

**APPENDIX A**  
**FRANCHISES\***

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\* **Editors Note:** Printed herein are the franchises currently in effect in the city.

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**ARTICLE I.**

# CABLE TELEVISION FRANCHISE

## DIVISION 1.

### MILLENNIUM DIGITAL MEDIA SYSTEMS, LLC

Ord. No. 177-B eff. Jan. 2, 2002

An ordinance granting a nonexclusive Franchise to MILLENNIUM DIGITAL MEDIA SYSTEMS, L.L.C., to install, construct, operate, extend and maintain a reception and distribution system for television and other audiovisual and electronic signals including Cable Information Services throughout the City of Portland; to set the terms and conditions of the Franchise; to establish rates and charges therefore and the procedure for changing rates and charges as determined by federal or state law; to establish procedures and regulations relating to termination, revocation or surrender of the Franchise; to provide for indemnification, bonding and insurance; and to establish penalties for violation of this Ordinance.

THE CITY OF PORTLAND ORDAINS:

#### **Sec. 1. Title.**

This Ordinance shall be known as the "Cable Television Franchise Ordinance between the City of Portland, Michigan and MILLENNIUM DIGITAL MEDIA SYSTEMS, L.L.C." and may be cited as such.

#### **Sec. 2. Definitions.**

(A) Unless the particular provisions or the context requires, the definitions and provisions contained in this section and in section 1.02 of Ordinance No. 133 entitled Cable Television Ordinance, shall govern the construction, meaning and application of words and phrases used in this ordinance. The definition of each word or phrase shall constitute, to the extent applicable, the definition of each word or phrase which is a derivative from it, or from which it is a derivative, as the case may be.

(B) The definitions listed under Section 1.02 of Ordinance No. 133, entitled "Cable Television Ordinance" being O.S. No. 12.262 are each incorporated herein by reference as if fully set forth herein.

*Basic Cable Service* is defined by the FCC as any service tier, which includes the retransmission of local broadcast signals and any public, educational, and governmental access programming required by the Franchise of the cable system to be provided to subscribers.

*Cable Act* shall mean the 1984 Cable Communications Policy Act of 1984, as amended by the 1992 Cable Competition and Consumer Protection Act of 1992 and the 1996 Telecommunications Act.

*Cable Information Services* shall mean two-way digital packet switched service provided over the Cable System using a cable modem and Internet protocol, which includes Internet access, interactive services, information services, electronic mail, access to newsgroups, a web browser, Website hosting and other enhancements.

*Cable Service* shall mean:

- (a) the one-way transmission to subscribers of video programming, or other programming service; and
- (b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

*Cable System* shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and/or Cable Information Service and which is provided to multiple subscribers within the City.

*City Council* or *Council* means the City Council of the City of Portland, Michigan.

*Channel* is a signaling path provided by the grantee of this Franchise, and the cable television system to relay to subscriber terminals, television broadcast programs that are received off the air, obtained by microwave, direct connection to a television broadcast station, satellite delivered or locally originated.

*Converter* is an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and by an appropriate channel selector; also permits a subscriber to view all signals delivered at designated dial locations.

*Franchise* or *Franchise agreement* means and includes any authorization granted hereunder in terms of a Franchise, privilege, permit, license or otherwise to install, construct, operate, extend and maintain a cable television system within the area of the City specified in this Ordinance.

The words *Franchisee*, *Franchise holder*, and *Grantee*, as used in this Ordinance, are interchangeable and refer to the cable television company Michigan Broadband, LLC.

The word *person* means and includes one or more individuals, firms, corporations, associations, partnerships, or organizations or any kind, and combination thereof.

*Public channels* shall mean channels, which are dedicated to the public interest, according to the following categories: 1) public access, 2) educational use, and 3) local government purposes.

*State of the Art* shall mean a cable system with technical performance, capacity, equipment, components, construction techniques and service equal to that which has been developed and demonstrated by existing cable television operators and reputable equipment suppliers to be workable in the field, which is at least as modern and technologically advanced as generally accepted, which is reasonably available and feasible to install, which is in use by at least some other cable systems in comparable areas of equivalent population and system size (excepting only systems that are experimental, a pilot or demonstrational), which customers have paid for in at least other comparable markets for at least a year, which is justified by reasonably predictable subscriber demand and a

willingness to pay a reasonable rate for such services, which is based on a reasonable projected rate of return on investment derived from the additional or upgraded capacity, and which investment can be amortized over a period of time which is both reasonable and customary in the cable television industry.

*Subscriber revenue* is any and all compensation and other consideration in any form, paid by any subscriber arising from the sale of all services to the subscribers.

*Subscriber service drop* shall mean each extension wiring from the franchisee's distribution lines to a subscriber's building.

(Ord. No. 177C, § 1, eff. 6-29-2006)

### **Sec. 3. Grant and acceptance of Franchise.**

The City hereby grants to Franchisee the nonexclusive Franchise and right to erect, install, construct, reconstruct, replace, remove, repair, maintain, operate in or upon, under, above, across the streets, avenues, highways, sidewalks, bridges, and other public ways, easements, and rights-of-way as now existing and all extensions thereof, and additions thereto, in and belonging to the City, all necessary poles, wires, cables, coaxial cables, transformers, amplifiers, underground conduits, manholes and other television, radio and other audiovisual and/or electronic signal and/or radio conductors and fixtures for the sole purpose of the ownership, maintenance and operation in the City a cable communication system for television, radio and other audiovisual and/or electronic signals to provide Cable Service and Cable Information Services in the City of Portland, all in strict accordance with the laws, ordinances and regulations of the United States of America, the state of Michigan, and the City, as now existing or hereafter adopted or amended. This franchise does not constitute the permit which may be required by Act No. 179 of the Michigan Public Acts of 1991, as amended, or Ordinance [190] (the Portland Telecommunications Ordinance), which if required must be obtained separately from the City of Portland.

Franchisee hereby accepts the Franchise and warrants and represents that it has examined all of the provisions of the City of Portland Cable Television Ordinance, and this Franchise ordinance; and it accepts and agrees to all the provisions contained therein.

### **Sec. 4. Term and assignability.**

(A) The term of this Franchise shall be ten (10) years from the effective date hereof unless sooner terminated as provided in this Franchise Agreement or the Cable Television Ordinance.

This Franchise Agreement may be renewed one (1) time for an additional five (5) year term upon the written request of the franchisee. In the event such a request is received, the renewal shall be approved unless the City finds that the franchisee is in violation of any term or condition of this Franchise Agreement. Except as provided for in the preceding two sentences, any additional requests for a renewal of this Franchise Agreement shall be treated in accordance with applicable Laws and the Ordinance.

