

**NEW BUFFALO TOWNSHIP  
BERRIEN COUNTY, MICHIGAN**

**C.A.T.V. ORDINANCE**

AN ORDINANCE TO ESTABLISH A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE TOWNSHIP OF NEW BUFFALO, COUNTY OF BERRIEN, STATE OF MICHIGAN, TO GRANT A NON-EXCLUSIVE FRANCHISE TO CONDOR CABLE OF MICHIGAN FOR THE ESTABLISHMENT AND OPERATION THEREOF.

TOWNSHIP OF NEW BUFFALO HEREBY ORDAINS:

SECTION 1. DEFINITIONS

“Community Antenna Television System”, “C.A.T.V”, or “System” shall mean any facility that receives over the air or by other means, and amplifies or otherwise modifies the signals broadcast by television or radio stations as well as signals containing other information, and distributes such signals by cable and/or other means to the public.

“Township” is the Township of New Buffalo, Michigan.

“Township Board” is the Board of the Township of New Buffalo, Michigan.

“Company” shall mean Berrien County Cablevision or anyone who succeeds the Company in accordance with the provisions contained herein.

“Public Ways” shall mean streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other public rights of way, and public grounds of waters within or belonging to the Township of New Buffalo.

“Subscriber” shall mean 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.

“Basic Service” shall mean the provision by the Company to television receivers of all signals of over-the-air television stations required by the Federal Communications Commission (hereby F.C.C.), public channels and additional channels at the option of the Company.

“Township Channel” shall mean a channel on the system, which is reserved for use by the Township or for public access.

“Franchise” shall mean the grant of authority to the Company to operate a C.A.T.V. system in the Township.

“Gross Revenues” shall mean the total revenues received by the Company from all services to the Township.

## SECTION 2. GRANT OF FRANCHISE

- A. There is hereby awarded to the Company a non-exclusive franchise for the occupation or use of the public ways within the Township for the construction, operation, and maintenance of a C.A.T.V. system.
- B. This franchise shall remain effective for fifteen (15) years unless sooner revoked as herein provided in Section 3 hereof. The Company shall give not later than ninety (90) days prior to the end of the original term, notice of renewal to the Township, and if the Township fails to respond upon expiration of ninety (90) days, then the franchise shall be considered renewed for a successive fifteen (15) year term.
- C. Nothing in the franchise shall affect the right of the Township to grant to any other person a franchise to occupy and use the public ways for construction, operation, and maintenance of C.A.T.V. or similar facilities, within the Township. The Township shall give the Company no less than two (2) weeks notice of the hearing date of any application for any additional franchise to another. Nothing contained in this franchise shall prohibit the Company from appearing before the Township Board and being heard on any application for any additional franchise to another.

## SECTION 3. REVOCATION OF FRANCHISE

- A. The franchise granted herein shall be subject to the right of the Township to revoke an ordinance as regulated by State statute upon the Township Boards determination that the Company has violated the terms or intent of the C.A.T.V. franchise ordinance. The Company will be notified in writing at least 30 days prior to any public hearing date being set by the Township Board.
- B. Any franchise granted hereunder shall be subject to all applicable provisions of the Township ordinance, and any amendments thereto.
- C. Any franchise granted hereunder shall be subject to all applicable state and federal laws, including rules and regulations established by the F.C.C.

## SECTION 4. LIMITATION OF FRANCHISE

- A. This franchise applies only to the operation of a C.A.T.V. system as provided herein, and does not take the place of any other franchise, license or permit which might be required by federal, state and local law.

- B. In the operation of its system, the Company 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.

#### SECTION 5. CHANGE OF OWNERSHIP

The Company shall not sell or transfer its system to another, no transfer any rights under this Franchise to another without approve by the Township Board, provided that no sale or transfer shall be effective until the vendee, assignee or lessee has filed with the appropriate office of the Township a written instrument, or instruments, properly executed, setting forth the terms and conditions or such sale, assignment or lease, the same to include an acceptance of the terms of this Franchise and an agreement to perform all conditions of such sale, assignment or lease, the same to include an acceptance of the terms of this Franchise and an agreement to perform all conditions thereof not less than ninety (90) days before such transfer or sale. Approval or disapproval by the Township shall not be unreasonably withheld. During such time period the Company shall continue to maintain quality service and perform in good faith in accordance with the terms of the Franchise. The Township Board shall treat any such transfer requests with due haste and care so as not to unnecessarily hinder the operations of the Company and the Board shall determine approval or disapproval within ninety (90) days of said written notice. The provisions of this Section 5 shall not apply to the collateral assignment of this Franchise for financing purposes.

