

CHAPTER 31

COMMUNITY ANTENNA FRANCHISE ORDINANCE TO C-TEC CABLE SYSTEMS OF MICHIGAN, INC.

31.01 SHORT TITLE.

This ordinance shall be known as the City of Lapeer Community Antenna Television Franchise Ordinance to C-TEC Cable Systems of Michigan, Inc.

EFFECTIVE DATE: OCTOBER 11, 1989

31.02 PURPOSE.

The purpose of this Ordinance is to provide for the issuance of a non-exclusive franchise for the regulation and control of Community Antenna Television (CATV) Systems in the City of Lapeer, pursuant to Chapter 14 of the Charter of the City of Lapeer, as revised.

31.03 DEFINITIONS:

(A) **COMPANY** means C-TEC Cable Systems of Michigan, Inc. or any other person, firm, or corporation being holder of a franchise to operate CATV System in the City of Lapeer.
EFFECTIVE DATE: OCTOBER 11, 1989

(B) **STREETS** mean streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other public rights of way, and public grounds or waters within or belonging to the City.

(C) **PERSON** means person, firm, corporation, or association, and any other legally recognized entity.

(D) **RESIDENTIAL SUBSCRIBER** means a purchaser of any service delivered over the System to an individual dwelling unit, where the service is not to be utilized in connection with a business, trade, or profession.

(E) **CABLE TV SERVICE** means the simultaneous delivery by the Company to television receivers of subscribers of all signals of over-the-air television broadcasters required by the FCC to be carried by a Community Antenna Television System; the Company Channels; City Channels; Public Channels; and at least five (5) additional channels at the option of the Company, or as directed by the City.

EFFECTIVE DATE: November 16, 1983

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- (F) **PREMIUM CHANNEL SERVICE** means the delivery by the Company to television receivers of subscribers certain individual channels not included in and in addition to the cable TV services.
EFFECTIVE DATE: NOVEMBER 16, 1983
- (G) **EXPANDED CABLE TV SERVICE** means the simultaneous delivery of at least four (4) additional (or at least nine (9) total) channels by the Company in addition to services provided by Cable TV Service.
EFFECTIVE DATE: NOVEMBER 16, 1983
- (H) **CHANNEL** means a band of frequencies in the electromagnetic spectrum h is capable of carrying either one audio-video television signal and a number of non-video signals, or several thousand non-video signals.
- (I) **CITY CHANNEL** means a channel on the System which is reserved by this Ordinance for use by the City or reserved for City use by the allocation or re-allocation of channels.
- (J) **PUBLIC CHANNEL** means a channel on the System which is reserved for carriage of program material provided by persons who lease channel time from the Company for the presentation of programs in accordance with this Ordinance.
- (K) **COMPANY CHANNEL** means a channel on the System which is reserved by this Ordinance for the carriage of program material originated by the Company or by another person in accordance with the F.C.C.'s cablecasting rules and regulations.
- (L) **CITY** means the City of Lapeer, a Michigan Municipal Corporation.
- (M) **F.C.C.** means the Federal Communications Commission.
- (N) **FRANCHISE** means the grant of authority to the Company to operate a CATV System in the City of Lapeer.
- (O) **GROSS SUBSCRIBER REVENUES** means the total revenues received by the System from subscribers to its services who are located in the City of Lapeer and includes all forms of consideration, such as initial lump sum payments or connection charges.

- (P) COMMUNITY ANTENNA TELEVISION SYSTEM, CATV, or SYSTEM** means any facility that, in whole or in part, receives directly or indirectly, over the air, or otherwise, and amplifies or otherwise modifies the signals transmitting programs broadcasted by one or more television or radio stations as well as signals transmitting any information of any kind whatsoever and distributes such signals by wire or cable, or otherwise to the public.
- (Q) PAY TELEVISION OR PAY TV** means an arrangement under which a charge is made to a television receiver for receiving a particular television program.
- (R) MINI-BASIC SERVICE** means the simultaneous delivery by the Company to television receivers of twelve (12) over-the-air TV channels as required by the FCC to be carried by a community antenna television system.
EFFECTIVE DATE: November 16, 1983