(B) This Franchise (or any renewals thereof) shall not be renewed more than two years prior to expiration of the Franchise term.

(C) This Franchise shall be terminable by the City for cause, in the manner provided hereinafter

and/or in the Cable Television Ordinance.

(D) The franchisee shall not transfer, sell nor assign the rights granted to it by this ordinance without the express consent of the City Council. The said consent of City Council may not be unreasonably refused or withheld, provided, however, the proposed assignee shows financial responsibility as determined by council and agrees to comply with all provisions of this Ordinance and the Cable Television Ordinance. Consent of the City shall not be required for the assignment of, or the granting of a security interest in, this Franchise agreement or the cable system for the purpose of securing indebtedness.

**Sec. 5. Territorial extent of Franchise; Annexation.**

(A) The franchisee is authorized to operate throughout the entire territory within the corporate limits of the City, subject to the right of the City, after notice and hearing by the City Council, to eliminate from the Franchise, any portion of the City not then being served by the franchisee and to award a Franchise for said excluded portion to another qualified applicant, and the City specifically retains the right to award to other franchisees the right to operate a cable system in the City of Portland.

(B) The franchisee shall, within 12 months of the date of annexation, extend services to any unserved residential area, which becomes annexed to the City after the effective date hereof.

**Sec. 6. Effective date.**

This Franchise ordinance shall become immediately effective upon its publication, which publication shall be within 45 days after its adoption by City Council, subject to acceptance by the Grantee and subject to approval by the City attorney of the bonds and insurance required by the Cable Television Ordinance and this Ordinance.

**Sec. 7. Construction of facilities; use of existing facilities, streets, etc., restrictions; disposal; duties.**

(A) [*Construction of facilities; etc.*] All poles, cables, wires, antennas, conduits, or appurtenances shall be constructed and erected in a workmanlike manner. The City shall not be held liable for any disturbance of Grantee's installation resulting from the altering, repairing, or installation of streets or electrical or sewer or water installations. Grantee shall, at its own expense, move or relocate any of the Grantee's installations at the request of the City whenever or wherever Grantee's installations are found by the City to interfere with the City streets, street grades, electrical, sewer or water installations, or any proposed changes thereof or extensions thereto. This Ordinance shall not be construed as to deprive the City of any rights or privileges, which it now has or may hereafter have to regulate the use and control of its streets and public utilities.

(B) *Local law and regulations; amendments to ordinance; new ordinances.* The franchisee shall at all times during the life of this Franchise be subject to all lawful exercise of the police power of the City of Portland and to such reasonable regulations as the City and/or its departments or commissions shall hereinafter provide. Said regulations may expressly include a rule prohibiting the use of the City streets or alleys for the installation of additional poles or underground cable, and may include regulations requiring all or part of said transmission system to be installed and maintained underground, provided the facilities of other users of the streets are installed and maintained underground. The police power of the City may be exercised through amendment of the Cable Ordinance as well as through enactment of separate ordinances and regulations, and

such amendment shall not require consultation with the franchisee unless such consultation is specifically provided for in this Franchise as originally granted.

(C) *Repairs; public safety.* The franchisee shall at all times maintain a force of one or more agents or employees in sufficient numbers and of sufficient technical qualifications to safely, adequately and promptly repair any structural damages to system equipment which is located in, over, under or upon public streets, ways, or places; and to immediately secure the public safety in the vicinity thereof, prior to, and during the making of said repairs.

(D) *Contractor qualifications.* Any contractor proposed for work of installation, maintenance, or repair of system equipment must be properly licensed under laws of the State of Michigan, and all local ordinances, and be thoroughly experienced in underground conduit and cable installation, in cable installation on poles, or in any other capacity for code enforcement officer prior to entry into contractual agreements with such contractor(s).

(E) *Conditions on street occupancy and location of lines.* The franchisee's system and associated equipment erected by the franchisee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places. No pole or other fixtures placed in any public way by the franchisee shall be placed in such a manner as to interfere with the usual travel on such public way. Franchisee shall install lines along and following the same courses as existing electrical and/or telephone lines are strung upon, over, across and under both private property and public property. Franchisee's lines shall not cross adjoining private property to reach an adjacent customer without first obtaining written permission. Franchisee shall run lines across private property, to houses and buildings, and inside and outside of buildings in strict accordance with courses established by existing utility lines and as approved by the property owner.

(F) *Maps, Drawings, Descriptions, Plans.*

- (1) Prior to the erection or installation of any towers, poles, guys, anchors, underground conduits, manholes or fixtures for use in connection with the installation, construction, maintenance or operation of a community antenna television system under this Franchise, the franchisee shall first submit to the City Manager for approval a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map and plans indicating the proposed location of all such facilities. No erection or installation of any tower, pole, guy, anchor, underground conduit, manhole, or fixture for use in a community antenna television system shall be commenced by any person until approval therefor has been received from the City Manager, and provided further, that such approval shall not be unreasonably withheld. Notwithstanding such approval, however, the City shall have the right to inspect all construction or installation work performed subject to the provisions of this Franchise and make such inspections as it shall find necessary to insure compliance with the terms of this Franchise and other pertinent provisions of law.
- (2) Prior to operational connection to any subscriber, Franchisee shall thoroughly test the system and determine that the same is properly functioning and ready for connection to subscribers without service interruption due to local system malfunction.

- (3) Franchisee shall, upon request of the City, provide the City with a map designating the location of all cable television facilities and equipment installed pursuant to this Franchise. Said map shall be annually updated showing all extensions and/or changes in said facilities and system.

(G) *Compliance with all legal standards; street; public ways, trees, shrubs.* All construction, alteration, or removal of system equipment or facilities shall conform to all applicable laws and standards, federal, state and local, including the entire charter and code of the City and shall further conform to any special requirements imposed by the City Manager or City planning commission incidental to plan approval and/or issuance of permits; and in case of disturbance of any street, sidewalk, alley, public way, or paved area, the franchisee shall, at its own cost and expense and in a manner approved by the City Manager or the City's designee, replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done. The franchisee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the franchisee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of Franchisee.

