

**BIG LAKE TOWNSHIP
ORDINANCE NO. 1010
CABLE ORDINANCE**

SECTION 1. INTENT

Section 1.1 Findings.

The Township finds that multiple providers may be interested in providing Cable Service in the Township. The Township is authorized to grant one or more nonexclusive Franchises to provide Cable Service in the Township.

Section 1.2 Intent.

The Township's intent in adopting this Cable Ordinance is to further the public interest in the delivery of Cable Service and ensure that all providers of Cable Service are subject to comparable burdens consistent with applicable law. This Cable Ordinance may encourage further development of, and competitive choices for, Cable Service and related communications services in the Township. Such a development could contribute significantly to the communication needs and desires of residents of the Township, benefit local economic development, and improve public and municipal services.

SECTION 2. SHORT TITLE

This Ordinance will be known and cited as the "Cable Ordinance."

SECTION 3. DEFINITIONS

For the purposes of this Cable Ordinance, the following terms, phrases, words, and their derivations must have the meaning given herein. Terms, phrases and words contained in this Cable Ordinance that are not defined herein or in a Franchise will have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the "Cable Act"), or their normal and customary meaning. When not inconsistent with the context, words in the singular number include the plural number. The words "must" and "will" are always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory. All defined terms herein shall be interpreted and applied consistent with the Cable Act.

a. "Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by a Franchise.

b. "Cable System" or "System" means a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, terminal devices, equipment, or facilities located in whole, or in part, in the Township and designed and constructed for the purpose of producing, receiving, transmitting, amplifying, or distributing Cable Service in the Township. A Cable System may be designed and constructed to be capable of delivering services in addition to Cable Services.

c. “Cable Programming Service” means any video programming regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

1. Basic Cable Service;
2. Video programming offered on a pay-per-channel or pay-per-program basis; or
3. A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service consists of commonly-identified video programming and is not bundled with any regulated tier of service.

d. “Cable Service” means: (1) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service; and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

e. “Channel” means a portion of the electromagnetic frequency spectrum which is used in a System and which is capable of delivering a television channel.

f. “Competition” means the offering of Cable Service to substantially the same potential customers in the Township by two (2) or more providers pursuant to Franchises.

g. “Drop” means the cable that connects the ground block on the Subscriber’s Terminal Device to the nearest feeder cable of the System.

h. “FCC” means the Federal Communications Commission, or its lawful successor.

i. “Franchise,” “Cable Franchise” or “Franchise Agreement” means an agreement between the Township and any provider of Cable Service pursuant to this Cable Ordinance granting an initial authorization, or renewal thereof, to provide Cable Service or operate a System in the Township.

j. “Franchise Fee” means any tax, fee, or assessment of any kind imposed by the Township or other governmental entity on a Grantee or Subscriber solely because of their status as such. The term “Franchise Fee” does not include: (i) any tax, fee or assessment of general applicability, but not including a tax, fee, or assessment which is unduly discriminatory against a cable operator or Subscribers; (ii) capital costs which are required by the Franchise related to the provision of public, educational, or governmental access facilities; (iii) requirements or charges incidental to awarding or enforcing the Franchise, including payments for bonds, security funds or letters of credit, insurance, indemnification, penalties or liquidated damages; (iv) any fee imposed under Title 17 of the United States Code.

k. “Grantee” is any recipient of a Franchise, and its agents and employees, lawful successors, transferees or assignees.

l. “Gross Revenues” means all revenues as determined in accordance with Generally Accepted Accounting Principles (“GAAP”) received by a Grantee, or its affiliates, from the sale or provision of Cable Service in the Township. By way of example and not limitation, Gross Revenues shall include franchise fees and any advertising revenues received by a Grantee or its affiliates in connection with the provision of Cable Service. Gross Revenues shall not include bad debt, any taxes or fees on services furnished by Grantee imposed by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit, or revenues received by a Grantee or its affiliates from the provision of Telecommunications Services in the Township.

m. “Installation” means the connection of the System with the Subscriber Terminal Device.

n. “Lockout Device” means an optional mechanical or electrical accessory to a Terminal Device which inhibits the viewing of a certain Channel or Channels provided over the Cable System.

o. “MPUC” means the Minnesota Public Utilities Commission, or its lawful successor.

