October 24, 2008

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

Re: In the matter of the complaint of AT&T Michigan for resolution of a dispute with the City of Clawson under the Uniform Video Services Local Franchise Act.
MPSC Case No. U-15683

Dear Ms. Kunkle:

Enclosed for filing in the above-referenced case are the Verified Complaint For Resolution of Dispute With City of Clawson Under Uniform Video Services Local Franchise Act And Other Relevant Authorities, Request For Declaratory Ruling, Request For Order to Show Cause, And Request For Expedited Relief, Affidavit of Susan Frentz in Support of Verified Complaint, and Proof of Service. Also enclosed is the original confidential version.

Please note that the confidential materials enclosed should be filed under separate seal, and that this documentation constitutes trade secrets and commercial or financial information which cannot be disclosed to unauthorized persons without the consent of AT&T Michigan pursuant to Section 210 of the 1991 P.A. 179, as amended by 1995 P.A. 216.

If you have any questions or concerns, please contact me.

Very truly yours,

Michael A. Holmes

Enclosure
STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Complaint of AT&T Michigan for Resolution of a Dispute with the City of Clawson under the Uniform Video Services Local Franchise Act ) Case No. U-15683 )

VERIFIED COMPLAINT FOR RESOLUTION OF DISPUTE WITH CITY OF CLAWSON UNDER UNIFORM VIDEO SERVICES LOCAL FRANCHISE ACT AND OTHER RELEVANT AUTHORITIES, REQUEST FOR DECLARATORY RULING, REQUEST FOR ORDER TO SHOW CAUSE, AND REQUEST FOR EXPEDITED RELIEF

Michigan Bell Telephone Company, d/b/a AT&T Michigan ("AT&T"), pursuant to the Uniform Video Services Local Franchise Act (the “Act”), MCL 484.3301 et seq., the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (the "METRO Act"), MCL 484.3101 et seq., the Michigan Administrative Procedures Act ("APA"), MCL 24.201 et seq., and the Commission's Rules of Practice and Procedure, R 460.17101 et seq., respectfully submits this Complaint to the Commission for resolution of a dispute with the City of Clawson (the "City") concerning the City's unlawful determination that AT&T's September 30, 2008 proposed Uniform Video Service Local Franchise Agreement (the "Proposed Agreement") is "incomplete" under the Act (attached as Exhibit 1). A copy of the City's October 20, 2008 letter and attached "Questions Supporting Incomplete Information on the AT&T Application for Video Service Local Franchise Agreement" are attached as Exhibit 2 hereto ("City Rejection").

1 Exhibit 1 is the public version of AT&T's Proposed Agreement. See also confidential Exhibits 4 and 5, which are two Confidential Attachments to AT&T's Proposed Agreement.

2 The October 20, 2008 letter from the City also contained a copy of Chapter 74, the City's Telecommunications Ordinance, and an excerpt from the City's Policy and Procedure, totaling 40 pages in length. These documents are attached as Exhibit 3.
INTRODUCTION

As detailed further below, the City's notification to AT&T in a letter dated October 20, 2008 violates the provisions of the Act, the Commission's January 30, 2007 Order in Case No. U-15169 and the May 3, 2007 Order in Case No. U-15281, by in effect, finding that the Proposed Agreement is incomplete because it does not contain at least 22 provisions in addition to those found in the Uniform Video Service Local Franchise Agreement ("Uniform Agreement") form approved by and required for use by the Commission pursuant to Section 2 of the Act in its January 30, 2007 Order in Case No. U-15169. Many of the additional provisions requested by the City pertain to the construction and placement of AT&T facilities in public rights-of-way ("ROW"), including (1) requests for additional information concerning the use and location of existing telephone facilities in the ROW\(^3\); (2) a provision authorizing the City to remediate construction in the ROW if not completed to its satisfaction by AT&T and its contractors; (3) an additional provision for a construction bond; (4) additional provisions regarding dispute resolution issues involving construction in the ROW\(^4\); and (5) additional provisions addressing liability, indemnification, and insurance for damage claims relating to work in the ROW\(^5\).

The City's Rejection insisted that additional provisions be included in the Proposed Agreement to address the following 22 issues the City believes are not adequately addressed by the Proposed Agreement, and, by necessity, the Uniform Agreement approved by the Commission as conforming to the requirements of the Act:

1. Despite the fact that AT&T has not begun to provide any video services in the City, let alone any government or education channels, the City believes that

\(^3\) See Sections 3B and 4A of the City's Rejection.
\(^4\) See Sections 4B and 4C of the City's Rejection.
\(^5\) See Sections 6B and 8 of the City's Rejection.
AT&T's Proposed Agreement is incomplete because it does not mandate a commitment that AT&T will not cease the availability of an education or government channel if the City does not provide the statutory-mandated programming for at least 8 hours per day for a period of 3 consecutive months for such channel. (City Rejection Section 1A).

(2) The City believes that AT&T's Proposed Agreement is incomplete because it does not mandate a commitment to locate PEG channels in an unspecified "proximity" to "offered broadcast services" during the franchise term and does not explain under what circumstances "the provider limits or conditions access to PEG channels." (City Rejection Sections 1B and 1C).

(3) The City believes that AT&T's Proposed Agreement is incomplete because it does not contain a definition of the phrase "records reasonably necessary for the audit", in apparent reference to the standard language in the Proposed Agreement at Section IX Audits (A) that "All records reasonably necessary for the audits [of a provider's calculation of video service fees paid under Section 6 of the Act] shall be made available by the Provider . . ." (City Rejection Section 2A).

(4) Despite the fact that Section 7 of the Act, MCL 484.3307, contains no mandatory deadline for providing such records in connection with an audit request, the City believes that AT&T's Proposed Agreement is incomplete because it does not contain a commitment to a specific time period within which "records reasonably necessary for the audit", will be provided. (City Rejection Section 2B).

(5) The City believes that AT&T's Proposed Agreement is incomplete because it does not contain a provision committing the provider to the use of "a particular dispute resolution method if there is a difference after the audit between what the provider has paid and what the provider ought to have paid." (City Rejection Section 2C).

(6) The City believes that AT&T's Proposed Agreement is incomplete because the standard language of Section IX Audits (A) that "the Provider shall pay the Franchising Entity's reasonable costs of the audit" [if there was an under payment in excess of 5% of the fees the audit determines should have been paid] does not quantify the specific amount of audit fees due in that situation. (City Rejection Section 2D).

(7) The City believes that AT&T's Proposed Agreement is incomplete because it does not contain information on the availability of an "alternative service technology that does not require the use of any public right-of-way", suggesting the City may attempt to dictate the technology used by a provider to offer video service "to avoid disruption of ongoing construction or prior construction in the right-of-way in the City." In addition, the City believes that AT&T’s Proposed Agreement is incomplete because it does not contain sufficient detail "to what extent will existing telephone facilities be utilized." (City Rejection Section 3A).
Despite Section 2(3)(e) of the Act, MCL 484.3302 (3)(e), which requires the franchise agreement to contain only a map providing "an exact description of the video service area footprint to be served, as identified by a geographic information system digital boundary meeting or exceeding national map accuracy standards," the City believes that AT&T's Proposed Agreement is incomplete because it does not contain "sufficient detail as to the actual location of access lines and rights-of-way" (City Rejection Section 4A).

Despite the fact that the subject is specifically addressed in Section 4.3 of the METRO Act permit issued to AT&T by the City (See Exhibit 6 hereto), the City believes that AT&T's Proposed Agreement is incomplete because it does not contain a provision which answers the hypothetical question: "To what extent will provider allow the Clawson contractor to remediate [construction in the right-of-way] at the expense of the provider." (City Rejection Section 4B).

The City believes that AT&T's Proposed Agreement is incomplete because it does not contain a provision which answers the question: "To what extent has the provider in other [franchise] agreements in Oakland County agreed to the furnishing of similar [construction] bonds?" (City Rejection Section 4C).

The City believes that AT&T's Proposed Agreement is incomplete because it does not contain a provision which answers the question: "To what extent will the provider in other franchise agreements in Oakland County provided for a specific dispute resolution procedure on issues involving right-of-way construction and to what extent will such provisions be set forth in the franchise agreement with Clawson?" (City Rejection Sections 4D and 7).

The City believes that AT&T's Proposed Agreement is incomplete because it does not contain a provision, totally irrelevant to the Internet Protocol-based technology of U-verse, AT&T's video service offering, regarding the extent which "the provider [will] move PEG channels to a digital tier or treat them as on-demand channels." (City Rejection Section 5A).

Despite the fact that the Proposed Agreement contains the standard provision in Section II F that "The provider shall comply with the public, education, and government programming requirements of Section 4 of the Act," the City believes that AT&T's Proposed Agreement is incomplete because it does not contain a provision which attempts to answer the question: "To what extent will the provider ensure that consumers are able to get access equally to all channels belonging to basic tier service?" (City Rejection Section 5B).

Despite the fact the Proposed Agreement contains a provision in Section II Requirements of the Provider D, that "The Provider agrees to comply with all valid and enforceable local regulations regarding the use and occupation of public rights-of-way in the delivery of the video service, including the police powers of the Franchising Entity," the City believes that AT&T's Proposed Agreement is incomplete because it does not answer questions as to the extent AT&T will
comply with certain provisions of Clawson's Telecommunications Ordinance, Chapter 74. (City Rejection Sections 6A and 6B).

(15) The City believes that AT&T's Proposed Agreement is incomplete because it does not contain more detailed information on "insurance coverage provided for work in the Right-of-Way." (City Rejection Sections 8 and 6).

(16) Despite the fact the Commission has definitively held in two prior orders\(^6\) that it is the responsibility of the franchising entity, not the provider, to insert the video service provider and PEG fee amounts, the City believes that AT&T's Proposed Agreement is incomplete because AT&T has not inserted the video service provider fee and PEG fee into Section VI A (ii)\(^7\) and Section VIII A, respectively, of the Proposed Agreement. (City Rejection Section 9).

(17) The City believes that AT&T's Proposed Agreement is incomplete because the definition of "Gross Fees" [sic] using the standard language in the Uniform Agreement, is not a verbatim repetition of the statutory definition of "gross revenues" in Section 6 (4) of the Act, MCL 484.3306 (4). (City Rejection Section 10).

(18) Despite the detailed instructions on the manner in which fees are to be calculated in Section VI Fees of the Proposed Agreement, the City believes that AT&T's Proposed Agreement is incomplete because the it does not contain a provision which identifies "the specific methodology utilized by the provider to calculate fees due to the franchise entity under the Act" nor does it contain the "imposed restrictions on the Audit outside of language in the Act." (City Rejection Section 10).

(19) Despite the provision in Section XIII Confidentiality of the Uniform Agreement that it is the right of the provider, not the franchising entity, to determine which items of information in the Proposed Agreement "should be deemed confidential," the City believes that AT&T's Proposed Agreement is incomplete because "there was no detail provided to confirm any claim of confidentiality" for Confidential Attachment B to the Proposed Agreement, the date on which the provider expects to provide video services in the franchising entity. (City Rejection Section 11).

(20) Despite the fact that AT&T is still seeking its first franchise agreements in various Michigan municipalities and has not terminated a single franchise agreement, the

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\(^7\) It is possible that the City Rejection most likely intended to reference the video service provider fee in Section VI A (i) "If there is an existing Franchise Agreement, an amount equal to the percentage of gross revenue paid to the Franchising Entity by the incumbent video Provider with the largest number of subscribers in the Franchising Entity," and did not intend to reference Section VI A (ii) "At the expiration of an existing Franchise Agreement or if there is no existing Franchise Agreement . . ." (emphasis added)
City believes that AT&T's Proposed Agreement is incomplete because it does not attempt to answer the question "what are the circumstances under which the provider has allowed for termination of the franchise agreement by the franchise entity?" (City Rejection Section 12).

(21) Despite the fact that the Act contains no requirement for a municipality-specific build-out schedule, the City believes that AT&T's Proposed Agreement is incomplete because it does not contain an "anticipated build-out schedule" assuming the consummation of a Franchise Agreement [with Clawson]. (City Rejection Section 13).

(22) Despite the fact that Section II Requirements of the Provider of the Proposed Agreement states:

The Provider shall comply with all customer service rules of the Federal Communications Commission under 47 CFR 76.309 (c) applicable to cable operators and applicable provisions of the Michigan Consumer Protection Act, 1976 PA 331, MCL 445.901 to 445.922.

i. Including but not limited to: MCL 445.902; MCL 445.903 (1)(a) through 445.903(a)(cc); MCL 445.903(1)(ff) through (jj); MCL 445.903(2); MCL 445.905; MCL 445.906; MCL 445.907; MCL 445.908; MCL 445.910; MCL 445.911; MCL 445.914; MCL 445.915; MCL 445.916; MCL 445.918,

the City believes that AT&T's Proposed Agreement is incomplete because it does not provide more detail on "to what extent does the provider agree to the applicability of the Michigan Consumer Protection Act." (City Rejection Section 14).

In the majority of these requested provisions, the City posed a hypothetical situation, asking that AT&T "confirm" what it will or will not do in the future under the circumstances described in the hypothetical. The City then requested that AT&T's "confirmation" be in the form of an additional contractual provision in the Uniform Agreement. The City's belief that AT&T's Proposed Agreement is incomplete because it does not contain provisions addressing these hypothetical situations is contrary to the express requirements of Section 2 of the Act, MCL 484.3302, and the Commission's January 30, 2007 Order in Case No. U-15169 mandating that providers and franchising entities use the Uniform Agreement approved by the Commission. As detailed herein, the City has no lawful grounds to believe that AT&T's Proposed Agreement
is "incomplete." Each of the City's stated "reasons" are manifestly contrary to the terms of the Act and the Commission's January 30, 2007 Order in Case No. U-15169, as well as the Commission's May 3, 2007 Order in Case No. U-15281.

The effect of the City's action is to materially hinder and delay AT&T's ability to provide video services within the City and thus affirmatively deny customer choice and competition in video services to the residents of the City. Further, the City's unjustified failure to follow the clear provisions of the Commission-approved Uniform Agreement will – unless immediately remedied – have a chilling and deleterious effect on the economic health of the State of Michigan. The City's actions will also discourage new entrants, such as AT&T, from investing in the new telecommunications and video services infrastructure and creating the related jobs necessary to offer new and enhanced services to the residents of Michigan. Neither the purposes of the Act nor customer welfare are served by what the City has done here.

If permitted to stand, the City's determination that the Proposed Agreement (a verbatim version of the Commission's Uniform Agreement), is incomplete will open the doors for a return to costly, time-consuming and unproductive individualized negotiations of franchise agreements with hundreds of municipalities in Michigan. That result would be contrary to both the letter and intent of the Act, which provides for a streamlined franchising process, resulting in uniform franchise agreements in approximately 30 days with every municipality a video service provider seeks to serve.

AT&T requests the following relief:

- that the Commission immediately issue an order pursuant to the Act, Section 63 of the APA, MCL 24.263, and Rule 701 of the Commission’s Rules of Practice and Procedure, R 460.17701, finding that: (1) the City's Rejection constitutes a violation of the Act and the Commission’s Order in Case No. U-15169; (2) AT&T’s Proposed Agreement is complete; and (3) the City has until October 30, 2008 to approve the same.
that the Commission issue an order directing that the City appear and show cause why it should not be found in violation of the Act and the Commission’s Order in Case No. U-15169 issued January 30, 2007, and further why the Commission should not order such remedies and penalties, including but not limited to the imposition of the fines available under Section 14 of the Act, as are sufficient to make whole AT&T for any and all damages it has sustained or may sustain as a result of the City's violations detailed herein.

alternatively, and in the event the Commission does not exercise jurisdiction under the Act the Commission should exercise jurisdiction under Sections 6(3), 7 and 18(1) of the METRO Act, and grant AT&T emergency relief, declaring the Proposed Agreement complete and requiring approval by the City by October 30, 2008.

alternatively, and in the event the Commission does not exercise jurisdiction under the Act or grant emergency relief under Sections 6(3) and 18(1) of the METRO Act, the Commission should commence the dispute resolution procedures under Section 7 of the METRO Act.

In support hereof, AT&T relies on the following demonstration and accompanying Exhibits and Affidavit.

PRELIMINARY BACKGROUND

1. In 2006, the Legislature passed and the Governor signed into law Public Act 480, known as the Uniform Video Services Local Franchise Act (the “Act”) (MCL 484.3301 et seq). The Act provides for uniform video service local franchises and promotes competition in the provisioning of video services in the State of Michigan.

2. On January 30, 2007, the Commission issued an Order in Case No. U-15169 that adopted a standardized form for the uniform video service local franchise agreement (Uniform Agreement) to be used by each franchising entity and video provider in Michigan. The Commission's Order in Case No. U-15169 contains the following express direction: "The adopted form shall be used without substantive or procedural changes for all video service local franchise agreements in the state of Michigan." (emphasis added).
3. AT&T seeks to become a "video service provider" in the City under the Act. MCL 484.3301(2)(q); See, AT&T's September 30, 2008 Proposed Agreement (Exhibit 1).

4. Section 1(2)(p) of the Act defines "video service" to include "video programming, cable services, IPTV, or OVS provided through facilities located at least in part in the public rights-of-way ..." MCL 484.3301(2)(p).

5. As part of its recent efforts to enhance and expand the services it provides to customers in the State of Michigan, AT&T has upgraded its telecommunications network facilities to provide, among other things, improved voice and data telecommunications services, higher quality and faster Internet access, and the ability to provide video services within the City. In relation to AT&T's efforts to upgrade its telecommunications network facilities, AT&T has placed and intends to place new or upgraded facilities within the public rights-of-way within the City. 8

6. The City is a "franchising entity" as defined by Section 1(2)(e) of the Act. MCL 484.3301(2)(e).

JURISDICTION

7. The Commission has jurisdiction and authority to administer the Act and to resolve disputes arising between a video provider and a franchising entity. MCL 484.3312(1); MCL 24.203(3), MCL 24.271; R 460.17103. The Commission has jurisdiction and authority to enforce its orders.

8 AT&T’s authority to install telecommunications facilities derives, inter alia, from its statewide franchise and statutory authority (since 1883 and in later enactments) to transact a telecommunication business using public rights-of-way in the City and pursuant to the METRO Act and METRO Act permit issued to AT&T by the City.
8. The Act provides the Commission with the authority to hold hearings and order remedies and penalties, including the imposition of fines, to protect and make whole parties that have been damaged as a result of a violation of the Act by a "person." MCL 484.3314. The Act defines "person" to include a "governmental entity, or any other legal entity." MCL 484.3301(2)(l). The Commission may also issue cease and desist orders. MCL 484.3314(1)(d).

9. The Commission has previously exercised such authority in a dispute between AT&T and the City of Southfield as reflected by its issuance of the May 3, 2007 Order Establishing an Expedited Hearing and Directing the City of Southfield to Show Cause in Case No. U-15281.

10. Alternatively, the Commission has jurisdiction under Sections 6, 7 and 18 of the METRO Act, MCL 484.3106, MCL 484.3107, and MCL 484.3118 respectively, to consider AT&T's Complaint and to resolve its disputes with the City.

11. In addition, the Commission has authority under Sections 6 (3) and 18 (1) of the METRO Act, MCL 484.3106 (3) and MCL 484.3118 (1), respectively, to issue orders for emergency relief, and under Section 7 of the METRO Act to commence dispute resolution procedures.

12. Further, the Commission has authority under MCL 24.263 to issue declaratory rulings.
13. On September 30, 2008, AT&T submitted to the Clerk of the City its Proposed Agreement. A copy of AT&T's September 30, 2008 cover letter and Proposed Agreement are attached hereto as Exhibit 1.

14. AT&T completed the Proposed Agreement using the Uniform Agreement, strictly following the Commission's Instructions issued in the Commission's January 30, 2007 Order in Case No. U-15169. A "uniform video service local franchise agreement" is defined by Section 1(2)(n) of the Act as "the franchise agreement required under this act to be the operating agreement between each franchising entity and video provider in this state." MCL 484.3301(2)(n). (emphasis added).

15. AT&T's Proposed Agreement provides the "exact description of the video service area footprint to be served" in the City in the form of a confidential map that was created using Geographic Information System (GIS) software. See, MCL 484.3302(3)(e) and Exhibit 1, Confidential Attachment A; submitted to the Commission as Confidential Exhibit 4. The manner in which the map was created by AT&T and complies with the requirements as to Section 2(3)(e) of the Act are explained in detail in the cover letter to the City. See also, the Affidavit of Susan Frentz.

