relocates its facilities underground, the Permittee shall relocate its facilities underground in the same location at Permittee's sole cost and expense.
- (14) Pole/Conduit License Agreement; Notification. If a Permittee forfeits or otherwise loses its rights under a pole/conduit license agreement with Consumers' Energy Company or any other entity, then Permittee shall notify the Township Supervisor in writing within thirty (30) days.
- (15) Identification. All personnel of a Permittee and its contractors or subcontractors who have as a part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing their name and photograph. A Permittee shall account for all identification cards at all times. Every service vehicle of a Permittee and its contractors or subcontractors shall be clearly identified as such to the public with the Permittee's name and telephone number.
- (16) 9-1-1 Emergency Service. As a condition of a Permit, a Permittee providing Local Exchange Service shall provide 9-1-1 service within the Township in accordance with the provisions of the applicable 9-1-1 service plan and the rules and orders of the Michigan Public Service Commission.

Section 10. No Township Liability; Indemnification.

- (1) Township not Liable. The Township, and its officers, agents, elected or appointed officials, employees, departments, boards, and commissions, shall not be liable to a Permittee or to its Affiliates or customers for any interference with or disruption in the operation of a Permittee's Telecommunications System or the provision of Telecommunications Services, or for any damages arising out of a Permittee's use of the Public Rights-of-Way.
- (2) Indemnification. As a condition of a Permit, a Permittee shall defend, indemnify, protect, and hold harmless the Township, its officers agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (including, without limitation, attorneys' fees) arising out of or resulting from the acts or omissions of the Permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent of the fault of the Permittee, its officers, agents, employees, contractors, successors, or assigns.

Section 11. Insurance.

- (1) A Permittee shall obtain and maintain in full force and effect for the duration of a Permit the following insurance covering all insurable risks associated with its ownership or use of its Telecommunications System:

- (a) A comprehensive general liability insurance policy, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Ten Million Dollars (\$10,000,000.00).
 - (b) An Automobile Liability Insurance Policy covering any vehicles used in connection with its activities under its Permit in an amount not less than One Million Dollars (\$1,000,000.00).
 - (c) Workers' Compensation and Employer's Liability Insurance with statutory limits.
- (2) The Township shall be named as an additional insured in all applicable policies. All insurance policies shall provide that they shall not be canceled or modified unless thirty (30) days prior written notice is given to the Township. A Permittee shall provide the Township with a certificate of insurance evidencing such coverage as a condition of issuance of the Permit and shall maintain on file with the Township a current certificate. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.
- (3) Each policy which is to be endorsed to add the Townships as an additional insured hereunder, shall contain cross-liability wording, as follows:
- "In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."
- (4) If the insurance policies required by this Section are written with deductibles in excess of Fifty Thousand Dollars (\$50,000.00), the deductibles shall be approved in advance by the Township. A Permittee agrees to indemnify and save harmless the Township from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Ordinance.
- (5) The Permittee shall require that its contractors and subcontractors working in Public Rights-of-Way carry in full force and effect workers' compensation and employer liability, comprehensive general liability and automobile liability insurance coverages of the types which Permittee is required to obtain under Section 11(1) with appropriate limits of coverage.

- (6) The Permittee's insurance coverage shall be primary insurance with respect to the Township, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions. Any insurance or self-insurance maintained by any of them shall be in excess of the Permittee's insurance and shall not contribute to it.

Section 12. No Assignment or Transfer of Control Without Township Consent.

A Permittee shall not assign or transfer a Permit or any of its rights under a Permit, in whole or in part, voluntarily, involuntarily or by operation of law, including by merger or consolidation or by other means, nor shall there be a transfer of Control of a Permittee or its business, without the prior written consent of the Township, which shall not be unreasonably withheld. The Permittee shall reimburse the Township for reasonable, actual costs, including attorneys fees, incurred in the review of a request by the Permittee for consent to an assignment or transfer of the Permit or a transfer of Control of a Permittee or its business. Notwithstanding anything in this Section to the contrary, the Permittee may grant a security interest in its rights under a Permit in favor of a third party without first obtaining the consent of the Township. If a Permit or any rights thereunder is assigned or transferred in whole or in part with the approval of the Township, the terms and conditions of the Permit and of this Ordinance shall be binding upon the successors and assigns of the Permittee.

Section 13. Revocation.