p. “Normal Business Hours” means those hours during which most similar businesses in the community are open to serve customers.

q. “Normal Operating Conditions” means those service conditions which are within the control of a Grantee. Those conditions which are not within the control of a Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of a Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of a Grantee’s facilities.

r. “Pay Television” means the delivery of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.

s. “PEG Access Facilities” means public, educational, and governmental programming channels, or any equipment or facilities for use of such Channels.

t. “Person” means any natural person, firm, partnership, association, corporation, company, or other legal entity.

u. “Right-of-Way” or “Rights-of-Way” means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the local government unit has an interest, including other dedicated rights-of-way for travel purposes and utility easements of local government units. Right-of-Way does not include the airwaves above a Right-of-Way with regard to wireless or other nonwire telecommunications or broadcast service.

v. “Right-of-Way Ordinance” means an ordinance adopted by the Township creating requirements regarding regulation, management and use of Rights-of-Way, including registration and permitting requirements.

w. “Standard Installation” means any residential installation that can be completed using a Drop of 150 feet or less.

x. “Subscriber” means any Person who is billed for and authorized to receive Cable Service from Grantee in the Township.

y. “Telecommunications Services” shall have the meaning ascribed in 47 U.S.C. § 153(46), as may be explained or interpreted by final action of the FCC.

z. “Terminal Device” means an electronic device that converts signals to a form accessible by the Subscriber.

aa. “Township” means Big Lake Township, Minnesota, a municipal corporation, in the State of Minnesota.

SECTION 4. FRANCHISES

Section 4.1 Generally

a. No Person may provide Cable Service in the Township, nor operate a Cable System in the Township, unless and until such Person is granted a Franchise. All Franchises must be granted pursuant to the provisions of this Cable Ordinance.

b. Any Franchise granted hereunder will authorize the Grantee to deliver Cable Service and construct, operate and maintain a Cable System in the Rights-of-Way in the Township.

c. All Franchises shall be nonexclusive, and Township may grant additional Franchises at any time. To the extent required by applicable law, the Township will not grant a Franchise for an area included in an existing Franchise on terms and conditions more favorable or less burdensome than those in the existing Franchise pertaining to: (1) the area served; (2) public, educational, or governmental access requirements; or (3) franchise fees. Additionally, and beyond the requirements of Minn. Stat. §238.08, the Township agrees that Grantee’s Franchise obligations with regard to ROW access and responsibilities, complimentary service to public buildings, penalties and security, sale or transfer of ownership shall not be more burdensome or less favorable than those imposed an any additional provider

d. This Cable Ordinance and Franchises granted pursuant hereto are intended to comply with Minnesota Statutes Chapter 238. Any applicable requirement established by Minn. Stat. 238.084 not expressly incorporated in this Cable Ordinance or a Franchise shall be deemed incorporated by reference in the Franchise as though fully set forth therein.

e. The performance of any Grantee is subject to periodic evaluation by the Township upon reasonable notice to the Grantee.

Section 4.2 Use of Rights-of-Way

a. Use of the Rights-of-Way to provide Cable Service and operate a Cable System must not be inconsistent with the terms and conditions by which such Rights-of-Way were created or dedicated and is subject to all legal requirements related to the use of such Rights-of-Way.

b. The Township may adopt and enforce a Right-of-Way Ordinance and all Grantees shall be subject to such Right-of-Way Ordinance. A Grantee shall not, through adoption or amendment of a Right-of-Way Ordinance be subject to additional burdens or obligations with respect to usage of the Right-of-Way which exceed burdens on other users of the Right-of-Way under a Right-of-Way Ordinance.

c. The Township may construct, maintain, repair or relocate sewers; grade, pave, maintain, repair, relocate and/or alter any Right-of-Way; construct, repair, maintain or relocate water mains; or construct, maintain, relocate, or repair any sidewalk or other public work.

d. All System facilities, lines and equipment in the Township must be located so as not to obstruct or interfere with the proper use of Rights-of-Way, alleys and other public ways and places, and cause minimum interference with the rights of property owners who abut any of the said Rights-of-Way, alleys and other public ways and places, and not interfere with existing public utility installations. Grantee shall at all times maintain a full and complete set of plans, records and "as built" drawings and/or maps showing the location of the Cable System installed or in use in the Township, exclusive of Subscriber service Drops and equipment provided in Subscribers' homes.