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9 As noted in AT&T's September 30, 2008 cover letter to its accompanying Proposed Agreement submission to the City, and pursuant to accompanying Section 11 of the Act, MCL 484.3312, AT&T has deemed both the "Video Service Area Footprint" and the "date on which AT&T expects to begin to provide video services in the City to be "Confidential Information." This information was set forth in Confidential Attachments A and B to the Proposed Agreement. Those confidential attachments are separately submitted to the Commission as Confidential Exhibits 4 and 5, respectively.
16. AT&T's Proposed Agreement also includes a narrative explanation of the map depicting the video service area footprint to be served within the City that provides in pertinent part:

The [confidential map] identifies the Video Service Area Footprint in terms of AT&T wire centers or exchanges serving the City of Clawson, and the exchange and such boundaries are overlaid onto a map with the municipal boundaries of the City of Clawson.

17. Pursuant to Section 3(2) of the Act, MCL 484.3303(2), the City was required to notify AT&T within 15 business days of September 30, 2008 "as to whether the submitted franchise agreement is complete as required by this act…"

18. By letter dated October 20, 2008 – the City provided its notification in response to AT&T's Proposed Agreement, rejecting the Proposed Agreement as "incomplete." See Exhibit 2 attached hereto. For the reasons stated herein, the City's Rejection is factually and legally defective, and the Rejection violates the provisions of the Act and the Commission's January 30, 2007 Order in Case No. U-15169.

19. AT&T requests the issuance of a Commission order directing that the City appear and show cause as to why it should not be found in violation of the Act and the Commission's Order in Case No. U-15169. AT&T further seeks a Commission order awarding AT&T any and all remedies, including the imposition of penalties and fines against the City, as are sufficient to make whole AT&T for any and all damages AT&T has sustained or may sustain as a result of the City's violations of the Act and the Commission's order in Case No. U-15169.

20. AT&T further seeks a Commission determination that its Proposed Agreement submitted to the City is complete and that, consequently, the City has until October 30, 2008 to approve the same. AT&T also seeks a declaratory ruling from the Commission that the City's
finding that AT&T's Proposed Agreement is "incomplete" violates the Act and the Commission's Order in Case No. U-15169.

21. The Commission's effective exercise of jurisdiction and authority to resolve this dispute will streamline the process for AT&T's provisioning of video services in the City and benefit consumers, as described infra.

22. Alternatively, AT&T requests the Commission exercise jurisdiction and issue an order for emergency relief under Sections 6 (3) and 18 (l) of the METRO Act, MCL 484.3106 (3) and MCL 484.3118 (1), respectively, in the nature of a determination that the provisions governing the construction of facilities in ROW which the City seeks to include in a Franchise Agreement are unnecessary and unlawful, inter alia for the reason that they are found in the permit issued by the City to AT&T under the METRO Act.

23. In the event the Commission does not issue the show cause order or order for emergency relief requested above, AT&T requests the commission to commence the dispute resolution procedures provided in Section 7 of the METRO Act, MCL 484.3107.

THE CITY'S NONCOMPLIANCE WITH THE ACT AND THE COMMISSION'S JANUARY 30, 2007 ORDER IN CASE NO. U-15169

24. Not one of the City's stated bases for its belief that AT&T's Proposed Agreement is "incomplete" possesses any merit.

25. The Clerk of the City of Clawson sent AT&T the letter dated October 20, 2008 and enclosures found at Exhibit 2 hereto. The letter references and attaches a document entitled, "QUESTIONS SUPPORTING INCOMPLETE INFORMATION ON THE AT&T APPLICATION FOR VIDEO SERVICE LOCAL FRANCHISE AGREEMENT", clearly
implying that the City found the Franchise Agreement somehow incomplete because it did not contain express answers to these questions posed by the City.

26. As will be discussed in more detail below, the vast majority of the questions posed by the City in the City's Rejection do not raise legitimate inquiries concerning whether AT&T's Proposed Agreement is complete; rather they ask a number of hypothetical questions concerning what may happen and what position might AT&T take if certain facts or circumstances develop in the future. In addition, the questions suggest that the Proposed Agreement is incomplete because it does not contain certain provisions which the Commission has decided are not required in the Uniform Agreement form which it approved and required for use.

27. "Question" 1 from the City provides as follows:

1. REFERENCE MCL 484.3304 (2)(4)\textsuperscript{10}

A. Please provide information that confirms if a franchising entity provides education and government channels only for 8 hours per day for three months or more, the provider in that instance will not cease the availability of such service?

REASON FOR QUERY? The City of Clawson does not utilize the public service channel but does provide education and government access.

B. Please confirm that PEG channels will be located and maintained during the franchise period in a location in sufficient proximity to the offered broadcast services? Also, please confirm these services will not be relocated during the franchise term?

C. Please provide those circumstances under which the provider limits or conditions access to PEG channels?

These questions do not pertain whatsoever to the text of the relevant provision in the Proposed Agreement, Section VII Public, Education, and Government (PEG) channels. Rather, here the City asks a series of hypothetical questions concerning what AT&T may do at some

\textsuperscript{10} Sections 4 (2) and 4 (4) of the Act.
unspecified future date if the franchising entity "provides education and government channels only for eight hours per day for three months or more."

Section 4 (2) of the Act, MCL 484.3304 (2) referenced by the City provides as follows:

Any public, education, or government channel provided under this section that is not utilized by the franchising entity for at least 8 hours per day for 3 consecutive months may no longer be made available to the franchising entity and may be programmed at the provider's discretion. At such time as the franchising entity can certify a schedule for at least 8 hours of daily programming for a period of 3 consecutive months, the provider shall restore the previously reallocated channel. (Emphasis added)

Here the City is asking the hypothetical question as to what AT&T may do in the future if one of the City's PEG channels is not utilized for the requisite time period provided in the statute. The statutory language referenced above states that the provider may no longer make the program available if it is not sufficiently utilized by the franchising entity. However, what AT&T may do in the future should that circumstance exist is not relevant in any manner to whether the Franchise Agreement submission to the City is complete.

28. Section 1B in the City's Rejection has another inquiry which has no relevance whatsoever to whether the Franchise Agreement submission is complete. It is not clear from this question quoted in paragraph 27 above what information the City is seeking concerning the channel designation that AT&T will have for PEG channels and the relationship of that designation to "offered broadcast services" whatever those are. More importantly, there is no requirement in either the Act or the Uniform Agreement approved and required by the MPSC that PEG programming be available in any channel designation or manner to the video service subscriber. While this subject may be a legitimate matter of interest to the City, nevertheless it does not pertain to a provision which is required to be included in the Uniform Agreement.
29. The same holds true for the question posed in Section 1 (C) quoted above in paragraph 27. Section VII Public, Education and Government (PEG) Channels A and B of the Uniform Agreement closely follow the relevant provisions in Section 4 of the Act governing the obligations of a video service provider for access to PEG programming. Any attempt to predict the circumstances under which "the provider limits or conditions access to PEG channels" in the future does not pertain to whether the Franchise Agreement submission to the City is complete.

30. Section 2 of the City's Rejection references MCL 484.3307, Section 7 of the Act, which authorizes a franchising entity:

"No more than every 24 months" to perform "reasonable audits of the video service provider's calculation of the fees paid under Section 6 to the franchising entity during the preceding 24 month period only. All records reasonably necessary for the audit shall be made available by the provider at the location where the records are kept in the ordinary course of business."

The City asks another series of hypothetical questions concerning the manner and time periods within which records may be made available to the City if it were to request an audit of the video service fees paid to it by AT&T:

A. Please provide a definition of "records reasonably necessary for the audit?"

REASON FOR THE QUERY? If the definition is restrictive and determined by the provider, this might not be consistent with the requirements of the auditor for the City of Clawson. Since the determination is focused on the accuracy of the franchise payment, the franchise entity should have complete and unrestricted access to all records utilized in not only determining the amount of the payment but also in allocating the various credits to which the provider is entitled under MCL 484.3306 (5).

B. Please provide information as to the time requirement imposed by the provider once a request is made for an audit of its records. For instance must the franchise entity wait for a period of more than 30 days before it has access to the records? Is the franchise entity auditor allowed continued access once it is first provided without inordinate delays?

C. Please indicate if the provider agrees to the application of a particular dispute resolution method if there is a difference after the audit between what the provider
has paid and what the provider ought to have paid? If there is agreement to that process, what is it? Also what dispute resolution language has the provider used in other agreements involving Oakland County franchise entities?

D. To what extent if underpayment has been determined, does the provider pay the audit fees of the Franchise entity?

None of the questions have any relevance whatsoever to whether the Proposed Agreement is complete. The Proposed Agreement contains the verbatim text of the audit provisions developed by the Commission in the Uniform Agreement, and is therefore complete.

31. Section 3 of the City's Rejection references MCL 484.3309, Section 9 of the Act, and asks in Question (A):

A. Does the provider have alternative service technology offering service, functionality and content that 'does not require the use of any public right-of-way? REASON FOR QUERY? Clawson is currently undergoing extensive roadway improvements. It is critical to determine if alternative technology can be used under this franchise agreement to avoid disruption of ongoing construction or prior construction in the right-of-way in the City.

The implication of this question is that the City may attempt to select the technology that AT&T must use to offer video services under the Franchise Agreement. There is no indication whatsoever in the Act that is the franchising entity rather than the provider which determines the technology or technologies the provider will use to provide the video services. The opposite is true. Section 9 (5) of the Act, MCL 4404.3309 (5) provides in relevant part as follows:

(5) Except for satellite service, a video service provider may satisfy the requirements of this section through the use of alternative technology that offers service, functionality, and content, which is demonstrably similar to that provided through the provider's video service system and may include a technology that does not require the use of any public right-of-way. The technology utilized to comply with the requirements of this section shall include local public, education, and government channels and messages over the emergency alert system as required under section 4.
Clearly, under Section 9 (5) of the Act, it is the provider's right to select the specific technology used to deliver video services. Again, the provider's choice of technology has no relevance whatsoever to whether the Franchise Agreement is complete. Section 3(G) of the Franchise Agreement tracks Section 9 (5) of the Act and confirms that the technology choice is the provider's to make.

32. In Question 3 (B) the City asks: "To what extent will existing telephone facilities be utilized?" With regard to this question posed, it is a matter of public information that AT&T is relying on enhancements to its existing telecommunications network and facilities to provide video, high-speed internet access and other internet protocol-based advanced services. More importantly, the specific manner and extent to which facilities will be utilized is also not relevant to the completeness of the Franchise Agreement submission.

33. Section 4 of the City's Rejection references MCL 484.3302 (3)(E). MCL 484.3302 (3) enumerates the list of provisions which must be included in the Uniform Agreement created by the Commission for use by all providers and municipalities. Subsection (e) referenced by the City provides that the Franchise Agreement must include:

An exact description of the video service area footprint to be served, as identified by a geographic information system digital boundary meeting or exceeding national map accuracy standards. For providers with 1,000,000 or more access lines in this state using telecommunication facilities to provide video services, the footprint shall be identified in terms of entire wire centers or exchanges. An incumbent video provider satisfies this requirement by allowing a franchising entity to seek right-of-way related information comparable to that required by a permit under the metropolitan extension telecommunications rights-of-way oversight act, 2002 PA 48, MCL 484.3101 to 484.3120, as set forth in its last cable franchise or consent agreement from the franchising entity entered before the effective date of this act.

11 AT&T believes the reference is to MCL 484.3302 (3)(e), Section 2 (3)(e) of the Act.
34. AT&T's Proposed Agreement for the City completely complied with this requirement. Confidential Attachment A to the Proposed Agreement provided a map of the video service area footprint in the City to be served by AT&T. The cover letter to the Clerk of the City provided the following explanation regarding the manner in which the video service footprint map was created by AT&T and how it complies with the statutory requirements, i.e., "as identified by a geographic information system digital boundary meeting or exceeding national map accuracy standards."

It is important to note that AT&T’s map demonstrates the exact footprint within which AT&T intends to offer video services and thus is consistent in full with the purpose for which it is prepared. AT&T’s “video service area footprint” map complies with Section 2(3)(e) of Act 480. Section 2(3)(e) provides that a uniform video service local franchise agreement include “an exact description of the video service area footprint to be served, as identified by a geographic information system digital boundary meeting or exceeding national map accuracy standards.”

AT&T's video service area footprint map is prepared using digital geographic data created by AT&T's Geographic Information System (GIS) application. GIS-mapping systems use software to combine multiple "layers" of information to create maps tailored for specific purposes, such as demonstrating the precise area in which AT&T intends to offer video services. Maps created using AT&T's GIS-mapping system meet or exceed all pertinent national map accuracy standards.

AT&T's GIS-created maps are created using the latest GIS-mapping technology. GIS-mapping systems are comprised of individual map elements, which are "intelligent" in the sense that each individual map element contains an encoded database record that includes a unique identifier attribute and spatial coordinate attributes for each individual map element (such as longitude and latitude). AT&T's GIS-mapping application uses wire center boundaries hand-digitized by AT&T, which are highly accurate for all map preparation purposes.

AT&T's GIS-mapping application uses data sources that have latitude and longitude coordinates embedded in and associated with all the points, lines and boundaries on all state and municipality maps used by AT&T, to create the video service area...
footprint maps. Those portions of the AT&T wire centers which are outside the boundaries of the City of Clawson are not included in the map.

AT&T's GIS-mapping application uses geographic data from several sources. For example, AT&T secures landbase data, including city and state boundaries, from TeleAtlas, which is recognized as a leader in GIS data and is the foremost provider of GIS application data in North America. Data and maps received from TeleAtlas are specifically-designed to comply with all national map accuracy standards.

In sum, AT&T’s map complies with the requirements of Section 3(3)(e) of Act 480 and includes "an exact description of the video service area footprint to be served, as identified by a geographic information system digital boundary meeting or exceeding national map accuracy standards." (Exhibit 1 at pp. 2-3)

35. The balance of Section 4 of the City's Rejection 4B and 4C states as follows:

B. With reference to construction in the right-of-way, Clawson has experienced when the remediation is completed by the applicant's contractor, certain standards maintained by Clawson are not met. This results in the necessity at a later date, for the City at its expense to correct the problematic construction. To what extent will the provider allow the Clawson contractor to remediate at the expense of the provider?

C. Clawson has adopted a policy of requiring a construction bond in place prior to the actual construction in the right-of-way. To what extent has the provider in other agreements in Oakland County agreed to the furnishing of similar bonds?

Once again, there is no requirement in the Act that a proposed agreement contain specific provisions dealing with remediation of construction work or the posting of construction bonds. Moreover, the METRO Act permit issued by the City to AT&T specifically addresses these issues in Sections 4.3 Restoration of Property and 8.1 Performance Bond or Letter of Credit, respectively. See Exhibit 6 hereto.

36. Section 5 of the City's Rejection reference MCL 484.3304 (2)(4)\(^{12}\) and asks the following questions:

\(^{12}\) This reference is apparently to Section 4 (2) and Section 4 (4) of the Act.
A. To what extent will the provider move PEG channels to a digital tier or treat them as on demand channels?

B. To what extent will the provider ensure that consumers are able to get access equally to all channels belonging to basic tier service?

REASON FOR QUERY? Discussions with other City Managers indicate that current AT&T customers complain about the poor video and audio quality of PEG Channel broadcasts and difficulties associated with accessing these channels.

The City of Clawson's current franchise agreements contain language as follows: "All PEG channels shall be placed on the basic tier of service (and in the lowest tier of service, if different), unless both parties agree otherwise." This is consistent with recent Federal Court actions in Dearborn et al v. Comcast and public comments from the FCC regarding Comcast's efforts to move PEG channels to the higher range of their digital offerings.

Neither of these questions is relevant in any manner whatsoever as to the completeness of the Proposed Agreement. Question A is apparently generated by the controversy with Comcast's attempt to move its PEG channels to the 900 tier of channels which is the subject of pending litigation in the City of Dearborn, et al v Comcast of Michigan, et al., Case No. 08-10156 in the United States District Court for the Eastern District of Michigan, Southern Division. However, this question is irrelevant to the AT&T Proposed Agreement because the technology of AT&T's U-verse does not have analog and digital tiers of channels and does not present any of the issues generated by the Comcast activities.

37. The second question posed by the City in Section 5 B is similarly irrelevant to the completeness of the Proposed Agreement. In addition, it is also a matter of public information that the PEG programming offered to AT&T U-verse subscribers may be accessed at channel 99 which is included in every package of U-verse service available to subscribers.

38. Section 6 of the City's Rejection references MCL 484.3302 (q) and MCL 484.330813 and ask the following questions:

13 These are apparently references to Section 2 (3)(q) and Section 8 of the Act respectively.
A. To what extent will the provider comply with Clawson Ordinance Chapter 74 Sec. 211-214 and Administrative Policy and Procedure PP-5 on specific requirements of Bond, Restoration etc.?

B. To what specific provision of Chapter 74 will the provider not comply?

Note: See attached Chapter 74 and Administrative Policy and Procedure PP-5. Also reference Section 3 of Comcast Agreement (not attached).

REASON FOR QUERY? The proposed Franchise Agreement merely states that AT&T will provide insurance for right-of-way items. The agreement fails to address the various forms of liability associated with work in the public right-of-way, dispute resolution, damage claims, future conflicts with municipal utility repair and maintenance, indemnification, negligence, assumption of risk and the various types of insurance required by the City of Clawson for work done by AT&T and/or contractors for the company.

Further, the agreement fails to address a variety of issues dealing with construction activities in the public right-of-way such as, applicable permits and the posting of bond in an amount equal to the value of such construction as authorized in the METRO Act. Further, the agreement fails to address how AT&T will address affected homeowners and the City of Clawson with appropriate notification of construction, maintaining prior traffic controls during construction, restoration of damaged public and/or private property, and how AT&T intends to comply with construction requirements contained in Chapter 74 Sections 211-214 of the Clawson Code of Ordinances.

These provisions of the Act referenced by the City pertain to the rights of a video service provider to use and occupy ROW and to install, construct and maintain a network within ROW to provide video services. The City is apparently asserting that the Proposed Agreement is incomplete because it does not contain an enumeration of those specific provisions of the City's Ordinance Chapter 74 and policy statement referenced in the question as to which AT&T will or will not comply. Any attempt to answer these questions in the form of specific ordinance references would require AT&T to speculate as to what provisions of the City's Clawson Ordinance and Policy and Procedure documents the City would seek to enforce against AT&T. Moreover, the assertion that the Proposed Agreement is incomplete because it does not attempt to provide answers to those questions is contradicted by the provision in the Proposed Agreement.
at Section II Requirements of the Provider D that "The provider agrees to comply with all valid and enforceable local regulations regarding the use and occupation of public rights-of-way in the delivery of the video service, including the police powers of the franchising entity."

39. In addition, the concerns expressed by the City in the "Reason for Query?" part of Section 6 asserts the Proposed Agreement is incomplete because it fails to address various issues like liability for damage claims, indemnification, insurance and other activities involving construction in the rights-of-way. Virtually every one of these potential concerns is already specifically addressed in the METRO Act Permit issued to AT&T by the City, a copy of which is attached hereto as Exhibit 6. See, for example, Section 4.6 Installation and Maintenance, Section 4.7 Pavement Cut Coordination, Section 5.1 Indemnity, Section 6 Insurance, and Section 8 Performance Bond or Letter of Credit. There is no requirement in the Act that these provisions found in the METRO Act Permit be replicated in a Franchise Agreement.

40. Section 7 of the City's Rejection references MCL 484.3310 and implies that the Proposed Agreement is incomplete because it does not contain information which satisfies the request to "Please provide the detailed particular dispute resolution process utilized by provider in other franchise agreements in Southeast Michigan." As with the other deficiencies alleged by the City, the Act nowhere requires that the Franchise Agreement identify a specific dispute resolution process to be utilized for disputes related to the Franchise Agreement. Moreover, the only dispute that AT&T has had with another municipality is a matter of public record. In that case, AT&T filed a formal MPSC complaint against the City of Southfield, MPSC Case No. U-15281.

41. Section 8 of the City's Rejection references Section 2 (3)(o) of the Act, MCL 484.3302 (3)(o), suggesting that the Franchise Agreement is incomplete because of a lack
of a description of insurance coverage provided for work in the right-of-way. This assertion is erroneous for the simple reason that the requirement in Section 2 (3)(o) of the Act applies only to incumbent video providers, not new entrants such as AT&T. Moreover, as with several of the questions discussed above, the specifics of Section 6 Insurance the METRO Act permit issued to AT&T by the City provides extensive detail concerning the insurance coverage provided to the City for work in the Right-of-Way.

