

ORDINANCE NO. 81-3

TOWNSHIP OF BIRCH RUN

SAGINAW COUNTY, MICHIGAN

AN ORDINANCE REGULATING CABLE ANTENNA TELEVISION SYSTEMS WITHIN THE TOWNSHIP OF BIRCH RUN, PROVIDING FOR TOWNSHIP REGULATION OF THE USE THEREOF CONSISTENT WITH FEDERAL COMMUNICATIONS COMMISSION RULES AND REGULATIONS, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF CABLE ANTENNA TELEVISION SYSTEM FRANCHISES, PROVIDING FOR OPERATIONAL STANDARDS, ESTABLISHING CONDITIONS FOR THE USE OF STREETS AND OTHER PUBLIC RIGHTS-OF-WAY WITHIN THE TOWNSHIP OF BIRCH RUN, REGULATING THE TRANSMISSION AND DISTRIBUTION OF TELEVISION SIGNALS, INCLUDING RADIO SIGNALS, WITHIN THE TOWNSHIP OF BIRCH RUN BY MEANS OF CABLE ANTENNA TELEVISION, BUT NOT INCLUDING THE OPERATION OF MASTER TELEVISION SYSTEMS CONFINED TO PRIVATE PROPERTY, ESTABLISHING RATES AND CHARGES AND PROVIDING PENALTIES FOR VIOLATION.

The Township of Birch Run ordains:

SECTION 1 - SHORT TITLE

This Ordinance shall be known and may be cited as the Township of Birch Run Cable Communications Regulatory Ordinance.

SECTION 2 - DEFINITIONS

For the purpose of the Ordinance the following terms, phrases, words and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- A. "Township" is the Township of Birch Run or the area of the territorial limits of the Township of Birch Run, excluding that part located within the Village of Birch Run.
- B. "Permittee" is the holder of a permit issued pursuant to this Ordinance.
- C. "Board" is the Township Board of the Township of Birch Run.
- D. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- E. "System" or "Cable Antenna Television System" or "CATV" shall mean the lines, fixtures, equipment, attachments and all appurtenances thereto which are used in the construction, operation and maintenance of the cable or community system or systems herein authorized.

F. "Federal Communications Commission" or "FCC" shall mean that Federal Agency constituted by the Communications Act of 1934 as amended.

G. "Street" is a street, alley or other public way in the Township of Birch Run.

SECTION 3 - PERMIT REQUIRED

No person shall provide or operate a cable antenna television system within the Township of Birch Run, over which the Township Board has jurisdiction, without first obtaining a permit as herein provided.

SECTION 4 - APPLICATION

Permits to provide and operate a cable antenna television system hereunder will be granted by the Board as hereinafter provided and shall be applied for by a written application in form approved by the Township Supervisor and filed with the Township Clerk, which application shall include, but shall not be limited to, the name of the applicant, local business address, principal officers or owners, principal stockholders in a corporation, location of antenna tower or towers, general description of the proposed distribution system in the Township, showing the area proposed to be served and indicating whether the applicant will require poles in the streets within the Township, or whether cables and appliances to be utilized by it in the streets in the Township will be located on existing poles of utility companies, service to be provided and rates to be charged, including installation charge per location, service charge for one receiver and for each additional receiver on the same premises. Each permittee shall provide to the Township Board a complete copy of any application for Federal Communications Commissions Certificate of Compliance for any part of its system affecting the Township; and at any time that an application is made to the Federal Communications Commission for Certificates of Compliance for any facility affecting the Township, a copy of said application shall be filed with the Township Board of the Township.

SECTION 5 - GRANTING OF PERMIT

The Township Board shall grant a Cable Antenna Television System Permit hereunder to each applicant who makes proper application, establishes its qualifications as herein set forth, furnishes the required insurance and assurances and establishes that its operations will not impose an unreasonable burden on the Township streets and roads. No permit granted hereunder shall be exclusive. In accordance with the provisions of Article 7, Section 19, of the Constitution of 1963 of the State of Michigan, any permit granted hereunder shall be revokable at the will of the Township unless the proposition shall have first been approved

by a majority of the electors of the Township voting thereon at a regular or special election.