31.04 AWARD OF NON-EXCLUSIVE FRANCHISE.

- (A)** The transfer of franchise from Centel Cable Television Company of Michigan is approved, and there is hereby awarded to C-TEC Cable Systems of Michigan, Inc. a non-exclusive franchise for the occupation or use of the streets within the City for the construction, operation and maintenance of a CATV system.
EFFECTIVE DATE: October 11, 1989
- (B)** This franchise shall become effective on the date ratified by the Company in writing after having been awarded by the Commission in accordance with applicable law. It shall remain effective until December 31, 1996, unless sooner terminated as herein provided in Section 31.05.
EFFECTIVE DATE: August 14, 1996
- (C)** Nothing in this Ordinance shall affect the right of the City to grant to any other person a franchise to occupy and use the streets or any part thereof for the construction, operation, and maintenance of a CATV or similar facility within the City, and the Company shall not take a legal position contesting the Commission's right to authorize such use of the streets or any part thereof; provided, however, that the City shall give the Company no less than two (2) weeks notice of the hearing date of any application for any additional franchise, to another, and nothing contained in this Ordinance shall prohibit the Company from appearing before the Commission and being heard on any application for any additional franchise to another.

31.05 REVOCATION OF FRANCHISE

- (A) The franchise granted hereunder shall be subject to the right of the City by resolution of a majority of its governing body to revoke the franchise at will.
- (B) Any franchise granted hereunder shall be 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) Any franchise granted hereunder shall be subject to all applicable State and Federal laws, including rules and regulations promulgated by the F.C.C.

31.06 LIMITATION OF FRANCHISE. A franchise granted pursuant to this Ordinance applies only to the operation of a CATV system as provided for herein, and does not take the place of any other franchise, license, or permit which might be required by Federal, State, or Local law.

31.07 TRANSFER AND CHANGE OF CONTROL OF FRANCHISE.

- (A) Each franchise granted pursuant to this Ordinance is non-transferable by the holder of the franchise to any other person, except with the express approval of the Lapeer City Commission and subject to such transferee having submitted an application as provided in Chapter 28 of the General Ordinances of the City of Lapeer and meeting all terms, conditions, and requirements of the General Ordinances of the City of Lapeer.
- (B) A franchise issued pursuant to this Ordinance shall automatically terminate where ownership or control of more than twenty-five percent (25%) of the right of control of the holder of the franchise is acquired by a person or group of persons acting in concert, none of whom already own or control twenty-five percent (25%) or more of such right of control, singularly or collectively, and an application for a new franchise shall be made or said franchise transferred pursuant to Section 31.07 (A).

31.08 CONSTRUCTION AND INSTALLATION OF SYSTEM

- (A) Subject to the provisions and restrictions of this Ordinance and the General Ordinances of the City of Lapeer, the Company shall have the right to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the City of Lapeer, poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the City of Lapeer a CATV System.

- (B) To lease, rent, or in any other lawful manner, obtain the use of towers, poles, lines, cables, and other equipment and facilities from any and all holders of public licenses and franchises within the corporate limits of the City of Lapeer, including, but not limited to, Consumers Power Company, Detroit Edison Company and Michigan Bell Telephone Company, and to use same on such terms as agreed upon subject to all existing and future ordinances of the City. The poles used for the Company's distribution system shall be those erected and maintained by Consumers Power Company, Detroit Edison Company and/or Michigan Bell Telephone Company when and where applicable, providing mutually satisfactory rental arrangements can be entered into with said companies.

31.09 CONDITIONS ON STREET OCCUPANCY

- (A) All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and public places and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or public ways and public places.
- (B) In case of disturbance of any street, sidewalk, alley, public way or paved area, the Company shall, at its own cost and expense and in a manner approved by the Lapeer City Manager or the Manager's representative, replace and restore such street, sidewalk, alley, public ways or paved area in as good a condition as it was in before the work involving such disturbance was done.
- (C) If, at any time during the period of a franchise granted pursuant to this Ordinance, the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, the Company, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
- (D) Any poles or other fixtures placed in any public way by the Company shall be placed in such a manner as not to interfere with the usual travel on such public way.
- (E) The Company shall, on the request of any person holding a building-moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than 48 hours advance notice to arrange for such temporary wire changes.