e. If the Township alters, or changes the grade or location of any Right-of-Way, alley or other public way, a Grantee shall, at its own expense, upon reasonable notice by Township, remove and relocate poles, wires, cables, conduits, manholes and other System fixtures, and in each instance comply with the standards and specifications of Township. If Township reimburses other occupants of the Right-of-Way, the affected Grantee will be likewise reimbursed.

f. Grantees shall not place poles, conduits, or other System fixtures where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Right-of-Way shall be so placed as to comply with all lawful requirements of Township.

g. A Grantee will, on request of any Person holding a moving permit issued by the Township, temporarily move wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid in advance by the Person requesting the same, and the Grantee will be given no less than ten (10) business days advance notice to arrange for such temporary changes.

- h. A Grantee will be liable for the failure to exercise reasonable care during construction, operation or maintenance of a System.

Section 4.3 Tree Trimming

A Grantee is authorized to trim any trees upon and overhanging the Rights-of-Way, alleys, sidewalks, or public easements of Township so as to prevent the branches of such trees from coming in contact with wires and cables of a System. The Township may supervise tree trimming activities and condition the authority to trim trees as it deems appropriate.

Section 4.4 Franchise Term.

Franchises will be granted for a term established in the Franchise Agreement. No Franchise may be granted for a period exceeding fifteen (15) years from the date of acceptance by Grantee.

Section 4.5 Regulation of Cable Service.

- a. The requirements of this Cable Ordinance define the Township's regulatory authority over Cable Services and Cable Systems. All Grantees are subject to all lawful exercise of the Township's police power, ordinance-making authority, and power of eminent domain.
- b. The terms of a Franchise Agreement define the contractual rights and obligations of the Township and the Grantee thereunder.

Section 4.6 Initial Franchise Applications.

- a. Upon request or its own initiative, the Township may initiate the cable franchise application process required by Minnesota Statutes Section 238.081. Any Person desiring an initial Franchise must file an application with the Township.
- b. The Township will establish an application fee in an amount to offset the costs of processing applications and awarding a Franchise. Such application fees will not constitute a Franchise Fee.
- c. Upon receipt of an application for a Franchise, Township staff will prepare a report and recommendations to the Township Council regarding the application(s).
- d. A public hearing concerning applications will be held prior to rejection or acceptance of applications, and award of any Franchises.

Section 4.7 Franchise Renewal.

Franchise renewals will be conducted in accordance with applicable laws. To the extent consistent with applicable laws, the Township may require reimbursement of the Township's expenses incurred in processing the renewal.

SECTION 5. CONSTRUCTION STANDARDS

Section 5.1 Registration, Permits and Construction Codes.

a. Within ninety (90) days of acceptance of an initial Franchise, a Grantee shall apply for any necessary governmental permits, licenses, certificates, and authorizations to construct, repair, replace, relocate, operate, maintain or reconstruct a System. Grantees may submit permit applications as construction progresses, as agreed upon with the Township. Grantees must strictly adhere to all state and local laws and building and zoning codes currently or hereafter applicable to location, construction, installation, operation or maintenance of the facilities used to provide Cable Service in the Township.

b. The Township may inspect any construction or installation work performed pursuant to the provisions of a Franchise. The Township may make such tests as it must find reasonably necessary to ensure compliance with the terms of this Cable Ordinance, the Franchise, and applicable provisions of local, state and federal law.

Section 5.2 Repair of Rights-of-Way and Property.

a. Any Rights-of-Way or other property disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of a Cable System shall be promptly and fully restored by the Grantee performing such work, at its expense, to a condition as good as that prevailing prior to such work.

b. If a Grantee fails to promptly perform the restoration required herein, the Township shall have the right, following ten (10) business days written notice to Grantee, to restore Rights-of-Way and other public property to a condition as good as that prevailing prior to the Grantee's work. The Township shall be fully reimbursed by the Grantee for its actual costs relating to such restoration.

Section 5.3 Undergrounding of Facilities.

a. In all areas of the Township where utility facilities are required to be placed underground, or where all other utility lines are underground, all Grantees must construct and install System facilities underground.

b. Facilities such as amplifier boxes and pedestal mounted terminal boxes may be placed above ground, but such facilities shall be of such size, design, and location as approved by the Township. The Township shall not unreasonably withhold approval.

c. A Grantee must bury new Drops within a reasonable time period which must not exceed fifteen (15) business days, subject to weather conditions. In the event the ground is frozen, a Grantee will be permitted to delay burial until the ground is suitable for burial.