42. Section 9 of the City's Rejection is entitled "Miscellaneous" and references video service fees in Section 6 of the Proposed Agreement and PEG fees in Section 8 of the Proposed Agreement, respectively. Both references direct AT&T to insert a particular percentage number into the Franchise Agreement. The suggestion that the Franchise Agreement is not complete because these two fee percentages have not been inserted by AT&T has been definitively resolved by the Commission in its January 30, 2007 Order in Case No. U-15169 and May 3, 2007 Order in Case No. U-15281.

43. The Commission's January 30, 2007 Order in Case No. U-15169 provides that it is the responsibility of the City to fill in the applicable "franchise fee" in AT&T's Proposed Agreement: "...(percentage amount to be inserted by Franchising Entity which shall not exceed 5%)...". January 30, 2007 Order, § VI(A)(ii) (emphasis added). Similarly, Section VIII(A)(1) and (2) require that the City enter the applicable PEG fee amount paid to the incumbent provider. The Commission's Order and the Instructions accompanying the Form approved and mandated by the Commission provide that it is the franchising entity that is to insert the annual PEG fee into the Proposed Agreement – and hence the "blanks" set forth in the prescribed form agreement – based on the City's knowledge of the PEG support fees, if any, paid by the largest incumbent provider to the franchising entity.
44. Any doubt concerning which entity has the responsibility to insert the video service fee and PEG fee numbers into the Franchise Agreement was definitively resolved by the Commission in its May 3, 2007 Order established at an expedited hearing and directing the City of Southfield to Show Cause in Case No. U-15281. There the Commission reiterated its holding that a franchise agreement submission is not incomplete because the provider has left the video service fee and PEG fee amounts to be inserted by the franchising entity, stating:

Southfield's April 16, 2007 letter made several findings of incompleteness based on sections of AT&T Michigan's franchise agreement relating to public, education and government (PEG) fees and franchise fees. Southfield's April 16, 2007 letter states that AT&T Michigan "chose not to complete the franchise fee or PEG fee items required by the application." Under both Act 480 and the Commission's January 30, 2007 order in Case No. U-15169, it is the responsibility of the franchising entity, not the provider, to fill in any applicable franchise or PEG fees. Section VI of the Commission's approved franchise agreement provides for franchise fees and Section VIII provides for PEG fees. Both Section VI(A)(ii) and Section VIII(A)(1)-(3) provide "blanks" that are the responsibility of the franchising entity to complete. Order at page 3.

45. Section 10 of the City's Rejection references Section 6 (6) of the Act, MCL 484.3306, and asks the questions:

To what extent has provider's definition of gross fees (VI Fees D) been defined differently than in the Proposed Agreement?

REASON FOR QUERY? By example the Act used an adverb "attributable" as a modifier on advertising compensation, which is omitted from the providers proposed Franchise Agreement.

What is the specific methodology utilized by the provider to calculate fees, due the franchise entity under the Act?

To what extent has the provider imposed restrictions on the Audit outside of language in the Act?

As with all of the other provisions in the Proposed Agreement, AT&T's submission to the City used without any change whatsoever the exact language provisions in the Uniform
Agreement approved by the Commission pertaining to the definition of gross revenues and other definitions. The fact that there may be occasional minor wording differences between the language in the Uniform Agreement approved by the Commission and the statutory definition does not render AT&T's submission to the City incomplete.

46. As to the second question in Section 10, all of the requirements as to the methodology which a provider must use in calculating video service fees due to a franchising entity are set forth in detail in Section VI Fees D – H of the Proposed Agreement. Finally, in Section 10 of the Questions from the City, AT&T has been asked, "To what extent has the provider imposed restrictions on the audit outside of the language in the Act." Any suggestion that an answer to this question is required to complete the Franchise Agreement is ludicrous; moreover, it calls for complete speculation and conjecture because AT&T has not received a request for an audit from any franchising entity.

47. Section 11 of the City's Rejection references Confidential attachment B to the AT&T Proposed Agreement, (the confidential designation of the "date on which the provider expects to provide video services") and asserts "there was no detail provided to confirm any claim of confidentiality, ergo this portion of the application is incomplete." Believing that AT&T's Proposed Agreement is incomplete because there was no detail provided to confirm any claim of confidentiality (1) is contrary to the language in Section XIII Confidentiality in the Uniform Agreement that it is the right of the provider, not the franchising entity, to determine which items of information in the Proposed Agreement "should be deemed confidential" and (2) the provision in page 2 of the Instructions for the Uniform Video Service Local Franchise Agreement" adopted in the January 30, 2007 Order in Case No. U-15169 that "The Franchising Entity cannot declare an application to be incomplete because it may dispute whether or not the
applicant has properly classified certain material as 'confidential". Moreover, Section 11(3) of the Act, MCL 484.331 (3) provides "the burden of removing the presumption [of entitlement to confidential treatment] under this subsection is with the party seeking to have the information disclosed."

48. The same thing holds true for Section 12 of the City's Rejection referencing termination of the Franchise Agreement. The Franchise Agreement is not incomplete because it does not contain a provision which answers "What are the circumstances under which the provider has allowed for termination of the franchise agreement by the franchise entity?" More importantly, there has not been a termination of a single Franchise Agreement with AT&T in Michigan by a franchising entity.

49. Section 13 of the City's Rejection again references Section 2 (3)(e) of the Act and suggests the Franchise Agreement is incomplete because it does not answer the question, "What is the anticipated build-out schedule assuming the consummation of the Franchise Agreement?" There is no requirement in either the Act or the Uniform Agreement for a municipality-specific build-out schedule.

50. Finally, Section 14 of the City's Rejection references Section 2 (3)(l) of the Act, MCL 3302 (3)(l), and asks, "To what extent does the provider agree to the applicability of the Michigan Consumer Protection Act?" The Uniform Agreement approved by the Commission removes any doubt whatsoever as to the specific provisions of the Michigan Consumer Protection Act which are applicable. Section II Requirements of the Provider states:

G. The Provider shall comply with all customer service rules of the Federal Communications Commission under 47 CFR 76.309 (c) applicable to cable operators and applicable provisions of the Michigan Consumer Protection Act, 1976 PA 331, MCL 445.901 to 445.922.

i. Including but not limited to: MCL 445.902; MCL 445.903 (1)(a) through 445.903(1)(cc); MCL 445.903(1)(ff) through (jj); MCL

It is specious for the City to suggest that the Franchise Agreement is incomplete in this subject matter.

**REQUEST FOR DECLARATORY RULING**

51. For the reasons set forth herein, AT&T requests that the Commission issue a declaratory ruling that the action of the City violates the Act and the Commission's Order in Case No. U-15169.

52. Section 63 of the APA, MCL 24.263, provides in pertinent part: "On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency … ."

53. Rule 701(1) of the Commission's Rules of Practice and Procedure, R 460.17701(1), provides in pertinent part: "Any person may request a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the commission or of a rule or order of the commission, pursuant to the provisions of sections 33 and 63 of Act No. 306 of the Public Acts of 1969, as amended, being 24.233 and 24.263 of the Michigan Compiled Laws."

54. The Act is a "statute administered by the commission" within the meaning of Rule 701, as provided in Section 12(1), MCL 484.3312(1). Further, as detailed in the preceding paragraphs and in the Exhibits and Affidavit attached hereto, AT&T's Verified Complaint constitutes a complete and concise statement of the facts attendant to AT&T's requested relief and the pertinent statutes and orders to which the request relates.

55. As detailed in this Verified Complaint, AT&T is entitled to a declaratory ruling that the City has violated the Act and the Commission's Orders in Case No. U-15169 and Case No. U-15281.
REQUEST FOR ORDER TO SHOW CAUSE

56. For the reasons set forth herein, AT&T requests that the Commission issue an order directing that the City appear and show cause why it should not be found in violation of the Act and the Commission’s Orders in Case No. U-15169 issued January 30, 2007 and Case No. U-15281 issued May 3, 2007, and further why the Commission should not order such remedies and penalties, including but not limited to the imposition of the fines available under Section 14 of the Act, as are sufficient to make whole AT&T for any and all damages it has sustained or may sustain as a result of the City's violations detailed herein.

REQUEST FOR EXPEDITED AND EMERGENCY RELIEF

57. Section 3(2) of the Act, MCL 484.3303(2), requires a franchising entity to notify a provider within 15 business days whether the submitted franchise agreement is complete and, if the franchise agreement is incomplete, to state in its notice the reasons the franchise agreement is incomplete.

58. Section 3(3) of the Act, MCL 484.3303(3), provides that a franchising entity has 30 days after submission of a complete franchise agreement to approve the agreement. It further provides that if a franchising entity fails to notify the provider regarding the completeness of the franchise agreement or to approve the franchise agreement, the franchise agreement shall be considered complete and the franchise agreement approved.

59. Notwithstanding that AT&T’s Proposed Agreement is complete as required by the Act and the Commission’s Orders in Case No. U-15169 and U-15281, the City notified AT&T that the submitted franchise agreement was "incomplete" by letter dated October 20, 2008. The date by which the City must approve AT&T's Proposed Agreement is fast approaching – October 30, 2008. As demonstrated in this Complaint, the stated reasons provided by the City are
factually and legally insufficient. Accordingly, the City must approve the agreement within 30 days of its submission on September 30, 2008 or the franchise agreement is deemed approved as a matter of law.

60. A franchising entity’s unlawful determination that a submitted franchise agreement is "incomplete" violates the Act and frustrates the Legislature’s intent that franchise agreements complying with the Act be approved within 30 days. Absent expedited relief, AT&T will be significantly prejudiced given the close time periods at issue in its ability to begin to offer video services within the City.

61. AT&T is entitled to an immediate determination that its submitted franchise agreement is complete and that the City's notice fails to comply with the Act.

62. Without an immediate determination as to the unlawfulness of the City's notice:
   a. AT&T will suffer irreparable harm in its ability to offer video services within 30 days after its submission of a completed franchise agreement as authorized by the Act;
   b. The residents of the City will suffer irreparable harm by being denied the benefits of video competition, including lower prices, better customer service, and expanded video service offerings.
   c. Investment in the State’s telecommunications infrastructure and the creation of high quality jobs to support AT&T’s video service will be diminished or delayed.

63. The Commission should immediately enter an order determining that AT&T’s submitted franchise agreement is complete and that the 30-day period for approval of the agreement expires on October 30, 2008.

VERIFICATION

64. In support and verification of this Complaint and exhibits, AT&T respectfully submits the attached Affidavit of Susan Frentz, AT&T Director – Regulatory.
CONCLUSION AND RELIEF REQUESTED

AT&T respectfully requests the following relief:

(a) that the Commission immediately issue an order finding (1) unlawful the City of Clawson's belief that the AT&T Proposed Agreement is incomplete, (2) that AT&T’s Proposed Agreement is complete, and (3) that the City has until October 30, 2008 to approve the same;

(b) that the Commission immediately enter a cease and desist order directing that the City of Clawson comply in full with the Act and the Commission's Order in Case No. U-15169 by entering into the Proposed Agreement submitted by AT&T;

(c) that the Commission immediately issue a declaratory ruling that the City of Clawson has violated the Act and the Commission's Order in Case No. U-15169 by virtue of the facts set forth herein;

(d) that the Commission issue an order (1) directing that the City of Clawson appear and show cause as to why it should not be found to have violated the Act and the Commission’s Order in Case No. U-15169; (2) determining that the City has violated the Act and the Commission's Order in Case No. U-15169; (3) imposing such remedies and penalties, including but not limited to the imposition of fines, as are sufficient to make whole AT&T for any and all damages it has sustained or may sustain; (4) sanctioning the City for taking frivolous positions and its blatant violation of the Act; and (5) awarding attorney fees to AT&T.

(e) that the Commission grant AT&T such other and further relief as is just and appropriate.
Respectfully submitted,

Craig Anderson
AT&T MICHIGAN
444 Michigan Avenue, Room 1700
Detroit, MI  48226
(313) 223-0725

and

DICKINSON WRIGHT PLLC

Michael A. Holmes

By: ___________________________________

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Michael A. Holmes (P24071)
Attorneys for AT&T Michigan
215 South Washington Square, Suite 200
Lansing, MI  48933-1816
(517) 371-1730

Dated:  October 24, 2008
AT&T MICHIGAN’S VERIFIED COMPLAINT FOR RESOLUTION OF DISPUTE WITH CITY OF CLAWSON UNDER UNIFORM VIDEO SERVICES LOCAL FRANCHISE ACT AND OTHER RELEVANT AUTHORITIES, REQUEST FOR DECLARATORY RULING, REQUEST FOR ORDER TO SHOW CAUSE, AND REQUEST FOR EXPEDITED RELIEF

MPSC CASE NO. U-15683

OCTOBER 24, 2008

EXHIBIT 1
September 30, 2008

Via UPS Overnight Delivery

To: Machele Kukuk
   Clerk of the City of Clawson
   425 N. Main Street
   Clawson, Michigan 48017

Re: Video Service Local Franchise Agreement for AT&T Michigan

Dear Ms. Kukuk:

Pursuant to Section 3 of 2006 Public Act 480, MCL 484.3303 ("Act 480") and the January 30, 2007 Order ("Order") of the Michigan Public Service Commission ("Commission"), in Case No. U-15169, Michigan Bell Telephone Co. doing business as AT&T Michigan ("AT&T"), hereby files the enclosed Uniform Video Service Local Franchise Agreement ("Agreement") by and between the City of Clawson, a Michigan Municipal corporation (the "Franchising Entity") and AT&T (the "Provider"). The Commission's Order and Instructions may be found at the following Commission web link: http://www.cis.state.mi.us/mpsc/orders/comm/2007/u-15169_01-30-2007.pdf

The enclosed filing includes the standard form Agreement approved by and required for use by the Commission, and it has been completed in accordance with the Commission's Instructions issued in the Order. It is unknown to AT&T whether or not there is an existing franchise agreement with an incumbent provider in the City of Clawson. Section 6(1)(a) of Act 480 provides that “[i]f there is an existing franchise agreement, an amount equal to the percentage of gross revenues paid to the franchising entity by the incumbent video provider with the largest number of subscribers in the franchising entity” shall be the franchise fee. Section 6(1)(b) of Act 480 provides “[a]t the expiration of an existing franchise agreement or if there is no existing franchise agreement, an amount equal to the percentage of gross revenues as established by the franchising entity not to exceed 5% and shall be applicable to all providers” as an annual franchise fee for providing video services.

In addition, for the support of public, education, and government ("PEG") access facilities and services, Section 6(8)(a) of Act 480 provides “[i]f there is an existing franchise on the effective date of this act, the fee paid to the franchising entity by the incumbent video provider with the largest number of cable service subscribers in the franchising entity as determined by the existing franchise agreement” shall be the PEG fee. And Section 6(8)(c) of Act 480 provides “[i]f there is no existing franchise agreement, a percentage of gross revenues as established by the franchising entity not to exceed 2% to be determined by a community needs assessment” for the support of public, education, and government ("PEG") access facilities and services. Accordingly, please insert the franchise fee into Section “VI. Fees” and the PEG support fee into Section “VIII. PEG Fees”, pursuant to the above noted statutory requirements. On May 3, 2007, the Michigan Public Service Commission noted at page 3 of its Order...
Establishing An Expedited Hearing And Directing The City Of Southfield To Show Cause in Case No. U-15281, that it is the Franchising Entity’s responsibility to fill in the applicable franchise fee and PEG fee.

The submission also includes Attachment 1 to the Agreement. Pursuant to Section 11 of Act 480, Section "XIII. Confidentiality" of the Agreement, and page 1 of the Instructions for Uniform Video Service Agreement issued in the Order, AT&T has deemed both the "Video Service Area Footprint" and "the date on which AT&T expects to begin to provide video services in part of the Video Service Area Footprint" as Confidential Information. The Confidential Information for Attachment 1 has been set forth in Confidential Attachments A and B respectively, and has been placed in a separate, sealed envelope and clearly identified by the label of the envelope as follows:

(AT&T Michigan "CONFIDENTIAL INFORMATION")

Pursuant to Section XIII of the Agreement, Section 11 of Act 480, and the Commission's Instructions, the City of Clawson as the Franchising Entity receiving the information so designated as confidential is required (a) to protect such information from public disclosure, (b) exempt such information from any response to a Freedom of Information Act ("FOIA") request made under MCL 15.231 to 15.246, and (c) make the information available only to and for use only by such local officials as are necessary to approve the Agreement or perform any other task for which the information is submitted.

It is important to note that AT&T’s map demonstrates the exact footprint within which AT&T intends to offer video services and thus is consistent in full with the purpose for which it is prepared. AT&T’s “video service area footprint” map complies with Section 2(3)(e) of Act 480. Section 2(3)(e) provides that a uniform video service local franchise agreement include “an exact description of the video service area footprint to be served, as identified by a geographic information system digital boundary meeting or exceeding national map accuracy standards.”

AT&T's video service area footprint map is prepared using digital geographic data created by AT&T's Geographic Information System (GIS) application. GIS-mapping systems use software to combine multiple "layers" of information to create maps tailored for specific purposes, such as demonstrating the precise area in which AT&T intends to offer video services. Maps created using AT&T's GIS-mapping system meet or exceed all pertinent national map accuracy standards.

AT&T's GIS-created maps are created using the latest GIS-mapping technology. GIS-mapping systems are comprised of individual map elements, which are "intelligent" in the sense that each individual map element contains an encoded database record that includes a unique identifier attribute and spatial coordinate attributes for each individual map element (such as longitude and latitude). AT&T's GIS-mapping application uses wire center boundaries hand-digitized by AT&T, which are highly accurate for all map preparation purposes.

AT&T's GIS-mapping application uses data sources that have latitude and longitude coordinates embedded in and associated with all the points, lines and boundaries on all state and municipality maps used by AT&T, to create the video service area footprint maps. Those portions of the AT&T wire centers which are outside the boundaries of the City of Clawson are not included in the map.
AT&T's GIS-mapping application uses geographic data from several sources. For example, AT&T secures landbase data, including city and state boundaries, from TeleAtlas, which is recognized as a leader in GIS data and is the foremost provider of GIS application data in North America. Data and maps received from TeleAtlas are specifically-designed to comply with all national map accuracy standards.

In sum, AT&T’s map complies with the requirements of Section 3(3)(e) of Act 480 and includes "an exact description of the video service area footprint to be served, as identified by a geographic information system digital boundary meeting or exceeding national map accuracy standards."

The City of Clawson has 15 business days beginning on October 1, 2008 within which to notify AT&T if the Agreement is complete. If the City of Clawson does not notify AT&T regarding the completeness of the Agreement within this 15 business day period, pursuant to Section 3(3) of Act 480, the Agreement shall be deemed complete. Any notice by the City of Clawson regarding the completeness of the Agreement must comply with Section 3(2) of Act 480 and must be sent by facsimile to each of the representatives of AT&T identified in Section "XV. Notices" of the enclosed Agreement.

AT&T has a proud history and tradition of providing home phone service for many decades to residents in the geographic area now located in the City of Clawson. Now, with the ability to provide wireline, wireless, Internet and video services, we are looking forward to serving them in new ways and becoming the City of Clawson’s complete communications and entertainment provider.

If there are any questions concerning the enclosed filing, please contact Susan Frentz, Director, Regulatory at 313-496-8162.

Attachments

cc: Penny Luebs, Mayor (Public Version Only)  
Richard Haberman, City Manager (Public Version Only)  
Lori Doughty, AT&T External Affairs Manager
UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT

THIS UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT ("Agreement") is made, pursuant to 2006 PA 480, MCL 484.3301 et seq, (the "Act") by and between the City of Clawson, a Michigan municipal corporation (the "Franchising Entity"), and Michigan Bell Telephone Company, a Michigan corporation doing business as AT&T Michigan.