(H) *Erection, Removal, and Common User of Poles.*

- (1) No poles or other wire-holding structures shall be erected by the franchisee without prior approval of the City Manager or his designee with regard to location, height, type and any other pertinent aspect. However, no location of any pole or wire-holding structure of the franchisee shall be a vested interest and such pole or structures shall be removed or modified by the franchisee at its own expense whenever the City Council determines that the public convenience would be enhanced thereby.
- (2) Where poles or other wire-holding structures already existing for use in serving the City are available for use by the franchisee, but it does not make arrangements for such use, the City Council may require the franchisee to use such poles and structures if it determines that the terms of the use available to the franchisee are just and reasonable.
- (3) Where the City or a public utility serving the City desires to make use of the poles or other wire-holding structures of the franchisee but agreement therefor with the franchisee cannot be reached, the franchisee shall permit such use for such consideration and upon such terms as the council shall determine to be just and reasonable, if the council determines that the use would enhance the public convenience and would not unduly interfere with the franchisee's operations.
- (4) Prior to a construction project in which the City shall require Franchisee to remove its cables from City poles and place them into underground conduit, City shall endeavor to provide Franchisee with at least twelve (12) months, but no less than six (6) months, advance written notice of such requirement. On projects for which the City has provided Franchisee with such advance notice, then Franchisee shall have sixty (60) days following the City's request to remove its cable lines to remove its lines from the City's poles, unless a longer time is agreed to in writing by the City.

(I) *Underground Construction.*

- (1) In all sections of the City where the cables, wires, or other like facilities of public utilities are placed underground, the franchisee shall place it cables, wires or other like facilities underground to the maximum extent that existing technology reasonably permits the franchisee to do so, subject to the approval of the City Manager or his designee as hereinbefore provided, and as to methods of construction and placement.
- (2) The City does not guarantee the accuracy of any maps showing the horizontal or vertical location of any existing substructure. In public rights-of-way, where necessary, the location shall be verified by excavation.
- (3) Franchisee agrees to install facilities underground when reasonably requested by the City and to share on a pro rata basis the cost of such underground installation and associated restoration of the rights of way.

(J) *Additional Provisions.* For the sake of clarity and completeness there are hereby acknowledged the additional provisions relating to construction, maintenance, and repair, contained in the Cable Television Ordinance.

(K) *Disposal of Poles and Towers.* Upon the expiration, termination or revocation of any Franchise granted pursuant to this Ordinance, or should any person wish otherwise to dispose of any tower or pole erected or installed for use in connection with a cable television system, the City retains the first right and option to purchase in place such towers and poles as it may require for their fair value based upon reproduction cost less depreciation. Further, upon the expiration, termination or revocation of any Franchise granted pursuant to this Ordinance, title to all underground conduit and manholes erected or installed for use in a cable television system under rights conferred in this Ordinance shall pass to the City of Portland under its control over its streets, alleys and public rights-of-way to protect them from things injurious and dangerous to the public.  
(Ord. No. 177C, §§ 5, 6, 6-29-2006)

## **Sec. 8. Rights reserved by City.**

- (A) This Franchise is subject to the right of the City by resolution of its council to revoke subject to the provisions of this agreement.
- (B) This Franchise is subject to all applicable provisions of City ordinances and the City charter, and any amendments thereto, whether made prior to or after the inception of the Franchise.
- (C) This Franchise is subject to the right of the City:
  - (1) To revoke the same for misuse, nonuse, or the failure to comply with the provisions of the cable ordinance, or any other local, state or federal laws, or FCC rules or regulations.
  - (2) To require proper and adequate extension of plant and service and maintenance thereof at the highest practicable standard of efficiency, and specifically to require extension of subscriber service to all residents of the City.

- (3) To adopt FCC customer service standards and to prevent unjust discrimination in service or rates. Nothing in these standards shall be construed to prevent or prohibit: (a) The City and the Grantee from agreeing to customer service requirements that exceed the standards set forth by the FCC; (b) The City from enforcing, through the end of the Franchise term, preexisting customer service requirements that exceed the standards set forth by the FCC in any section contained in this Franchise agreement; (c) Any state or franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or (d) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth by the FCC standards.
  - (4) To require continuous and uninterrupted service to the public in accordance with the terms of the Franchise throughout the entire period thereof.
  - (5) To impose such other regulations as may be determined by the council to be conducive to the safety, welfare, and accommodation of the public.
  - (6) To control and regulate the use of its streets, alleys, bridges, and public places and the space above and beneath them. The franchisee shall pay such part of the cost of improvement or maintenance of streets, alleys, bridges, and public places, as shall arise from its use thereof and shall protect and save the City harmless from all damages arising from said use; and may be required by the City to permit joint use of its property and appurtenances located in the streets, alleys and public places of the City, by the City and other utilities insofar as such joint use maybe reasonably practicable and upon payment of reasonable rental therefor; provided, that in the absence of agreement, upon application by the franchisee, the council shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefor, which award shall be final.
  - (7) To install and maintain without charge, its own equipment upon the franchisee's poles upon the condition that said equipment shall not interfere with the operations of the franchisee.
  - (8) Through its appropriately designated representatives, to inspect all construction or installation work performed subject to the provision of this Franchise and the Cable Ordinance, and make such inspections as it shall find necessary to insure compliance with the terms of the Franchise, the Cable Ordinance, and other pertinent provisions of law.
  - (9) At the expiration of the term for which this Franchise is granted or upon the termination and cancellation as provided herein, to require the franchisee to remove at its own expense any and all portions of the system from the public ways within the City.
- (D) Transfer of this Franchise, or change of ownership or control of the franchisee, is subject to all the restrictions and conditions contained in the Cable Television Ordinance.

## **Sec. 9. Maintenance.**

The franchisee shall:

- (A) Render efficient service, locate and repair malfunctions promptly, and respond to subscriber service complaints within 24 hours after notice; except where extraordinary circumstances exist.
- (B) Interrupt service only for good cause and for the shortest time possible. Such interruptions insofar as possible shall be preceded by notice, and shall occur during periods of minimum use of the system.
- (C) Operate the system continuously, with operating personnel on call 24-hours per day; and have a toll free listed telephone so that service requests may be placed without long distance telephone expense.
- (D) Upon request, advise the City Clerk in writing and within fourteen (14) days of the procedures and personnel, which shall be available for the handling of consumer complaints. The City Clerk, or such other person as the City council shall designate, shall be afforded an opportunity to review all consumer complaints, and the method in which the same have been handled by the franchisee.
- (E) Maintain a record accurately showing the time, the duration, probable cause, and action taken on all failures or outages on the main distribution system. Any routine or scheduled interruption of the signal for the purpose of testing or maintenance shall be scheduled when there will be a minimum number of customers inconvenienced.
- (F) Maintain records of all user and other complaints regarding the quality of service, equipment malfunctions and similar matters; Franchisee shall make every good faith effort to respond to all such complaints within forty-eight (48) hours after receipt of same, excluding Sundays and holidays. Written records of all such complaints and the resolution of same shall be maintained by Franchisee for a one (1) year period after origination of same and shall include notation of the reasons why any response is made later than the forty-eight (48) hour period. All such records shall be open to inspection by the City Council or its designee at any time. At the end of each year, copies of those records shall be sent to the City upon their request.
- (G) Should it be impossible or impractical to correct any malfunctions within twenty-four (24) hours or less, then each subscriber whose television reception is so disrupted shall receive a credit from the company in the amount of one thirtieth ( ) of such subscriber's monthly charge for every additional twenty-four (24) hour period that said subscriber's television reception is so disrupted, unless said disruption in service was caused by an act of God or was entirely beyond the control of the company.