Section 5.4 Erection, Removal and Joint Use of Poles.

- a. In any area of the Township where facilities may be located above ground, a Grantee must make use of existing poles and other facilities to the extent technically and economically feasible.
- b. No poles, above-ground conduits, amplifier boxes, similar structures, or other wire-holding structures may be erected or installed by the Grantee on public property without prior approval of the Township with regard to location, height, type and other pertinent aspects.
- c. All facilities are subject to applicable zoning and other land use regulations.

Section 5.5 Safety Requirements.

- a. A Grantee must at all times employ ordinary and reasonable care in the construction, installation and maintenance of System facilities and must use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. All System facilities must at all times be kept and maintained in good condition, order, and repair so that the same must not menace or endanger the life or property of the Township or any Person.
- b. A Grantee must install and maintain equipment and facilities in accordance with all applicable federal, state and local laws and regulations, and the requirements of the National Electric Safety Code and in such manner that they will not interfere with private radio, police and fire communications or any installations of Township or of any public utility serving Township.

SECTION 6. SYSTEM DESIGN AND EXTENSION PROVISIONS

Section 6.1 System Capacity and Channels.

At a minimum, any Franchise granted hereunder shall describe the Grantee's network in terms of the total System capacity such as the total number of analog and digital video channels which can be provided, and the minimum number of video channels which will be offered.

Section 6.2 Cable Service Availability.

- a. Any Franchise granted hereunder may authorize Cable Service throughout the Township, or a portion thereof.
- b. Each Franchise will identify a required service area. A Grantee will be required to offer Cable Service to all dwellings within its required service area. Franchises may authorize and require Cable Service throughout the corporate boundaries of the Township, as it exists from time to time, or such smaller area as the Township reasonably and lawfully deems appropriate and is agreeable to the Grantee.

c. Any Franchise granted hereunder may establish requirements for the extension of the System and provision of Cable Service beyond the initially required service area.

d. Cable Service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides.

Section 6.3 Non-Standard Installations. A Grantee must provide Cable Service to any Person requesting other than a Standard Installation except that a Grantee may charge for the incremental increase in material and labor costs incurred above the cost of making a Standard Installation.

Section 6.4 Technical Standards. Any System offering Cable Service in the Township must comply, at minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time.

Section 6.5 Special Testing. Town may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or unresolved complaints. The Town shall arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. The Town shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, Town wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer mutually selected by Town and Grantee based on a mutually agreed upon scope of work. In the event that testing reveals that the source of the technical difficulty is within the Grantee's control, the cost of the testing must be borne by the Grantee. If the testing reveals the difficulties to be caused by factors that are beyond Grantee's control, the cost of the testing must be borne by the Township.

Section 6.6 FCC Reports.

Grantees must, upon written request from Township, file all applicable required FCC technical reports with the Township.

Section 6.8 Lockout Device.

Grantees shall provide by sale or lease a Lockout Device to any requesting Subscriber.

Section 6.9 Emergency Alert System. Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System ("EAS").

If the Grantee provides an EAS, then the Grantor shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. The Grantor shall hold the Grantee, its employees, officers and assigns harmless from any claims or costs arising out of use of the EAS, including, but not limited to, reasonable attorneys' fees and costs.

SECTION 7. CONSUMER PROTECTION AND CUSTOMER SERVICE STANDARDS

Grantee shall comply with the FCC Customer Service Rules at 47 CFR §76.309, as may be amended from time to time. In the event the FCC Customer Service Rules are amended such that they conflict with or differ from any of the requirements of this Section 7, the terms of the FCC Customer Service Rules shall control.

Section 7.1 Enforcement of Customer Service Standards. This Section 7 shall be fully applicable except during periods when Competition exists in the Township. The Township will stay and not enforce this Section 7 during periods when Competition exists in the Township, except that the Township may initiate enforcement of this Section while Competition exists in the event the Township receives, in any thirty (30) day period, at least five (5) written complaints with respect to each competitor concerning similar customer service issues. In such case, the Township Council may initiate enforcement of this Section by adopting a Resolution indicating the basis for initiating enforcement.

