

ORDINANCE NO. 16

AN ORDINANCE ESTABLISHING GUIDELINES AND PROCEDURES FOR THE GRANTING OF NON-EXCLUSIVE CABLE TELEVISION FRANCHISES WITHIN THE TOWNSHIP OF PENINSULA, GRAND TRAVERSE COUNTY, MICHIGAN.

THE TOWNSHIP OF PENINSULA ORDAINS:

Section 1. Definitions.

The following words, terms, phrases, and their derivations shall have the meanings as given herein. Words not defined herein shall be given their normal and common meanings:

- (a) "System" shall mean a system of antennae, cables, wires, lines, towers, or other conductors, converters, equipment or facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audiovideo and other forms of electronic or electrical signals via cable or other conductor to Subscribers for a specified fee. Such term shall not include any facility that serves or will serve only subscribers in any multiple-unit dwelling under common ownership, control or management which does not use Township rights of way.
- (b) "Subscriber" means a person, firm or corporation authorized to receive the services of the System.

Section 2. Necessity of Franchise.

No person, firm or corporation shall construct or operate a System within the Township except by franchise granted hereunder by the Township.

Section 3. Interference.

Neither the owner of any multiple unit, residential dwelling, nor the owner's agent or representative shall interfere with the rights of any tenant or lawful occupant thereof to receive system installation, services or maintenance from a cable communication company franchised under the authority of this Ordinance.

Section 4. Franchise Conditions.

- (1) Non-exclusiveness. Each franchise or renewal thereof granted under the authority of this Ordinance shall be non-exclusive.

- (2) Franchise Irrevocable if Ratified. If a franchise granted under this Ordinance is ratified and approved by the majority of persons voting at a general or special election in the Township, such franchise shall be irrevocable.
- (3) Revocation of franchise/standards. If a franchise granted under this Ordinance is not submitted to the voters of the Township for ratification and approval, such franchise shall be revocable at any time after a hearing before the Township Board. The following are factors, evidence of which may be considered by the Township Board as a basis for a finding that, based upon a preponderance of evidence presented, there is reason for revocation of a franchise granted hereunder. Those standards are as follows:
 - (a) The demonstrated material and repeated violation of this Ordinance by a franchisee.
 - (b) The demonstrated material and repeated violation of a franchise agreement granted under the authority of this Ordinance by a franchisee.
 - (c) The bankruptcy of a franchisee.
 - (d) Assignment, sale or transfer of a franchise without the written consent of the Township; and
 - (e) Any other factor which has rendered a franchisee unable to continue the competent operation of a franchise granted hereunder.
- (4) Terms of franchise: The terms of a franchise granted hereunder shall be determined by the requirements of this Ordinance and by the provisions of a franchise agreement signed pursuant hereto.

Section 5. Theft of service/vandalism.

- (1) No person, firm or corporation, whether a subscriber to the system or not, shall willfully, maliciously or otherwise, damage or cause to be damaged any wire, cable, conduit, apparatus or equipment of the system or commit any act with intent to cause such damage, or to tap, tamper with or otherwise connect any wire or device to a wire, cable, conduit, apparatus, appurtenance or equipment of any such system with the intent to obtain a signal or impulse from the system without authorization of the franchisee.
- (2) It shall be unlawful for any person to tap, monitor, or arrange for the tapping or monitoring of any cable lines, signal, input device, or other subscriber outlet, or receive it for any purpose whatsoever without the specific written authorization of the subscriber or pursuant to a court order.

- (3) Whoever shall violate any provision of this section shall be guilty of a misdemeanor and shall be liable to a penalty not to exceed \$500 or ninety days in jail or both per day, for each and every day or part thereof that the violation occurs.

Section 6. Eminent Domain.

Nothing in any franchise granted hereunder shall limit any rights of the Township which it may have to acquire by eminent domain or otherwise any property of the franchisee; provided, however, that any such acquisition shall be for a price that values the franchisee's property at fair market value.

Section 7. Assignment, sale or transfer of franchise.

Any franchise granted under the authority of this Ordinance shall not be transferred, sold or assigned by the franchisee without the express written consent of the Township Board, which consent may not be unreasonably withheld.

Section 8. Police power.

The rights of a franchisee are subject to the powers of the Township to adopt and enforce general ordinances necessary for the protection of the health, safety and welfare of the people of the Township.

Section 9. Subscriber rights.