**Sec. 10. Commitments by Franchisee to extrinsic matters.**

The franchisee hereby:

- (A) Accepts and agrees to all of the provisions of the Cable Television Ordinance, and the obligations imposed upon it thereby, to the same degree, and extent as if each and every such provision were repeated herein, and irrespective of whether any such provision be so repeated.

The franchisee further accepts and agrees that, except to the extent they may conflict with this Franchise or be expressly modified herein, it hereby contractually binds itself, to the City, as to all commitments heretofore made by it to the City, relating to construction and operation of its system, and the services to be rendered thereby, including all matters set forth in its final written proposal made to the City.

In the case of conflict or ambiguity between this Franchise Ordinance, the Cable Television Ordinance or the final proposal of the franchisee, their priorities shall be as follows, from highest to lowest:

- (1) Cable Television Franchise Ordinance;
  - (2) Cable Television Ordinance.
- (B) Represents and warrants to the City that it has examined all of the provisions of the Cable Television Ordinance and waives any claims that any provisions thereof are unreasonable, arbitrary, invalid or void;
- (C) Recognizes the right of the City to make reasonable amendments to the Cable Television Ordinance during the term of this Franchise upon sixty (60) days prior notice to the franchisee, or without notice with respect to emergency amendments. It further recognizes and agrees that the City and Franchisee shall follow FCC guidelines and rulemaking established in the Cable Act regarding Franchise renewal at the end of any Franchise term.

The Franchise granted under this Franchise Agreement is nonexclusive. Franchisee acknowledges the City's rights to grant one or more competing franchises. To avoid unfair competition due to disparate Franchise obligations, Franchisee may petition the City to renegotiate this agreement as a result of potentially noncompetitive terms of this agreement.

- (D) Represents and covenants that it is a member of "Miss Dig" or equivalent underground notification service approved by the City and shall continue to be a member thereof during the term of this Franchise;
- (E) Agrees to use its best efforts, as its expense, to actively and diligently conduct the prosecution of all applications to the FCC (or other governmental regulatory bodies) necessary to permit construction in accordance with the ordinance and this Franchise Agreement, including but not limited to FCC approval of said Ordinance and Franchise, and any special licenses or permission associated therewith;
- (F) Represents and warrants that it will maintain a business address in Michigan so long as it is bound by this Franchise and that it will notify the City in writing of any change of its business office, corporation registered agent office or name of the corporation's registered agent within ten (10) days of the change thereof;
- (G) Represents and warrants that it is fully capitalized to the extent necessary to perform all the work, obtain all the facilities and equipment, and meet all of the commitments required by this

Franchise and that it will remain fully capitalized during the term of this Franchise;

- (H) That it shall be solely responsible for any and all damage and injury by its employees, agents, independent contractors, contractors, and officers and/or of its equipment to any person or property, whether private or public, and shall hold the City harmless from all liability for any damages or injuries whatever.

### **Sec. 11. Standards of service.**

(A) Franchisee shall furnish reasonably adequate service and facilities to the public and its cable television system shall be installed, constructed, maintained and operated in accordance with the accepted standards of the industry, in conformity with the state of the art and any standards of operation or maintenance for a cable television system which may be established or issued by the Federal Communications Commission. It is the intention of this Cable TV Franchise Ordinance that Franchisee shall possess the financial and technical qualifications necessary to provide a cable television system, which will assure its subscribers high quality service.

(B) Franchisee agrees and binds itself to extend its lines and to serve any and all applicants for television service whose dwellings or places of business are located in the City and who in good faith have entered into, or signified their willingness to enter into, a contract for such television service, provided that additional charges for out-of-way locations may be added to the installation charges when necessary to cover extra installation costs.

(C) The television system franchised under this Ordinance shall maintain such capacity, capability and technical standards as will enable it to interconnect with any other cable television system located in any outlying community, insofar as it is technically and economically feasible to interconnect; and Franchisee shall make reasonable and diligent efforts to accomplish interconnection with outlying systems of other communities. However, nothing in this provision shall prohibit the charging to subscribers, on a time-used basis, of extra fees for cablecast channels received from noncontiguous systems.

(D) Franchisee shall continually upgrade its facilities, equipment, and service so that it maintains a "state of the art" system. Franchisee shall install additional channel capacity as required to keep channel capacity in excess of the demand. Within a reasonable time, to be determined by the franchisee and the City Council, the cable system shall be upgraded so that it is no less advanced than any other system of comparable size, excepting only systems that are experimental, pilot or demonstrational.

### **Sec. 12. Franchise fee.**

(A) During the term of this Franchise or any renewal thereof, the franchisee shall pay to the City for the use of its streets, public places and other facilities as well as the maintenance, improvement and supervision thereof; and for the regulation of activities by virtue of the Franchise, an annual Franchise fee in an amount up to five percent (5%) of the annual local gross subscriber revenues, revenue derived from advertising, leased channels, Basic, Basic Enhanced and Premium service charges as reviewed by the franchisee. Franchise fees will also include, upon written notice from the City, such other revenues as the FCC or Congress recognize in the future as a permissible basis for computation of Franchise fees such as Cable Information Service. The Franchise fee shall be paid in addition to any other tax or payment owed to the City by the franchisee, including

pole rental fees. Initially the Franchise fee shall be at a rate of 3.5 percent. The City shall notify Franchisee in writing no later than 90 days in advance of any proposed changes in the percentage rate for the Franchise fee.

At such time that premium service franchise fees are passed through to its customers. Franchisee agrees that it will pass through these costs to its Portland customers in the same manner as all other municipalities served by the franchisee's primary headend in which the municipality requires payment of franchise fees on premium services.

(B) *"Local gross subscriber revenues"* shall mean those gross revenues of the franchisee from subscribers (adjusted for nonpayment and collection expenses within the City), including revenue resulting from installation and relocation charges or from the sale of tangible property to subscribers, defined as user end equipment such as converters and remotes, excluding the sale of the franchisee's fixed assets or the potential sale of the system. To the extent that Franchisee's books of account do not reflect the source of any gross subscriber revenue, that portion of gross subscriber revenue allocable to Portland shall be based on the ratio of the number of subscribers in Portland to the number of subscribers outside the City of Portland.

(C) *Method of computation.* Sales tax or other taxes levied directly on a per subscription basis and collected by Franchisee adjusted for nonpayment and collection expenses shall be deducted from the local gross subscriber revenues before computation of sums due the City is made.

