

ORDINANCE NO. 1-400

CABLE COMMUNICATIONS ORDINANCE

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ORDINANCE NO. 1-400

AN ORDINANCE TO PROMOTE AND ENCOURAGE THE FURNISHING OF A HIGH QUALITY  
BUT ECONOMICAL CABLE COMMUNICATIONS SERVICE TO THE RESIDENTS OF THE  
CITY AND TO REGULATE SUCH SERVICE IN THE PUBLIC INTEREST

THE CITY OF ISHPEMING ORDAINS THAT ORDINANCE NO. 1-400 IS HEREBY AMENDED TO READ AS FOLLOWS:

ARTICLE I - SHORT TITLE, PURPOSE, NECESSITY OF FRANCHISE, AND DEFINITIONS

1.1 Short Title

This Ordinance shall be known and cited as the Cable Communications Ordinance.

1.2 Purpose

The purpose of this Ordinance is to promote and encourage the furnishing of a high quality but economical cable communications service to the residents of the City of Ishpeming and to regulate such service in the public interest.

1.3 Necessity of Franchise Agreement

No person shall own or operate a Cable System, as defined herein, in the City, except by Franchise Agreement granted by the City, which Franchise Agreement shall comply with all the requirements of this Ordinance.

1.4 Definitions

For the purpose of this Ordinance, the words "shall" and "will" are mandatory and "may" is permissive. Further definitions and modifications to these definitions may appear in a Franchise Agreement. Words not defined shall be given their common and ordinary meaning as used by the Cable Industry. All definitions contained in this Cable Communications Ordinance or in the Franchise Agreement which are inconsistent with the Cable Communications Policy Act of 1984 shall be deemed to be pre-empted and superseded by said Act; otherwise, the definitions contained in this Ordinance shall control as between this Ordinance and any Franchise Agreement.

1. Applicant - Person or company submitting a proposal for a Franchise Agreement of a Cable Communications System.
2. Basic Service - All subscriber services provided by the Grantee, including the delivery of audio and visual broadcast signals, covered by the regular monthly charge, if any, paid by all subscribers, excluding optional services for which a separate charge is made.
3. Cablecast - To distribute programs (both from broadcasting sources and original programs) through the Cable System by means of coaxial cable or other electrical conductors or fiber optical transmitters.
4. Cable Communications Service - The business, in whole or in part, of receiving directly or indirectly over the air, and amplifying or otherwise modifying signals, transmitting programs broadcast by one (1) or more signals, sound signals, pictures, visual images, digital signals, telemetry, or any other type of closed circuit transmission by means of electrical or light impulses, whether or not directed to originating signals or receiving signals off the air, and redistributing such signals by wire, cable, or other means to members of the public.
5. Cable Communications System, Cable System, CATV or System - A system of coaxial

cables or other electrical conductors or fiber optical cables and equipment used or to be used to originate or receive television or radio signals directly or indirectly off the air and to transmit them via cable or other means to subscribers for a fixed or variable fee, including the origination, receipt, transmission, and distribution of voices, sound signals, pictures, visual images, digital signals, telemetry, or any other type of closed circuit transmission by means of electrical impulses, whether or not directed to originating signals or receiving signals off the air.

6. Community Specific Cablecasting - Programming or channel allocation which selectively cablecasts to individual communities to meet their unique needs or interests. "Community" refers to any unit with common needs or interests such as individual cities or neighborhoods, school districts or groups with common characteristics.
7. Connection - The attachment of the drop to the first radio or television set of the subscriber.
8. Converter - A device, sometimes a box or a digital selector, used to convert television signals of one frequency to another. Cable Systems install converters on T.V. sets in homes where more than twelve channels are carried on a single cable. This converter also protects signals from the interference of strong local signals by converting the cable channel to a channel where no local broadcast signals exist. The converter may also allow reception of additional programming and/or services.
9. Drop - The cable that connects the subscriber terminal to the nearest feeder cable of a Cable System.
10. FCC - The Federal Communications Commission and any legally appointed, designated or elected agent or successor.
11. Feeder - Intermediate line of Cable System that carries signals from trunk line to drops.
12. Franchise - The rights, privileges or power of public concern granted to the City pursuant and subject to the Michigan Constitution, and all statutes, laws, rules, regulations and cases of the State of Michigan and the United States.
13. Franchise Agreement - Agreement between cable operator and the City setting specific rights and responsibilities of each for the construction and operation of Cable System within the City.
14. Franchisee or Grantee - A person to whom a cable communications Franchise Agreement has been granted.
15. Fraud or Deceit - Shall not be limited to common law fraud and deceit but shall include the meaning of those words under federal securities law.
16. Headend - The equipment of the Antenna site in a master antenna and Cable System. The point of origination that collects all the signals (from the broadcast stations, cable stations, and satellite stations) and sends them to the subscribers.
17. Hub - One or two or more elements in a large Cable System from which trunk lines originate, from which programming and data is sent out via trunk lines, and where