- (1) Non-discrimination. No franchisee shall deny system service or access to subscribers upon the basis of their race, color, creed, ancestry, sex, age, disability, income level or marital status.
- (2) Subscriber antenna. No franchisee may require the removal or provide any inducements for the removal of any potential or existing subscriber's antennas as a condition of provision of service.
- (3) Subscriber privacy.
 - (a) No signals shall be transmitted from a subscriber's terminal, dwelling or place of business for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber; provided, however, that any franchisee shall be entitled to conduct, without such written authorization, system-wide or individually addressed sweeps for the purpose of verifying system integrity, controlling the return path transmission, or billing for services rendered hereunder.

- (b) No poll or other upstream response of a subscriber or user shall be conducted or obtained unless the program of which the upstream response is a part shall contain an explicit disclosure of the nature, purpose, and prospective use of the results of the poll or upstream response shall release the results of upstream responses only in the aggregate and without individual reference.

Section 10. Invalidity.

If any section, sentence, clause or phrase of this Ordinance is held invalid, unconstitutional or void by any court, such section, sentence, clause or phrase shall be deemed a separate and independent provision thereof of this Ordinance, and such holding shall not affect the validity of the remainder of the Ordinance.

Section 11.

That this Ordinance shall take effect thirty (30) days from the date of final adoption. This Ordinance was adopted by Resolution of the Township Board on the 11th day of October, 1988, and re-affirmed at its regular meeting of November 15, 1988.

Published in Traverse City Record-Eagle December 5, 1988.

Mary K. Belding

Mary K. Belding
Township Clerk

AGREEMENT

THIS CABLE COMMUNICATIONS SYSTEM FRANCHISE AGREEMENT, entered into on this 11th day of October, 1988, by and between PENINSULA COMMUNICATIONS, INC., a Michigan corporation, with offices located at 14250 Center Road, Traverse City, Michigan 49685 (hereinafter "Peninsula"), and THE TOWNSHIP OF PENINSULA, a Michigan municipal corporation, with offices located at Traverse City, Michigan 49685 (hereinafter "the Township").

WITNESSETH:

WHEREAS, the Township is authorized to grant non-exclusive cable communication system franchises and renewals thereof involving the use of the rights of way under its dominion and control; and

WHEREAS, Peninsula has submitted a proposal which will require a substantial investment by Peninsula in anticipation of future returns, including plans to construct a cable communications system to provide telecommunications services that would not otherwise be available in the Township; and

WHEREAS, the Township Board has determined that it is in the best interests of the Township to grant a non-exclusive franchise to Peninsula, which shall be subject to the terms and conditions of this Franchise Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, the Township and Peninsula agree as follows:

Section 1 - Definitions

A. The terms defined in Ordinance No. 16 of the Township of Peninsula shall have the same meaning when used in this Agreement.

B. "Channel" means a six Megahertz (6 MHz) frequency band which is capable of carrying either one (1) standard television signal, or a number of audio, digital, or other non-television signals, or some combination of such signals.

C. "Programming" means any video, audio, text or data coded signals carried over the system.

D. "Basic service" shall mean the lowest cost tier, of service which is available to subscribers for a fee.

Section 2 - Conditions of the Franchise

A. The Township does hereby grant to Peninsula and to its successors, assigns, or designees, the right, authority, power and franchise to establish, construct, acquire, maintain and operate a cable system within the Township to furnish and sell cable services from such system to the inhabitants of the Township, and to use and occupy the streets, alleys and other public places within said Township for its cable system, including the right to enter and construct, erect, locate, relocate, repair and rebuild in, on, under, over, across and use the streets, alleys, bridges and other public places of said Township, all towers, poles, cables, amplifiers, conduits and other facilities owned, leased or otherwise used by Peninsula for the furnishing of cable services within the Township and during the continuance of the franchise hereby granted, subject to applicable provisions of other ordinances of the Township.

B. The terms of the franchise hereunder shall be determined by the requirements of this Agreement and by the requirements of

Ordinance No. 16 of the Township, as amended from time to time by the Township Board.

C. It is agreed by the Township and Peninsula that the present non-exclusive franchise will continue in accordance with the terms and conditions herein until 2003.

D. Either the Township or Peninsula shall have the option to require that this Agreement be submitted to the voters at a general or special election for ratification and approval. In the event that this Agreement is so submitted, and is approved by the majority of persons voting, the franchise granted hereunder shall be irrevocable and Peninsula shall be responsible for the cost of any special elections held pursuant to this Paragraph D.

E. If this Agreement is not submitted to the electors for approval, the franchise granted hereunder shall be revocable upon failure of Peninsula to observe any of the terms of Ordinance No. 16 of the Township of Peninsula and this Agreement; provided, however, that the Township must give one-hundred eighty (180) days prior written notice of such revocation to Peninsula.