#### SECTION 6. CONSTRUCTION AND INSTALLATION OF SYSTEM

Subject to the provisions and restrictions of this franchise and the ordinance of the Township, the Company shall have the right:

- A. To construct, erect, operate and maintain in, upon, along, across, above, over and under the public ways, poles, cables, underground conduit, manholes and other conductors and fixtures necessary for the maintenance and operation of a C.A.T.V. system in the Township; and,
- 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 limits of the Township including but not limited to , Michigan Bell Telephone Company and Indiana and Michigan Electric Company, and to use Company's distribution system shall be those erected and maintained by Michigan Bell Telephone Company, Indiana and Michigan Electric Company, or any others, or the Township, when and where applicable, providing mutually satisfactory rental arrangements can be entered into with said utilities or Township.
- C. No tower shall be placed or constructed without the prior approval of the Township Assessor/Zoning Administrator.

#### SECTION 7. CONDITIONS ON PUBLIC WAY OCCUPANCY

- A. All transmissions and distribution structures, lines, and equipment erected by the Company within the Township shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said public ways.
- B. In case of disturbances of any public way or paved area, the Company shall at its own cost and expense replace and restore such public way 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 this franchise, the Township shall lawfully elect to alter or change the grade of any public way, the Company, upon reasonable notice by the Township shall remove and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.
- D. Any poles or other fixtures placed in public way by the Company shall be placed in such manner as not to interfere with the usual travel on such public way.
- E. The Company shall, on request of any person holding a building moving permit issued in the Township, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary raising or lowering of wires shall be paid by the person requesting the same, and the Company shall be given not less than 48 hours advance notice to arrange for such temporary wire changes. The Township, or any other non-profit organization, including historical societies, shall be exempt from any charges.
- F. The Company shall, after giving notice to the Township, have the authority to trim trees upon and hanging over public ways and places in the Township so as to prevent the branches of such trees from coming in contact with the wires and cables of the C.A.T.V. system.
- G. In all sections of the Township where all existing cable or other like facilities of utility companies are presently or subsequently placed underground, the Company shall place its cables or other like facilities underground.

#### SECTION 8. SAFETY REQUIREMENTS

- A. The Company shall at 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 cables, fixtures, and other equipment in accordance with all applicable federal, state, and local laws, ordinances, codes, rules and regulations, and in such Township or of a public utility serving the Township.
- C. All structures and all lines, equipment, and connections in, over, under, and upon the public ways or places in the Township, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition and in good order and repair.

#### SECTION 9. ERECTION, REMOVAL AND COMMON USE OF POLES

- A. Poles or other wire holding structures shall be erected by the Company only with prior approval of the Township Board.
- B. Where a public utility serving the Township desires to make use of the poles or the other wire holding structures of the Company, but agreement therefore with the Company cannot be reached, the Township may require the Company to permit such use for reasonable and just compensation, provided that such use would not unduly interfere with the Company's operation.

SECTION 10. RIGHTS RESERVED TO THE TOWNSHIP

- A. The Township 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 C.A.T.V. operation of the Company, and that such installations shall be installed in a safe manner, in conformance with state and Township regulations.
- B. At the expiration of this franchise or upon its revocation, as provided for herein, the Township shall have the right to require the Company to remove at its own expense all portions of the C.A.T.V. system from all public ways and places within the Township.

SECTION 11. MAPS, PLATS, AND REPORTS

The Company shall, on or before the first day of April of each year file with the Township Clerk, true and accurate maps or plats, showing the location of all existing cables, whether leased or owned outright. Attached to such maps or plate shall be a list by address of current subscribers.

SECTION 12. CARRIAGE OF SIGNALS

- A. The Company shall comply with all rules and regulations of the F.C.C. with respect to the reception, carriage, and distribution of signals.
- B. Minimum channel complement shall include all V.H.F. channels significantly viewed, public, community, and education channels as required by the F.C.C.
- C. The Company shall transmit and deliver over Township channels the signals designated therefore by the Township council.

SECTION 13. SIGNAL QUALITY REQUIREMENTS

- A. The Company shall operate facilities capable of distributing color television signals, free from ghost images, interferences, or distortions, and accompanied with proper sound, to produce good pictures on state-of-the-art television sets in good repair without interfering with other electrical or electrical systems.
- B. For purpose of this 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 F.C.C. relative to C.A.T.V. systems.

- C. The Company shall demonstrate by instruments or 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 state-of-the-air television set with a screen of sufficient area as to clearly demonstrate the relative merit of the delivered signal.