upstream messages are received and where switching is accomplished. Large Systems have multiple hubs linked to each other and/or to the master headend.

18. Installation - The connection of the System from feeder cable to the point of connection.
19. Interactive System - A two-way operational System. See also "two-way capability".
20. Local Gross Subscriber Revenues - All gross revenues of the Franchisee from subscribers within the City including local gross revenues from pay TV in excess of the fair market value royalty paid by Franchisee therefor, provided, however, that revenue resulting from sales of tangible property shall not be deemed "local gross subscriber revenues" for the purpose of computing any franchise fee pursuant to this ordinance. To the extent that the Franchisee's Books of Account do not reflect the source of any gross subscriber revenues, or where the source thereof may not be reasonably determined, that portion of gross subscriber revenues allocable to the City shall be based on the ratio of the number of subscribers who receive basic service or its equivalent in the City to the number of subscribers outside the City.
21. Local Public Access - Refers to the public opportunity to use cable channels which are dedicated to that purpose and are not under control of Grantee.
22. Pay TV - Cable channels that require an additional subscriber fee.
23. Person - An individual, partnership, corporation, or other entity as the context may indicate.
24. Producer - A user providing input services to the Cable System for receipt by subscribers.
25. Public Access Channels - Channels which are dedicated to the public interest, according to the following categories:
  - (a) community
  - (b) education
  - (c) local government
  - (d) health and medical
  - (e) other (as determined by the City to be in the public's general interest, health, safety and welfare)
26. Public Property - Any real property owned by any Governmental agency.
27. Resident - An individual, partnership, corporation, or other entity as the context may indicate, who has a permanent or temporary residence, dwelling abode, domicile or place of business within the City of Ishpeming.
28. Street, Highway - The surface of and the space above and below any public street, road, highway, freeway, land, path, public way, alley, court, sidewalk, boulevard, parkway, drive, or any easement or right of way now or hereafter held by the City which shall, within its proper use and meaning in the sole opinion of the City, entitle Grantee to the use thereof for the purpose of installing, or transmitting over, poles, wires, cables, conductors, ducts, conduits, vaults,

manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.

29. Subscriber - A person who pays an installation charge and/or monthly fee to a Cable System operator for connections to the System and for programs and services carried by or through the Cable.
30. Subscriber Terminal - The point at which a fixture, clamping screw, bracket or similar device facilitates the completion of the connection of extension wiring from the Franchisee's distribution cable to a subscriber's premises.
31. City - The Local Government of the City of Ishpeming and all the territory within its corporate limits.
32. City Council - The governing body of the City of Ishpeming.
33. Trunk, Trunk Line - Main line of Cable System that carries signals from headend to extremities of Cable System.
34. Two-Way Capability - Ability of Cable System to conduct signals to the headend, as well as away from it. Two-way bi-directional Systems carry data and audio/visual television signals in either direction (upstream and downstream). This is called "interactive".
35. User - A person or organization utilizing a System channel as a producer, for purposes of production and/or transmission of material, or as a subscriber, for purposes of receipt of material.

## ARTICLE II - SELECTION OF FRANCHISE AGREEMENT

### 2.1 Award of Franchise Agreement

The City Council may award a Franchise Agreement to an Applicant only after a public hearing on the application, notice of which hearing shall be published in a local newspaper of general circulation at least thirty (30) days prior to the date of the hearing. The City Council may reject any application deemed not to be in compliance with this Ordinance.

### 2.2 Franchise Agreement Application - Form and Contents

All applications shall be submitted in writing. All applications shall contain the information called for by this Ordinance in the manner prescribed by this Ordinance.