- (F) The Company shall, after giving notice to and obtaining the approval of the Lapeer City Manager or the Manager's representative, have the authority to trim trees upon and hanging over 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 CATV System, except that at the option of the Lapeer City Manager, such trimming may be done by the City or under the supervision and direction of the City at the expense of the Company.
- (G) In all sections of the City where the cable, wires or other like facilities are placed underground, the Company shall place its cables, wires or other like facilities underground to the maximum extent that existing technology reasonably permits the Company to do so.

31.10 SAFETY REQUIREMENTS.

- (A) The company shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- (B) The Company shall install and maintain its wires, cables, fixtures and other equipment in accordance with all applicable Federal, State and Local laws and rules and regulations, and in such manner that they will not interfere with any installations of the City or of a public utility serving the City.
- (C) All structures and all lines, equipment, and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

31.11 ERECTION, REMOVAL AND COMMON USE OF POLES.

- (A) No poles or other wire holding structures shall be erected by the Company without prior approval of the Lapeer City Manager with regard to location, height, type and any other pertinent aspect. However, no location of any pole or wire holding structure of the Company shall be a vested interest and such pole and structure shall be removed or modified by the Company at its own expense whenever the Lapeer City Manager determines that the public enience would be enhanced thereby.

- (B) Where poles or other wire holding structures already in existence for the use in serving the City are available for use by the Company, but it does not make arrangements for such use, the Lapeer City Manager may require the Company to use such poles and structures if said Manager determines that the public convenience would be enhanced thereby and terms of the use available to the Company are just and reasonable.
- (C) Where the City or a public utility serving the City desires to make use of the poles or other wire holding structures of the Company, but agreement therefore with the Company cannot be reached, the City may require the Company to permit such use for such consideration and upon such terms as the City, through its governing body, shall determine to be just and reasonable, if said governing body determines that the use would enhance the public convenience and would not unduly interfere with the Company's operation.

31.12 RIGHTS RESERVED TO THE CITY.

- (A) The City shall have the right to install and maintain free of charge upon the poles and cables of the Company any wire and pole fixtures necessary for a police or fire alarm system, on the condition that such wire or pole fixtures do not interfere with the cable communications operations of the Company and that such installations shall be installed in a safe manner in conformance with State and City regulations.
- (B) The City shall have the right to supervise all construction or installation work performed subject to the provisions of this Ordinance and make such inspections as it shall find necessary to insure compliance with the terms of the Ordinance and all other pertinent provisions of law. At the expiration of this franchise or upon its termination or cancellation, as provided for herein, the City shall have the right to require the Company to remove at its own expense all portions of the cable communications systems from all public streets, alleys, ways, and areas within the City.

31.13 MAPS, PLATS AND REPORTS.

The Company shall, on or before the first day of April of each year, file with the City Clerk true and accurate maps or plats, showing the location of all existing and proposed installations, which shall include all receiving and transmitting stations, all trunklines, whether leased or owned outright, feeder lines, whether leased or owned outright, and attached to such maps or plats shall be a list by address of current subscribers.

31.14 CARRIAGE OF SIGNALS.

The Company shall comply with all rules and regulations, both present and future, of the United States Federal Communications Commission with respect to the reception, carriage and distribution of signals.

31.15 SIGNAL QUALITY REQUIREMENTS.

- (A) The facilities used by the Company shall be capable of distributing color TV signals, and when the signals the Company distributes are received in color by the Company they shall be distributed in color by the Company.
- (B) The Company shall produce a picture, whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production television sets in good repair and as good as the state of the art allows, and shall transmit signals of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with other electrical or electronic systems. For purposes of the Section, the standards to be applied in determining whether or not the Company is producing a good picture or transmitting signals of adequate strength to produce same are those acceptable standards as set forth in the rules and regulations of the Federal Communications Commission relative to community antenna television systems as amended or as shall be amended hereafter.
- (C) The Company shall demonstrate by instruments and otherwise to subscribers, upon request, that a signal of adequate strength and quality is being delivered. Such demonstration shall be made by taking a standard production television set with a screen of sufficient area as to clearly demonstrate the relative merit of the receiving signal.