#### SECTION 14. OPERATION AND MAINTENANCE OF SYSTEM

- A. The Company shall maintain an office in the area which shall be open all normal business hours, have a listed local telephone, and be so operated that complaints and requests for repairs or adjustment may be received at anytime, 24 hours per day.
- B. 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.
- C. The Company agrees to use its best efforts to restore service to individual customers within twenty-four (24) hours of interruption and in the event of a general outage caused by an Act of God or acts beyond the control of the Company, to use its best efforts to restore service within five (5) days and in such event to notify the Township Clerk of anticipated restoration of service so that citizens and customers may be properly informed.
- D. 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 rebate from the Company in the amount of one-thirteenth of such subscriber's monthly charge for every additional twenty-four hour period that said subscriber's television reception is do disrupted, unless said disruption in service was entirely beyond its control.
- E. Any rebate made to any subscriber under this section, in any month, shall not exceed said subscriber's normal monthly fee paid to the Company.
- F. Complaint procedures shall be given to each new subscriber by the Company at the time of initial subscription to the C.A.T.V. system. In the instance of existing subscribers, changes in complaint procedures shall be included with the next monthly billing.

#### SECTION 15. RATES

- A. The rates and charges for television and radio signals distributed shall be as follows:
  - 1. "Basic Service" \$7.95 per month
  - 2. Installation charge for "Basic Service" \$20.00
  - 3. Each additional outlet \$2.00 per month-per outlet
  - 4. At no time shall a one-time installation charge for "Basic Service" exceed \$20.00

5. Reconnection within 30 days after disconnection due to subscriber non-payment \$10.00.
- B. If, in the future, the State of Michigan regulates the rates of the Company for the services provided under this franchise, those portions of this section so regulated by the State of Michigan shall be of no effect during such State regulation to the extent of any conflict therewith.
- C. Where an unusually difficult or abnormal installation is encountered or requested, the Company reserves the right to require additional charges to reasonably recover the Company's costs. Such charges may, at the subscriber's request, be added to the subscriber's monthly charge over a negotiable period of time.

#### SECTION 16. CAPACITY AND COMMENCEMENT OF SYSTEM

- A. The Company shall extend the installation of cables amplifiers, and related equipment throughout the Township as rapidly as is practicable.
- B. Within one (1) year from the date of certification from the F.C.C. the Company shall be capable of providing "Basic Service" on a regular basis to residence in the Township where density is at least 40 homes per cable mile contiguous with the existing system.
- C. Initial channel capacity of the system shall be no less than fifty-four (54) channels. Two (2) channels additional to the local channels reserved in the basic line up are to be designated for Township use.
- D. The Company shall provide "Basic Service" to one outlet on each floor of all existing or future policies and fire stations, the Township Hall, and all public and private schools located within 300 feet of the Company's cables within the Township without any charge therefore.
- E. In the event of an emergency situation, the Township may interrupt signals otherwise being distributed by the Company for the delivery of signals necessitated by such emergency.
- F. No person, firm or corporation in the Company's franchise area shall be arbitrarily refused service. For unusual circumstances, such as weather conditions affecting requirements for underground cable construction, or more than 200 feet of distance from distribution cable to connection of service to subscribers, service may be made available on the basis of an installation payment by the prospective subscriber(s) to the Company, to reimburse the Company for its costs. This section is in the interest of not unfairly burdening existing subscribers with higher than normal incidental costs of said installations.

#### SECTION 17. LIABILITY INSURANCE AND INDEMNIFICATION

- A. The Company shall maintain throughout the term of its franchise, liability insurance insuring the Township and the Company with regard to all damages for which the Township and/or the Company may be liable, including, but not

limited to, damages arising from the installation, operation, maintenance or removal of the Company's C.A.T.V. system, whether or not any act or omission complained of is authorized, allowed or prohibited by the franchise.

- B. The Company, by its acceptance of this franchise, agrees to indemnify the Township and hold the Township harmless from all claims, demands, penalties and expense (including reasonable attorney fees) which the Township may be required to pay as a result of the Company's acts or negligence in the installation, operation or maintenance of the Cable Television System authorized herein. Further, following the receipt of notice of the Township of the filing or assertion of any such claim or demand against Township and/or Company, the Company will promptly assume responsibility and prosecute to a conclusion the adjustment and settlement of any such claim or demand and the defense of any legal action filed incident thereof. The Company shall notify the Company's representatives thereof. The Company shall carry and pay the cost of the following liability insurance in support of its undertaking to hold the township harmless from loss sustained by either on account or the acts or negligence of the Company, in at least the amounts indicated below, for injury to or death of persons and injury to or destruction of property.
- C. The liability insurance referred to in this section shall be in the following amounts:
1. \$500,000.00 for personal injury or death to any one person, with a limit of \$1,000,000.00 for personal injury and property damage combined resulting from any one accident.
  2. \$500,000.00 for property damage resulting from any one accident, with a limit of \$1,000,000.00 for personal injury and property damage combined resulting from any one accident.
  3. \$500,000.00 for all other types of liability.