The Franchise fee will be paid each January during the term of this agreement as a prepayment for the year. Within ninety (90) days of the end of each calendar year, a certified statement from the company's C.P.A. or designee will be provided to the City to certify revenues for the prior year. This statement will be accompanied with a check or a credit statement to reconcile the payment made with actual revenue. All statements shall reflect the total amount of local gross subscriber revenues, and the charges provided for in subparagraph (B) hereof, the deductions and the computations for the period covered by the statement.

(D) *Right of recomputation.* No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a Franchise fee under this Ordinance or for the performance of any other obligation hereunder.

(E) *Failure to make required payment.* Failure to pay any fee required by this section shall result in automatic suspension of the Franchise granted, and reinstatement thereof may be had only upon resolution by the City Council, and payment of the delinquent fee or fees plus any interest or penalties as may be required by the resolution. Interest shall be calculated at the prime lending rate as then offered at Michigan National Bank.

(F) *Annual financial statement.* The franchisee shall annually file with the City Clerk a compiled statement of revenues received from the operation of CATV within the City of Portland within 60 days after the close of each calendar year, and shall make its financial records pertaining thereto available to the City for inspection at the City of Portland at any reasonable time. The franchisee shall also make available to the City, copies of all FCC filings and reports upon their request.

### **Sec. 13. Rates, charges and refunds generally.**

(A) *Rates and charges.*

(1) *Limitations on rates.* The charges made for service of the franchisee hereunder shall be fair and reasonable.

(B) *Advance charges.* The franchisee may require advance payment for installation fees and for one (1) month's advance service fee and a deposit fee for conversion equipment.

(C) *Other governmental regulation of rates.* If, in the future, the State of Michigan or the United States government or any regulatory agency thereof regulates the rates of the franchisee for the services provided for in this Franchise Ordinance, this section shall be of no effect during such regulation to the extent of any conflict therewith.

(D) *Refunds to Subscribers.*

(1) If during the terms of the Franchise the franchisee received refunds of any payments made for television or radio signals, it shall without delay notify the City Council and suggest a plan for flow through of the refunds to its subscribers.

(2) If any subscriber in less than 30 days terminates service, for reasons listed below, the franchisee shall refund to such subscriber his initial connection charges in full. If any subscriber terminates service because of the franchisee's failure to render service to such subscriber of a type and quality, and in the manner provided for herein, or because the franchisee ceased to operate the system authorized herein for any reason except expiration of the Franchise, the franchisee shall refund to such subscriber a portion of the initial connection charges which corresponds to the fraction obtained by dividing the number of months of service received by the subscriber by twelve (12).

(E) *Rate Policies:*

(1) Senior citizen discount: If a subscriber is sixty-five (65) years or older, then they will receive a ten (10%) percent discount from the Basic rate. Proof of age by the subscriber is necessary for receiving the discount.

(2) The franchisee may require a reasonable converter deposit paid upon installation.

(3) The City retains all authority under the Cable Act.

#### **Sec. 14. Services to the City.**

The franchisee shall provide to the City:

(A) Two channels, at no charge, located on the subscriber distribution system, for the purpose of providing public, educational and governmental access. One channel, originating at Portland City Hall, shall be a combined public access and government access channel. The other channel, originating at Portland High School, shall be an educational access channel operated by the Portland Public Schools. Franchisee shall provide the bandwidth and Rf modulation equipment necessary to transmit a generated signal over the subscriber distribution system. The franchisee

shall provide equipment such as cables, modulators, amplifiers and other Rf distribution equipment at no cost to the City. The franchisee shall maintain or replace, as needed, the cables, modulators, amplifiers and other Rf distribution equipment owned by the franchisee. The franchisee shall provide technical advice regarding the use and operation of the access channels at no cost to the City. The franchisee shall provide background audio for the access channels. Upon request, the franchisee shall place NOAA weather audio on the government access channel.

- (B) A fiber optic return cable installed at City Hall, to provide transportation of the access channel's signal described in paragraph (A), to the optical transition node (OTN), which provides all residents of the City with cable television services. The franchisee shall provide all equipment, including the fiber optic cable, transmitter, receiver and splicing necessary to complete the activation of the fiber optic cable and to provide the access channel's signal on the cable system. Where appropriately located, the City shall provide conduit space for the underground installation of the fiber optic cable at no recurring monthly charge to the franchisee. The labor necessary to complete the installation of the fiber optic cable in the City's conduit shall be provided equally by the City and the franchisee and the expense of which shall be borne equally by the franchisee and the City. The expense of installing the fiber optic cable located beyond the extent and outside of the City's conduit shall be borne by the franchisee. Within 3 months of the activation of the fiber optic [optic] return cable, the City agrees to rescind Section 27 Liquidated Damages, of the Amendment To Cable Television Franchise Ordinance.
- (C) One outlet of Basic Enhanced service, with no installation or monthly charge to the City, for each City building, including fire station(s), police station(s), City Hall and library(s) located within 300 feet of Franchisee's cable system. Additional outlets shall be provided at no monthly charge to the City; however, additional service outlets shall be provided at the cost of labor and materials. There shall be no charge to the City for maintenance or service.
- (D) The services of its technical department to provide technical advice and assistance regarding the use and operation of the local government and public access channels.
- (E) Cable Information Service to a maximum of five (5) City buildings, including fire station(s), police station(s), City Hall and library(s) located within 300 feet of Franchisee's cable system. The City shall pay a monthly service charge for said Cable Information Service at a rate not to exceed Grantee's actual costs of providing the Service to City. Installation of Cable Information service drops shall be provided at the cost of labor and materials.
- (F) The labor to pre-wire up to fifteen (15) service outlets in the new Portland City Hall for cable television and cable information service. Franchisee shall provide wiring for cable television service and City shall provide wiring for cable information service. City shall provide engineering drawings indicating the location of outlets for the aforementioned services.

#### **Sec. 15. Services to educational institutions.**

During the continuing operation of the cable communications system in the City, the franchisee shall provide to state accredited, public, private and parochial schools in the City for education services at least the

following:

- (A) As set forth in Section 14(A), one educational access channel, at no charge, located on the subscriber distribution system, for the purpose of educational access. Franchisee shall provide the bandwidth and Rf modulation equipment necessary to transmit a generated signal over the subscriber distribution system. The franchisee shall provide, upon request, background audio for the educational access channel.
- (B) One outlet of Basic Enhanced service, with no installation or monthly charge to the schools, for each public, private and parochial school located within 300 feet of Franchisee's cable system. Additional outlets shall be provided at no monthly charge to the schools; however, additional service outlets shall be provided at the cost of labor and materials.
- (C) The shared access channel shall originate from Portland Public High School. The franchisee shall provide equipment such as cables, modulators, amplifiers and other Rf distribution equipment at no cost to the school. The franchisee shall maintain or replace, as needed, the cables, modulators, amplifiers and other Rf distribution equipment owned by the franchisee. The franchisee shall provide technical advice regarding the use and operation of the access channel at no cost to the school.