31.16 OPERATION AND MAINTENANCE OF SYSTEM.

- (A) The Company shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as is possible, shall be preceded by notice and shall occur during periods of minimum use of the System.
- (B) The Company shall maintain an office in the City, or in a location acceptable to the City, which shall be open during all usual business hours, have a listed telephone, and be so operated that complaints and requests for repairs or adjustments may be received at any time, 24 hours each day.
- (C) The Company shall limit failures to a minimum by locating and correcting malfunctions promptly, but in no event longer than 24 hours after receiving notice of same; should it be impossible or impractical to correct any such malfunctions within 24 hours or less, then each subscriber whose television reception is so disrupted shall receive a rebate from the Company in the amount of \$.25 for every additional 24 hour period, or any portion thereof,

that said subscriber's television reception is so disrupted, unless the Company can show to the satisfaction of the Lapeer City Manager that said disruption in service was entirely beyond its control. Provided however, that the rebate to any subscriber under this Section, in any month, shall not exceed said subscriber's normal #monthly fee paid to the Company.

In the event a disruption of service, for any reason, extends beyond three (3) days from the time the Company is notified of such disruption, affected subscribers shall receive a rebate as herein provided above.

- (D) The Lapeer City Manager shall be the official of the City having primary responsibility for the continuing administration of the franchise and implementation of any reasonable complaint procedures.
- (E) Any complaint procedures implemented by the Lapeer City Manager, in addition to any procedures outlined in this Ordinance, shall be given to each subscriber by the Company at the time of initial subscription to the CATV System.

31.17 RATES.

- (A) The rates and charges for television and radio signals distributed hereunder shall be fair and reasonable and no higher than necessary to meet all costs of service within the City (assuming efficient and economical management), including a fair return on the original cost within the City, less depreciation, of the properties devoted to such service within the City.
- (B) The following maximum rates and charges are hereby authorized and shall not be increased by the Company without prior approval of the Lapeer City Commission following a public hearing. The Company shall have the right to discount these rates and charges.

EFFECTIVE DATE: November 11, 1983

ONE-TIME CHARGES:

1. Initial service connection: \$20.00
2. Upgrading, downgrading, or switching converters requiring a company technicians' visit to the subscriber's premises: \$10.00
3. Installation of additional services, not covered above, ordered after the initial connection of any of the above services, including multiple outlets, FM or stereo connections, relocation of outlets, or the addition of remote control switches: \$10.00

4. Reconnection Services: \$10.00
EFFECTIVE DATE: November 30, 1983

MONTHLY RATES:

1. Community Antenna Service: \$6.00
 2. Cable TV Service: \$8.95
 3. Expanded Cable TV Service: \$11.45
 4. Premium Channel Service: \$10.45 per channel
 5. Radio Service: \$2.00 per connection
 6. Additional TV Set Connection: \$5.00 per set.
- (C) The Community shall receive no consideration whatsoever for, or in connection with, its service to its subscribers other than in accordance with this Section.
- (D) If, in the future, the State of Michigan regulates the rates of the Company for the services provided under this Ordinance, this Section shall be of no effect during such State regulation to the extent of any conflict therewith.
- (E) The Company shall bill subscribers no more than one month in advance of the services being provided.
EFFECTIVE DATE: November 16, 1983
- (F) The Company shall keep the Lapeer City Commission advised of channels delivered for the above services and regular discounts offered.
EFFECTIVE DATE: November 16, 1983

31.18 CAPACITY AND COMMENCEMENT OF SYSTEM

- (A) The Company shall extend the installation of cables, amplifiers and related equipment throughout the City as rapidly as is practicable. Within three (3) years from the effective date of this franchise, the Company's trunkline installations of cables, amplifiers, and related equipment shall be capable of providing basic service to every City dwelling unit.

Thereafter, the Lapeer City Commission may impose such further construction obligations as are necessary to bring basic service to any building within the City.

- (B)** The Company shall apply the F.C.C. Certification within thirty (30) days from the effective date of this Ordinance.
- (C)** Within one (1) year from the date of certification from the F.C.C., the Company shall be providing Basic Service on a regular basis to at least 300 residential subscribers.
- (D)** As soon as possible, but in no event later than two (2) years from the effective date of this franchise, the Company shall transmit over the system the signals of all channels, both VHF and UHF, as may be required by the F.C.C.
- (E)** Initial channel capacity of the system (utilizing no less than twenty (20) channels) shall be as follows:

VHF and UHF channels required by F.C.C.	All
Public channels.....	1
City channels, including those for public schools, libraries, and for educational purposes.....	2
Company channels.....	Remainder

The initial channel use authorized in this subsection shall be subject to allocation or re-allocation subject to representations to the Lapeer City Commission as to the proper allocations to be made in light of the developments in the state of the art, the use of CATV as communications, educational, and entertainment media, and subject to the regulations of the F.C.C.