SECTION 6 - TERM OF PERMIT

Each permit granted hereunder shall be for a term of one year and from year to year thereafter for a total period of fifteen years from the date of the issuance of the first permit or until terminated as herein provided if termination occurs sooner. The permit granted hereunder shall be deemed to constitute a contract between the Township and the Permittee. Nothing contained herein shall provide a Permittee from seeking a renewal or extension of a permit for periods of reasonable duration on the same terms and conditions as contained herein or on such different or additional terms and conditions as may be lawfully specified by the Township and which are consistent with the requirements of the Federal Communications Commission.

SECTION 7 - COMPLIANCE WITH LAWS, REGULATIONS AND ORDINANCES

The Permittee shall, at all times during the life of this Ordinance, be subject to all lawful exercise of the Police power of the Township and to such reasonable regulation as the Township shall hereafter by resolution or Ordinance provide. The construction, operation and maintenance of the system by the Permittee shall be in full compliance with such portions of the Uniform Building Code, the National Electrical Code, the Plumbing Code, and the Fire Code, all adopted by the Township of Birch Run, as may be applicable and as the same may be amended and revised from time to time, and in full compliance with all other applicable rules, regulations and ordinances now in effect or hereafter adopted by the Federal Communications Commission, the Township, or any other agency of the State of Michigan or the United States which may hereafter acquire jurisdiction of the operations of the Permittee.

SECTION 8 - INDEMNIFICATION

The Permittee shall indemnify and hold the Township harmless at all times during the term of its Permit and specifically agrees that it will pay all damages and penalties which the Township may be legally required to pay as a result of granting said permit. Such damages and penalties shall include, but not be limited to, damages arising out of a copyright infringement and other damages arising out of the installation, operation, or maintenance of the Cable Antenna Television System authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by its Permit or this Ordinance, including libel and slander actions.

SECTION 9 - INSURANCE

The Permittee shall provide insurance in such forms as shall protect the Township and itself from and against any and all claims for injury or damage to

SECTION 10 - SYSTEM CONSTRUCTION, MAINTENANCE AND PROCEDURES

Upon the granting of a permit to construct and maintain a Cable Antenna Television System within the Township, and in furtherance of the Permittee's execution of the contracts with public utility companies or any other owner or lessee of any poles located within or without the Township to whatever extent such contract or contracts shall be expedient and of advantage to the Permittee for the use of poles and posts necessary for proper installation of the system, the Permittee shall obtain right-of-way permits from the appropriate State, County, and Federal officials necessary to cross highways or roads under their respective jurisdiction, to supply main trunklines from the Permittees receiving antennas, obtain permission from the Federal Aviation authority to erect and maintain antennas suitable to the needs of the system and its subscribers and to obtain whatever other permits a Township, County, State or Federal agency may require. The Permittee shall construct its cable system using material of good and durable quality and all work involved in the construction, installation, maintenance and repair of the cable antenna system shall be performed in a safe, thorough and reliable manner.

Any Township property damaged or destroyed shall be promptly repaired or replaced by the Permittee and restored to serviceable condition. The Permittee's system, poles, wires and appurtenances shall be located, erected and

maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the Township may deem proper to make or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

In case of any disturbance of pavement, sidewalks, driveways, or other surfacing, the Permittee shall, at its own cost and expense, and in a manner approved by the Township, replace and restore all paving sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before the work was commenced.

The Permittee shall not place poles or other fixtures where the same will interfere with any gas, electric, or telephone fixtures and appliances, water hydrant or mains, and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on such alley, and then in such manner as to not interfere with the usual traffic on said streets, alleys and public ways.

In the event that at any time during the existence of the Permit granted hereunder, the Township shall lawfully widen, realign or otherwise alter the street right-of-way or construct, re-construct, re-align or change the grade of or otherwise alter the pavement, or any water main, fire hydrant, sewer or appurtenance, the Permittee upon reasonable notice by the Township shall remove, re-lay and re-locate, its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

In areas of the Township in which telephone lines and electrical utility lines are underground, all Permittee's lines, cables and wires, shall be underground.

The Permittee shall have the right, so long as its Permit is in force and effect, to utilize the streets and roads of the Township to the extent set forth in its application or as otherwise provided by the Township Board in its permit for the transmission of television and radio signals, as herein authorized, from its antenna location or locations to the premises of subscribers. The Permittee may erect all such wires, cables and appurtenances in said streets or roadways subject to the approval of the Township Engineer of the placement of any such poles.