Section 7.2 Regulation of Cable Service Rates.

a. Grantor shall have the right to exercise rate regulation only to the extent expressly authorized by law, or to refrain from exercising such regulation for any period of time, at the sole discretion of the Grantor. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC. Nothing herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions.

Section 7.3 Sales Procedures.

A Grantee may not exercise deceptive sales procedures when marketing any of its Cable Services within Township. Grantees may conduct marketing consistent with local ordinances and other applicable laws and regulations.

Section 7.4 Telephone Inquiries and Complaints.

a. Grantees must maintain local, toll-free or collect call telephone access lines which will be available to its Subscribers 24 hours a day, seven days a week.

b. During Normal Business Hours, trained representatives of Grantee must be available to respond to Subscriber inquiries. Grantees must ensure that: (1) an adequate number of trained company representatives will be available to respond to customer telephone inquiries during Normal Business Hours, and; (2) after Normal Business Hours, the access line will be answered

by a trained company representative or a service or an automated response system such as an answering machine.

c. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

Section 7.5 Telephone Answer Time and Busy Signals.

a. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, must not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time must not exceed thirty (30) seconds.

b. These standards must be met no less than ninety (90) percent of the time under Normal Operating Conditions, measured on a quarterly basis. Under Normal Operating Conditions, the customer must receive a busy signal less than three (3) percent of the time.

Section 7.6 Installation, Outage and Service Calls.

Under Normal Operating Conditions each of the following standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

a. Excluding conditions beyond the control of a Grantee which prevent performance, Grantees will begin working on service interruptions promptly, and in no event later than twenty-four (24) hours after the interruption becomes known, and Grantees must begin actions to correct other service problems the next business day after notification of the service problem and resolve such problems as soon as is reasonably possible;

b. The “appointment window” alternatives for Installations, service calls, and other Installation activities will be either a specific time or, at maximum, a four-hour time block during Normal Business Hours. Grantees may schedule service calls and other installation activities outside of Normal Business Hours for the convenience of the customer;

c. A Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment;

d. If a representative of a Grantee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time during Normal Business Hours which is convenient for the customer.

Section 7.7 Complaint and Other Service Records.

a. Upon written request by the Township, and subject to a Grantee’s obligation to maintain the privacy of certain information, Grantees must prepare and maintain written records of all written complaints received and the resolution of such complaints, including the date of such resolution.

- b. Written complaint records must be on file at the office of a Grantee.

Section 7.8 Subscriber Contracts.

Grantees must provide to the Township upon request any standard form Subscriber contract utilized. If no such written contract exists, Grantee must provide a document completely and concisely stating the length and terms of the Subscriber contract offered to customers.

Section 7.9 Video Programming.

All Franchises will identify the initial video Channels to be provided by a Grantee. To the extent required by applicable law and 47 U.S.C. § 544(b), prior Township approval is required for any change in the broad categories of video programming, provided that such approval shall not be unreasonably withheld. Notification of such changes shall be deemed provided when a Grantee provides 30 day notice of Channel changes to Township pursuant to Section 7.10, and approval by Township shall be deemed granted unless such Grantee is otherwise notified in writing within 14 days. Individual programming decisions may be made in the discretion of a Grantee.

Section 7.10 Billing and Subscriber Communications.

- a. A Grantee must give the Township and Subscribers thirty (30) days advance written notice of any changes in rates, programming services, or channel alignments.
- b. Bills must be clear, concise, and understandable. Bills must clearly delineate all activity during the billing period, including optional charges, rebates, and credits. In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within 30 days.

Section 7.11 Refunds and Credits.

- a. If a Grantee is aware that its Cable Service is interrupted or discontinued for 24 or more consecutive hours, its Subscribers must be credited pro rata for such interruption. Credits must be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted. For this purpose, every month will be assumed to have thirty (30) days.

Section 7.12 Additional Customer Service Requirements.

The Township may adopt additional or modified customer service requirements to address subscriber concerns or complaints.

SECTION 8. COMMUNITY SERVICES

Section 8.1 PEG Access Facilities.

Franchises will establish obligations to provide PEG Access Facilities to meet the community's needs and interests.

Section 8.2 Service to Public or Educational Institutions.