I. Definitions
For purposes of this Agreement, the following terms shall have the following meanings as defined in the Act:

A. "Cable Operator" means that terms as defined in 47 USC 522(5).
B. "Cable Service" means that terms as defined in 47 USC 522(6).
C. "Cable System" means that term as defined in 47 USC 522(7).
E. "Franchising Entity" means the local unit of government in which a provider offers video services through a franchise.
F. "FCC" means the Federal Communications Commission.
G. "Gross Revenue" means that term as described in Section 6(4) of the Act and in Section VI(D) of the Agreement.
H. "Household" means a house, an apartment, a mobile home, or any other structure or part of a structure intended for residential occupancy as separate living quarters.
I. "Incumbent video provider" means a cable operator serving cable subscribers or a telecommunication provider providing video services through the provider’s existing telephone exchange boundaries in a particular franchise area within a local unit of government on the effective date of this act.
J. "IPTV" means internet protocol television.
K. "Local unit of government" means a city, village, or township.
L. "Low-income household" means a household with an average annual household income of less than $35,000.00 as determined by the most recent decennial census.
M. "METRO Act" means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48, MCL 484.3101 et seq.
N. "Open video system" or "OVS" means that term as defined in 47 USC 573.
O. "Person" means an individual, corporation, association, partnership, governmental entity, or any other legal entity.
P. "Public rights-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easements dedicated for compatible uses.
Q. "Term" means the period of time provided for in Section V of this Agreement.
R. "Uniform video service local franchise agreement" or "franchise agreement" means the franchise agreement required under the Act to be the operating agreement between each franchising entity and video provider in this state.
S. "Video programming" means that term as defined in 47 USC 522(20).
T. "Video service" means video programming, cable services, IPTV, or OVS provided through facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 USC 332(d) or provided solely as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public internet.
U. "Video service provider" or "Provider" means a person authorized under the Act to provide video service.
V. "Video service provider fee" means the amount paid by a video service provider or incumbent video provider under Section 6 of the Act and Section VI of this Agreement.
II. Requirements of the Provider

A. An unfranchised Provider will not provide video services in any local unit of government without first obtaining a uniform video service local franchise agreement as provided under Section 3 of the Act (except as otherwise provided by the Act).

B. The Provider shall file in a timely manner with the Federal Communications Commission all forms required by that agency in advance of offering video service in Michigan.

C. The Provider agrees to comply with all valid and enforceable federal and state statutes and regulations.

D. The Provider agrees to comply with all valid and enforceable local regulations regarding the use and occupation of public rights-of-way in the delivery of the video service, including the police powers of the Franchising Entity.

E. The Provider shall comply with all Federal Communications Commission requirements involving the distribution and notification of federal, state, and local emergency messages over the emergency alert system applicable to cable operators.

F. The Provider shall comply with the public, education, and government programming requirements of Section 4 of the Act.

G. The Provider shall comply with all customer service rules of the Federal Communications Commission under 47 CFR 76.309 (c) applicable to cable operators and applicable provisions of the Michigan Consumer Protection Act, 1976 PA 331, MCL 445.901 to 445.922.
   i. Including but not limited to: MCL 445.902; MCL 445.903 (1)(a) through 445.903(1)(cc); MCL 445.903(1)(ff) through (jj); MCL 445.903(2); MCL 445.905; MCL 445.906; MCL 445.907; MCL 445.908; MCL 445.910; MCL 445.911; MCL 445.914; MCL 445.915; MCL 445.916; MCL 445.918.

H. The Provider agrees to comply with in-home wiring and consumer premises wiring rules of the Federal Communications Commission applicable to cable operators.

I. The Provider shall comply with the Consumer Privacy Requirements of 47 USC 551 applicable to cable operators.

J. If the Provider is an incumbent video provider, it shall comply with the terms which provide insurance for right-of-way related activities that are contained in its last cable franchise or consent agreement from the Franchising Entity entered before the effective date of the Act.

K. The Provider agrees that before offering video services within the boundaries of a local unit of government, the video Provider shall enter into a Franchise Agreement with the local unit of government as required by the Act.

L. The Provider understands that as the effective date of the Act, no existing Franchise Agreement with a Franchising Entity shall be renewed or extended upon the expiration date of the Agreement.

M. The Provider provides an exact description of the video service area footprint to be served, pursuant to Section 2(3)(e) of the Act. If the Provider is not an incumbent video Provider, the date on which the Provider expects to provide video services in the area identified under Section 2(3)(e) of the Act must be noted. The Provider will provide this information in Attachment 1 - Uniform Video Service Local Franchise Agreement.

N. The Provider is required to pay the Provider fees pursuant to Section 6 of the Act.

III. Provider Providing Access

A. The Provider shall not deny access to service to any group of potential residential subscribers because of the race or income of the residents in the local area in which the group resides.

B. It is a defense to an alleged violation of Paragraph A if the Provider has met either of the following conditions:
   i. Within 3 years of the date it began providing video service under the Act and the Agreement; at least 25% of households with access to the Provider’s video service are low-income households.
   ii. Within 5 years of the date it began providing video service under the Act and Agreement and from that point forward, at least 30% of the households with access to the Provider’s video service are low-income households.

C. [If the Provider is using telecommunication facilities] to provide video services and has more than 1,000,000 telecommunication access lines in Michigan, the Provider shall provide access to its video service to a number of households equal to at least 25% of the households in the provider’s telecommunication
service area in Michigan within 3 years of the date it began providing video service under the Act and Agreement and to a number not less than 50% of these households within 6 years. The video service Provider is not required to meet the 50% requirement in this paragraph until 2 years after at least 30% of the households with access to the Provider’s video service subscribe to the service for 6 consecutive months.

D. The Provider may apply to the Franchising Entity, and in the case of paragraph C, the Commission, for a waiver of or for an extension of time to meet the requirements of this section if 1 or more of the following apply:
   i. The inability to obtain access to public and private rights-of-way under reasonable terms and conditions.
   ii. Developments or buildings not being subject to competition because of existing exclusive service arrangements.
   iii. Developments or buildings being inaccessible using reasonable technical solutions under commercial reasonable terms and conditions.
   iv. Natural disasters
   v. Factors beyond the control of the Provider

E. The Franchising Entity or Commission may grant the waiver or extension only if the Provider has made substantial and continuous effort to meet the requirements of this section. If an extension is granted, the Franchising Entity or Commission shall establish a new compliance deadline. If a waiver is granted, the Franchising Entity or Commission shall specify the requirement or requirements waived.

F. The Provider shall file an annual report with the Franchising Entity and the Commission regarding the progress that has been made toward compliance with paragraphs B and C.

G. Except for satellite service, the provider may satisfy the requirements of this paragraph and Section 9 of the Act through the use of alternative technology that offers service, functionality, and content, which is demonstrably similar to that provided through the provider’s video service system and may include a technology that does not require the use of any public right-of-way. The technology utilized to comply with the requirements of this section shall include local public, education, and government channels and messages over the emergency alert system as required under Paragraph II(E) of this Agreement.

IV. Responsibility of the Franchising Entity

A. The Franchising Entity hereby grants authority to the Provider to provide Video Service in the Video Service area footprint, as described in this Agreement and Attachments, as well as the Act.

B. The Franchising Entity hereby grants authority to the Provider to use and occupy the Public Rights-of-way in the delivery of Video Service, subject to the laws of the state of Michigan and the police powers of the Franchising Entity.

C. The Franchising Entity shall notify the Provider as to whether the submitted Franchise Agreement is complete as required by the Act within 15 business days after the date that the Franchise Agreement is filed. If the Franchise Agreement is not complete, the Franchising Entity shall state in its notice the reasons the Franchise Agreement is incomplete. The Franchising Entity cannot declare an application to be incomplete because it may dispute whether or not the applicant has properly classified certain material as “confidential.”

D. The Franchising Entity shall have 30 days after the submission date of a complete Franchise Agreement to approve the agreement. If the Franchising Entity does not notify the Provider regarding the completeness of the Franchise Agreement or approve the Franchise Agreement within the time periods required under Section 3(3) of the Act, the Franchise Agreement shall be considered complete and the Franchise Agreement approved.
   i. If time has expired for the Franchising Entity to notify the Provider, The Provider shall send (via mail: certified or registered, or by fax) notice to the Franchising Entity and the Commission, using Attachment 3 of this Agreement.

E. The Franchising Entity shall allow a Provider to install, construct, and maintain a video service or communications network within a public right-of-way and shall provide the provider with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way.

F. The Franchising Entity may not discriminate against a video service provider to provide video service for any of the following:
   i. The authorization or placement of a video service or communications network in public right-of-way.
   ii. Access to a building owned by a governmental entity.
   iii. A municipal utility pole attachment.

G. The Franchising Entity may impose on a Provider a permit fee only to the extent it imposes such a fee on incumbent video providers, and any fee shall not exceed the actual, direct costs incurred by the Franchising Entity for issuing the relevant permit. A fee under this section shall not be levied if the Provider already has
paid a permit fee of any kind in connection with the same activity that would otherwise be covered by the
permit fee under this section or is otherwise authorized by law or contract to place the facilities used by the
Provider in the public right-of-way or for general revenue purposes.

H. The Franchising Entity shall not require the provider to obtain any other franchise, assess any other fee or
charge, or impose any other franchise requirement than is allowed under the Act and this Agreement. For
purposes of this Agreement, a franchise requirement includes but is not limited to, a provision regulating rates
charged by video service providers, requiring the video service providers to satisfy any build-out
requirements, or a requirement for the deployment of any facilities or equipment.

I. Notwithstanding any other provision of the Act, the Provider shall not be required to comply with, and the
Franchising Entity may not impose or enforce, any mandatory build-out or deployment provisions, schedules,
or requirements except as required by Section 9 of the Act.

J. The Franchising Entity is subject to the penalties provided for under Section 14 of the Act.

V. Term

A. This Franchise Agreement shall be for a period of 10 years from the date it is issued. The date it is issued
shall be calculated either by (a) the date the Franchising Entity approved the Agreement, provided it did so
within 30 days after the submission of a complete franchise agreement, or (b) the date the Agreement is
deemed approved pursuant to Section 3(3) of the Act, if the Franchising Entity either fails to notify the
Provider regarding the completeness of the Agreement or approve the Agreement within the time periods
required under that subsection.

B. Before the expiration of the initial Franchise Agreement or any subsequent renewals, the Provider may apply
for an additional 10-year renewal under Section 3(7) of the Act.

VI. Fees

A. A video service Provider shall calculate and pay an annual video service provider fee to the Franchising
Entity. The fee shall be 1 of the following:
   i. If there is an existing Franchise Agreement, an amount equal to the percentage of gross revenue paid
to the Franchising Entity by the incumbent video Provider with the largest number of subscribers in
the Franchising Entity.
   ii. At the expiration of an existing Franchise Agreement or if there is no existing Franchise Agreement,
an amount equal to the percentage of gross revenue as established by the Franchising Entity of
   _______% (percentage amount to be inserted by Franchising Entity which shall not exceed 5%) and
   shall be applicable to all providers

B. The fee shall be due on a quarterly basis and paid within 45 days after the close of
the quarter. Each payment shall include a statement explaining the basis for the calculation of the fee.

C. The Franchising Entity shall not demand any additional fees or charges from a
provider and shall not demand the use of any other calculation method other than allowed under the Act.

D. For purposes of this Section, “gross revenues” means all consideration of any kind or nature, including,
without limitation, cash, credits, property, and in-kind contributions received by the provider from subscribers
for the provision of video service by the video service provider within the jurisdiction of the franchising entity.

   1. Gross revenues shall include all of the following:
      i. All charges and fees paid by subscribers for the provision of video service, including equipment
rental, late fees, insufficient funds fees, fees attributable to video service when sold individually or as
part of a package or bundle, or functionally integrated, with services other than video service.
      ii. Any franchise fee imposed on the Provider that is passed on to subscribers.
      iii. Compensation received by the Provider for promotion or exhibition of any products or services over
the video service.
      iv. Revenue received by the Provider as compensation for carriage of video programming on that
Provider’s video service.
      v. All revenue derived from compensation arrangements for advertising to the local franchise area.
      vi. Any advertising commissions paid to an affiliated third party for video service advertising.

   2. Gross revenues do not include any of the following:
      i. Any revenue not actually received, even if billed, such as bad debt net of any recoveries of bad debt.
      ii. Refunds, rebates, credits, or discounts to subscribers or a municipality to the extent not already offset
by subdivision (D)(i) and to the extent the refund, rebate, credit, or discount is attributable to the video
service.
iii. Any revenues received by the Provider or its affiliates from the provision of services or capabilities other than video service, including telecommunications services, information services, and services, capabilities, and applications that may be sold as part of a package or bundle, or functionality integrated, with video service.

iv. Any revenues received by the Provider or its affiliates for the provision of directory or internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing.

v. Any amounts attributable to the provision of video service to customers at no charge, including the provision of such service to public institutions without charge.

vi. Any tax, fee, or assessment of general applicability imposed on the customer or the transaction by a federal, state, or local government or any other governmental entity, collected by the Provider, and required to be remitted to the taxing entity, including sales and use taxes.

vii. Any forgone revenue from the provision of video service at no charge to any person, except that any forgone revenue exchanged for trades, barters, services, or other items of value shall be included in gross revenue.

viii. Sales of capital assets or surplus equipment.

ix. Reimbursement by programmers of marketing costs actually incurred by the Provider for the introduction of new programming.

x. The sale of video service for resale to the extent the purchaser certifies in writing that it will resell the service and pay a franchise fee with respect to the service.

E. In the case of a video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the video Provider’s revenue attributable to the other services, capabilities, or applications shall be included in gross revenue unless the Provider can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.

F. Revenue of an affiliate shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate has the effect of evading the payment of franchise fees which would otherwise be paid for video service.

G. The Provider is entitled to a credit applied toward the fees due under Section 6(1) of the Act for all funds allocated to the Franchising Entity from annual maintenance fees paid by the provider for use of public rights-of-way, minus any property tax credit allowed under Section 8 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (METRO Act), 2002 PA 48, MCL 484.3108. The credits shall be applied on a monthly pro rata basis beginning in the first month of each calendar year in which the Franchising Entity receives its allocation of funds. The credit allowed under this subsection shall be calculated by multiplying the number of linear feet occupied by the Provider in the public rights-of-way of the Franchising Entity by the lesser of 5 cents or the amount assessed under the METRO Act. The Provider is not eligible for a credit under this section unless the provider has taken all property tax credits allowed under the METRO Act.

H. All determinations and computations made under this section shall be pursuant to generally accepted accounting principles.

I. Any claims by a Franchising Entity that fees have not been paid as required under Section 6 of the Act, and any claims for refunds or other corrections to the remittance of the Provider shall be made within 3 years from the date the compensation is remitted.

J. The Provider may identify and collect as a separate line item on the regular monthly bill of each subscriber an amount equal to the percentage established under Section 6(1) of the Act, applied against the amount of the subscriber’s monthly bill.

K. The Franchising Entity shall not demand any additional fees or charges from a Provider and shall not demand the use of any other calculation method other than allowed under the Act.

VII. Public, Education, and Government (PEG) Channels

    A. The video service Provider shall designate a sufficient amount of capacity on its network to provide for the same number of public, education, and government access channels that are in actual use on the incumbent video provider system on the effective date of the Act or as provided under Section 4(14) of the Act.

    B. Any public, education, or government channel provided under this section that is not utilized by the Franchising Entity for at least 8 hours per day for 3 consecutive months may no longer be made available to the Franchising Entity and may be programmed at the Provider’s discretion. At such a time as the Franchising Entity can certify a schedule for at least 8 hours of daily programming for a period of 3 consecutive months, the Provider shall restore the previously reallocated channel.

    C. The Franchising Entity shall ensure that all transmissions, content, or programming to be retransmitted by a video service Provider is provided in a manner or form that is capable of being accepted and retransmitted by a Provider, without requirement for additional alteration or change in the content by the Provider, over the
particular network of the Provider, which is compatible with the technology or protocol utilized by the Provider to deliver services.

D. The person producing the broadcast is solely responsible for all content provided over designated public, education, or government channels. The video service Provider shall not exercise any editorial control over any programming on any channel designed for public, education, or government use.

E. The video service Provider is not subject to any civil or criminal liability for any program carried on any channel designated for public, education, or government use.

F. If a Franchising Entity seeks to utilize capacity pursuant to Section 4(1) of the Act or an agreement under Section 13 of the Act to provide access to video programming over one or more PEG channels, the Franchising Entity shall give the Provider a written request specifying the number of channels in actual use on the incumbent video provider’s system or specified in the agreement entered into under Section 13 of the Act. The video service Provider shall have 90 days to begin providing access as requested by the Franchising Entity. The number and designation of PEG access channels shall be set forth in an addendum to this agreement effective 90 days after the request is submitted by the Franchising Entity.

G. A PEG channel shall only be used for noncommercial purposes.

VIII. PEG Fees

A. The video service Provider shall also pay to the Franchising Entity as support for the cost of PEG access facilities and services an annual fee equal to one of the following options:
   1. If there is an existing Franchise on the effective date of the Act, the fee (enter the fee amount ___________) paid to the Franchising Entity by the incumbent video Provider with the largest number of cable service subscribers in the Franchising Entity as determined by the existing Franchise Agreement;
   2. At the expiration of the existing Franchise Agreement, the amount required under (1) above, which is ______% of gross revenues. (The amount under (1) above is not to exceed 2% of gross revenues);
   3. If there is no existing Franchise Agreement, a percentage of gross revenues as established by the Franchising Entity and to be determined by a community need assessment, is _____% of gross revenues. (The percentage that is established by the Franchising Entity is not to exceed 2% of gross revenues.); and
   4. An amount agreed to by the Franchising Entity and the video service Provider.

B. The fee required by this section shall be applicable to all providers, pursuant to Section 6(9) of the Act.

C. The fee shall be due on a quarterly basis and paid within 45 days after the close of the quarter. Each payment shall include a statement explaining the basis for the calculation of the fee.

D. All determinations and computations made under this section shall be pursuant to generally accepted accounting principles.

E. Any claims by a Franchising Entity that fees have not been paid as required under Section 6 of the Act, and any claims for refunds or other corrections to the remittance of the Provider shall be made within 3 years from the date the compensation is remitted.

F. The Provider may identify and collect as a separate line item on the regular monthly bill of each subscriber an amount equal to the percentage established under Section 6(8) of the Act, applied against the amount of the subscriber’s monthly bill.

G. The Franchising Entity shall not demand any additional fees or charges from a Provider and shall not demand the use of any other calculation method other than allowed under the Act.

IX. Audits

A. No more than every 24 months, a Franchising Entity may perform reasonable audits of the video service Provider’s calculation of the fees paid under Section 6 of the Act to the Franchising Entity during the preceding 24-month period only. All records reasonably necessary for the audits shall be made available by the Provider at the location where the records are kept in the ordinary course of business. The Franchising Entity and the video service Provider shall each be responsible for their respective costs of the audit. Any additional amount due verified by the Franchising Entity shall be paid by the Provider within 30 days of the Franchising Entity’s submission of invoice for the sum. If the sum exceeds 5% of the total fees which the audit determines should have been paid for the 24-month period, the Provider shall pay the Franchising Entity’s reasonable costs of the audit.

B. Any claims by a Franchising Entity that fees have not been paid as required under Section 6 of the Act, and any claims for refunds or other corrections to the remittance of the provider shall be made within 3 years from the date the compensation is remitted.
X. Termination and Modification

This Franchise Agreement issued by a Franchising Entity may be terminated or the video service area footprint may be modified, except as provided under Section 9 of the Act, by the Provider by submitting notice to the Franchising Entity. The Provider will use Attachment 2, when notifying the Franchising Entity.

XI. Transferability

This Franchise Agreement issued by a Franchising Entity or an existing franchise of an incumbent video service Provider is fully transferable to any successor in interest to the Provider to which it is initially granted. A notice of transfer shall be filed with the Franchising Entity within 15 days of the completion of the transfer. The Provider will use Attachment 2, when notifying the Franchising Entity. The successor in interest will assume the rights and responsibilities of the original provider and will also be required to complete their portion of the Transfer Agreement located within Attachment 2.

XII. Change of Information

If any of the information contained in the Franchise Agreement changes, the Provider shall timely notify the Franchising Entity. The Provider will use Attachment 2, when notifying the Franchising Entity.

XIII. Confidentiality

Pursuant to Section 11 of the Act: Except under the terms of a mandatory protective order, trade secrets and commercial or financial information designated as such and submitted under the Act to the Franchising Entity or Commission are exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246 and MUST BE KEPT CONFIDENTIAL.

A. The Provider may specify which items of information should be deemed "confidential." It is the responsibility of the provider to clearly identify and segregate any confidential information submitted to the franchising entity with the following information:

"[insert PROVIDER'S NAME]
[CONFIDENTIAL INFORMATION]"

B. The Franchising Entity receiving the information so designated as confidential is required (a) to protect such information from public disclosure, (b) exempt such information from any response to a FOIA request, and (c) make the information available only to and for use only by such local officials as are necessary to approve the franchise agreement or perform any other task for which the information is submitted.