#### **Sec. 16. Service to Subscribers.**

(A) The franchisee shall carry WKBD Channel 50 from Detroit provided on the Basic Service during the term of this agreement or a similar service with comparable programming that is agreed to by the City Council, the agreement to which shall not be unreasonably withheld. However, Council's consent shall not be required in the event that Franchisee's deletion of WKBD's programming is pursuant to federal law, including any applicable regulations.

(B) Movies and programs bearing an "X" rating shall be prohibited from all channels as provided by law.

#### **Sec. 17. Conversion equipment.**

The franchisee shall provide to each subscriber the conversion equipment necessary for the receipt of all services available on the general distribution system. The franchisee may collect a deposit from subscribers to insure the protection and return of the conversion equipment. Such deposit may be paid by the subscriber in the amount set forth under the section entitled "Rates." At the termination of service, the subscriber shall receive a refund in full of his security deposits upon the return of the conversion devices in good condition to the franchisee, normal wear expected. In the event the conversion device is not returned to the franchisee or is not returned in good condition at the termination of service, the franchisee may retain from the security deposit the actual cost of the conversion device or the actual cost of repair.

#### **Sec. 18. Prohibition of discriminatory or preferential practices.**

The franchisee shall not, in its rates or charges, or in making available the services or facilities of its system, or in its rules or regulations, or in any other respect, make or grant preference or advantages to any

subscriber or potential subscriber to the system, or to any user or potential user of the system; and shall not subject any such person to any prejudice or disadvantage. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscriptions to the system or other legitimate uses thereof; nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classifications shall be entitled.

### **Sec. 19. Channel capacities.**

The franchisee's cable communication system shall be capable of carrying a combination of at least 135 analog and digital audio and video channels with a minimum of 115 video channels. The cable communication system as installed shall provide the following services and shall possess the following minimum physical capabilities:

- (A) Trunk Cable shall be capable of transmitting outbound from the central distribution point a combination of at least 135 analog and digital audio and video channels, passing the useable VHF and FM spectrum and shall have the further capability of converting UHF for distribution to subscribers on the VHF bands. The system shall accommodate, at a minimum, 450 MHZ amplifier equipment.
- (B) *Feeder Cables.* Each feeder cable and subscriber drop and associated amplifiers and electronic equipment shall be capable of transmitting a combination of at least 135 analog and digital audio and video outbound channels and of passing in the reverse direction (5-30 MHZ) data signals from each subscriber.
- (C) Nothing herein shall be construed to prohibit the franchisee from increasing the capability of the cable communication system or constructing the same in accord with more advanced technological standards than those presently used by the franchisee. If channel capacity is limited by demand at any time during this agreement, Franchisee agrees to upgrade the capacity of the cable system.

The cable system shall utilize a hybrid fiber-coaxial architecture and be designed with the capability to transmit forward and return signals. Franchisee may develop, construct and operate a cable system capable of providing nonvideo services such as high-speed data transmission, Internet access, local and long distance telephone service, and other competitive services, which Franchisee may activate in response to consumer and business demand for such services.

### **Sec. 20. Indemnification; defense of litigation no recourse against city.**

(A) *Indemnification.* Franchisee shall indemnify and hold harmless the City, its officers, boards, commissions, agents, and employees, against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages (including but not limited to damages to City property and damages arising out of copyright infringements, and damages arising out of any failure by Franchisee to secure consents from the owners, authorized distributors or licensees or programs to be delivered by Franchisee's cable television system), costs or liabilities (including costs or liabilities of the City with respect to its employees), of every kind and nature whatsoever, including, but not limited to, damages for injury or death or damages to person or property, regardless of the merit of any of the same, against all liability to others, and against any loss, cost and

expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense arising out of or pertaining to the exercise or the enjoyment of any Franchise hereunder by Franchisee or the granting thereof by the City.

(B) *Defense of Litigation.* Franchisee shall at the sole risk and expense of Franchisee, upon demand of the City, made by its designee, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the City, its officers, boards, commissions, agents or employees and arising out of or pertaining to the exercise or enjoyment of this Franchise, or the granting thereof by the City.

Franchisee shall promptly pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made or issued against Franchisee, the City, its officers, boards, commissions, agents, or employees in any of these premises; and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking or other assurance required hereunder, or otherwise, provided, that neither Franchisee nor City shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit, or other proceeding, without first obtaining the written consent of the other.

(C) The franchisee shall have no recourse whatsoever, against the City or its officers, boards, commissioners, agents or employees for any loss, cost, expense or damage arising out of any provision or requirement of this Franchise or because of its enforcement.

## **Sec. 21. Faithful performance bond.**

The franchisee shall, concurrently with its acceptance of this Franchise, file with the City Clerk and at all times thereafter maintain in full force and effect for the term of this Franchise or any renewal thereof, at Franchisee's sole expense, a corporate surety bond in a reasonable company licensed to do business in Michigan in an amount not less than \$10,000.00, renewable annually, and conditioned upon the faithful performance of Franchisee, and upon the further condition that in the event Franchisee shall fail to comply with any one or more of the provisions of the Franchise, there shall be recoverable jointly and several from the principal and surety of such bond any damages or loss suffered by the City as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the franchisee as prescribed hereby, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond, said condition to be continuing obligation for the duration of the Franchise and any renewal thereof and thereafter until the franchisee has liquidated all of its obligations with the City that may have arisen from the acceptance of this Franchise or renewal by the franchisee or from its exercise of any privilege or right herein granted. The bond shall provide that at least thirty (30) days prior written notice of intention not to renew, cancellation, or material change, be given to the City by filing the same with the City Clerk.

## **Sec. 22. Insurance.**

(A) *[Insurance to be maintained in full force.]* The franchisee shall, concurrently with its acceptance of this Franchise, file with the City Clerk and at all times thereafter maintain in full force and effect for the term of this Franchise or any renewal thereof, at Franchisee's sole expense, insurance in such forms and in such

companies as shall be approved by the City, such approval not to be unreasonably withheld, to protect the City and the franchisee from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the construction, erection, operation, or maintenance of any aspect of the system. The amount of such insurance shall be not less than the following:

(1) General Liability Insurance.