Franchises will establish obligations for the provision of free or reduced cost services to identified public or educational institutions.

SECTION 9. ADMINISTRATION PROVISIONS

Section 9.1 Administration of Franchise.

a. The Township Board will have continuing regulatory authority over Cable Systems, Cable Services, and Franchise compliance and will have the sole authority to hold hearings and take final enforcement action as provided in Section 14.1c.-d or revoke a Franchise as provided in Section 14.2.

b. The Township Board may delegate this regulatory supervision by giving written notice of such delegation to affected Grantees. Grantees must cooperate with any such delegatee of the Township Board.

Section 9.2 Franchise Fee.

a. A Grantee must pay to the Township a Franchise Fee in the amount established in the Franchise Agreement.

b. Franchise Fee payments are payable quarterly. Franchise Fee payments must be made within sixty (60) days of the end of each calendar quarter.

c. Each Franchise Fee payment must be accompanied by a report certified by an officer of the Grantee, in form reasonably acceptable to Township, detailing the computation of the payment. All amounts paid must be subject to audit and recomputation by the Township and acceptance of any payment must not be construed as an accord that the amount paid is in fact the correct amount.

d. A Grantee may designate that portion of a Subscriber's bill attributable to the Franchise Fee as a separate line item on the bill.

Section 9.3 Access to Records.

Subject to the privacy provisions of the Cable Act and confidentiality designation of certain records under the Minnesota Data Practices Act, Min. Stat. Ch. 13 or other applicable law, throughout the term of this Franchise, the Grantee agrees that the Township, upon reasonable prior written notice of thirty (30) days to the Grantee, and no more than once per calendar year, may review such of the Grantee's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor and enforce Grantee's compliance with the provisions of this Franchise ("Records"). Such notice shall specifically reference the section(s) of the Franchise that are under review so

that the Grantee may organize the necessary Records for easy access by the Township. Grantee shall make available for review such Records as soon as possible and in no event more than thirty (30) days unless Grantee explains that it is not feasible to meet this timeline and provides a written explanation for the delay and an estimated reasonable date for when such information will be provided. All such Records pertaining to financial matters that may be the subject of an inspection by the Township shall be retained by the Grantee for a period of six (6) years, pursuant to Minnesota Statutes Section 541.05. The Grantee shall not deny the City access to Records on the basis that they are under the control of any parent corporation, affiliated entity or a third party. Grantee shall provide all Records requested by the Township or Township's agent in the following manner: 1) at a conference room in Town Hall; or 2) at Grantee's office located in or near the Township; or 3) via mail or electronic communication acceptable to the Township and Grantee. All Records shall be subject to the provisions of this Franchise and applicable law regarding confidentiality.

SECTION 10. INDEMNIFICATION AND INSURANCE

Section 10.1 Indemnification of the Township.

a. A Grantee must indemnify, defend and hold harmless the Township, its officers, boards, committees, commissions, elected officials, employees and agents from and against any loss or damage to any real or personal property of any Person, or for any injury to or death of any Person, arising out of or in connection with the Grantee's intentional misconduct, willful neglect or negligence in the construction, operation, maintenance, repair or removal of, or other action or event with respect to a System or other facilities used by a Grantee to deliver Cable Service.

b. A Grantee must indemnify, defend, and hold the Township, its officers, boards, committees, commissions, elected officials, employees and agents, harmless from and against all lawsuits, claims, actions, liability, damages, costs, expenses or penalties incurred as a result of the award or enforcement of a Franchise.

c. A Grantee shall not be required to provide indemnification or defense for any intentional misconduct, willful neglect or negligence by an Indemnified Party, for any enforcement action taken by the Township against a Grantee, or for any claim based solely on the Township's operation of PEG Access Facilities, delivery of PEG Access programming, or EAS messages originated by the Township. Subject to the limitations in Minnesota Statutes Chapter 466, the Township shall indemnify, defend and hold a Grantee harmless from any damage resulting from any intentional misconduct, willful neglect or negligence by the Township, its officers, boards, committees, commissions, elected officials, employees and agents, in utilizing PEG Access Facilities or Channels, delivering EAS messages originated by the Township, or in connection with work performed on or adjacent to the System.

d. With respect to each claim for indemnification:

1. the Township must promptly notify the Grantee in writing of any suit, claim or proceeding which gives rise to such right;

2. the Grantee must afford the Township an opportunity to participate in any compromise, settlement or other resolution or disposition of any suit, claim or proceeding; and
3. the Township must cooperate with reasonable requests of the Grantee, at Grantee's expense, in its participation in a suit, claim or proceeding.