- A. Such information may include without limitation, the following:
  1. Information regarding the identity of the Applicant.
  2. Biographical data of the Applicant's principal owners and proposed management, including the experience of such persons in the cable communications field.
  3. A detailed description of the System and facilities proposed for the City, including the matters to which a response is specifically required by this Ordinance and including a schedule of projected rates for all charges and fees to subscribers.
  4. A detailed timetable for the construction and commencement of operation of the System, including the matters to which a response is specifically

required by this Ordinance.

The application may consist of a format which may be adopted by City Council resolution.

- B. The City shall be entitled to verify any information furnished by the Applicant and/or in response to other requests by the City for information regarding the Applicant and the Applicant's affairs. The City may exercise such right by requiring reports from the Applicant, and/or from third parties having knowledge of the applicant, or by conducting such other kinds of investigation as the City may deem proper.

In such cases the Applicant shall furnish the City with such written authorization regarding release of information as may be necessary to carry out the intent. Foregoing provisions shall also be applicable to a Grantee as well as an Applicant, it being deemed to be in the public interest that the City remain knowledgeable regarding the Grantee and the operation of the System throughout the term of the Franchise Agreement.

- C. For an Applicant, or any person on behalf of an Applicant, to make an untrue statement of material fact; or, with the intent to mislead, fail to make known a material fact, when responding to any request for information by the City or by any officer or agency thereof, shall constitute a fraud upon the City.

### 2.3 Criteria for Selection

The award of a Franchise Agreement to an Applicant shall be based upon the information contained in the application and such other relevant information as may be obtained by the City regarding such applications. Such award may be based upon the criteria set forth below together with such other factors as the City may deem relevant. Regardless of the criteria suggested below, the City's decision to award or not to award a Franchise Agreement is final and an Applicant waives objection to the City's weight or priority of the following factors or any other factors the City may deem relevant.

- A. The experience of the Applicant in the cable communications field and the credentials of its owners and managers.
- B. The Applicant's financial resources, including both present financial condition and the availability of committed funding to finance the applicant's proposed System; and the specificity and credibility of the applicant's projections of the revenue and expenses attributable to the construction and operation of the System.
- C. The Applicant's System design including channel capacity and ability to provide a broad range of services in conformity with the highest quality standards of the cable industry.
- D. The Applicant's schedule of rates and the length of time the applicant is committed to maintain such rates.
- E. The Applicant's response to specific local concerns or needs, whether formulated by the City and made known to applicants or whether ascertained by the Applicant.

### ARTICLE III - FRANCHISE AGREEMENT: GRANT OF AGREEMENT

### 3.1 Franchise Agreement

A Franchise Agreement shall be in such form and contain such terms and provisions as shall be approved by the City Council. A Franchise Agreement shall be adopted, and amended, by Ordinance of the City Council, or by any other mode of adoption or amendment authorized or required by law.

### 3.2 Grant of Franchise Agreement

A Grantee shall be awarded a Franchise Agreement, pursuant to the provisions of Article II, Section 2.1 of this Ordinance, either by Ordinance of the City Council or by any other means authorized or required by law. The Grantee shall be promptly notified of the award by the City by written notice thereof, sent by registered or certified mail, which notice shall be accompanied by one or more copies of the Franchise Agreement.

### 3.3 Term and Other Provisions of Franchise Agreement

- A. The Franchise Agreement shall provide for a non-exclusive Franchise for a term of not less than fifteen years, which term shall commence as of the date of the Franchise Agreement.
- B. The Franchise Agreement may provide for periodic review sessions at any time. Topics for discussion and review at the review sessions may include, but shall not be limited to, services provided, rate structure, applications of new technologies, System performance, extension, subscriber complaints, rights of privacy, amendments to the Franchise Agreement, and developments in the law.
- C. The Franchise Agreement may provide that throughout the term of the Agreement, the Grantee shall pay the City a Franchise fee. The Grantee shall take any action with respect to any federal or state agency which may be necessary or appropriate to make the payment and receipt of such fees lawful. Acceptance of any payment by the City shall not be construed as a release of rights or an accord and satisfaction regarding any claim the City may have for further and additional sums payable by the Grantee or for the performance of any other obligation of the Grantee under this Ordinance or the Franchise Agreement.
- D. The Franchise Agreement shall, in substance, contain the following express undertaking:
  - (1) that the Agreement shall define and provide a basic service for a minimum time period;
  - (2) that the Agreement may provide an optional tier of channels available to subscribers in addition to the basic service;
  - (3) that the Agreement may provide full basic service to all areas within the City zoned residential/commercial, provided, however, that existing service areas outside residential and commercial areas may be charged for higher basic rates to reflect lower density;
  - (4) that the Agreement provides that the operator may obtain from the franchising authority modifications of any express requirement contained in the Franchise Agreement for facilities or equipment by demonstrating that (1) it is commercially impractical for the operator to comply with such requirement and (2) that the proposal by the cable operator for modification of such requirement is appropriate because of commercial impracticability.