C. Any Franchising Entity which disputes whether certain information submitted to it by a provider is entitled to confidential treatment under the Act may apply to the Commission for resolution of such a dispute. Unless and until the Commission determines that part or all of the information is not entitled to confidential treatment under the Act, the Franchising Entity shall keep the information confidential.

XIV. Complaints/Customer Service

A. The Provider shall establish a dispute resolution process for its customers. Provider shall maintain a local or toll-free telephone number for customer service contact.

B. The Provider shall be subjected to the penalties, as described under Section 14 of the Act, and the Franchising Entity and Provider may be subjected to the dispute process as described in Section 10(3) of the Act.

C. Each Provider shall notify its customers of the dispute resolution process required under Section 10 of the Act.

D. In connection with providing video services to the subscribers, a provider shall not do any act prohibited by Section 10(1)(a-f) of the Act. The Commission may enforce compliance to the extent that the activities are not covered by Section 2(3)(l) in the Act.
XV. Notices

Any notices to be given under this Franchise Agreement shall be in writing and delivered to a Party personally, by facsimile or by certified, registered, or first-class mail, with postage prepaid and return receipt requested, or by a nationally recognized overnight delivery service, addressed as follows:

If to the Franchising Entity:  
(must provide street address)

City of Clawson:

425 N. Main Street
Clawson, Michigan 48017

Attn: City Clerk (cc: Mayor and City Manager)
Fax No.: 248.435.3240 (Mayor and City Manager: 248.435.0515)

If to the Provider:  
(must provide street address)

444 Michigan Avenue
Room 1670
Detroit, Michigan 48226

Attn: Susan Frentz, Director - Regulatory
Fax No.: 313.496.9332

Or such other addresses or facsimile numbers as the Parties may designate by written notice from time to time.

XVI. Miscellaneous

A. Governing Law. This Franchise Agreement shall be governed by, and construed in accordance with, applicable Federal laws and laws of the State of Michigan.

B. The parties to this Franchise Agreement are subject to all valid and enforceable provisions of the Act.

C. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute on and the same agreement.

D. Power to Enter. Each Party hereby warrants to the other Party that it has the requisite power and authority to enter into this Franchise Agreement and to perform according to the terms hereof.

E. The Provider and Franchising Entity are subject to the provisions of 2006 Public Act 480.
IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Franchise Agreement.

City of Clawson, a Michigan Municipal Corporation

By

Print Name
Title
Address
City, State, Zip
Phone
Fax
Email

FRANCHISE AGREEMENT
(Franchising Entity to Complete)

Date submitted:

Date completed and approved:

Michigan Bell Telephone Company, a Michigan Corporation, doing business as AT&T Michigan

By

Print Name: Gail F. Torreano
Title: President
Address: 444 Michigan Avenue, Room 1700
City, State, Zip: Detroit, Michigan 48226
Phone: 313.223.7171
Fax: 313.223.9008
Email: m42325@att.com
UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT
(Pursuant To 2006 Public Act 480)
(Form must be typed)

Date: September 30, 2008
Applicant’s Name: Michigan Bell Telephone Company d/b/a AT&T Michigan
Address 1: 444 Michigan Avenue
Address 2: Room 1670 Phone: 313.496.8162
City: Detroit State: Michigan Zip: 48226
Federal I.D. No. (FEIN): 38-0823930

Company executive officers:
Name(s): Gail F. Torreano; Robin M. Gleason
Title(s): President; Vice President - Regulatory

Person(s) authorized to represent the company before the Franchising Entity and the Commission:
Name: Susan Frentz or her designee(s)
Title: Director - Regulatory
Address: 444 Michigan Avenue, Room 1670, Detroit, Michigan 48226
Phone: 313.496.8162 Fax: 313.496.9332 Email: m42325@att.com

Describe the video service area footprint as set forth in Section 2(3e) of the Act. (An exact description of the video service area footprint to be served, as identified by a geographic information system digital boundary meeting or exceeding national map accuracy standards.)

Michigan Bell Telephone Company d/b/a AT&T Michigan
CONFIDENTIAL INFORMATION

SEE ATTACHED CONFIDENTIAL MAP LABELED AS ATTACHMENT A

The Video Service Area Footprint is set forth in a map, attached as Confidential Attachment A, which is created using Expanded Geographic Information System (EGIS) software and thus, meets the requirements of Section 2(3)(e) of Act 480. The map identifies the Video Service Area Footprint in terms of AT&T wire centers or exchanges serving the City of Clawson, and such boundaries are overlaid onto a map with the municipal boundaries of the City of Clawson.
[Option A: for Providers that Options B and C are not applicable, a description based on a geographic information system digital boundary meeting or exceeding national map accuracy standards]

[Option B: for Providers with 1,000,000 or more access lines in Michigan using telecommunication facilities to provide Video Service, a description based on entire wire centers or exchanges located in the Franchising Entity]

[Option C: for an Incumbent Video Service Provider, it satisfies this requirement by allowing the Franchising Entity to seek right-of-way information comparable to that required by a permit under the METRO Act as set forth in its last cable franchise or consent agreement from the Franchising Entity entered into before the effective date of the Act]

Pursuant to Section 2(3)(d) of the Act, if the Provider is not an incumbent video Provider, provide the date on which the Provider expects to provide video services in the area identified under Section 2(3)(e) (the Video Service Area Footprint).

Date: See Confidential Attachment B

For All Applications:

Verification
(Provider)

I, Gail F. Torreano, of lawful age, and being first duly sworn, now states: As an officer of the Provider, I am authorized to do and hereby make the above commitments. I further affirm that all statements made above are true and correct to the best of my knowledge and belief.

Name and Title (printed): Gail F. Torreano, President

Signature: Gail F. Torreano	Date: September 30, 2008

(Franchising Entity)

City of Clawson, a Michigan municipal corporation

By

Print Name

Title

Address

City, State, Zip

Phone

Fax

Email

Date
AT&T MICHIGAN’S VERIFIED COMPLAINT FOR RESOLUTION OF DISPUTE WITH CITY OF CLAWSON UNDER UNIFORM VIDEO SERVICES LOCAL FRANCHISE ACT AND OTHER RELEVANT AUTHORITIES, REQUEST FOR DECLARATORY RULING, REQUEST FOR ORDER TO SHOW CAUSE, AND REQUEST FOR EXPEDITED RELIEF

MPSC CASE NO. U-15683

OCTOBER 24, 2008

EXHIBIT 2
October 20, 2008

AT&T
444 Michigan Ave.
Room 1670
Detroit, MI 48226

ATTN: Susan Frentz, Director - Regulatory

RE: Video Service Local Franchise Agreement for AT&T Michigan

Dear Ms. Frentz:

We have completed the review of the proposed Video Service Local Franchise Agreement for AT&T.

Attached find the "Questions Supporting Incomplete Information on the AT&T Application for Video Service Local Franchise Agreement" including attachments.

Should you have any questions regarding this information please contact our City Attorney Jon Kingsepp at 248.613.2288.

Sincerely,

G. Machele Kukuk, CMC
City Clerk
QUESTIONS SUPPORTING INCOMPLETE INFORMATION
ON THE AT&T APPLICATION FOR VIDEO SERVICE LOCAL FRANCHISE AGREEMENT

CITY OF CLAWSON

OCTOBER 20, 2008

1. REFERENCE MCL 484.3304 (2)(4)
   
   A. Please provide information that confirms if a franchising entity provides education and government channels only for 8 hours per day for three months or more, the provider in that instance will not cease the availability of such service?

   REASON FOR QUERY? The City of Clawson does not utilize the public service channel but does provide education and government access.

   B. Please confirm that PEG channels will be located and maintained during the franchise period in a location in sufficient proximity to the offered broadcast services? Also, please confirm these services will not be relocated during the franchise term?

   C. Please provide those circumstances under which the provider limits or conditions access to PEG channels?

2. REFERENCE MCR 484.3307

   A. Please provide a definition of "records reasonably necessary for the audit?"

   REASON FOR THE QUERY? If the definition is restrictive and determined by the provider, this might not be consistent with the requirements of the auditor for the City of Clawson. Since the determination is focused on the accuracy of the franchise payment, the franchise entity should have complete and unrestricted access to all records utilized in not only determining the amount of the payment but also in allocating the various credits to which the provider is entitled under MCL 484.3306 (5).
B. Please provide information as to the time requirement imposed by the provider once a request is made for an audit of its records. For instance must the franchise entity wait for a period of more than 30 days before it has access to the records? Is the franchise entity auditor allowed continued access once it is first provided without inordinate delays?

C. Please indicate if the provider agrees to the application of a particular dispute resolution method if there is a difference after the audit between what the provider has paid and what the provider ought to have paid? If there is agreement to that process, what is it? Also what dispute resolution language has the provider used in other agreements involving Oakland County franchise entities?

D. To what extent if underpayment has been determined, does the provider pay the audit fees of the Franchise entity?

3. **REFERENCE MCL 484.3309**

A. Does the provider have alternative service technology offering service, functionality and content that “does not require the use of any public right-of-way”?

**REASON FOR QUERY?** Clawson is currently undergoing extensive road way improvements. It is critical to determine if alternative technology can be used under this franchise agreement to avoid disruption of ongoing construction or prior construction in the right-of-way in the City.

B. To what extent will existing telephone facilities be utilized?

4. **REFERENCE MCL 484.3302 (3) (E)**

A. To what extent will the provider submit sufficient detail as to the actual location of access lines and rights-of-way?

**REASON FOR QUERY?** Previously, when organizing the location of VRAD facilities, AT&T and Clawson’s legal counsel agreed to a format whereby the proprietary and confidential concerns of AT&T were protected by a limited disclosure to Clawson’s legal counsel. Such information was necessary due to the extensive and ongoing road way construction throughout the City of Clawson. It became evident that particular locations may require different treatment as to others. As a result the parties were able to distinguish the more troublesome locations.
B. With reference to construction in the right-of-way, Clawson has experienced when the remediation is completed by the applicant’s contractor, certain standards maintained by Clawson are not met. This results in the necessity at a later date, for the City at its expense to correct the problematic construction. To what extent, will the provider allow the Clawson contractor to remediate at the expense of the provider?

C. Clawson has adopted a policy of requiring a construction bond in place prior to the actual construction in the right-of-way. To what extent has the provider in other agreements in Oakland County agreed to the furnishing of similar bonds?

D. To what extent has the provider in other franchise agreements in Oakland County provided for a specific dispute resolution procedure on issues involving right-of-way construction and to what extent will such provisions be set forth in the franchise agreement with Clawson?

5. **SECTION II (F) REFERENCE MCL 484.3304 (2)(4)**

A. To what extent will the provider move PEG channels to a digital tier or treat them as on demand channels?

B. To what extent will the provider ensure that consumers are able to get access equally to all channels belonging to basic tier service?

**REASON FOR QUERY?** Discussions with other City Managers indicate that current AT&T customers complain about the poor video and audio quality of PEG Channel broadcasts and difficulties associated with accessing these channels.

The City of Clawson's current franchise agreements contain language as follows: “All PEG channels shall be placed on the basic tier of service (and in the lowest tier of service, if different), unless both parties agree otherwise.” This is consistent with recent Federal Court actions in Dearborn et al v. Comcast and public comments from the FCC regarding Comcast’s efforts to move PEG channels to the higher range of their digital offerings.
6. **REFERENCE MCL 484.3302 (q) and MCL 484.3308**

A. To what extent will the provider comply with Clawson Ordinance Chapter 74 Sec. 211-214 and Administrative Policy and Procedure PP-5 on specific requirements of Bond, Restoration etc.?

B. To what specific provision of Chapter 74 will the provider not comply?

Note: See attached Chapter 74 and Administrative Policy and Procedure PP-5. Also reference Section 3 of Comcast Agreement (not attached).

**REASON FOR QUERY?** The proposed Franchise Agreement merely states that AT&T will provide insurance for right-of-way items. The agreement fails to address the various forms of liability associated with work in the public right-of-way, dispute resolution, damage claims, future conflicts with municipal utility repair and maintenance, indemnification, negligence, assumption of risk and the various types of insurance required by the City of Clawson for work done by AT&T and/or contractors for the company.

Further, the agreement fails to address a variety of issues dealing with construction activities in the public right-of-way such as, applicable permits and the posting of bond in an amount equal to the value of such construction as authorized in the METRO Act. Further, the agreement fails to address how AT&T will address affected homeowners and the City of Clawson with appropriate notification of construction, maintaining proper traffic controls during construction, restoration of damaged public and/or private property, and how AT&T intends to comply with construction requirements contained Chapter 74 Sections 211-214 of the Clawson Code of Ordinances.

7. **REFERENCE MCL 484.3310**

Please provide the detail of the particular dispute resolution process utilized by provider in other Franchise Agreements in Southeast Michigan.

**REASON FOR QUERY?** The City of Clawson will not use The American Arbitration Association as a forum for dispute resolution. This process of dispute resolution should be described for the customers and for disputes under the Franchise Agreement between provider and Franchise entity.
8. **REFERENCE MCL 484.3302 (3)(o)**

To what extent is insurance coverage provided for work in the Right of Way?

**REASON FOR QUERY?** The City of Clawson prefers language similar to its existing agreement with Comcast Section 6.1-6.13.

9. **MISCELLANEOUS**

**VI: Fees.**

A (ii) Insert 5%.

**VIII: PEG Fees**

A (1) Insert 1%.

10. **REFERENCE MCL 484.3306 (6)**

To what extent has provider’s definition of Gross Fees (VI Fees D) been defined differently than in the proposed Franchise Agreement?

**REASON FOR QUERY?** By example the Act used an adverb “attributable” as a modifier on advertising compensation, which is omitted from the providers proposed Franchise Agreement.

What is the specific methodology utilized by the provider to calculate fees, due the franchise entity under the Act?

To what extent has the provider imposed restrictions on the Audit outside of language in the Act?

11. **ATTACHMENT B**

There was no detail provided to confirm any claim of confidentiality ergo this portion of the application is incomplete. (Reference Attachment B)

12. What are the circumstances under which the provider has allowed for termination of the franchise agreement by the franchise entity?

13. **REFERENCE MCL 484.3302 (e)**

What is the anticipated build out schedule assuming the consummation of a Franchise Agreement?
14. **REFERENCE MCL 484.3302 (I)**

To what extent does the provider agree to the applicability of the Michigan Consumer Protection Act?

**NOTE:** The process of addressing “completeness” of the Franchise Agreement may be furthered by any response of the provider.

City of Clawson

/s/ G. Machele Kukuk

Its; City Clerk

JON H. KINGSEPP PLLC

/s/ Jon H. Kingsepp

Clawson City Attorney
AT&T MICHIGAN’S VERIFIED COMPLAINT FOR RESOLUTION OF DISPUTE WITH CITY OF CLAWSON UNDER UNIFORM VIDEO SERVICES LOCAL FRANCHISE ACT AND OTHER RELEVANT AUTHORITIES, REQUEST FOR DECLARATORY RULING, REQUEST FOR ORDER TO SHOW CAUSE, AND REQUEST FOR EXPEDITED RELIEF

MPSC CASE NO. U-15683

OCTOBER 24, 2008

EXHIBIT 3
Chapter 74 TELECOMMUNICATIONS*

*Cross references: Businesses, ch. 18; zoning, § 34-481 et seq.; streets, sidewalks and other public places, ch. 66; utilities, ch. 82.

Article I. In General
Secs. 74-1--74-30. Reserved.
Article II. Cable Television and Internet Services Advisory Board
Sec. 74-31. Creation.
Sec. 74-32. Composition, appointment, vacancies and term.
Sec. 74-33. Compensation.
Sec. 74-34. Organization and meetings.
Sec. 74-35. Expenditure of funds and budget.
Sec. 74-36. Functions.
Secs. 74-37--74-70. Reserved.
Article III. Cable Television Franchise
Division 1. Generally
Sec. 74-71. Definitions.
Sec. 74-72. Purpose of article.
Sec. 74-73. Necessity of franchise.
Sec. 74-74. Administrator.
Sec. 74-75. Advisory body.
Sec. 74-76. Delegation of authority by city.
Sec. 74-77. Evaluation of violations.
Sec. 74-78. Remedies available.
Sec. 74-79. Appeal process.
Secs. 74-80--74-100. Reserved.
Division 2. Selection of Franchisee
Sec. 74-101. Award of franchise.
Sec. 74-102. Franchise application form; contents; fees.
Sec. 74-103. Criteria for selection.
Secs. 74-104--74-120. Reserved.
Division 3. Franchise Agreement; Grant of Franchise
Sec. 74-121. Franchise agreement.
Sec. 74-122. Grant of franchise.
Sec. 74-123. Execution and delivery of franchise agreement by the grantee.
Sec. 74-124. Execution and delivery of franchise agreement by the city.
Sec. 74-125. Term and other provisions of franchise agreement.
Sec. 74-126. Negotiated provisions of franchise agreement.
Sec. 74-127. Rights reserved by the city.
Sec. 74-128. Procedure for termination.
Sec. 74-129. Contravention of franchise.
Secs. 74-130--74-150. Reserved.
Division 4. Design of System
Sec. 74-151. Channel capacity.
Sec. 74-152. Picture quality and technical requirements.
Sec. 74-153. Two-way capacity.
Sec. 74-154. Facilities.
Sec. 74-155. Special channel and access requirements.
Sec. 74-156. Service to public buildings.
Sec. 74-157. Interconnection.
Sec. 74-158. Community specific cablecasting.
Sec. 74-159. Computer services.
Sec. 74-160. All channels emergency alert.
Secs. 74-161--74-180. Reserved.
Division 5. Services and Programming; Subscriber Contracts; Complaints
Sec. 74-181. Services and programming.
Sec. 74-182. Local origination and cablecasting.
Sec. 74-183. Use of channels.
Sec. 74-184. Marketing.
Sec. 74-185. Interruption of service.
Sec. 74-186. Complaints.
Division 6. Construction
Sec. 74-211. Initial service area.
Sec. 74-212. Construction timetable.
Sec. 74-213. Construction standards.
Sec. 74-214. Conditions on use.
Secs. 74-215--74-240. Reserved.
Division 7. System Operations
Sec. 74-241. Information availability.
Sec. 74-242. Service contract.
Sec. 74-243. Subscriber practices.
Sec. 74-244. Rates and charges; changes therein and procedures.
Sec. 74-245. Subliminal advertising.
Sec. 74-246. Tampering in fraudulent connections or sales.
Sec. 74-247. Landlord and tenant relationship.
Secs. 74-248--74-270. Reserved.
Division 8. Consumer Protection
Sec. 74-271. Customer service.
Sec. 74-272. Cable service.
Sec. 74-273. Grantee's billings.
Sec. 74-274. Disconnect and downgrade charges.
Sec. 74-275. Late payment charges.
Sec. 74-276. Notice of programming or channel change.
Sec. 74-277. Notice of price increase or reduction of service.
Sec. 74-278. Grantee's communications.
Sec. 74-279. Disclosure of information on grantee's costs.
Sec. 74-280. Subscriber rebates.
Sec. 74-281. Security fund.
Sec. 74-282. Liquidated damages.

ARTICLE I. IN GENERAL

Secs. 74-1--74-30. Reserved.

ARTICLE II. CABLE TELEVISION AND INTERNET SERVICES ADVISORY BOARD*

*Editor's note: Ord. No. 634, adopted Feb. 3, 2004, redesignated the former Cable Television Advisory Board as the Cable Television and Internet Services Advisory Board.

Cross references: Boards, commissions and authorities, § 2-311 et seq.

Sec. 74-31. Creation.

A cable television and internet services advisory board is hereby created to identify, review and analyze problems and to perform functions delineated in this article regarding the construction, operation and maintenance of cable and internet communication services within the city and to further advise the city council of its findings and to make recommendations to
resolve such problem and to perform the functions delegated to it.

(Code 1978, § 2-201; Ord. No. 633, 2-3-2004)

Sec. 74-32. Composition, appointment, vacancies and term.

(a) The cable television and internet services advisory board shall consist of five members, three of whom shall be appointed by the city council. Members appointed by the council shall serve for a period of two years.

(b) Two additional members shall be appointed by the city council to serve on the cable television advisory board for terms of one year, one member representing the city and one member representing the city public schools.

(c) Any vacancy occurring on the cable television advisory board shall be filled by the city council, and the person so appointed shall serve for the remainder of the unexpired term.

(d) Ex officio members to the cable television advisory board may be appointed by the city council from time to time and shall serve until the next regular election for the members of the city council.


Sec. 74-33. Compensation.

All members of the cable television advisory board shall serve without compensation.

(Code 1978, § 2-203)

Sec. 74-34. Organization and meetings.