#### SECTION 18. BOND

The Company shall, within thirty (30) days of the grant of a franchise to it pursuant to this Cable Communications Ordinance file with the Township Clerk, and at all times thereafter maintain in full force and effect for the term of the franchise, at its expense, a corporate surety bond, or such other surety arrangement as the Board may approve, in the amount of Twenty-Five Thousand Dollars (\$25,000.00), conditioned upon the faithful performance by such cable communications company of its obligations under its franchise as herein set forth, and upon the further condition that if such cable communications company shall fail to comply with any one (1) or more provisions of this Cable Communications Ordinance, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the Township as result thereof, including the full amount of any compensation, indemnification, or cost of removal of any property of such cable communications company as provided in the Cable Communications Ordinance plus attorney's fees and costs, up to the full amount of the bond, said condition to be a continuing obligation for the full duration of any franchise granted under this Cable Communications Ordinance and any renewal thereof and



thereafter until such cable communications company has liquidated all of its obligations with the Township which may have arisen under the franchise or from the exercise of any privilege or right granted thereby. Any bond provided under this section shall provide that at least thirty (30) days prior notice of any intention not to renew, to cancel or to make a material change therein shall be filed with the Township Clerk. Nothing herein shall be construed to excuse faithful performance by any cable communications company or in any way to limit its liability for damages or otherwise.

#### SECTION 19. FINANCIAL RECORDS AND REPORTS

The Company shall keep full, true, accurate and current books of accounts reflecting its investment and its operation under this franchise, which financial books and records shall be kept and maintained by the Company and shall be made available for inspection and copying by the Chairman of the Finance Committee of the Township or his authorized representative, at all reasonable times at the Company's normal place of business, with reasonable prior notice, during regular business hours.

#### SECTION 20. PUBLICATION COSTS

The Company shall assume the cost of publication of this Franchise as such publication is required by law. A bill for publication costs shall be presented to the Company by the appropriate Township officials upon the Company's filing of its acceptance of this franchise and the said publication costs shall be paid at that time by the Company.

#### SECTION 21. ANNUAL FRANCHISE FEE

Commencing one year from the effective date of this ordinance, and each year thereafter, the Company shall pay to the Township treasurer a franchise fee equal to three percent (3%) of the Company's gross revenues derived from all cable services include basic mid-band tier and premium pay charges within the Township, or \$250.00, whichever is greater.

#### SECTION 22. SEVERABILITY

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.

#### SECTION 23. EFFECTIVE DATE

This Ordinance shall be effective on the date ratified by the Company in writing after having been awarded by the Township Board in accordance with applicable laws.

#### CERTIFICATION

I Carol, A. Earley, Clerk of the Township of New Buffalo, County of Berrien, State of Michigan, do hereby certify that the foregoing Ordinance 810326 was duly adopted at a regular meeting of the Township Board of the Township of New Buffalo held on the twenty-sixth (26) day of March, 1981 in said Township of New Buffalo. On a motion by Joann Fleck supported by Casimer Krycka. Vote 4 ayes, 0 nays, 1 absent.

**LEGAL NOTICE, PUBLISHED JUNE 23, 1983**

**ORDINANCE 810326  
NEW BUFFALO TOWNSHIP C.A.T.V. ADOPTED MARCH 26, 1981**

In accordance with the provisions of said Ordinance, the non-exclusive franchise granted to Berrien County (Condor) Cablevision is hereby rescinded, and non-exclusive 15 year franchise is granted to Michiana Cablevision Corporation.

Section 15. Rates – Paragraph A is changed to read:

Schedule of Rates and Charges (Residential Subscribers)

Monthly Charges:

Service Description	First Outlet	Add'l Outlet
Basic Service (w/o conv.)	\$7.95	\$2.00
Basic Service (with conv.)	\$8.50	\$3.00
Showtime	\$8.95	
HBO	\$9.95	
The Movie Channel	\$9.95	
F.M. Service	\$2.00	

Wireless Remote Control Converter  
(For customers without full service pkg.) \$4.25 each

<u>Installation Charges</u>	Regular	Introductory Offer
Basic Service	\$25.00	\$9.95
Showtime, HBO, or TMC	\$19.95	\$9.95
F.M. Service	\$19.95	\$9.95

<u>Add'l Outlets</u>	Basic w/o conv.	Expanded Basic w/conv.
Done with initial installation	\$7.50	\$15.00
Installed later (Separate trip)	\$12.50	\$22.50

I, Helen B. Durlin, Clerk of the Township of New Buffalo, County of Berrien, State of Michigan, do hereby certify that the foregoing changes in Ordinance 810326 were duly adopted at a regular meeting of Township Board of the Township of New Buffalo, held on the ninth day of June, 1983 in said Township of New Buffalo, on motion by Joann Fleck, supported by John Hartley and carried, 5 yeas, no nays, no one absent.