F. If by reason of strikes, acts of God, acts of public enemies, orders of any kind by the government of the United States of America or of the State of Michigan, or any of their departments, agencies, political subdivisions or officials or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, explosions, partial or entire failure of utilities, or any other cause not reasonably within

the control of the disabled party, a party is unable, in whole or in part, to carry out its obligations under this Agreement, said party shall not be deemed in violation or default during the continuance of such inability.

Section 3 - Construction and Service

A. Peninsula will provide a cable communication system within the Township with not less than twelve (12) channels of capacity, and may be bi-directional.

B. The system will meet or exceed applicable FCC technical standards (47 CFR 76, et seq.).

C. Construction and installation of the system shall be conducted so as to minimize the interruption of existing service available to the public and residents of the Township.

D. Peninsula shall provide a converter or similar terminal device to each subscriber. Parental key lock and cordless remote control shall be offered as available optional features. Peninsula may require a customer deposit for such converter, parental key lock and cordless remote control.

E. Peninsula shall have the right to prescribe reasonable rules governing the use of its service by subscribers.

F. The system shall have the capacity for carrying audio text data or video signals.

G. Peninsula shall use its best efforts to insure that all subscribers receive continuous, uninterrupted service, regardless of construction, modification, reconstruction or sale of the system.

When necessary interruptions can be anticipated, Peninsula shall notify subscribers in advance.

H. Peninsula shall provide upon request and free of charge one (1) installation each for the existing elementary school(s) located within the borders of the Township. The schools shall be subject to regular monthly charges for service.

I. Construction and modification of the communication system to be implemented under this Agreement shall be completed within thirty-six (36) months of this Agreement to the extent that any Township subscriber or resident first requesting service will receive such service.

Section 4 - Programming Service

A. Peninsula shall endeavor to provide a wide range and assortment of programming to serve the variety of needs and interests within the community, subject to the availability of same upon such reasonable terms and conditions as are generally available to other cable communications systems.

B. Peninsula will incorporate and follow present and future FCC regulations regarding the content of programs retransmitted or cablecasted including, but not limited to, sports programs, nonduplication, candidates for political office, the fairness doctrine, and obscenity regulations. (47 CFR 76, et seq.)

Section 5 - Rates

A. Peninsula shall file with the Township a schedule which shall describe all services including a breakdown by tiers offered of

all rates and charges of any kind or nature whatsoever. Peninsula shall file with the Township notice of any changes in said rates or charges at least thirty (30) days prior to any change becoming effective. To be effective, any change in rates or charges must be filed with the Township as provided herein.

B. If Peninsula's service to a subscriber is interrupted by system failure for twenty-four (24) or more consecutive hours, Peninsula shall grant a pro-rata credit for such interruption, at the request of the subscriber, where the amount of credit exceeds \$1.00.

C. The Township will not regulate installation and service rates.

Section 6 - Maintenance

A. Peninsula shall maintain all components of the system in good condition and repair at all times.

B. Peninsula shall maintain an annual log showing the date, time and duration, as well as probable cause for all system outages due to causes other than routine testing or maintenance. Said log shall be retained by Peninsula for one (1) additional year, and shall be subject to inspection and copying by the Township upon reasonable request.

C. Peninsula shall respond to calls for repair and system outages, whole or partial, as soon as possible.

Section 7 - Indemnification and Insurance

A. Indemnification. Peninsula shall indemnify and hold harmless the Township and all agents, officers, employees and representatives thereof from all claims, demand, cause of action, judgments, costs and expenses or losses for injury or death to persons or damage to property, arising out of, caused by, or as a result of Peninsula's construction, maintenance or operation of its cable system within the Township. Such indemnification shall not extend to injury or damage caused by the negligence or other fault of the Township, its agents, servants or employees.

B. Insurance. Peninsula shall annually obtain and maintain liability insurance covering its operations within the Township, with the Township listed as an additional insured (on the general liability portion only) in the following amounts:

General Liability	
Insurance/Property Damage\$1,000,000 per incident \$2,000,000 aggregate
Personal Injury\$1,000,000 per incident \$2,000,000 aggregate
Automobile Insurance/Combined Bodily	
Injury and Property Damage\$1,000,000 per incident -----

All such insurance coverage shall provide a ten (10) day notice to the Township in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancellation shall become effective. Peninsula shall advise the Township of the carriers, policy numbers and coverage limits, and shall keep copies of all policies required hereunder on

file in its offices, available for inspection at the request of the Township.