- (5) that the Agreement may provide additional tiers and services which will be discussed during the period review sessions as provided in Section 3.3(B) of this ordinance;
- (6) that the Agreement provides for any sale of Franchise Agreement to be subject to City review and approval;
- (7) that the Agreement provides that the Grantee accepts all provisions of this Ordinance and waives any claim that any provision hereof is unreasonable, arbitrary, invalid, or void;
- (8) that the Agreement recognizes the right of the City to make reasonable amendments to this Ordinance during the term of any Franchise Agreement upon sixty (60) days prior written notice to the Grantee, or without notice with respect to emergency amendments.

#### 3.4 Negotiated Provisions of Franchise Agreement

A Franchise Agreement may contain such further conditions or provisions as may be negotiated between the City and the Grantee except that no such conditions or provisions shall conflict with any provisions of this Ordinance or other law. In the case of such conflict, the provisions of this Ordinance or other law shall prevail over the conflicting provision of a Franchise Agreement.

#### 3.5 Rights Reserved by the City

- A. Any Franchise Agreement granted pursuant to this Ordinance shall be subject to the right of the City, by resolution of the City Council to revoke the Franchise Agreement for just cause. Just cause shall include, without limitation:
  - (1) A material violation by Grantee of any provision of the Franchise Agreement or this Ordinance, or any rule, order, or determination of the City made pursuant thereto, where such violation shall remain uncured for a period of sixty (60) days subsequent to receipt by Grantee of written notice of the violation.
  - (2) Any attempt by Grantee to dispose of all or substantially all of the property or facilities of the System in contravention of the Franchise Agreement.
  - (3) The commission of any fraud or deceit upon the City.
- B. Any Franchise Agreement granted hereunder shall be subject to all applicable provisions of other City ordinances, general law statutes, Charter, and any amendments thereto, whether made prior to or after the inception of the Franchise Agreement.
- C. Any Franchise Agreement granted hereunder may be subject to additional rights of the City, including but not limited to the following:
  - (1) To require proper and adequate extension of plant and service and maintenance thereof at the highest practical standard of efficiency.
  - (2) To require the cable operator to comply with technical standards relating to the facilities and equipment of its Cable System as established by the Federal Communications Commission. Access to cable service shall not be denied to any group



of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

- (3) To require continuous and uninterrupted service to the public in accordance with the terms of the Franchise Agreement throughout the entire period thereof.
- (4) To impose such other regulations as may be determined by the City Council to be conducive to the safety, welfare and accommodation of the public.
- (5) Through its appropriately designated representatives to inspect all construction or installation work performed subject to the provisions of the Franchise Agreement and this Ordinance, and to make such inspections as it shall find necessary to insure compliance with the terms of the Franchise Agreement, this Ordinance, and other pertinent provisions of law.

(6) At the expiration of the term for which a Franchise Agreement is granted or upon termination and cancellation as provided therein, to require the Grantee to remove at Grantee's sole expense any and all portions of the System from the public ways within the City, at the option of the City.

- D. Any Franchise Agreement granted hereunder shall require Grantee to safeguard the privacy of all subscribers with regard to the Cable Communications Services and System. The Grantee shall be required to safeguard and keep all individual home subscriber information.

### 3.6 Procedure for Termination

Any termination or cancellation of a Franchise Agreement prior to the expiration of the term thereof shall be made by resolution of the City Council, and only after a public hearing thereon if a public hearing is requested by the Grantee. Grantee shall be entitled to sixty (60) days written notice of such hearing and the notice shall specify with reasonable particularity the grounds upon which the contemplated termination is based. Any such termination shall be subject to any requirements of higher law and any limitation contained in the Franchise Agreement between the City and the Grantee.

### 3.7 Contravention of Ordinance

Any breach by the Grantee of the Franchise Agreement, in addition to constituting a breach of the contract, shall constitute a violation of this Ordinance. The costs of any litigation, including attorney fees, incurred by the City to enforce this Ordinance or Franchise Agreement granted pursuant hereto shall be reimbursed to the City by the Grantee, in respect of such litigation or part thereof in which the City is the prevailing party.

