

# Ordinance No. 23

## CABLE TELEVISION ORDINANCE TOWNSHIP OF COVERT, VAN BUREN COUNTY, MICHIGAN

Ordinance granting a franchise to Lakeland Cablevision, its successors and assigns, to operate and maintain a cable television system in the Township of Covert, Van Buren County, Michigan.

### THE TOWNSHIP OF COVERT ORDAINS:

Sec. 1. This Ordinance shall be known and may be known and may be cited as the "Covert Township Cable Television Ordinance."

### Sec. 2. DEFINITIONS.

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number, include the plural number. The word "shall" is always mandatory and not merely directory.

1. **Township** is the Township of Covert, a political subdivision in Van Buren County, Michigan.
2. **Company** is the grantee of rights under this Ordinance awarding a franchise and is known as Lakeland Cablevision, 4771 Niles Avenue, St. Joseph, Michigan 49085.
3. **Person** is any person, firm, partnership, association, corporation, company or organization of any kind.
4. **System** shall mean the entire installation located in the Township of Covert.
5. **Regular Subscriber Service** shall mean the distribution of broadcast television and radio, public access, educational access, and government assess signals.

### Sec. 3. GRANT OF AUTHORITY.

Township after consideration at its regular board meeting \_\_\_\_\_, 1988, providing an opportunity for public participation and being satisfied as to the Company's legal, technical, character, financial, and other qualifications, and the adequacy and feasibility of the Company's construction arrangements, hereby grants to the Company a non-exclusive franchise, right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions therof, and additions, thereto, in the Township poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of the Township of a Cable Television System for the purpose of distributing television and radio programs, and various communications and other electronic services to the public. The right so granted includes the right to use and occupy said streets, alleys, public ways and public places and all manner of easements for the purposes herein set forth.

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## **Sec. 4. LIABILITY AND INDEMNIFICATION.**

The Company shall pay and by its acceptance of this franchise the Company expressly agrees that it will pay all damages and penalties which the Township may legally be required to pay as a result of the Company's negligence in the installation, operation, or maintenance of the Cable Television System authorized herein. The Township shall notify the Company's representatives within fifteen (15) days after the presentation of any claims or demands to the Township, either by suit or otherwise, made against the Township on account of any negligence or contract as aforesaid on the part of the Company. The Company shall carry and pay the cost of the following liability insurance in support of its undertaking to hold the Township harmless from loss sustained by either on account of the negligence of the Company, in at least the amounts indicated below, for injury to or death of persons and injury to or destruction of property.

1. \$500,000.00 for property damage to any one person.
2. \$500,000.00 for property damage to any one accident.
3. \$250,000.00 for personal injury to any one person.
4. \$500,000.00 for personal injury to any one accident.

The Company shall comply with all provisions of the Workmen's Compensation Law of Michigan.

## **Sec. 5. SUBSCRIBER COMPLAINTS.**

In order to resolve complaints regarding cable television operations, the company shall maintain a local office presently located at 4771 Niles Avenue, St. Joseph, Michigan 49085, or agent so that cable television maintenance service shall be available to subscribers upon telephone request between the hours of 9:00 A.M. and 6:00 P.M. of each day that the Company is transmitting signals to subscribers. The Company shall attempt to resolve any complaints concerning its cable television operation as expeditiously as possible. Should a subscriber have an unresolved complaint regarding the quality of service, equipment malfunction, or similar matters, the subscriber shall be entitled to file his complaint with the Township Clerk, who shall have primary responsibility and authority for the continuing administration of the franchise and the procedures for resolving complaints. The Clerk may also demand that a Company representative meet with a representative of the Township Board to discuss and resolve such complaint, such meeting to be held within thirty (30) days after demand therefore. The Company reserves the right to make final determination of the disputed claim under this Section. The Company shall notify each subscriber, at the time of initial subscription to the service of the Company, of the procedures for reporting and resolving such complaints.

## **Sec. 6. CONDITION ON ROAD OCCUPANCY.**

1. The Company may enter into one or more contracts with any electric utility, telephone company or the owner or lessee of any poles or posts located within the Township to whatever extent such contract or contracts may be expedient and of advantage to the Company in furnishing the service covered by this Franchise to its subscribers.
2. The Company system, poles, wires and appurtenances shall be located, erected and maintained so that none of it shall endanger or interfere with the lives of persons, or interfere with any improvements the Township may deem proper to make, or hinder

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unnecessarily or obstruct the free use of the streets, alleys, bridges, easements or public property.