\$1,000,000.00 Per Occurrence for Bodily Injury & Property Damage

\$2,000,000.00 General Aggregate for Bodily Injury & Property Damage

\$2,000,000.00 Products Aggregate for Bodily Injury & Property Damage

(2) Commercial Automobile Insurance.

\$1,000,000.00 Per Occurrence for Bodily Injury & Property Damage

(3) Workman's compensation insurance shall also be provided as required by the laws of the State of Michigan, as amended.

(B) *[Notice provided in event of alteration or cancellation.]* All said insurance coverage shall provide ten (10) day notice to the City Clerk in the event of material alterations or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective.

(C) *[Copies of all policies filed.]* Copies of all policies required hereunder shall be furnished to and filed with the City Clerk, prior to the commencement of operations or the expiration of prior policies, as the case may be.

(D) *Nonwaiver.* Neither the provisions of this section, nor any bonds accepted by the City pursuant hereto, nor any damage recovered by the City thereunder, shall be construed to excuse unfaithful performance by the franchisee or limit the liability of the franchisee under this ordinance or the Franchise for damages, either to the full amount of the bond, or otherwise.

### **Sec. 23. Penalties and franchise revocation.**

In case of material noncompliance with any term of this Cable Television Franchise Ordinance or the Cable Television Ordinance, the City may assess penalties and terminate this Franchise agreement in accordance with the procedures in this section.

(A) *Notice of Complaint.* The City shall provide Franchisee with written notice of the complaint. The Notice shall describe in reasonable detail the alleged material noncompliance.

(B) *Opportunity to Cure.* Franchisee shall have 90 days from receipt of written notice to cure the alleged material noncompliance. If Grantee cures the alleged material noncompliance with the 90-day period, the City shall provide Franchisee with written notice withdrawing the complaint.

- (C) *Public Hearing.* If Franchisee fails to cure the alleged noncompliance within the 90-day cure period, or if Franchisee provides the City with written notice disputing the complaint, and the parties fail to otherwise resolve the matter, the City shall schedule a public hearing on the alleged noncompliance. At the public hearing, Franchisee may present testimony, cross-examine witnesses and deliver to the City all evidence relevant to Franchisee's defense. At the conclusion of the public hearing, the City may dismiss the complaint; defer action, or order fines or Franchise agreement termination in accordance with this section.
- (D) *Fines.* For willful noncompliance with any material provision of this cable television Franchise ordinance or cable television ordinance that Franchisee fails to cure after the 90-day period, the City may assess a fine of up to one hundred [dollars] (\$100.00) per day of noncompliance. If the City finds that the complaint resulted from Franchisee's good faith misinterpretation of this Franchise Agreement, the fine shall not exceed three hundred [dollars] (\$300.00), if the noncompliance continues beyond three (3) days.
- (E) *Termination.* City Council may, after a duly noticed public hearing, terminate this Franchise agreement for material and willful continuing noncompliance by Franchisee. If Franchisee contests the termination in a court of competent jurisdiction, Franchisee may operate the cable system in accordance with this Franchise agreement while the case is pending.

#### **Sec. 24. Severability and preemption.**

(A) *Severability.* It is the intent of the parties hereto, that all provisions and sections of this Franchise be liberally construed to protect and preserve the peace, health, safety and welfare of the inhabitants of the City of Portland and should any provision or section of this Franchise 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, it being the intent that they shall stand, notwithstanding the invalidity or unenforceability of any particular provision or section thereof. In the event that any portion of this ordinance shall be inconsistent with the rules and regulations of the FCC, and result in the withholding of a certificate of compliance therefrom, the FCC is authorized to declare such provision of this ordinance inoperable and authorize the operation of the CATV system during the period this ordinance is being amended. Provided, however, that all such provisions struck by the FCC shall be renegotiated with the City.

(B) *Preemption.* The provisions of this ordinance shall be construed to conform to all present requirements of the Federal Communications Commission, all acts of the Congress of the United States, and all acts and requirements of the State of Michigan.

#### **Sec. 25. Franchise expense.**

The franchisee shall, within thirty (30) days of its acceptance of this Franchise Agreement and upon receipt thereof, reimburse the City up to fifty (50) percent of its reasonable legal fees incurred in the preparation and review of the same, the reimbursement of which shall not exceed \$2,500.

#### **Sec. 26. Notice to be published.**

The City Clerk shall publish notice in the manner required by law to the effect that the Cable Television

Franchise Ordinance, and any extension or amendment thereto following its adoption by Council, is complete in the form to be enacted by Council, is on file at the office of the Clerk for inspection by and distribution to the public for at least the next 4 weeks following publication and that the City Council intends to adopt such Franchise Ordinance in such form thereafter.

**Sec. 27. Publication and effective date.**

This Ordinance shall be published in the Portland Review and Observer, a weekly newspaper circulated in the City of Portland, within fifteen (15) days following its adoption and shall take effect on the date of publication or ten (10) days after adoption, whichever shall be later.

Adoption Date: December 17, 2001

Publication Date: December 23, 2001

Effective Date: January 2, 2002

**DIVISION 2.**

**MICHIGAN BROADBAND, LLC**

**ORDINANCE NO. 177C**

**AN ORDINANCE TO AMEND THE CABLE FRANCHISE AND TO APPROVE AN ASSIGNMENT OF THE CABLE FRANCHISE**

WHEREAS, Millennium Digital Media Systems, L.L.C. ("Millennium") is currently the franchisee under a Cable Television Franchise Agreement ("Franchise") with the City of Portland, Michigan ("City"), which is Ordinance No. 177B; and

WHEREAS, Millennium has proposed to assign the Franchise to Michigan Broadband, LLC ("Michigan Broadband" or the "Assignee") (the "Assignment"), and Millennium and Michigan Broadband have requested the City's consent to the Assignment; and

WHEREAS, Section 4(D) of the Franchise requires that the City approve any assignment or transfer of the Franchise; and

WHEREAS, the City has agreed to consent to the Assignment subject to the parties accepting this Ordinance.

THE CITY OF PORTLAND ORDAINS:

**SECTION 1. FRANCHISE ASSIGNED.**

The City hereby consents to the Assignment of the Franchise to Michigan Broadband upon the following terms and conditions, and hereby amends the definition of "Franchisee" under Section 2(B) of the

Franchise to read as follows:

"Franchisee", "Franchise holder", and "Grantee", as used in this Ordinance, are interchangeable and refer to the cable television company Michigan Broadband, LLC.

## **SECTION 2. FRANCHISE BINDING.**

A. Michigan Broadband hereby acknowledges that the transactions and actions ("Transactions") taken pursuant to the Asset Purchase Agreement dated February 8, 2006 ("APA") by and among Millennium, Michigan Broadband, and their parents and affiliates:

- i) do not affect the binding nature of the Franchise and the obligations of the franchisee as stated therein, except as otherwise provided herein; and
- ii) do not constitute a waiver or release of any rights or powers of the City, except as otherwise provided herein.