In addition to all other rights and powers reserved or pertaining to the Township, the Township reserves as an additional separate and distinct remedy the right to revoke a Permit and all rights and privileges of a Permittee in any of the following events or for any of the following reasons:

- (1) A Permittee fails after thirty (30) days prior written notice to comply with any of the provisions of the Permit or this Ordinance (except Section 5(6)); or
- (2) A Permittee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt; or
- (3) All or part of a Permittee's facilities are sold under an instrument to secure a debt and are not redeemed by the Permittee within ninety (90) days from such sale; or
- (4) A Permittee violates Section 5(6) of this Ordinance or otherwise attempts to or does practice any fraud or deceit in its conduct or relations with the Township; or
- (5) The Township condemns all of the property of a Permittee within the Township by the lawful exercise of eminent domain; or
- (6) A Permittee abandons its Telecommunication System or fails to seek renewal of its Permit; or
- (7) A Permittee fails to pay any fines due for violations of this Ordinance; or

- (8) A Permittee fails to pay any civil fines imposed by a court of competent jurisdiction, such as pursuant to an ordinance providing for civil infractions.

No revocation, except for reason of condemnation, shall be effective unless the Township Board shall have adopted a resolution setting forth the reason for the revocation and the effective date, which resolution shall not be adopted without thirty (30) days prior notice to the Permittee and a hearing at which the Permittee receives rudimentary due process.

Section 14. Removal.

- (1) Removal; Underground. Upon revocation of a Permit, or upon expiration of a Permit if the Permit is not renewed, the Permittee may remove any underground Cable from the Public Rights-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the streets along the extension of Cable to be removed. Except as otherwise provided, the Permittee shall not remove any underground Cable or conduit which requires trenching or other opening of the Public Rights-of-Way along the extension of Cable to be removed. The Permittee shall remove, at its sole cost and expense, any underground Cable or conduit which is ordered to be removed by the Township based upon a determination, in the sole discretion of the Township, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the Township to remove Cable or conduit shall be mailed to the Permittee not later than thirty (30) calendar days following the date of revocation or expiration of the Permit. A Permittee shall file written notice with the Township Clerk not later than thirty (30) calendar days following the date of revocation or expiration of the Permit. A Permittee shall file written notice with the Township Clerk not later than thirty (30) calendar days following the date of expiration or termination of the Permit of its intention to remove Cable and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the Township. Removal shall be completed not later than twelve (12) months following the date of revocation or expiration of the Permit. Underground Cable and conduit in the Public Rights-of-Way which is not removed within such time period shall be deemed abandoned and, at the option of the Township, title shall be vested in the Township. For purposes of this subsection (1), "Cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.
- (2) Removal; Above Ground. Upon revocation of a Permit, or upon expiration of a Permit if the Permit is not renewed, a Permittee, at its sole cost and expense, shall, unless relieved of the obligation by the Township, remove from the Public Rights-of-Way all above ground elements of its Telecommunication System, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.
- (3) Permits; Restoration; Completion. A Permittee shall apply for and obtain such encroachment permits, licenses, authorizations or other approval and pay such fees and deposit such security as required by applicable law or ordinances of the

Township, shall conduct and complete the work of removal in compliance with all such applicable law or ordinances, and shall restore the Public Rights-of-Way to the same condition they were in before the work of removal commenced.

Section 15. Other Provisions Not Waived.

- (1) Nothing in this Ordinance shall be construed as a waiver of any ordinances, Charter provisions, codes, or regulations of the Township or the Township's right to require Permittee or Persons utilizing the Telecommunication System or Telecommunications Services to secure appropriate permits or authorization for such use.
- (2) The Township fully reserves its police powers to ensure and protect the public health, safety, and welfare and fully reserves its authority and power to amend this Ordinance at any time. The terms and conditions of any Permit shall be subject to compliance with any future amendments of this Ordinance. The Township fully reserves its right to exercise the reasonable control of the Public Rights-of-Way pursuant to Article VII, Section 29 of the 1963 Michigan Constitution.
- (3) Nothing in this Ordinance or any Permit shall limit any right the Township may have to acquire by eminent domain any property of a Telecommunications Provider.
- (4) Nothing in this Ordinance or any Permit shall limit the authority of the Township to impose a tax, fee, or other assessment of any kind on any Person. A Telecommunications Provider shall pay all fees necessary to obtain all federal, state, and local licenses, permits, and authorizations required for the construction, installation, maintenance, or operation of its Telecommunications System within the Public Rights-of-Way.