D. Non-waiver. Neither of the provisions of this section, nor any policies of insurance accepted by the Township pursuant hereto shall be construed to excuse unfaithful performance by Peninsula or limit its liability.

Section 8 - Renewal

A. No more than twenty-four (24) months, but not less than twelve (12) months before the expiration of the renewal granted hereunder, Peninsula shall inform the Township in writing whether it intends to seek renewal of the franchise and shall file a proposal for continued and, if relevant, expanded services.

B. Upon notice of Peninsula's intent to renew, the Township Board shall determine whether Peninsula has satisfactorily performed its obligations under the franchise. As a part of this determination, a public hearing will be held to receive public comment upon Peninsula's performance.

C. Any decision by the Township upon renewal of the franchise granted hereunder shall be based upon the following considerations:

1. The presence or absence of a history of material non-compliance with the terms of the existing franchise.
2. The presence or absence of a change in Peninsula's qualifications so as to impair its ability to operate the franchise.

3. Whether the renewal proposal is reasonable.
4. Whether the system has been maintained in an adequate and proper manner over the history of the franchise.
5. Whether the system meets FCC technical standards; and
6. Whether there exists an historical pattern of satisfactory resolution of subscriber complaints.

D. Non-renewal. If, following evaluation and public hearing, the Township Board determines that the renewal of the Franchise Agreement is not in the public interest, the Township shall issue a written statement of specific reasons for non-renewal.

Section 9 - Removal of System

A. If Peninsula on its own action or as required by the Township terminates the system, it shall remove its poles, lines, cables, or other system fixtures from the public property upon which they are located within twelve (12) months of being notified to do so by the Township; provided, however, that Peninsula may, at its sole election, abandon any buried cable and equipment.

B. After removal has been completed, Peninsula shall restore all property, public or private, to the condition in which it existed prior to the installation, erection or construction of its system. The provisions of this Paragraph B shall not apply to any system fixtures located upon the private property owned or leased by

Peninsula. If such removal and restoration is not completed by Peninsula within twelve (12) months of notice by the Township, all property remaining shall, at the option of the Township, upon notice delivered in writing to Peninsula, be deemed abandoned and shall become property of the Township.

C. In the event Peninsula fails or refuses to remove its system or satisfactorily restore all areas to their original condition, the Township at its option may perform such work and recover from Peninsula the costs thereof.

D. In the case of a foreclosure or other judicial sale of the plant, property, and equipment of Peninsula or any part thereof, including or excluding the franchise, the Township may serve notice of termination upon Peninsula and the successful bidder at such sale, in which event the franchise and all rights and privileges of Peninsula hereunder shall cease and terminate sixty (60) days after such service of notice, unless the Township shall have approved the transfer of the franchise.

Section 10 - Miscellaneous

A. The provisions of this Franchise Agreement shall apply to the successors and assigns of Peninsula.

B. Entire Agreement. This Agreement and the Township's Ordinance No. 16 contains the entirety of the agreement between the parties, superseding all prior agreements, and can be changed only by a writing signed by both parties.

C. Captions. The captions to sections and subsections of this Agreement are intended solely to facilitate reading and shall not affect the interpretation of this Agreement.

D. Invalidity. If any portion of this Agreement is determined to be illegal or invalid, such determination shall have no effect on the validity of the remaining agreement.

E. Business and Service Office. Peninsula's business office shall be open for business at least Monday through Friday from 10:00 a.m. to 4:00 p.m. Outside of such regular business hours, Peninsula shall maintain a telephone number to receive calls for repair service, by answering device or otherwise, twenty-four (24) hours a day, seven (7) days a week.

F. Obscenity. Peninsula shall be subject to all applicable laws and regulations concerning obscenity.

G. Renegotiation of Agreement. The terms and conditions of this Agreement shall be subject to renegotiation following significant changes in FCC regulations or federal or state law, or upon written request of either the Township or Peninsula after January 1, 2000; provided, however, that no change in this Agreement may occur unless it is agreed to in writing signed by both parties.

H. Maps and Records. Peninsula shall keep accurate maps and records of all its facilities and furnish copies of such maps and records upon request to any office of the Township.

I. This Agreement shall become effective on the 11th day of October, 1988.

On the date and year first above written, we, the under-
signed, have set our hands and seals for and on behalf of our
principals.

In the presence of:

Kent V. Solomonson

Mary Jo Lance

In the presence of:

Phoebe J. DeWol

Everly Joe

PENINSULA COMMUNICATIONS, INC.,
a Michigan corporation

By Jack E. Solomonson
President

TOWNSHIP OF PENINSULA

By Mary K. Redding
October 13, 1989