(a) There shall be elected at the initial meeting of the cable television advisory board a chair, vice-chair and secretary. Election of officers shall be held annually at the first meeting in December.

(b) The cable television advisory board shall adopt rules and regulations necessary for the conduct of its business, and shall govern its meetings in accordance with Robert's Rules of Order, Newly Revised.

(c) A majority of the members of the board shall constitute a quorum for purposes of its transaction of business. All meetings shall be open to the general public and held at a place available to the general public with appropriate notice of the time and place of each meeting.

(d) A copy of the minutes of all meetings of the cable television advisory board shall be kept and filed with the city clerk.

(Code 1978, § 2-204)

Sec. 74-35. Expenditure of funds and budget.

(a) No later than February 15 of each year, the chair of the cable television advisory board
shall furnish to the city manager recommendations regarding proposed programs for the ensuing fiscal year and also proposed financial needs, which information shall be reviewed or considered in the preparation of the budget by the manager to be submitted to the city council.

(b) Neither the cable television advisory board nor any member may incur or create any expenses or obligation or liability for or on behalf of the city without express approval of the city council.

(Code 1978, § 2-205)

Sec. 74-36. Functions.

(a) The purpose and duty of the cable television and internet services advisory board shall be to generally identify and examine needs of the city in connection with cable communication and internet service facilities, operations, programming and/or content, and concomitant activities and to formulate and report any findings and recommendations to the city council which shall have the final authority to make any decisions in regard thereto.

(b) As part of the task and duties of the cable television advisory board, it shall:

(1) Assess community needs for preferences regarding cable communication and internet service facilities through the use of questionnaires, surveys, interviews and/or other forms appropriate methods necessary to achieve information that will completely inform the cable television and internet services advisory board.

(2) Establish and recommend guidelines for the integration of access programming, content or services with community needs and to ascertain whether such programming, content or services may be relevant or responsive to the needs or interest of the community.

(3) Investigate, review or analyze complaints from subscribers in order to determine or ascertain the concern, if any, regarding the operability of the communications systems, maintenance program, programming, content or service availability or any other problems or concerns directly related to the telecommunications and internet system.

(4) Study and recommend other areas that may be appropriate, as directed by the city manager or city council.

(5) Cooperate and coordinate with similar cable and internet communication advisory bodies in, but not limited to, adjacent communities and within the consortium, for the purpose of determining, evaluating or developing the optimum use of the cable and internet communication systems.


Secs. 74-37--74-70. Reserved.

ARTICLE III. CABLE TELEVISION FRANCHISE
DIVISION 1. GENERALLY

Sec. 74-71. Definitions.

For purposes of this article, any subsequent ordinance dealing with cable communications, any franchise agreement between the city and a cable communications company, and any application or proposal submitted pursuant to an RFP or otherwise, the following terms, phrases, words and their derivations shall have the meaning given in this section unless defined differently in such ordinance, franchise agreement or proposal. 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 words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

Access cablecasting means services provided by a cable television system on its public, education, local government, licensed or other access channels.

Applicant means the person or company submitting a proposal for the franchise of a cable communications system.

Basic service means all subscriber services provided by the grantee, including the delivery of broadcast signals, covered by the regular monthly charge, if any, paid by all subscribers, excluding optional services for which a separate charge is made.

Cable communications service means the business, in whole or in part, of receiving directly or indirectly over the air, and amplifying or otherwise modifying signals transmitting programs broadcast by one or more signals, sound signals, pictures, visual images, digital signals, telemetry, or any other type of closed circuit transmission by means of electrical or light impulses, whether or not directed to originating signals or receiving signals off the air, and redistributing such signals by wire, cable or other means to members of the public.

Cable communications system, cable system, CATV and system mean a system of coaxial cables or other electrical conductors or fiber optical cables and equipment used or to be used to originate or receive television or radio signals directly or indirectly off the air and to transmit them via cable to subscribers for a fixed or variable fee, including the origination, receipt, transmission, and distribution of voices, sound signals, pictures, visual images, digital signals, telemetry, or any other type of closed circuit transmission by means of electrical impulses, whether or not directed to originating signals or receiving signals off the air.

Cablecast means to distribute programs, both from broadcasting sources and original programs, through the community system by means of coaxial cable or other electrical conductors or fiber optical transmitters.

City means the local government of the City of Clawson and all the territory within its corporate limits.

City council means the governing body of the local unit of government.

Community specific cablecasting means programming or channel allocation which selectively cablecasts to individual communities to meet their unique needs or interests. The term "community" refers to any unit with common needs or interests such as individual cities or neighborhoods, school districts or groups with common characteristics.
Connection means the attachment of the drop to the first radio or television set of the subscriber.

Converter means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and, by an appropriate channel selector, also permits a subscriber to view all basic subscriber signals included in the basic service delivered at designated converter dial locations. The converter may also allow reception of additional programming and/or services at extra cost to the subscriber.

Drop means the cable that connects the subscriber terminal to the nearest feeder cable of the cable system.

FCC means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

Feeder means intermediate line of cable system that carries signals from trunk line to drops.

Franchise means the rights of a grantee to construct and operate a cable system in the city, subject to the city Charter, this article and the franchise agreement.

Franchise agreement means the agreement between cable operator and the city setting specific rights and responsibilities of each for construction and operation of a cable system.

Fraud and deceit mean not to be limited to common law fraud and deceit, but shall include the meaning of those words under federal securities law.

Grantee means a person to whom a cable communications franchise has been granted.

Gross revenues means all revenue derived directly or indirectly by the grantee, its affiliates, subsidiaries, parent, and/or any person in which the grantee has a financial interest of five percent or more from or in connection with the operation of the system in the city including, but not limited to, basic subscriber service monthly fees, pay cable fees, converter rentals, studio rental, production equipment, personnel fees, and advertising revenues. The term does not include:

1. Any taxes on services furnished by the grantee and imposed directly upon any subscriber or user by the state, city or other governmental unit and collected by the grantee on behalf of such governmental unit; and

2. Any dividends, distributions, interest or payments for services between the grantee and its affiliates, subsidiaries and parent.

Headend means the equipment at the antenna site in a master antenna or cable system. The point of origination that collects all the signals (from broadcast stations, cable stations, and satellite stations) and sends them to the subscribers.

Hub means one of two or more elements in a large cable system from which trunk lines originate, from which programming and data is sent out via trunk lines, and where upstream messages are received and where switching is accomplished. Large systems may have multiple hubs linked to each other and/or to master headend.

Installation means the connection of the system from feeder cable to the point of connection.
*Interactive system* means a two-way operational system. See also *Two-way capability*.

*Interconnect* means to link cable systems or headends so that subscribers to different cable systems can see the same programming simultaneously.

*Local origination* means programs produced locally, the content of which may be original or produced elsewhere and sold or licensed to a grantee for use.

*Local public access* refers to the public opportunity to use cable channels which are dedicated to that purpose and are not under control of the grantee.

*Lockout device* means a device which prevents reception of one or more channels at an individual drop.

*Loop* means a completely interactive closed-circuit net connecting specified municipal, educational, medical or commercial facilities within a system which should also have the capacity to be interconnected to the main cable system.

*Pay TV* means cable channels that require an additional subscriber fee.

*Person* means an individual, partnership, corporation, or other entity as the context may indicate.

*Point to point transmission* means a signaling path provided by a system to transmit signals of any type from a subscriber terminal to another point in the system.

*Producer* means a user providing input services to the cable system for receipt by subscribers.

*Proposal* means an applicant's proposal, such as a response to an RFP.

*Public access channels* means channels which are dedicated to the public interest, according to the following categories:

1. Community;
2. Education;
3. Local government;
4. Health and medical;
5. Other.

*RFP* means a request by the city for a proposal from applicants for a cable system.

*Security system* means optional two-way services offered to cable subscribers which may alert authorities and/or subscribers of potential emergencies in the subscriber's home or public or private building.

*Senior citizen* means a person 62 years old or older.

*Street* and *highway* mean the surface of and the space above and below any public street, road, highway, freeway, land, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by the city which shall, within its proper use and meaning in the sole opinion of the city, entitle the grantee to its use for the purpose of installing, or transmitting over, poles, wires, cables, conductors, ducts, conduits,
vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a system.

Subscriber means a person who pays an installation charge and a monthly fee to a cable system operator for connections to the system and for programs and services carried on the cable.

Subscriber service drop. See Drop.

Trunk and trunk line mean the main line of cable system that carries signals from headend to extremities of cable system.

Two-way capability means the ability of cable system to conduct signals to the headend as well as from the headend. See Loop.

User means a person or organization utilizing a system channel as a producer, for purposes of production and/or transmission of material, or as a subscriber, for purposes of receipt of material.

(Ord. No. 594, § 7.5-4, 7-15-1997)

Cross references: Definitions generally, § 1-2.

Sec. 74-72. Purpose of article.

The purpose of this article is to promote and encourage the furnishing of a high quality but economical cable communications service to the residents of the city and to regulate such service in the public interest.

(Ord. No. 594, § 7.5-2, 7-15-1997)

Sec. 74-73. Necessity of franchise.

No person shall own or operate a cable system in the city, except by franchise granted by the city, which franchise shall comply with all the requirements of this article.

(Ord. No. 594, § 7.5-3, 7-15-1997)

Sec. 74-74. Administrator.

The city council may appoint an administrator who shall serve at the pleasure of the council and who shall be responsible for the continuing administration of the franchise on the part of the city. The city shall provide written notice to the grantee of the initial appointment of the administrator and any subsequent appointments.

(Ord. No. 594, § 7.5-119, 7-15-1997)

Cross references: Officers and employees, § 2-111 et seq.

Sec. 74-75. Advisory body.

The city council may, by resolution, appoint a communications advisory committee to perform such duties and to have such powers as the city council may determine. The composition and terms of office of the members of the committee, as well as the duties and
powers of the committee, shall be determined and established by resolution of the city council.

(Ord. No. 594, § 7.5-120, 7-15-1997)

Sec. 74-76. Delegation of authority by city.

Unless otherwise provided in its franchise agreement, the city reserves the right to delegate from time to time any of its rights or obligations under that franchise to any body or organization. Any such delegation shall be effective upon written notice to the grantee. Upon receipt of such notice, the grantee shall be bound by all terms and conditions of the delegation not in conflict with the franchise. Any such delegation or revocation, no matter how often made, shall not be deemed to be an amendment to the franchise or require the grantee's consent.

(Ord. No. 594, § 7.5-121, 7-15-1997)

Sec. 74-77. Evaluation of violations.

(a) The violation of this article by the grantee, the grantee's agents, employees and/or independent contractors employed or retained by the grantee shall be grounds for evaluating the following:

1. The grantee's compliance with any existing agreement and with applicable law;
2. The quality of the grantee's service and whether it has been reasonable in light of community needs;
3. The technical ability of the grantee to provide the services, facilities, and equipment as set forth in an operator's proposal for future or renewed cable services; and
4. The reasonableness of the grantee's proposal to meet the future cable-related community needs and interests of the residents and cable television consumers of the city.

(b) These evaluations shall be proper and germane for the city to consider formally when reviewing a proposal for renewal of any agreement to provide cable services within the city.

(Ord. No. 594, § 7.5-142, 7-15-1997)

Sec. 74-78. Remedies available.

If the authority determines that the grantee has violated this article, the authority may order appropriate rebates to subscribers as provided in section 74-280 and/or assess liquidated damages against the grantee as provided in section 74-282. In addition, the city may pursue any additional or other legal or equitable remedies available to it under the franchise agreement or any applicable law.

(Ord. No. 594, § 7.5-143, 7-15-1997)

Sec. 74-79. Appeal process.

With respect to matters affecting the city individually, and excluding matters affecting all
of the authority's member communities equally, the grantee may appeal any action of the
authority to the city by submitting a written appeal within 21 days from the date of the authority's
action to which the grantee objects, including the proposed assessment of liquidated damages.
Upon such appeal, the city council shall conduct a de novo review of the action of the authority
being appealed and shall set a hearing date within 60 days of the date of receipt of the appeal.
The grantee may present any information, data or other evidence to the city council either prior
to or at the time of the hearing. Hearings shall be open to the public and members of the public
and representatives of the authority may also present any evidence or information pertinent to
the matter appealed. The city council shall then determine whether to uphold, reverse, or
modify the action of the authority. The appeal shall stay any further action on the matter
appealed until the appeal has been decided by the city council, including the assessment of
liquidated damages.

(Ord. No. 594, § 7.5-144, 7-15-1997)

Secs. 74-80--74-100. Reserved.

DIVISION 2. SELECTION OF FRANCHISEE

Sec. 74-101. Award of franchise.

The city council may award a franchise to an applicant only after a public hearing on the
application and proposal, notice of which hearing shall be published in a local newspaper of
general circulation at least 20 days prior to the date of the hearing. The city council may reject
all applicants.

(Ord. No. 594, § 7.5-16, 7-15-1997)

Sec. 74-102. Franchise application form; contents; fees.

(a) All proposals shall be submitted in writing and shall be accompanied by a nonrefundable
fee in the amount established by resolution. If the city issues an RFP with respect to a
grant of a franchise, all proposals shall contain the information called for by the RFP in
the manner prescribed by the RFP.

(b) Such proposals may include, without limitation, the following:

(1) Information regarding the identity of the applicant.

(2) Biographical data of the applicant's principal owners and proposed management,
including the experience of such persons in the cable communications field.

(3) Audited financial statements for the applicant's last fiscal year, together with the
applicant's most current interim financial statements, which interim statements
need not be audited but which shall be reviewed by a certified public accountant
in accordance with standards established by the American Institute of Certified
Public Accountants, and which interim statements shall be accompanied by the
accountant's report thereon.

(4) A financing plan for the proposed system and a projection, covering the term of
the franchise, of revenue and expense in sufficient detail to permit a
determination to be made of the financial viability of the applicant's proposal.

(5) A detailed description of the system and facilities proposed for the city, including the matters to which a response is specifically required by divisions 4 and 5 of this article.

(6) A detailed timetable for the construction and commencement of operation of the system, including the matters to which a response is specifically required by division 6 of this article.

(c) An RFP, if issued, shall consist of an application which may be adopted by city council resolution.

(d) The city shall be entitled to verify any information furnished by the applicant in response to the RFP or in response to other requests for information regarding the applicant and the applicant's affairs. The city may exercise such right by requiring reports from the applicant, or from third parties having knowledge of the applicant, or by conducting such other kinds of investigation as the city may deem proper. In such cases, the applicant shall furnish the city with such written authorization regarding release of information as may be necessary to carry out the intent and purpose of the provisions of this section. All of the provisions of this section shall also be applicable to a grantee as well as an applicant, it being deemed to be in the public interest that the city remain knowledgeable regarding the grantee and the operation of the system throughout the term of the franchise.

(e) No applicant, nor any person on behalf of any applicant, shall, in responding to an RFP or in responding to any other request for information by the city or by any officer or agency of the city, make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading. A violation of this subsection shall constitute a fraud upon the city.

(Ord. No. 594, § 7.5-17, 7-15-1997)

Sec. 74-103. Criteria for selection.

The award of a franchise to an applicant shall be based upon the information contained in the applicant's proposal and such other relevant information as may be obtained by the city regarding such applicants and the proposals. Such award shall be based upon the criteria set forth as follows, together with such other factors as the city may deem relevant:

(1) The experience of the applicant in the cable communications field and the credentials of its owners and managers.

(2) The applicant's financial resources, including both present financial condition and the availability of committed funding to finance the applicant's proposed system, and the specificity and credibility of the applicant's projections of the revenue and expenses attributable to the construction and operation of the system.

(3) The applicant's system design including channel capacity and ability to provide a broad range of services in conformity with the highest quality standards of the cable industry.

(4) The applicant's response to specific local concerns or needs, whether formulated
by the city and made known to applicants, or whether ascertained by the applicant.

(5) The extent to which the applicant meets community needs, including such factors as enhancing competition and customer choice.

(Ord. No. 594, § 7.5-18, 7-15-1997)

Secs. 74-104--74-120. Reserved.

DIVISION 3. FRANCHISE AGREEMENT; GRANT OF FRANCHISE

Sec. 74-121. Franchise agreement.

The franchise agreement shall be in such form and contain such terms and provisions as shall be approved by the city council. The agreement may be adopted, and amended, by resolution of the city council or by any other mode of adoption or amendment authorized or required by law.

(Ord. No. 594, § 7.5-30, 7-15-1997)

Sec. 74-122. Grant of franchise.

A grantee shall be awarded a franchise, pursuant to the provisions of section 74-101, either by resolution of the city council or by any other means authorized or required by law. The grantee shall be promptly notified of the award by the city by written notice, sent by registered or certified mail, which notice shall be accompanied by one or more copies of the franchise agreement.

(Ord. No. 594, § 7.5-31, 7-15-1997)

Sec. 74-123. Execution and delivery of franchise agreement by the grantee.

Unless otherwise provided in the franchise agreement in question:

(1) The franchise agreement shall be properly executed and delivered to the city by the grantee on or before 15 days after the date the city sends written notice of the award to the grantee, which 15-day period may be extended by the city council for good cause; provided, however, that the franchise agreement shall not become effective until that specific date set forth in the franchise agreement.

(2) At the time of delivery of the franchise agreement by the grantee to the city, the grantee shall pay to the city all costs incurred by the city in the franchise process. All other payments which are to be made to the city by the grantee shall be made in accordance with the terms and conditions of the franchise agreement.

(3) At the time of delivery of the franchise agreement, as provided in this section, the grantee shall also deliver all other monies and all documents and instruments required by this article or by the franchise agreement.

(Ord. No. 594, § 7.5-32, 7-15-1997)
Sec. 74-124. Execution and delivery of franchise agreement by the city.

Upon timely receipt by the city from the grantee of the properly executed franchise agreement, together with the acceptance fee and such other monies, documents and instruments as may be required in accordance with section 74-123, the city may execute the agreement and, upon execution, shall deliver one fully executed copy to the grantee.

(Ord. No. 594, § 7.5-33, 7-15-1997)

Sec. 74-125. Term and other provisions of franchise agreement.

(a) The franchise agreement shall provide for a nonexclusive franchise for a term which shall commence as of the date set forth in the franchise agreement.

(b) Unless otherwise provided in the franchise agreement, throughout the term of the franchise, the grantee shall pay the city a franchise fee within 90 days after the end of each fiscal year of the grantee. The fee shall not be less than five percent of the grantee’s gross revenues for each year. The grantee shall take any action with respect to any federal or state agency which may be necessary or appropriate to make the payment and receipt of such fees lawful. Acceptance of any payment by the city shall not be construed as a release of or as an accord and satisfaction regarding any claim the city may have for further and additional sums payable as a franchise fee or for the performance of any other obligation of the grantee under this article or the franchise agreement.

(c) Unless otherwise provided in its franchise agreement, a grantee shall:

(1) Agree to and accept all provisions of this article and waives any claim that any provision is unreasonable, arbitrary, invalid, or void.

(2) Recognize the right of the city to make amendments to this article during the term of the franchise pursuant to the terms and conditions of the franchise agreement.

(Ord. No. 594, § 7.5-34, 7-15-1997)

Sec. 74-126. Negotiated provisions of franchise agreement.

The franchise agreement shall contain such further conditions or provisions as may be negotiated between the city and the grantee, except that no such conditions or provisions shall conflict with any provision of the city Charter, this article or other law in effect on the date of the franchise agreement. In the case of such conflict, the provisions of the city Charter, this article or other law shall prevail over the conflicting provision of the franchise agreement.

(Ord. No. 594, § 7.5-35, 7-15-1997)

Sec. 74-127. Rights reserved by the city.

Unless otherwise provided in the franchise agreement in question:

(1) Any franchise granted pursuant to this article shall be subject to the right of the
city, by resolution of the city council, to revoke the franchise for just cause. Just cause shall include, without limitation:

a. A material violation by the grantee of any provision of the franchise agreement or this article, or any rule, order, or determination of the city made pursuant thereto, where such violation shall remain uncured pursuant to the terms and conditions of the franchise agreement.

b. Any attempt by the grantee to dispose of any of the facilities or property of the system in contravention of the franchise agreement.

c. The commission of any fraud or deceit upon the city.

(2) Any franchise granted under this article shall be subject to all applicable provisions of the Code made pursuant to the police power of the city, the city Charter, and any amendments thereto, whether made prior to or after the inception of the franchise.