### **Sec. 7. APPROVAL OF TRANSFER.**

The Company shall not sell or transfer its system to another, nor transfer any rights under this Franchise to another without approval by the Township, provided that no sale or transfer shall be effective until the vendee, assignee or lessee has filed with the appropriate office of the Township an instrument duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of this franchise and agreeing to perform all conditions thereof. The System shall not be sold or transferred by the company to any outside interest except upon written notice to the Township not less than ninety (90) days before such transfer of sale, and such approval or disapproval by the Township shall not be unreasonably withheld and failure to act within sixty (60) days from receipt of the notice will evidence of approval. The provisions of this Section 7 shall not apply to the collateral assignment of this Franchise for financing purposes.

### **Sec. 8. PAYMENTS TO THE TOWNSHIP.**

1. The Company shall, during each year of operation under this Franchise, pay to the Township of Covert, two (2%) per cent of the annual gross subscriber receipts received by the Company for cable television services rendered to subscribers located with the Township with an annual report showing the Company's annual gross subscriber receipts during the preceding year and such other information as the Township shall reasonably request with respect to properties and expenses related to the Company's services within the Township for such period.
2. Annual gross subscribers receipts shall mean all compensation and other consideration in any form whatever and any contributing grant or subsidy received directly or indirectly by the Company from the supplying regular subscriber service, that is, monthly service sold to all the Company's subscribers, but shall not include revenues derived from per-program or per-channel charges, leased channel revenues, advertising revenues, nor shall it include charges to each subscriber for installation, connection, or relocation, or any other income derived from the cable television system. Provided, however, that the term "Gross Annual Subscriber Receipts" shall not include any taxes on the services furnished by the Company which are or may be imposed directly upon any subscriber by any Township, State or other government unit and collected by the Company for such government unit.

### **Sec. 9. RECORDS AND REPORTS.**

The Company shall keep full, true, accurate and current books of account reflecting its investment and its operations under this Franchise, which books and records shall be kept and maintained by the Company and shall be made available for inspection and copying by the Chairman of the Finance Committee of the Township of Covert, or his authorized representative, at all reasonable times.

### **Sec. 10. RATES.**

The Company's initial monthly rate for regular subscriber service rendered to residential subscriber shall be \$15.00 and shall not exceed rates being charged its other subscribers in nearby townships from time to time. Installation and service charges for additional outlets shall be at the

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discretion of the Company but at the same rates as charged subscribers in the Company's service area.

### Sec. 11. PROCEDURES.

The Company may at any time and from time to time change its monthly rates; provided that the Company shall be required to give the Township Board written notice of any proposed rate increase at least sixty (60) days prior to the proposed effective date of such rate increase.

The Company may impose a late charge not to exceed \$1.00 per month for each invoice not paid within thirty (30) days after mailing, to cover the extra expense involved in handling delinquent payments.

### Sec. 12. FREE CONNECTION AND SERVICE.

Upon request, the Company shall furnish free of charge, outside connections and service to hospitals within the Township and to all public and parochial schools located within the Township and to Township buildings, when other connections are being made within the particular areas of any such hospitals, schools or public buildings; provided, however, any and all inside wiring or work shall be done at the expense of the hospital, school, or Township, as the case may be, and provided that a service cable has previously been installed in reasonable proximity to such hospital, school or public building.

### Sec. 13. FRANCHISE TERM.

The Franchise granted the Company herein shall terminate fifteen (15) years from date of the grant, and may be renewed for a successive fifteen (15) year term the same terms and conditions as contained herein, or on such specified by the Township Board and as are consistent with the requirements of Rule 76.31 (a)(6) of the Federal Communications Commission. The Company shall give not later than ninety (90) days prior to the end of the original term, notice of renewal to the Township, and if the Township fails to respond upon expiration of the ninety (90) days, then the franchise shall be considered renewed for a successive fifteen (15) year term.

### Sec. 14. COMMENCEMENT OF CONSTRUCTION.

Upon grant of this franchise to construct and maintain a cable television system in the Township of Covert, the company may enter into contracts with public utilities, telephone company or other for the use of poles and posts necessary for proper installation of the system, obtain right of way permits from appropriate State, County and Federal officials necessary to cross highways or roads under their respective jurisdiction to supply main trunk lines from the Company's receiving antennas, obtain permission from the Federal Aviation Authority to erect and maintain antennas suitable to the needs of the system and its subscribers and obtain whatever other permits a Township, County, State or federal Agency may require. In construction, installation and maintenance of its system, the Company will use steel, cable, and electronic devices, all of specialized and advanced design and type which should be subject to the approval of the Township Engineer, and in the operation of its system, the Company will employ personnel with training, skill and experience in electronics and communications. However, neither material nor personnel of this sort may be available to the Company for its system in the event of war or other similar national emergency.