SECTION 11 - PROVISION OF SERVICE; LINE EXTENSIONS

The Permittee shall make its service available to all residents of the Township who can be reached by its distribution system as mutually agreed between the Township Board and the Permittee. In general, the Permittee shall extend services to new subscribers at the normal installation charge and monthly rate for customers of that classification where there are an average of

fifty homes per each linear mile of new cable construction. In the event that such requirements cannot be met, extensions of service shall be required only on a basis which is reasonable and compensatory.

SECTION 12 - SERVICE TO PUBLIC BUILDINGS; SERVICE TO THE PUBLIC IN CASE OF EMERGENCY

A Permittee shall furnish, free, without monthly fees, installation or service charges, its standard community antenna television service and facilities to all public and parochial schools, fire and police stations, and hospitals within the Township of Birch Run provided such building is within Four Hundred (400) Feet of an existing line of the system, and provided further, that such service shall mean only an energized cable to such building. The cost of any internal wiring shall be borne by the institution receiving such service. In case of any emergency or disaster, the Permittee shall, upon the request of the Township, make available its facilities to the Township, or such other governmental agency as may be designated by the Township, for emergency use during an emergency or disaster period only.

SECTION 13 - CHANNEL CAPACITY AND ACCESS

The cable antenna television system to be installed shall have a minimum of twelve channel capacity with appropriate technology to upgrade the system to a thirty-five channel capacity along with technical capacity for return or two-way communication. The Permittee will install and maintain a cable antenna television system in keeping with the latest state-of-the-art technology including the capability for satellite reception.

The Permittee, and any and all of its officers, agents, and employees are specifically prohibited from engaging in the sale, service, rental or leasing of television receivers, radio receivers, or television or radio receiver related parts and accessories with any person, anywhere within the Township, whether for a fee or charge or not. The Permittee shall prohibit any of its officers, agents, and employees from violating the terms of this section at all times, whether in the performance of the duties of the Permittee or otherwise.

The Company or Permittee shall not allow its cable or other operations to interfere with television reception of persons not served by the Permittee, nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents of the Township.

The Permittee shall not permit the transmission of any signal, aural, visual or digital, including "polling" the channel selection, from any subscriber's premises without first obtaining written permission of the subscriber. The Permittee shall not permit the installation of any specific terminal equipment in any subscriber's premises that will permit transmission from the subscriber's

premises of two-way services utilizing aural, visual or digital signals, without first obtaining written permission of the subscriber. It shall be prohibited for any person to attach or affix or cause to be attached or affixed any equipment or device which allows access or use of the cable television system without payment to the Permittee for the same.

SECTION 14 - RATES

By its acceptance of a Permit, issued under this Ordinance, the Permittee agrees that its rates and charges for television and radio signals through the cable antenna television system shall be fair and reasonable, and no higher than necessary to meet all costs of service (assuming efficient and economical management) including a fair return on the cost, plus depreciation, of the properties devoted to such service (without regard to any subsequent sale or transfer price or the cost of such properties). The Permittee may, at its discretion, waive, reduce or suspend connection fees for specific and indeterminate periods and/or monthly service fees for a period not to exceed thirty days for promotional purposes. Prior to making any charges to subscribers, the Permittee shall, submit to the Township Board of the Township a schedule of rates setting forth all charges of any kind or nature whatsoever to be made to subscribers within the Township. The Township Board of the Township shall approve or disapprove said rate schedule within forty-five days after the Permittee submits it. The Township Board may hold a public hearing on any rate schedule, but shall not be required to do so.

SECTION 15 - APPLICATION FEES, COSTS AND EXPENSES OF TOWNSHIP

The Permittee shall pay to the Township, for the privilege of operating a Cable Antenna Television System, under the Permit herein granted, the sum of Five Hundred (\$500.00) Dollars, at the time of the application, which sum of money shall not be refundable. Further, the Permittee shall pay to the Township other necessary and reasonable costs, charges, and expenses, incurred by the Township by or as a result of the Permittee's activities hereunder.

SECTION 16 - TRANSFER

The Permittee shall not sell, assign or transfer its system to another, or transfer any rights under this Ordinance, to another, except to a wholly owned subsidiary without prior written approval by the Township, provided that such approval shall not be unreasonably withheld, if the assignee has filed with the Township an instrument duly executed, reciting the fact that such sale, assignment or lease accepts all of the terms and conditions of this Ordinance and provides for the performance of all of the conditions and provisions thereof.