B. Michigan Broadband hereby accepts all the terms of this Ordinance and the Franchise as modified herein.

## **SECTION 3. TRANSACTION COSTS.**

Millennium and/or Michigan Broadband shall reimburse the City its costs related to this franchise assignment, not to exceed \$5,500. Such payment shall be made to the City within thirty (30) days of receipt by Millennium and Michigan Broadband of reasonable and appropriate documentation from the City reflecting any costs, including but not limited to legal services and publication costs, related to this franchise assignment.

## **SECTION 4. ASSIGNMENTS AND TRANSFERS.**

Michigan Broadband may, without obtaining prior consent of Grantor, from time to time: (a) assign or transfer its assets, including the Franchise, provided however, that such assignment or transfer is to a parent or subsidiary of Michigan Broadband or another entity under direct or indirect control of the parent of Michigan Broadband and that such assignment does not require approval of the City under Section 4 of the Franchise; (b) restructure its debt or change the ownership interests among its equity participants, and/or its affiliates; (c) pledge or grant a security interest in its assets, including but not limited to the Franchise, or of interests in Michigan Broadband, to any lender(s) for purposes of securing indebtedness.

## **SECTION 5. UNDERGROUND INSTALLATIONS.**

Section 7 of the Franchise is hereby amended to add Section 7(I)(3), which reads as follows:

Franchisee agrees to install facilities underground when reasonably requested by the City and to share on a pro rata basis the cost of such underground installation and associated restoration of the rights of way.

## **SECTION 6. REMOVAL FROM POLES.**

Section 7 of the Franchise is hereby amended to add Subsection 7(H) (4), which reads as follows:

- (4) Prior to a construction project in which the City shall require Franchisee to remove its cables from City poles and place them into underground conduit, City shall endeavor to provide Franchisee with at least twelve (12) months, but no less than six (6) months, advance written notice of such requirement. On projects for which the City has provided Franchisee with such advance notice, then Franchisee shall have sixty (60) days following the City's request to remove its cable lines to remove its lines from the City's poles, unless a longer time is agreed to in writing by the City.

#### **SECTION 7. PRIOR DEFAULTS.**

The City reserves all rights against Michigan Broadband and Millennium concerning defaults under the Franchise discovered after the Effective Date of this Ordinance. Michigan Broadband agrees that it will not contend directly or indirectly that any defaults or failures to comply with the Franchise which may have occurred prior to the closing of the Transactions are waived, including but not limited to the following:

- (a) the ability of the City to obtain redress for prior defaults, such as recovery of any underpayment of Franchise fees;
- (b) the ability of the City to enforce in the future any Franchise terms which may not have been enforced in the past.

#### **SECTION 8. CONDITIONAL TERMS.**

With the exception of Section 3 above, the obligations of Millennium and Michigan Broadband under this Ordinance and the City's consent to the Assignment become effective upon the Closing Date of the transactions contemplated by the APA, but such consent and obligations shall be null and void if the Closing Date occurs after December 31, 2006. The obligations of Millennium and Michigan Broadband with regard to Section 3 become effective upon the adoption by the City of this Ordinance.

#### **SECTION 9. NOTIFICATION.**

Within thirty (30) days of the Closing Date, Michigan Broadband shall notify the City in writing of the date on which the closing occurred by written notice to the City Manager, Tom Dempsey, 259 Kent Street, Portland, MI 48875 with a copy to John W. Pestle of Varnum, Riddering, Schmidt & Howlett LLP, 333 Bridge Street, NW, Suite 1700, Grand Rapids, Michigan 49504. All notices to Michigan Broadband shall be addressed to: 401 Kirkland Parkplace, Suite 410, Kirkland, Washington 98033, Attention: Steve Weed and Jim Penney.

#### **SECTION 10. REPRESENTATIONS.**

Each party agreeing to this Ordinance hereby confirms and represents to the other parties that the representative signing this Ordinance on behalf of such party has all necessary authority to sign on behalf of such party. The City confirms and represents to Millennium and Michigan Broadband that (a) the Franchise was duly issued, is valid and enforceable in accordance with its terms, and is in full force and effect; (b) other than

as set forth in this Ordinance, there have been no amendments or modifications to the Franchise as a result of this Assignment; (c) to the best of the City's knowledge and belief there are no defaults under the Franchise and no event has occurred and is continuing which, with the giving of notice or passage of time, or both, could constitute a default thereunder; and (d) upon the consummation of the Assignment, the duly authorized franchisee under the Franchise will be Michigan Broadband.

#### **SECTION 11. COUNTERPARTS.**

This Ordinance may be signed in counterparts with individual signatures on separate pages and the pages then assembled to form a complete document, and upon all parties signing this Ordinance, it shall be final and binding upon all the parties.

#### **SECTION 12. CONFLICTS.**

In the event of any conflict between this Ordinance and the provisions of any other ordinance, including but not limited to the Franchise, the provisions of this Ordinance shall prevail and the provisions of any conflicting ordinance shall be hereby repealed to the extent of any conflict.

#### **SECTION 13. CONDITIONAL APPROVAL.**

The City's approval of the proposed Assignment granted by this Ordinance is conditional upon the acceptance of this Ordinance by both Michigan Broadband and Millennium. Such acceptance shall be demonstrated by each party signing this Ordinance as set forth below. If signed acceptance pages are not received by the City for both Millennium and Michigan Broadband within thirty (30) days of the Effective Date of this Ordinance, then this Ordinance becomes null and void and the City's approval of the proposed Assignment is of no effect.

#### **SECTION 14. PUBLICATION AND EFFECTIVE DATE.**

This Ordinance must be published and recorded as provided in the City Charter and takes effect on the date of publication, but not less than ten (10) days after its adoption by the City Council.;oh5;

Ayes: Habegger, Duff, Alderman, Parsons, Barnes

Nays: None

Absent: None

Abstain: None

**ORDINANCE DECLARED ADOPTED.**

Dated: June 19, 2005

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James E. Barnes, Mayor

\_\_\_\_\_

Yvonne M. Miller, City Clerk

Introduced: June 5, 2006

Adopted: June 19, 2006

Published: June 25, 2006

Effective: June 29, 2006

Franchisee hereby accepts this Ordinance assigning the Franchise as modified herein and agrees to all the provisions contained herein.

MICHIGAN BROADBAND, LLC

By (Name): \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: June \_\_\_\_\_, 2006

MILLENNIUM DIGITAL MEDIA SYSTEMS, L.L.C

By (Name): \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: June \_\_\_\_\_, 2006