Section 16. Severability.

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby, except as provided in this Section. If a court or administrative agency of competent jurisdiction determines, by a final, non appealable order or an order from which no appeal has been taken within the time allowed, that any right or obligation of a Permittee under this Ordinance is invalid, unconstitutional or unenforceable, then the Permit shall become revocable and subject to termination without cause by either the Township or the Permittee on sixty (60) days written notice. In the event of termination under this Section by the Township, the procedures for revocation set forth in Section 13 shall be followed. In the event of termination under this Section by either the Township or the Permittee, the provisions of Section 14 for removal shall apply.

Section 17. Authorized Township Officials.

The Township Supervisor or his or her designee is hereby designated as the authorized Township official to prosecute violations under this Ordinance as provided by this Ordinance.

Section 18. Penalties for Violation.

Any person, firm, corporation, or entity found violating any of the provisions of this Ordinance shall, upon conviction, be punished by a fine of not to exceed \$500.00 or by imprisonment not to exceed 90 days, or by both such fine and imprisonment, at the discretion of the Court. The Court shall order in addition to the other penalties, that the Defendant make full restitution to the Township as specifically permitted by MCL Section 769.1a; MSA Section 28.1073 and otherwise permitted by state law. Each day that a violation shall continue shall constitute a separate offense. The provisions of this Ordinance may also be enforced by an action for injunction, damages, or other appropriate legal action.

Section 19. Effective Date.

This Ordinance shall become effective immediately upon publication in a newspaper of general circulation within the Charter Township of Frenchtown and shall apply to any and all applications pending for a telecommunications permit.

APPENDIX A - GROSS REVENUES

For the purpose of Section 6(2), "Gross Revenues" means all amounts earned, received or accrued by a Permittee and its Affiliates in whatever form and from all sources which are in connection with or attributable to the Permittee's Telecommunications System in Township or to the Permittee's or its Affiliates' provision of Telecommunications Services within the Township.

(1) Gross Revenues shall include, but not be limited to, all revenues from or attributable to customers, other carriers, or third parties whether for services, equipment, directories, publications, or otherwise. It shall include revenues of the types generally described in the Revenue Accounts of the FCC Uniform System of Accounts for Telecommunications Companies as in effect on October 31, 1996, 47 CFR Section 32 Subpart D, whether or not the Permittee or its Affiliates are subject to such System of Accounts, including Accounts 4999 through 5302 and any cross referenced accounts or sub-accounts which may be established by Permittee or its Affiliates relating to the preceding account numbers. Gross Revenues shall include all services provided by a Permittee or its Affiliates, whether or not subject to regulation at the federal, state or local level. For transactions with Affiliates Gross Revenues shall be computed in accordance with the principles set forth in 47 CFR Section 32.27 as in effect on October 31, 1996, including in particular Section 32.27(d), and otherwise at the fair market rate.

(2) Gross Revenues shall include all amounts received, earned, or accrued during a period regardless of whether (a) received or not in the case of amounts earned or accrued; (b) the amounts are to be paid in cash, in trade, or by means of some other benefit to the Permittee or its Affiliates; (c) the goods or services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure; (d) the amounts are characterized, separately identified, or accounted as being for goods, services, or fees to be paid to units of government or government agencies; or (e) the amounts are initially recorded or received by the Permittee or by an Affiliate. However, Gross Revenues shall exclude uncollectible accounts during the period, computed on a fair basis consistently applied.

(3) Gross Revenues shall be computed at the level where first received from an entity not in any way Affiliated with the Permittee and shall not be net of (a) any operating expense; (b) any accrual, including without limitation, any accrual for Boards; or (c) any other expenditure.

(4) Revenues from customers shall be allocated to the Township based upon whether or not the location being provided service pursuant to the Permit is located in the Township and not by any other allocation method. Revenues from Non-Switched Telecommunications Services shall be allocated to the Townships set forth in Appendix A-1.

(5) Revenues whose source cannot be identified with a specific customer or Township shall be allocated to the Township based upon the percentage of customers in the Township compared to the number of customers served by that portion of Permittee's Telecommunications System (including portions outside the Township) to which such revenues are reasonably attributable.

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