SECTION 17 - LOCAL OFFICE: COMPLAINT PROCEDURES

The Permittee shall maintain a business office or agent for the purpose of receiving and resolving all complaints regarding the quality of service, equipment, malfunctions and similar matters. Such office must be able to be reached by local or toll-free telephone service and the Permittee shall provide to the Township a name, address, and telephone number of a person who will act as the Company or Permittee Agent to receive complaints regarding the quality of service, equipment malfunctions, and similar matters. Such office shall be open to receive inquiries or complaints from subscribers during normal business hours. Any complaints from subscribers shall be investigated and acted upon as soon as possible, but at least within three (3) business days of the receipt.

SECTION 18 - TERMINATION

A Permittee may surrender its Permit at any time in which event it shall refund to subscribers all prepaid and unearned service and other charges collected from subscribers.

In addition to all other rights and powers pertaining to the Township by virtue of this Ordinance, or otherwise, the Township reserves the right to terminate and cancel this Permit and all rights and privileges of the Permittee hereunder in the event of any of the following:

- A. The Permittee violates any provision of the Permit issued hereunder or any rule, order or determination of the Township, the Township Board or its agents, made pursuant to this Permit, except where such violation is without fault or through excusable neglect.
- B. The Permittee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt.
- C. The Permittee attempts to evade any of the provisions of this franchise or terms and conditions of the Permit issued hereunder or practices any fraud or deceit upon the Township.
- D. The Permittee fails to begin the design of its system within ninety (90) days after necessary governmental approval and necessary leasing agreements from utilities are secured, or fails to begin construction within six (6) months thereafter, or fails to make reasonable efforts to complete construction within eighteen (18) months after the commencement of such construction, or fails to complete such construction substantially within two (2) years from the effective date of the issuance of the Permit. The Permittee shall be entitled to a hearing before the Township Board to determine the findings of fact and propriety of the termination of the Permit. The determination of the Township Board and its decision shall be final.

Upon termination of its Permit, the Permittee shall at its own expense, remove from the roads and streets and public ways of the Township, all its facilities, and equipment, therein utilized by it and its cable antenna television system operation, unless the Township Board shall specifically authorize it to leave all or a part of such facilities and equipment in place.

SECTION 19 - REPEAL

All Ordinances or parts of Ordinances of the Township of Birch Run inconsistent or in conflict with this Ordinance are and the same are hereby repealed.

SECTION 20 - SEPARABILITY - INVALIDITY

If any Section, paragraph, sentence, clause, phrase or part of this Ordinance, shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and to this end the provisions of this Ordinance are hereby deemed and declared to be severable.

SECTION 21 - NEW RULE

A permit granted subject to the provisions of this Ordinance may be renegotiated if after the effective date of the Permit, the Federal or State Regulations are substantially changed so as to substantially alter the service, conditions or standards upon which the Cable Antenna Television System is to operate.

SECTION 22 - PENALTIES: INJUNCTIVE PROCEEDINGS

Any person who shall violate any provision of this Ordinance shall, upon conviction, be punished by a fine of not more than Five Hundred (\$500.00) Dollars, or by imprisonment for not more than ninety (90) days, or both such fine and imprisonment, in the discretion of the Court having jurisdiction. Each day's failure of compliance with any provision of this Ordinance shall constitute a separate offense. Legal proceedings to enjoin the violation of any of the provisions of this Ordinance may be brought in any Court of competent jurisdiction in the name of the Township. Such action shall be taken only as authorized by the Township Board.

SECTION 23 - EFFECTIVE DATE OF ORDINANCE

This Ordinance shall be effective thirty (30) days from and after the date of publication thereof.

This Ordinance is hereby declared to have been adopted by the Township of Birch Run, County of Saginaw, State of Michigan, at a regular meeting thereof held on the tenth day of November, 1981, and ordered to be given publication in the manner prescribed by law.

	<u>YES</u>	<u>NO</u>	<u>NOT VOTING</u>
Laurence Courtney, Supervisor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marcia Strong, Clerk	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Edgar Scharrer, Treasurer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Alvin Block, Trustee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
James Dorr, Trustee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

We, LAURENCE COURTNEY, SUPERVISOR, and MARCIA STRONG, CLERK, do hereby certify that the foregoing is a true copy of an Ordinance adopted by the Township of Birch Run at a meeting held on the 10 day of November, 1981.

Laurence Courtney
LAURENCE COURTNEY, SUPERVISOR

Marcia Strong
MARCIA STRONG, CLERK