### 3.8 Franchise Agreement Fee Account

The City may establish through the term of the Franchise Agreement, a separate financial accounting of any Franchise Agreement fees as collected in accordance with the Franchise Agreement to be used for the administration of the Franchise Agreement.

## ARTICLE IV - MODIFICATION OF FRANCHISE OBLIGATIONS

### 4.1 Facilities and Equipment

During the period the franchise is in effect, the cable operator may obtain from the franchising authority modification of any express requirement contained in the Franchise Agreement for facilities or equipment, including public, educational, or governmental access facilities or equipment by demonstrating that (1) it is commercially impracticable for the cable operator to comply with such requirement and (2) that the proposal by the

cable operator for modification of such requirement is appropriate because of commercial impracticability.

For purposes of this section, the term "commercially impracticable" means, with respect to any requirement applicable to a cable operator, that it is commercially impracticable for the operator to comply with such requirement as a result of a change in conditions which is beyond the control of the operator and the non-occurrence of which was a basic assumption upon which the requirement was based.

Modification shall only be necessary in the event that cable operator will change the capabilities of its facilities or equipment. No modification will be necessary for cable operator to change facilities or equipment, by way of improvement or otherwise, if such change does not affect the overall capabilities.

#### 4.2 Basic Subscriber Services

The Franchise Agreement shall require Franchisee to carry on its Cable Communications System all the channels required by the FCC and for the Franchisee to maintain a basic tier. Franchisee shall be entitled to modify its basic tier during the period the franchise is in effect so long as the City Council is notified 30 days in advance.

#### 4.3 Budget Service

Franchisee shall provide a budget service, which, at a minimum, shall include the three (3) major networks, being ABC, CBS, and NBC, and the Public Broadcasting System (PBS) channel (currently known as WNMU-TV). The rate for the budget service shall be determined by the Franchisee; provided, however, that such rate shall not exceed \$3.95 per month. Changes in the channels carried or in the rate charged under the budget service shall not be made without the approval of the Ishpeming City Council.

### ARTICLE V - RENEWAL

#### 5.1 Commencement of Renewal Proceedings

During the six month period which begins with the 36th month before the franchise expiration, the franchising authority may on its own initiative, and shall at the request of the cable operator, commence proceedings which afford the public in the franchise area appropriate notice and participating for the purpose of:

- (1) identifying the future cable-related community needs and interest; and
- (2) reviewing the performance of the cable operator under the franchise during the then current franchise term.

#### 5.2 Proposal for Renewal

- (1) Upon completion of a proceeding under subsection 5.1, a cable operator seeking renewal of a franchise may, on its own initiative or at the request of a franchising authority, submit a proposal for renewal.
- (2) Subject to section 624 (47 USCS 544), any such proposal shall contain such material as the franchising authority may require, including proposals for an upgrade of the Cable System.
- (3) The franchising authority may establish a date by which such proposal shall be submitted.

### 5.3 Public Notice, Review and Decision

- (1) Upon submittal by a cable operator of a proposal to the franchising authority for the renewal of a franchise, the franchising authority shall provide prompt public notice of such proposal and, during the four month period which begins on the completion of any proceedings under subsection (1), renew the franchise or, issue a preliminary assessment that the franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with paragraph (2) to consider whether:
  - (A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
  - (B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality, or level of cable services or other services provided over the System, has been reasonable in light of community needs;
  - (C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and
  - (D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.
- (2) In any proceeding under paragraph (1), the cable operator shall be afforded adequate notice and the cable operator and the franchise authority, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence, including evidence related to issues raised in the proceeding under subsection 5.1, to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.
- (3) At the completion of a proceeding under this subsection, the franchising authority shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. Such decision shall state the reason therefor.

### 5.4 Grounds for Denial of Renewal

Any denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of subsection 5.3(1), pursuant to the record of the proceeding under subsection 5.3. A franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection 5.3(1) (A) or on events considered under subsection 5.3(1) (B) in any case in which a violation of the franchise or the events considered under subsection 5.3(1) (B) occur after January 1, 1985, unless the franchising authority has provided the operator with notice and the opportunity to cure, or in any case in which it is documented that the franchising authority has waived its right to object, or has effectively acquiesced.