Section 10.2 Insurance.

- a. A Grantee must obtain and maintain in full force and effect, at its sole expense, a comprehensive general liability insurance policy, in protection of the Grantee, and the Township, its officers, elected officials, boards, commissions, agents and employees for damages which may arise as a result of operation of the System or delivery of Cable Service.
- b. The policies of insurance must be in the sum of not less than One Million Dollars (\$1,000,000.00) for personal injury or death of any one Person, and Two Million Dollars (\$2,000,000.00) for personal injury or death of two or more Persons in any one occurrence, Five Hundred Thousand Dollars (\$500,000.00) for property damage to any one person and Two Million Dollars (\$2,000,000.00) for property damage resulting from any one act or occurrence.
- c. The insurance policy must be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance must contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after sixty (60) days advance written notice have been provided to the Township.

SECTION 11. FRANCHISE TRANSFER OR ABANDONMENT

Section 11.1 Abandonment of Service. A Grantee may not discontinue the provision of Cable Service without having first given three (3) months written notice to the Township.

Section 11.2 System Removal After Abandonment, Termination or Forfeiture.

a. In the event of termination or forfeiture of the Franchise or abandonment of the System, the Township may require the Grantee to remove all or any portion of its System from all Rights-of-Way and public property within the Township; provided, however, that the Grantee will not be required to remove its System to the extent it lawfully provides Telecommunications Services over the System.

b. If the Grantee has failed to commence removal of its System, or such part thereof as was designated by the Township, within one hundred twenty (120) days after written demand for removal is given, or if the Grantee has failed to complete such removal within twenty-four (24) months after written demand for removal is given, the Township may apply funds secured by the Franchise toward removal and/or declare all right, title, and interest in the System to be in the Township with all rights of ownership including, but not limited to, the right to operate the System or transfer the System to another for operation by it pursuant to the provisions of 47 U.S.C. § 547.

Section 11.3 Sale or Transfer of Franchise.

a. No sale or transfer of ownership of a Grantee other than a sale or transfer to an entity controlling, controlled by, or under common control with Franchisee, nor sale or transfer of a Franchise, is permitted without Township approval. Any sale or transfer of stock in a Grantee creating a new controlling interest constitutes a sale or transfer of ownership. A “controlling interest” includes majority stock ownership or a lesser amount sufficient to confer actual working control in whatever manner exercised. Township approval is not required where a Grantee grants a security interest in its Franchise or System to secure an indebtedness.

b. A Grantee must file a written request with the Township prior to any transaction described above. The Township will approve or deny a transfer request within one hundred and twenty (120) days of receipt of a written request. The Township will not unreasonably withhold its approval.

c. In no event will a transaction be approved unless the transferee becomes a signatory to, and assumes all rights and obligations under, the Franchise.

d. In the event of any proposed transaction described above, the Township will have the right to purchase the System. In the event a Grantee has received a bona fide offer for purchase of its System, the Township shall have the right to purchase for the price which the proposed assignee or transferee agreed to pay. The Township will be deemed to have waived its right to purchase the System in the following circumstances:

1. The Township does not notify the Grantee in writing, within 90 days of notice, that it intends to exercise its right of purchase; or
2. The Township approves the transaction.

SECTION 12. PROTECTION OF INDIVIDUAL RIGHTS

Section 12.1 Discriminatory Practices Prohibited.

No Grantee may deny Cable Service or otherwise discriminate against citizens on the basis of race, color, religion, national origin, sex, age, status as to public assistance, affectional preference, or disability.