(3) Any franchise granted under this article shall be subject to the following additional rights of the city:

a. To require proper and adequate extension of plant and service and maintenance at the highest practicable standard of efficiency, pursuant to the terms and conditions of the franchise agreement.

b. To establish reasonable standards of service and quality of products, and to prevent unjust discrimination in service or rates.

c. To require continuous and uninterrupted service to the public in accordance with the terms of the franchise throughout the entire period of the franchise.

d. To impose such other regulations as may be determined by the city council to be conducive to the health, safety and welfare of the public.

e. Through its appropriately designated representatives, to inspect all construction or installation work performed subject to the provisions of the franchise and this article and make such inspections as it shall find necessary to ensure compliance with the terms of the franchise, this article and other pertinent provisions of law.

f. At the expiration of the term for which a franchise is granted or upon termination and cancellation as provided therein, to require the grantee to remove at the grantee’s sole expense any and all portions of the system from the public ways within the city.

g. To require the grantee to safeguard and keep private all individual home subscriber information.

(Ord. No. 594, § 7.5-36, 7-15-1997)

Sec. 74-128. Procedure for termination.

Unless otherwise provided in the franchise agreement in question, any termination or cancellation of a franchise prior to the expiration of the term shall be made by resolution of the
city council only after a public hearing thereon. The grantee shall be entitled to 30 days' written notice of such hearing, and the notice shall specify with reasonable particularity the grounds upon which the contemplated termination is based. Any such termination shall be subject to any requirements of higher law and any limitation contained in the franchise agreement between the city and the grantee.

(Ord. No. 594, § 7.5-37, 7-15-1997)

Sec. 74-129. Contravention of franchise.

Any breach by the grantee of the franchise agreement, in addition to constituting a breach of contract, shall constitute a violation of this article. The reasonable costs of any litigation, including attorney's fees, incurred by the city to enforce this article or franchise granted pursuant hereto shall be reimbursed to the city by the grantee, in respect of such litigation or its part in which the city is the prevailing party.

(Ord. No. 594, § 7.5-38, 7-15-1997)

Secs. 74-130--74-150. Reserved.

DIVISION 4. DESIGN OF SYSTEM

Sec. 74-151. Channel capacity.

The grantee shall maintain throughout the term of the franchise the number of channels specified to be initially activated in the franchise agreement. The grantee shall also activate additional channel capacity as required by public access or institutional users. The grantee shall continually upgrade the system's facilities, equipment, and service pursuant to the terms and conditions of the franchise agreement.

(Ord. No. 594, § 7.5-50, 7-15-1997)

Sec. 74-152. Picture quality and technical requirements.

(a) The system shall produce a picture upon each subscriber's television screen in black and white or color, depending upon whether color is being telecast and provided the subscriber's television set is capable of producing a color picture, which is undistorted and free from ghost images, without material degradation of color fidelity. The system shall produce a sound which is undistorted on a properly operating standard receiver of a subscriber.

(b) The system shall transmit or distribute signals to all television and radio receivers of all subscribers without causing crossmodulation in the cables or interfering with other electrical or electronic systems or the reception of other television or radio receivers.

(c) The system shall at all times meet not less than minimum FCC technical standards.

(d) The system shall be designed for and operated on a 24-hour a day continuous operation basis.

(e) A response by a grantee to an RFP shall specify the procedure for initially and
subsequently testing the technical capacity of the system. Representatives of the city may be present during testing. The tests may be done annually at such times as may be determined by the city, with notice to the grantee. All expenses for all such tests shall be paid by the grantee.

(Ord. No. 594, § 7.5-51, 7-15-1997)

Sec. 74-153. Two-way capacity.

(a) The grantee shall provide and maintain an operational two-way system (audio, video and data impulse).

(b) The grantee will not install or permit the installation of any subscriber premises equipment that will permit transmission of two-way services utilizing audio, video or digital signals without first obtaining written permission of the subscriber. This subsection is not intended to prohibit the transmission of signals useful only for the control or measurement of the system performance, or utility meter reading.

(Ord. No. 594, § 7.5-52, 7-15-1997)

Sec. 74-154. Facilities.

The grantee's proposal may describe, in detail, the location of its headend, hubs, distribution system, studios, equipment and other facilities and a plan for implementing the construction, utilization and maintenance of those facilities including plans for accommodating future growth and changing needs and desires of the community as determined by the city.

(Ord. No. 594, § 7.5-53, 7-15-1997)

Sec. 74-155. Special channel and access requirements.

(a) The grantee shall carry broadcast stations in accordance with FCC rules as from time to time revised.

(b) The grantee's proposal may describe, in detail, the utilization of converters or other special equipment which subscribers are to receive and any charges for them.

(c) Unless otherwise provided in its franchise agreement, the grantee shall designate an emergency channel to be operated by the city.

(d) The grantee shall provide adequate channels for public access as provided in the franchise agreement. All residential subscribers who receive all or any part of the total services offered on the system shall also receive all public access channels at no additional charge. These channels shall be activated upon system activation and thereafter maintained as needed. If so provided in the franchise agreement, the grantee shall establish rules and regulations for the use of community access channels which shall be approved by the city before implementation, and thereafter shall not be altered or amended without approval of the city. In preparing such rules, the grantee shall:

(1) Provide an equal opportunity for use of access services.

(2) Present a needs assessment of the community to be served and provide a plan to meet those needs.
(3) Develop a plan to allocate to the city a reasonable use and fair schedule of channel time and use of equipment and facilities so that the city can send and receive programming fitted to its needs. Such plan shall be approved by the city before implementation and thereafter shall not be altered or amended without approval of the city.

(4) Describe all equipment and facilities and any charges for their use.

(5) Comply, at a minimum, with the requirements of the city now or hereafter adopted or determined regarding access channels.

(e) The grantee's proposal may describe in detail all other channels offered.

(Ord. No. 594, § 7.5-54, 7-15-1997)

Sec. 74-156. Service to public buildings.

The grantee's proposal may designate all publicly owned buildings in the city (city hall, police department, fire department, schools, library, etc.) and any buildings owned or leased for governmental use by any state, federal or local government in the city, to which the grantee will provide service. The provisions for such service shall be described in detail and shall be provided without charge. The grantee's proposal may include in such designation plans for existing as well as future publicly owned buildings.

(Ord. No. 594, § 7.5-55, 7-15-1997)

Sec. 74-157. Interconnection.

(a) Required. The grantee shall interconnect origination and access channels of the cable system with any or all other systems in adjacent areas, pursuant to the terms and conditions of the franchise agreement. Interconnection of systems may be done by direct cable connection, microwave link, satellite, or other appropriate method.

(b) Procedure. Upon receiving the directive of the city to interconnect, the grantee shall immediately initiate negotiations with the other affected systems in order that costs may be shared equitably for both construction and operation of the interconnection link.

(c) Relief. The grantee may be granted reasonable extensions of time to interconnect or the city may rescind its order to interconnect upon petition by the grantee to the city. The city shall grant such request if it finds that the grantee has negotiated in good faith and has failed to obtain an approval from the system of the proposed interconnection, or that the cost of the interconnection would cause an unreasonable or unacceptable increase in subscriber rates.

(d) Cooperation required. The grantee shall cooperate with any interconnection corporation, regional interconnection authority or city, county, state and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of cable systems beyond the boundaries of the city.

(Ord. No. 594, § 7.5-56, 7-15-1997)
Sec. 74-158. Community specific cablecasting.

The grantee's proposal may describe the means and manner of providing community specific cablecasting over the system and the time of activation and points of delivery.

(Ord. No. 594, § 7.5-57, 7-15-1997)

Sec. 74-159. Computer services.

Unless otherwise provided in its franchise agreement, the grantee shall design and construct a system so that A and B cables (serving residential and institutional users) accommodate interactive data communications and so that the total network transmission time is less than one-tenth of a second. Further, the system shall accommodate interactive communications of point to point, point to multipoint, and multipoint to multipoint communications between subscribers or potential subscribers.

(Ord. No. 594, § 7.5-58, 7-15-1997)

Sec. 74-160. All channels emergency alert.

Unless otherwise provided in its franchise agreement, in case of any emergency or disaster, the grantee shall make its entire system available, without charge, to the city or to any other governmental or civil defense agency that the city may designate. The system shall be engineered to provide an audio alert system to allow authorized officials to override automatically the audio signals on all channels and to transmit and report emergency information. The system shall also have the capability for visual transmission of emergency messages.

(Ord. No. 594, § 7.5-59, 7-15-1997)

Secs. 74-161--74-180. Reserved.

DIVISION 5. SERVICES AND PROGRAMMING; SUBSCRIBER CONTRACTS; COMPLAINTS

Sec. 74-181. Services and programming.

The grantee's proposal may state the extent of its commitment to provide for the following: A variety of origination programming; automated channels carrying information from local sources; local access programming; a home security package (with mechanisms to decrease incidents of false alarms); access support including color broadcast studio and location production equipment, post-production equipment, access promotion plans, and use of video facilities; plans accommodating growth of access, and production centers; a system to accommodate data, audio and video transmissions between institutions; service to public buildings expanding distant signal offerings as FCC rules allow; broadcast station signals in late night and early morning hours; an FM service with individual station processing; a means for using the system during emergencies; and needs of schools and other learning institutions.

(Ord. No. 594, § 7.5-71, 7-15-1997)
Sec. 74-182. Local origination and cablecasting.

The grantee’s proposal may include detailed information on plans for local origination, origination cablecasting, automated channels carrying information from local sources, variety of origination programming, review of and incorporation of the needs and reports of the city, channel allocations, estimated programming hours, equipment, personnel and other resources committed to local origination production.

(Ord. No. 594, § 7.5-72, 7-15-1997)

Sec. 74-183. Use of channels.

(a) Charges made by a grantee to a user, except for public access channels operated by a grantee, which shall be free, shall be based upon the fair value of the service to the user and no other criteria. The grantee shall not discriminate on any other grounds among users or in favor itself.

(b) Advertising for any candidate for political office, or for parties sponsoring such candidates, shall be in accordance with federal law.

(Ord. No. 594, § 7.5-73, 7-15-1997)

Sec. 74-184. Marketing.

The grantee’s proposal may describe a marketing plan, advertising policy and means to promote the use of the access channels.

(Ord. No. 594, § 7.5-74, 7-15-1997)

Sec. 74-185. Interruption of service.

Whenever it is necessary to shut off or interrupt service, the grantee shall do so during periods of minimum use of the system. Unless such interruption is unforeseen and immediately necessary, the grantee shall give reasonable notice to subscribers. All costs incurred in repairing the system shall be paid by the grantee, and, if service is interrupted or disconnected, rebates and/or reductions in charges will be made pursuant to the terms and conditions of the franchise agreement. The cause for any such interruption shall be removed, and service restored as promptly as reasonably possible.

(Ord. No. 594, § 7.5-75, 7-15-1997)

Sec. 74-186. Complaints.

(a) Unless otherwise provided in its franchise agreement, the grantee shall maintain an office in or proximate to the city which shall be open during all usual business hours, have a listed local telephone number, and be so operated that complaints and request for repairs or adjustments may be received at any time, seven days per week.

(b) Notice of this information shall be provided to all new subscribers at the time of subscription and to existing subscribers annually.
(c) All complaints by the city, subscribers, or other interested persons regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to the system shall be investigated and responded to by a service representative of the grantee within six hours or such greater time, if any, set forth in a grantee's franchise agreement. If reasonably possible, the grantee shall promptly rectify the cause of all valid complaints.

(Ord. No. 594, § 7.5-76, 7-15-1997)


DIVISION 6. CONSTRUCTION

Sec. 74-211. Initial service area.

(a) The grantee's proposal may clearly indicate the date by which system engineering and design shall be completed and dates on which each stage of system construction shall be completed.

(b) The energized cable shall be extended throughout the city within 18 months after commencement of construction or such other time specified in a grantee's franchise agreement. All persons along the route of the energized cable who desire them may have individual drops installed within the same period of time.

(c) A map prepared by the grantee reflecting the areas within the city initially served by the system along with the schedule for development of the system may be included in the grantee's proposal.

(d) The city shall cooperate with the grantee in the development of its proposed service area by making available to the grantee, for copying, all maps, data and other statistical information, then in possession of the city, needed for the preparation of a map defining the initial service area.

(Ord. No. 594, § 7.5-88, 7-15-1997)

Sec. 74-212. Construction timetable.

(a) The grantee's construction timetable as set forth in the franchise agreement shall reflect the specific method and schedule of construction of the system. The plan of the grantee shall reflect the following:

1. Location of all facilities including studios, headends, microwave receivers and senders and all hubs and wiring.

2. A timetable reflecting when each area within the initial service area will be served.

(b) Within 30 days after the commencement of the franchise term, the grantee may apply for all necessary permits, licenses, certificates and authorizations which are required in the conduct of its business including, but not limited to, any joint use attachment agreements, microwave carrier licenses, or any other permits, licenses and
authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable communications systems, or their associated microwave transmission facilities. If after six months from the commencement of the franchise term the grantee has not received the permits, licenses, certificates and authorizations described in this subsection, the city may assess penalties pursuant to the franchise agreement without regard to fault for delay in obtaining such permits, licenses, certificates and authorizations.

(c) The grantee shall promptly notify the city of all delays known or anticipated in the construction of the system. The city may extend the construction timetable if the grantee, acting in good faith, experiences delays by reason of circumstances beyond its control.

(Ord. No. 594, § 7.5-89, 7-15-1997)

Sec. 74-213. Construction standards.

Unless otherwise provided in its franchise agreement:

(1) The grantee shall not open or disturb the surface of any streets, or public property, without first obtaining a permit from the city for which permit the city may impose a reasonable fee to be paid by the grantee. The lines, conduits, cables and other property placed in the streets, and public property pursuant to such permit shall be located in such part of the street or public property as shall be determined by the city. The grantee shall, upon completion of any work requiring the opening of any streets or public property, restore the same including the pavement and its foundations to as good a condition as formerly and in a manner and quality approved by the city, and shall exercise reasonable care to maintain the same thereafter in good condition. Such work shall be performed with diligence, and due care, and, if the grantee shall fail to perform the work promptly, to remove all dirt and rubbish and to put the street or public property back into the condition required hereby, the city shall have the right to put the streets or public property back into such condition at the expense of the grantee. The grantee shall, upon demand, pay to the city the cost of such work done.

(2) All wires, conduits, cable and other property and facilities of the grantee shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, and travel upon, or other use of, the streets and public property of the city. The grantee shall keep and maintain all of its property in good condition, order and repair so that the property shall not menace or endanger the life or property of any person. The city shall have the right to inspect and examine at all reasonable times and upon reasonable notice the property owned or used, in part or in whole, by the grantee. The grantee shall keep accurate maps and records of all of its wires, conduits, cables and other property and facilities located, constructed and maintained in the city. Further, the grantee shall furnish copies of such maps and records from time to time as requested by the city without charge.

(3) All wires, conduits, cables and other property and facilities of the grantee shall be constructed and installed in an orderly and workmanlike manner. All wires,
conduits and cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(4) The grantee shall at all times comply with the following codes, rules, regulations, as amended, and any others supplemental to or in substitution thereof:
   d. Applicable FCC and other applicable federal, state and local regulations and ordinances. In any event, the installation, operation or maintenance of the system shall not endanger or interfere with the safety of persons or property in the city.

(5) Whenever the city shall undertake any public improvement which affects the grantee's equipment or facilities, the city may, with due regard to reasonable working conditions and with reasonable notice, direct the grantee to remove or relocate its wires, conduits, cables and other property located in streets, or public property. The grantee shall relocate or protect its wires, conduits, cables and other property at its own expense.

(6) The grantee's plans for constructing its system, and the construction of the system, shall be in accordance with its proposal as modified by the franchise agreement. However, the grantee shall comply with the following minimum requirements:
   a. The grantee shall construct underground in any area where both the electrical and telephone lines have been installed underground.
   b. The grantee shall change from aerial to underground, at its own expense, in any area where both the telephone and electric utilities are hereafter changed from aerial to underground.
   c. To enable the grantee reasonable opportunity to change its wiring from aerial to underground, and also to allow it to prewire all new subdivisions or new development areas, the city shall provide the grantee with written notice of the following but without liability for failure to provide such notice:
      1. Any underground trenching that may be pending.
      2. All ordinance changes affecting the wiring of the system.

(7) The grantee shall, upon completion of any work on private property (or easements thereon), restore the property including any and all landscape features, plantings, turf, buildings, pipes, and wires (overhead and underground) pavements, sidewalks, foundations or other features whatsoever, to as good a condition as existed before construction.

(8) The grantee shall, prior to construction, make a clear videotape record of all underground construction and other specially designated areas. Such tapes are
to be preserved for three years after completion of the applicable construction.

(Ord. No. 594, § 7.5-90, 7-15-1997)

Sec. 74-214. Conditions on use.

Unless otherwise provided in its franchise agreement:

(1) The grantee shall not place poles or other fixtures where such fixtures will interfere with any gas, electric, or telephone fixture, water hydrant or main.

(2) The grantee, at the request of any person holding a building moving permit and with not less than five days' advance notice, shall temporarily remove, raise or lower its wires, conduits and cables. The expense of such temporary removal, raising or lowering of wires, conduits and cables shall be paid by person requesting the same, and the grantee shall have the authority to require such payment in advance.

(3) The grantee shall have the authority, to the extent the city has authority, to trim trees upon or overhanging any street or public property so as to prevent the branches of such trees from coming in contact with the wires, conduits and cables of the grantee. All trimming shall be done under the supervision and direction of the city and at the expense of the grantee.

(Ord. No. 594, § 7.5-91, 7-15-1997)

Secs. 74-215--74-240. Reserved.

DIVISION 7. SYSTEM OPERATIONS

Sec. 74-241. Information availability.

(a) Unless otherwise provided in its franchise agreement, throughout the term of this franchise, the grantee shall maintain books and records in accordance with normal and accepted bookkeeping and accounting practices for the cable communications industry, and allow for inspection and copying of the same at reasonable times. The books and records to be maintained by the grantee shall include the following:

(1) A record of all requests for service.

(2) A record of all subscriber or other complaints, and the action taken.

(3) A file of all subscriber contracts; provided, however, that the grantee will not have to disclose subscriber records which would tend to invade subscriber privacy.

(4) The grantee policies, procedures and company rules.

(5) Financial records, pursuant to the terms and conditions of the franchise agreement.

(b) The city shall give the grantee at least 24 hours' notice before making inspections of any books or records of the grantee.
(c) The grantee shall file with the city, at the time of its payment of the franchise fee, the following, unless otherwise provided in its franchise agreement:

(1) A monthly financial statement, certified by the grantee as correct, showing in such detail as may be required by the city the gross operating revenues of the grantee for the period to which the fee relates, together with all other financial information customarily contained in such statements and such other financial information as may be required by the city.

(2) An annual certified financial statement prepared by an independent certified public accountant showing, in such detail as may be required by the city, the gross operating revenues of the grantee for the period to which the annual fee relates, together with all other financial information customarily contained in such statements and such other financial information as may be required by the city.

(3) Current list of names and addresses of each officer and director and other managerial and supervisory personnel, as well as each shareholder, having legal or beneficial ownership of one percent or more of the grantee's stock if changed from a prior filing.

(4) A copy of each document filed with all federal, state and local agencies during the preceding fiscal year and not previously filed with the city, each of which filings are to be provided at the time the filing is made.

(5) A statement of its current billing practices if changed from a prior filing.

(6) A copy of its current rules if changed from a prior filing.

(7) A copy of its current subscriber service contract if changed from a prior filing.

(d) Unless otherwise provided in its franchise agreement, the city, its agents and representatives shall have authority to arrange for and conduct an audit of and copy the books and records of the grantee; provided, however, that all books and records so audited shall remain the sole and exclusive property of the grantee. The grantee shall first be given five days' notice of the audit request, the description of and purpose for the audit, and the description, to the best of the city's ability, of the books, records and documents it wishes to review.

(Ord. No. 594, § 7.5-103, 7-15-1997)

Sec. 74-242. Service contract.

Unless otherwise provided in its franchise agreement:

(1) The grantee shall receive approval from the city of the form and content of the service contract to be used by the grantee prior to entering into any such service contracts with subscribers, and the grantee shall make no changes in the approved service contract without prior approval of the city. The service contract shall include, at a minimum, a schedule of all rates and charges, a description of services, instructions on the use of the system, and billing and collection practices.

(2) The grantee shall have authority to promulgate such rules, regulations, terms
and conditions governing the conduct of its business as shall be reasonably necessary to enable the grantee to exercise its rights and perform its obligations under this franchise and to ensure an uninterrupted service to each and all of its subscribers; provided such rules, regulations, terms and conditions shall not be in conflict with the provisions of the franchise, ordinances of the city, and laws of the state or the United States.