- (F)** The Company shall transmit and deliver over City channels the signals designated therefore by the Lapeer City Commission.
- (G)** The Company shall provide Basic Service to one outlet on each floor of all existing or future police and fire stations, the Lapeer City Hall, and all public and private schools located in the City, without any charge therefore.
- (H)** In the event of an emergency situation, the City may interrupt signals otherwise being distributed by the Company for the delivery of signals necessitated by such emergency.

- (I) In the operation of its system, the Company shall not interfere in any way with the signals of any electrical system located in buildings which house any part of the system, and shall not deprive an inhabitant of any building, by contract or otherwise, of any existing right to use an individual or master antenna for the purpose of receiving television signals.

31.19 LIABILITY INSURANCE AND INDEMNIFICATION.

- (A) The Company shall maintain throughout the term of its franchise, liability insurance insuring the City and the Company with regard to all damages for which the City and/or the Company may be liable, including, but not limited to, damages arising out of copyright infringement and all other damages arising out of the installation, operation, maintenance or removal of the cable communications system that is the subject of this franchise, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance.
- (B) The liability insurance referred to in subparagraph (A) of this Section shall be in the following minimum amounts:
 - 1. \$500,000.00 for bodily injury or death to any one person, within limits, however, of \$1,000,000.00 for bodily injury or death resulting from any one accident;
 - 2. \$500,000.00 for property damage resulting from any one accident;
 - 3. \$500,000.00 for infringement of copyright;
 - 4. \$500,000.00 for all other types of liability.
- (C) The Company shall pay, and by its acceptance of this franchise, the Company agrees that it will pay as a result of granting this franchise, and the Company shall save the City harmless from any and all liability arising out of this franchise, the granting of the same or the operation of the system hereunder. The Company shall pay for expenses incurred by the City in defending itself with regard to all damages and penalties which the City may be required to pay as a result of granting this franchise, including, but not limited to, all reasonable investigation, witness, and attorney fees.
- (D) The Company shall maintain throughout the term of its franchise, a faithful performance bond running to the City and to the subscribers of a CATV System, with at least two good and sufficient sureties approved by the City, in the penal sum of \$75,000.00, conditioned that the Company shall well and truly observe, fulfill and perform each term and condition

of the bond, and all damages proximately resulting from the failure of the Company to well and faithfully observe any provisions of this Ordinance shall be recoverable by the City from the principal and sureties.

- (E) The insurance policies and bond obtained by the Company in compliance with this Section must be approved by the Lapeer City Commission and such insurance policy and bond, along with written evidence of payment of required premiums, shall be filed with the Lapeer City Clerk.
- (F) The City shall annually review the above insurance and bond provision; and, if it is determined that the insurance coverage and performance bond is inadequate, additional insurance and/or bond may be required as reasonable determined by the Lapeer City Commission and shall be provided by the Company.

31.20 ANNUAL FRANCHISE FEE. Commencing one year from the effective date of this Ordinance, and each year thereafter, the Company shall pay to the Lapeer City Clerk a franchise fee equal to 5% of the Company's gross subscriber revenues or \$1,000.00 whichever is greater.
EFFECTIVE DATE: October 11, 1989

31.21 SEPARABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional, by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

31.22 PENALTY. Any person, persons, firm, association, or corporation violating any of the foregoing provisions of this Ordinance shall, upon conviction thereof, be sentenced to pay a fine of not exceeding five hundred dollars (\$500.00) or by imprisonment for not more than ninety (90) days in the Lapeer County Jail, or by both such fine and imprisonment, in the discretion of the Court.

31.23 ANNUAL REPORT. The Company shall provide within sixty (60) days following the conclusion of each Franchise year an annual report showing the yearly total gross subscriber revenues and payments to the City. This report shall be submitted with such other reasonable information as will clearly reveal the extent of the applicant's CATV operations, including investment in CATV facilities, revenues and expenses of operations within the City of Lapeer.
EFFECTIVE DATE: November 16, 1983

EFFECTIVE DATE: May 23, 1979, at 12:01 a.m.