Section 12.2 Subscriber Privacy.

a. Grantees must comply with the subscriber privacy-related requirements of 47 U.S.C. § 551.

b. No signals of a Class IV Channel may be transmitted from a Subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written authorization of the Subscriber.

c. No lists of the names and addresses of Subscribers or any lists that identify the viewing habits of Subscribers may be sold or otherwise made available to any party other than to Grantee and its employees for internal business use, and also to the Subscriber subject of that information, without the express written authorization of the Subscriber.

d. Written Subscriber authorization is limited to a period not to exceed one (1) year. Subscriber authorization may be renewed at the option of the Subscriber. No penalty may be invoked for a Subscriber's failure to provide or renew such authorization. The authorization must be revocable at any time by the Subscriber without penalty of any kind whatsoever.

e. Written authorization from a Subscriber is not required for conducting System-wide or individually addressed electronic sweeps to verify System integrity or monitor for billing purposes. This information must be kept confidential subject to the provision set forth in Subparagraph (b) of this Section.

SECTION 14. ENFORCEMENT OF THE CABLE ORDINANCE OR FRANCHISE

Section 14.1 Violations or Other Occurrences Giving Rise to Enforcement Action.

a. In order to take enforcement action pursuant to this Cable Ordinance or a Franchise, the Township must provide the Grantee with written notice of the violation or other occurrence giving rise to the Township's action.

b. The Grantee shall have thirty (30) days subsequent to receipt of the notice to cure the violation or occurrence giving rise to the Township's action. Alternatively, the Grantee may, within seven (7) days of receipt of notice from the Township, notify Township in writing that there is a dispute as to whether a violation or failure has in fact occurred. Such written notice by the Grantee to the Township shall specify with particularity the matters disputed by Grantee.

c. In the event a Grantee does not timely cure to the Township's satisfaction the violation or other occurrence giving rise to the Township's action, or timely disputes whether a violation has occurred, the Township will schedule a public hearing affording Grantee due process. The Township will endeavor to schedule the hearing for a date within ninety (90) days of the initial violation notice. Notice of the hearing must be provided to the Grantee.

d. At the completion of the hearing, the Township will issue written findings of fact and its final determination.

e. In the event Township determines that no violation has taken place, the Township will rescind the notice of violation in writing.

Section 14.2 Franchise Revocation.

a. In addition to all other rights and remedies that the Township possesses pursuant to law, equity and the terms of the Franchise Agreement, the Township may revoke or terminate the Franchise, and all rights and privileges pertaining thereto, in accordance with Section 14.1 if the Township determines that:

1. The Grantee has violated any material requirement or provision of the Cable Ordinance or a Franchise and has failed to timely cure; or
2. The Grantee has attempted to evade any of the material provisions of the Cable Ordinance or a Franchise; or

3. The Grantee has practiced fraud or deceit upon the Township or a Subscriber; or
 4. The Grantee has filed for bankruptcy.
- b. During any revocation proceeding and any appeal period, the Franchise will remain in full force and effect unless the term thereof sooner expires.

Section 14.3 Compliance with Federal, State and Local Laws.

The Township and Grantee will conform to state laws and rules regarding Cable Service or the System not later than one year after they become effective, unless otherwise stated, and conform to federal laws and regulations regarding cable as they become effective.

THE FOREGOING ORDINANCE WAS DULY ADOPTED this 22nd day of April, 2020 by the Town of Big Lake Board.

The motion for adoption of the foregoing ordinance was duly moved by Supervisor _____, seconded by Supervisor _____. After discussion thereof and upon a vote taken thereon, resulting in the following votes:

Bruce Aubol	in favor <u> </u> ; against <u> </u> ; abstained <u> </u>
Larry Alfords	in favor <u> </u> ; against <u> </u> ; abstained <u> </u>
Dean Brenteson	in favor <u> </u> ; against <u> </u> ; abstained <u> </u>
Robert Hofer	in favor <u> </u> ; against <u> </u> ; abstained <u> </u>
Norman Leslie	in favor <u> </u> ; against <u> </u> ; abstained <u> </u>

Bruce Aubol, Chairman

Attest:

Brenda Kimberly-Maas, Town Clerk

STATE OF MINNESOTA

SS

COUNTY OF SHERBURNE

On this 22nd day of April, 2020, within and for said County, personally appeared Bruce Aubol and Brenda Kimberly-Maas, to me personally known, being each duly sworn, did say that they are respectfully the Chairman of the Board and Town Clerk, of the Town of Big Lake, the municipal Township named in the foregoing instrument, was signed and sealed on behalf of said Township authority of its Town Board and they acknowledged said instrument to be the free act and deed of said municipal Township.

SEAL

NOTARY PUBLIC