### 5.5 Appeals

- (1) Any cable operator whose proposal for renewal has been denied by a final decision

of a franchising authority made pursuant to this section, or has been adversely affected by a failure of the franchising authority to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of section 635 (49 USCS 545).

- (2) The court shall grant appropriate relief if the court finds that:
  - (A) any action of the franchising authority is not in compliance with the procedural requirements of this section; or
  - (B) in the event of a final decision of the franchising authority denying the renewal proposal, the operator has demonstrated that the adverse finding of the franchising authority with respect to each of the factors described in subparagraphs (A) through (D) of subsection 5.3(1) on which the denial is based is not supported by a preponderance of the evidence, based on the record of the proceeding conducted under subsection 5.3.

#### 5.6 Finality

Any decision of a franchising authority on a proposal for renewal shall not be considered final unless all administrative review by the State has occurred or the opportunity therefor has lapsed.

#### 5.7 Definition of "Franchise Expiration"

For purposes of this section, the term "franchise expiration" means the date of the expiration of the term of the franchise, as provided under the franchise.

#### 5.8 Alternative Procedures

Notwithstanding the provisions of subsections 5.1 through 5.7 of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections 5.1 through 5.7 of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections 5.1 through 5.7.

### ARTICLE VI - CABLE THEFT

The City hereby agrees to cooperate with cable operator in detecting cable theft and tampering, and combating criminal acts prohibited by federal, state, and local law.

### ARTICLE VII - ADMINISTRATION AND ADVISORY BOARD

#### 7.1 Administrator

The City Council may appoint an Administrator who shall serve at the pleasure of the City Council and who shall be responsible for the continuing administration of any Franchise Agreements on the part of the City. The City shall provide written notice to Grantee of the initial appointment of the Administrator and any subsequent appointments.

#### 7.2 Advisory Body

The City Council may appoint a cable communications advisory committee to perform such duties and to have such powers as the City Council may determine. The composition and terms of office of the members of the committee, as well as the duties and powers of the Committee, shall be determined and established by resolution of the City Council.

### 7.3 Delegations of Rights and/or Obligations of City

The City reserves the right to delegate from time to time any of its rights and/or obligations under the Franchise Agreement to any body or organization. Any such delegation shall be effective upon written notice thereof to Grantee. Upon receipt of such written notice Grantee shall be bound by the terms and conditions of the delegation not in conflict with the Franchise Agreement. Any such delegation or revocation thereof, no matter how often made, shall not be deemed to be an amendment to the Franchise Agreement or require Grantee's consent.

## ARTICLE VIII - PENALTY, SEVERABILITY, PUBLICATION AND EFFECTIVE DATE

### 8.1 Franchise Agreement May Provide Liquidated Damage Provisions

The Franchise Agreement may include a liquidated damages clause providing for stipulated recovery of damages for any material violation of the Franchise Agreement granted pursuant to this Cable Communications Ordinance.

### 8.2 Penalties

Any person violating any of the provisions of this Cable Communications Ordinance shall, upon conviction thereof, be punished by a fine of not more than Five Hundred (\$500.00) Dollars, or by imprisonment for a period of not more than ninety (90) days, or by both fine and imprisonment.

### 8.3 Injunctive Relief

Notwithstanding the existence of any criminal remedy as hereinbefore provided, any Cable Communications System or Cable Communications service in violation of any provisions of this Ordinance shall constitute a nuisance per se, and the City shall be empowered to seek injunctive relief in a Court of appropriate jurisdiction to enjoin such violations and abate such nuisance.

### 8.4 Severability

All provisions and sections of this Ordinance, and any Franchise Agreement granted pursuant hereto, shall be liberally construed to protect and preserve the peace, health, safety and welfare of the inhabitants of the City, and should any provision or section of this Ordinance or Franchise Agreement granted pursuant hereto, be held unconstitutional, invalid, or otherwise unenforceable, such holding shall not be construed as affecting the validity of any of the remaining provisions or sections of this Ordinance or Franchise Agreement granted pursuant hereto.

### 8.5 Publication According to Charter

This Ordinance shall be published in any manner permitted or required by law.

This amended Ordinance shall become effective upon publication.

## ARTICLE IX - CANCELLATION OF EXISTING FRANCHISE AGREEMENT

The contract for CATV service, dated May 1, 1972, between the City of Ishpeming, and Telesystem Corporation, is hereby cancelled, set aside, rescinded, and held for naught.

Adopted: May 7, 1986