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## **Sec. 15. CONSTRUCTION SCHEDULE.**

No later and December 31, 1989 as shown on the attached map, the Company shall extend energized trunk cable to the extent economically feasible. Provided, however, that the Company shall only be required to extend trunk cable to those other sections of its franchise area which meets the general density standard in excess of ten (10) single household subscriber connections per one thousand fifty-six (1056) strand feet of cable or fifty (50) single household subscriber connections per strand mile of cable. Measurement of the general density standard for service to any area added to the Company's existing franchise area during the term of the franchise shall be made from the closest existing point of the Company's cable television system.

1. Whenever the Company shall receive a request for service from at least ten such subscribers within 1056 feet of its distribution cable, it shall extend its system to such subscribers at no cost to the subscriber for system extension other than the usual connection fees for all subscribers, provided that such extensions is technically and physically feasible. The 1056 feet shall be measured in extension length of the Company's cable required for service located within the public way or easement and shall not include length of necessary service drop to the subscriber's residence or premises.
2. No person, firm or corporation in the Company's franchise area shall be arbitrarily refused service. However, for unusual circumstances, such as requirements for underground cable, or more than 200 feet of distance from distribution cable to connection of service to subscribers, or a density of less than ten single household subscriber connections per 1056 feet of strand plant, in order that existing subscribers shall not be unfairly burdened, service may be made available on the basis of an installation or connection payment by the prospective subscriber(s) to the Company, to reimburse the Company for its costs of materials, labor and easements.
3. If the Company does not, of its own accord, proceed to secure the permits and build line extension at such time as the franchise area reaches the required density, the Township Board may request the Company to build plant and deliver service, however, the Company may be permitted to show cause why such extension or expansion should not or cannot be constructed.

## **Sec. 16. MODIFICATION OF FCC RULES.**

Consistent with the requirements of Rule 76.31 (a)(6) of the Federal Communications Commission, any modification of Rule 76.31 resulting from amendment thereto by the Federal Communications Commission shall to the extent applicable be considered as a part of this franchise as of the effective date of the amendment made by the FCC and shall be incorporated in such franchise by specific amendments thereto by the lawful action of the Township Board within one (1) year from the effective date of the Federal Communications Commission's amendment or at the time of renewal of this franchise, whichever occurs first.

## **Sec. 17. PUBLICATION COSTS.**

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The Company shall assume the costs of publication of this franchise as such publication is required by law. A bill for publication costs shall be presented to the Company by the appropriate Township officials which shall be paid at that time by the Company.

### **Sec. 18. ACTIVITIES PROHIBITED.**

The Company shall not allow its cable or other operations to interfere with television reception of persons not served by the Company, nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents of the Township.

### **Sec. 19. LIMITED PURPOSE.**

This franchise is granted by the Township Board of the Township of Covert, to the Company purely for the purpose of using easements, streets, highways of the Township to erect and construct the Company's system and is not intended to convey any copyright or patent privileges whatsoever.

### **Sec. 20. TERMINATION.**

This Ordinance may be declared null and void and the franchise terminated, and the rights and privileges hereby granted, forfeited in the case of the Company, its successors and assigns, shall refuse or neglect to perform the conditions hereunder specified on its part to be performed. Provided, however, the Township shall give the Company written notice of any default on the part of the Company and the Company shall have a reasonable time to correct such default prior to any termination of the Company's franchise.

### **Sec. 21. BOND.**

The Company agrees to execute and deliver to the Township upon demand by the Township, a good and sufficient bond, with corporate surety, in a sum to be agreed upon by the parties, conditioned upon the Company's obligation to remove all poles installed by the Company located in the Township upon termination of this franchise.

### **Sec. 22. SEPARABILITY.**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance 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 affect the validity of the remaining portions hereof.

### **Sec. 23. EFFECTICE DATE.**

This Ordinance is hereby declared to have been approved by the Township of Covert, County of Van Buren, State of Michigan, at a meeting of the Township Board held on September 12, 1988, and shall take effect and be in force from and after date of publication.

Proposed by Trustee Viola Logan  
Seconded by Trustee Geraldine Rood

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AYES: 4  
NAYS: 4  
ABSENT: 1  
ABSTENTION:

APPROVED AS TO FORM:

Jerry Sarno, Supervisor

Ward S. Hamlin, Jr.  
Covert Township Attorney  
401 Center Street  
P.O. Box 30  
South Haven, Michigan 49090

Geraldine Rood, Clerk

Date approved by Covert Township Board- September 12, 1988.

Date of Publication- October 8, 1988