(3) Each subscriber shall be provided with instructions on filing complaints or otherwise obtaining information or assistance from the grantee.

(4) All items described in this section shall be provided to each new subscriber at the time a contract is entered or service begun and to all existing subscribers forthwith upon any changes therein.

(Ord. No. 594, § 7.5-104, 7-15-1997)

Sec. 74-243. Subscriber practices.

(a) There shall be no charge for disconnection of any installation or outlet. If any subscriber fails to pay a properly due monthly subscriber fee or any other proper fee or charge when due, the grantee may discontinue service to such subscriber; provided, however, that the grantee may not remove any of its equipment until after the later of:

(1) Thirty days after the due date of such delinquent fee or charge; or

(2) Ten days after delivery to subscriber of written notice of the intent to disconnect.

If a subscriber pays before expiration of the later of subsection (a)(1) or (a)(2) of this section, the grantee shall not disconnect. After disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, the grantee shall promptly reinstate the subscriber's cable service.

(b) Refunds to subscribers shall be made or determined in the following manner:

(1) If the grantee fails, upon request by a subscriber, to provide any service then being offered, the grantee shall promptly refund all deposits or advance charges paid for the service in question by such subscriber. This subsection does not alter the grantee's responsibility to subscribers under any separate contractual agreement or relieve the grantee of any other liability.

(2) If any subscriber terminates any monthly service because of failure of the grantee to render the service in accordance with the franchise, the grantee shall refund to such subscriber the proportionate share of the charges paid by the subscriber for the services not received. This subsection does not relieve the grantee of liability established in other provisions of the franchise.

(c) If any subscriber terminates any monthly service prior to the end of a prepaid period, a proportionate portion of any prepaid subscriber service fee, using the number of days as a basis, shall be refunded to the subscriber by the grantee.

(Ord. No. 594, § 7.5-105, 7-15-1997)

Sec. 74-244. Rates and charges; changes therein and procedures.
(a) **Rates and charges.**

(1) **Limitations on rates.** The charges made for services of the grantee shall be fair and reasonable and no higher than necessary to meet all costs of the service (assuming efficient and economical management), and to provide a fair return to the grantee. The grantee shall receive no consideration whatsoever from its subscribers for or in connection with its service to its subscribers other than in accordance with this section, without approval of the city council.

(2) **Adjustments to rates.** The city council shall have the power, authority and right to cause the grantee's rates and charges to conform to the provisions of subsection (a)(1) of this section, and, for this purpose, it may deny or institute changes in such rates and charges when it determines that, in the absence of such action on its part, the grantee's rates and charges or proposed rates and charges will not conform to such subsection; provided, however, that the city council shall not, in making such determination, act in contravention of the franchise agreement.

(b) **Rate schedule.** The grantee's proposal shall include a detailed schedule of all rates and charges applicable to the system as required by the RFP. There shall be no charge for disconnection of any installation or connection and no charge for maintenance or repair service unless such service is required as a result of damage caused by the subscriber. The rates and charges set forth in the grantee's proposal shall not be exceeded during 3 1/2 years from the date of the franchise agreement or two years after completion of construction of the system, whichever first occurs.

(c) **Rate changes.** The criteria and standards relating to the establishment of rate changes, whether initiated by the city or by grantee, shall include those certain criteria set forth in the franchise agreement.

(d) **Procedure for rate changes.** The procedure for reviewing and establishing a proposed rate change shall be set forth in the franchise agreement.

(e) **No change required.** Nothing in this section shall be deemed to require any proposed rate change initiated by the grantee.

(Ord. No. 594, § 7.5-106, 7-15-1997)

**Sec. 74-245. Subliminal advertising.**

The grantee is expressly prohibited from transmitting any form of subliminal advertising at any time.

(Ord. No. 594, § 7.5-107, 7-15-1997)

**Sec. 74-246. Tampering in fraudulent connections or sales.**

No person, whether or not a subscriber to the cable system, may intentionally or knowingly remove or damage or cause to be damaged any wire, cable, conduit, equipment, or apparatus of the grantee, or to commit any act with an intent to cause such removal or damage, or tap, tamper with, or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus, or appurtenances of the licensee with the intent to obtain a signal or
impulse from the cable system without authorization from or compensation to the grantee, or obtain cable television or other communications, service or sell, rent, lend, offer or advertise for sale, rental or use any instrument, apparatus, device or plans, specifications, or instructions for making or assembling the same to connect to the grantee's cable system with intent to cheat or defraud the grantee of any lawful charge to which it is entitled.


**Sec. 74-247. Landlord and tenant relationship.**

(a) The city declares that this article has, as one of its principal objectives, the lawful public purpose of rapidly developing and maximizing the educational, community service, cultural and public safety potential of cable television in order to benefit all of the residents of the city. The city further finds that the public interest and necessity require that no owner of any multiple-unit residential dwelling (nor his agent or representative) be permitted to directly or indirectly prevent any resident of such dwelling from receiving cable communications service installation, maintenance, and services from a grantee operating under a valid franchise issued by the city.

(b) In order to provide the opportunity for the residents of any multiple-unit residential dwelling to obtain service from a grantee, such grantee may negotiate an agreement with the owner of that dwelling or, failing agreement, may request that the city exercise its power of eminent domain for the necessary public purpose of enabling the grantee to serve residents of that multiple-unit residential dwelling. Upon request of such grantee, the city may commence condemnation proceedings in accordance with applicable law. In the event of such proceeding, in preparing its good faith offer of just compensation, the city may consider the following:

1. The amount and fair market value of space occupied by the grantee's cable and related facilities. The fair market value of the space shall be assessed in light of the prior use, if any, of that space, together with any evidence of nonspeculative alternative uses;

2. The present value of any funds that the owner will reasonably expend over time in ensuring that the grantee conforms to all laws, regulations and the reasonable conditions necessary to ensure the safety, convenient functioning, and appearance of the multiple-unit residential dwelling;

3. The continued physical availability of other space on the premises for the installation of alternative modes of television program reception or delivery;

4. As an offset to the amounts set forth in subsections (b)(1) and (b)(2) of this section, any increase in the fair market value of the multiple-unit residential dwelling attributable to the availability of the grantee's service to the property's tenants; and

5. Any other reasonable, nonspeculative factors which the city may find relevant.

The requesting grantee shall indemnify the city for all expenses and costs incurred by the city in the condemnation proceedings as well as for the full amount of the condemnation award made to the owner if such condemnation proceedings are completed.

(c) Notwithstanding any other language in this section or elsewhere in this article, the
grantee shall not be obligated to provide service to any multiple-unit residential dwelling so long as the owner of that dwelling demands compensation from the grantee in an amount that is unreasonable or imposes financial or other conditions that would, in the grantee's reasonable business judgment, render provision of service to that dwelling uneconomic. The grantee shall not be obligated, in such circumstances, to request the city to institute condemnation proceedings. Notwithstanding anything to the contrary set forth in this article or the franchise agreement, a grantee shall be permitted to charge each resident of a multiple-unit residential dwelling an additional charge, above and beyond the service rate for a single-family dwelling, as specified in the franchise agreement, solely to defray the exact additional per resident cost to the grantee of compensating the owner for access to the multiple-unit residential dwelling. Any such additional charge shall be subject to the approval of the city. Such additional charge shall not be included in the computation of the franchise fees due to the city pursuant to this article or the franchise agreement.

(d) Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall penalize, charge, or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident or discriminate in any way against such tenant or resident who requests or receives cable communications service from a company operating under a valid and existing cable communication franchise issued by the city. Any person convicted of violating any provision of this section is subject to a fine of not more than $300.00 for each offense.

(e) No person shall reseal, without the express written consent of both the grantee and the city, any cable service, program, or signal transmitted by a grantee operating under a franchise issued by the city.

(f) Nothing in this section shall prohibit a person from requiring that cable communications system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning and appearance.

(g) Nothing in this article shall prohibit a person from requiring a grantee from agreeing to indemnify the owner, or his agents or representatives, for damages or for liability for physical damages caused by installation, operation maintenance, or removal of cable television facilities.

(Ord. No. 594, § 7.5-109, 7-15-1997)

Secs. 74-248--74-270. Reserved.

DIVISION 8. CONSUMER PROTECTION

Sec. 74-271. Customer service.

(a) The grantee shall maintain a local office which provides the necessary facilities, equipment, and personnel to comply, under normal operating conditions, with the customer service standards set forth in subsections (a)(1) through (a)(5) of this section. For purposes of this section, the term "normal operating conditions" means embrace all conditions which are within the control of the grantee, including special promotions, pay-per-view events, rate increases, and maintenance or upgrade of the cable system,
but excluding conditions outside the grantee's control, such as, natural disasters, civil disturbances, power outages, telephone network outages, and extreme weather:

(1) On a monthly basis, provide sufficient customer service representatives and toll-free telephone line capacity during normal business hours to ensure that a minimum of 90 percent of all calls will be answered within 30 seconds and 90 percent of all calls for service will not be required to wait more than 30 seconds after such call has been answered before being connected to a service representative. All incoming customer service lines shall not be simultaneously busy more than three percent of the total time the cable office is open on any business day.

(2) Staffed emergency toll-free telephone line capacity on a 24-hour basis, including weekends and holidays.

(3) Maintenance of an office in the franchise area of the authority with adequate office hours to meet public demand. The authority may require the grantee to alter or extend these hours if there is significant evidence through subscriber complaints that the posted hours are not adequate.

(4) An emergency system maintenance and repair staff, capable of responding to and repairing system malfunctions on a 24-hour basis.

(5) An installation staff, capable of furnishing standard installation to any subscriber within seven days after receipt of a request. The term "standard installations" shall mean those located up to 150 feet from where trunk and feeder cable have been activated. The grantee shall, at its sole expense, cause all drops required to be buried to be properly buried within 15 days of installation of service unless conditions during such period make burial impracticable, in which case the drop shall be buried within 15 days after physical conditions reasonably allow for such burial. If there's any dispute between the grantee and the subscriber as to when conditions permit burial of the drop, such dispute shall be resolved by the decision of the city's building official or other official designated by the city to resolve such disputes.

(b) The grantee shall provide written instructions and information at the time of installation and reinstallation, and at least annually thereafter, to all subscribers on products and services, prices and options, installation and service maintenance policies, instructions for using the system, and billing and complaint procedures. Such instructions and information shall include the grantee's business address, applicable phone number, and the name of the appropriate official or department of the grantee to whose attention the subscriber should direct a request for service, request for billing adjustment or complaint. Such instructions and information shall also include the name, business address and telephone number of the authority's executive director and the title, business address and telephone number of the designated city employee to whom the subscriber can call or write for information regarding the terms, conditions, and provisions governing the grantee's franchise if the grantee fails to respond within a reasonable period of time to the subscriber's complaint or request for installation, service or billing adjustment. The grantee shall promptly furnish revised written instructions and information to each subscriber whenever the instructions and information previously provided have been materially changed. The written instructions and information provided for in this section shall be subject to the review and approval of
the authority which shall not withhold its approval unreasonably.

(c) For purposes of subsection (a) of this section, the office which the grantee is required to maintain may be a "virtual office" consisting of a toll-free telephone number which all subscribers in the city may access from their homes 24 hours a day, seven days a week to register complaints or questions concerning the cable system, conveniently located bill payment offices within the combined corporate limits of the Cities of Royal Oak, Ferndale, Clawson, Pleasant Ridge, Berkley and Huntington Woods where subscribers may pay their bills, and there is no charge for delivery and pickup of converter boxes, remotes and similar grantee-provided customer premises equipment.

(d) Unless otherwise specified by city, the term "authority," as used in this section, shall mean:

(1) The Intergovernmental Cable Communications Authority (ICCA) for a grantee where the city has transferred or delegated certain powers, functions, duties and responsibilities on cable television matters for that grantee to the ICCA; and

(2) The Southeast Oakland County Cable Communications Cooperative (SOCCC) for a grantee where the city has transferred or delegated certain powers, functions, duties and responsibilities on cable television matters for that grantee to the SOCCC.

(Ord. No. 594, §§ 7.5-130, 7.5-131, 7-15-1997)

Sec. 74-272. Cable service.

(a) The grantee shall interrupt system service only with good cause and for the shortest time possible and, except in emergency situations, only after periodic cablecasting notice of service interruption for two days prior to the anticipated interruption. Services may be interrupted between 1:00 a.m. and 5:00 a.m. for routine testing, maintenance and repair, without notification, any night except Friday, Saturday, Sunday, Holidays, or the night preceding a holiday.

(b) The grantee shall maintain a written log, or an equivalent stored in computer memory and capable of access and reproduction in printed forms, of all subscriber service complaints. Such log shall list the date and time of such complaints, identifying the subscribers and describing the nature of the complaints and when and what actions were taken by the grantee in response thereto. Such log shall be kept at the grantee's local office or otherwise shall promptly be made available by grantee to city, reflecting the operations to date for a period of at least three years, and shall be available for public inspection during regular business hours. The grantee shall submit a summary of such complaints quarterly to the authority for its review, or a copy if the authority so requests. For purposes of this subsection, the "local office" which grantee is required to maintain may be the "virtual office" described in section 74-271(c), provided that, upon request, the grantee shall make available for public inspection at a location in or proximate to the city the log required to be maintained by the grantee pursuant to this subsection.

(c) For purposes of this section, the term "service interruption" shall mean any loss or material distortion of picture and/or sound on one or more channels; the term "subscriber problem" shall mean a service interruption affecting a single subscriber; the
term "outage" shall mean a service interruption affecting two or more subscribers. Under normal operating conditions, as specified in section 74-271, the grantee shall maintain a sufficient repair force of competent technicians so as to respond effectively to any subscriber problem or outage within the following time periods, unless the applicable period is extended at the request of the subscriber or extended pursuant to the requirements of any applicable law or regulation:

(1) Subscriber problem. There shall be same day service, seven days a week for all requests for service received prior to 12:00 noon each day. In no event shall the response time for notice received after 12:00 noon exceed 24 hours, including weekends and holidays, from the time the grantee receives notice of the problem.

(2) Outage. Outages shall be repaired within two hours, including on weekends and holidays, from the time the grantee discovers or receives notice of the outage.

(d) Upon receipt of a request for service, the grantee shall establish a four-hour appointment window with the subscriber, or adult representative of the subscriber. The grantee shall respond to the request for service within such established appointment window. If access to the subscriber's home is not made available to the grantee's technician when the technician arrives during the established appointment window, the technician shall leave written notification stating the time of arrival and requesting that the grantee be contacted again to establish a new appointment window. In such case, the grantee shall respond in a timely manner after it is contacted to establish the new appointment window. Notwithstanding the foregoing, if the grantee's technician telephones the subscriber's home before or during the appointment window and is advised that the technician will not be given access to the subscriber's home during the appointment window, then the technician shall not be obliged to travel to the subscriber's home or to leave the written notification, and the burden shall again be upon the subscriber, or adult representative of the subscriber, to contact the grantee to arrange for a new appointment window, in which case the grantee shall respond in a timely manner after it is contacted to establish the new appointment window.

(e) Except as otherwise provided in subsection (d) of this section, the grantee, under the provisions of this section and section 74-271, shall be deemed to have responded to a request for service, a subscriber problem, or an outage only when sufficient technicians arrive at the service location, begin work on the request for service or remedial work, as the case may be, and proceed diligently to complete such work.

(f) As to company-owned and company-maintained equipment, no charge shall be made to the subscriber for any service call unless the problem giving rise to the service request can be demonstrated by the grantee to have been:

(1) Caused by subscriber negligence;

(2) Caused by malicious destruction of cable equipment; or

(3) A problem previously established as having been noncable in origin.

(g) All service personnel of the grantee, or its contractors or subcontractors who have as part of their normal duties contact with the general public, shall wear on their clothing a clearly visible identification card bearing their name and photograph. The grantee shall account for all identification cards at all times. Every service vehicle of the grantee shall
be clearly identifiable by the public as such a vehicle.

(Ord. No. 594, § 7.5-132, 7-15-1997)

Sec. 74-273. Grantee's billings.

(a) The grantee's bills to its subscribers shall be clear, concise and understandable and shall be itemized as to each charge reflected thereon. The bill and any accompanying communication from the grantee to its subscribers, and any other communication from the grantee to its subscribers, shall not contain any false or misleading statement. Such other communication referred to in this subsection shall be deemed to be a report under all applicable provisions of the franchise agreement relating to reports.

(b) The grantee shall file with the city a copy of the billing form to be used by grantee at least 32 days prior to sending any such billing form to subscribers, and the grantee shall make no changes in the latest billing form on file without similarly first filing the revised billing form with the city.

(Ord. No. 594, § 7.5-133, 7-15-1997)

Sec. 74-274. Disconnect and downgrade charges.

(a) The grantee shall make no charge to any subscriber on account of either complete discontinuance of service or net downgrade of service whereby the subscriber requests a lower tier of basic service and/or a net reduction in premium service.

(b) The grantee may only disconnect a subscriber if at least 45 days have elapsed after the due date for payment of the subscriber's bill and the grantee has provided at least ten days' written notice to the subscriber prior to disconnection specifying the effective date after which cable services are subject to disconnection. However, the grantee may disconnect a subscriber at any time if the grantee in good faith and on reasonable grounds determines that the subscriber has tampered with or abused the grantee's equipment, or is, or may be, engaged in the theft of cable services.

(c) The grantee shall promptly disconnect any subscriber who so requests disconnection. No period of notice prior to requested termination of service may be required of subscribers by the grantee. If the subscriber fails to specify an effective date for disconnection, the effective date shall be deemed to be the day following the date the disconnect request is received by the grantee. No charge may be imposed upon the subscriber for any cable service delivered after the effective date of the disconnect request.

(Ord. No. 594, § 7.5-134, 7-15-1997)

Sec. 74-275. Late payment charges.

Late payment charges imposed by the grantee upon subscribers shall be fair and shall be reasonably related to the grantee's cost of administering delinquent accounts. No late payment charge shall be imposed upon a subscriber, and a subscriber shall not be deemed to be in arrears on a bill, unless at least 40 days have elapsed after the due date specified on the bill; and, for purposes of this section and section 74-274, the due date specified on the bill shall not be earlier than the first day of the monthly period to which the bill is attributable.
Sec. 74-276. Notice of programming or channel change.

A grantee shall provide a least 45 days' written notice to subscribers (30 days if there is more than one grantee operating in the city) prior to discontinuing any channel or programming service or to realigning any channel and shall provide written notice of the same to the authority no later than the grantee's notice to subscribers. This section shall not preclude the right of the city, or the authority on behalf of the city, to contest or prohibit any such action by the grantee if, and to the extent, such right exists. The notice requirement shall not apply in cases in which a programming service is discontinued because a nonaffiliated provider discontinues furnishing the same to the grantee on less than 45 days' notice (30 days if there is more than one grantee operating in the city) to the grantee. In any such case, the grantee shall nevertheless furnish notice to its subscribers and the authority promptly upon the grantee receiving notice of the discontinuance of the programming service from such nonaffiliated provider.

(Ord. No. 594, § 7.5-135, 7-15-1997)

Sec. 74-277. Notice of price increase or reduction of service.

The grantee shall provide at least 45 days' written notice to subscribers (30 days if there is more than one grantee operating in the city) prior to implementing any increase in subscriber rates or reduction in subscriber services and shall provide written notice of the same to the authority no later than the grantee's notice to subscribers. The provisions of this section shall not preclude the right of the city, or the authority on behalf of the city, to contest or prohibit any such action by the grantee if, and to the extent, permitted by law.

(Ord. No. 594, § 7.5-136, 7-15-1997)

Sec. 74-278. Grantee's communications.

Prior to or simultaneously with any communication made by the grantee to the general public or to the grantee's subscribers announcing or explaining any increase in subscriber rates or reduction in programming services, the grantee shall furnish a copy of such communication to the authority. The copy of the communication required to be furnished to the authority under this article shall be deemed to be a report under all applicable provisions of the franchise agreement relating to reports, in effect as of the effective date of the ordinance from which this article is derived.

(Ord. No. 594, § 7.5-137, 7-15-1997)

Sec. 74-279. Disclosure of information on grantee's costs.

If there is only one grantee franchised to provide cable communications service in the city, then if the grantee, in any communication to the general public, to the city, to subscribers, or to the authority, justifies a price increase or reduction in service on the basis of increased costs to which the grantee has been or will be subjected, then the grantee, on written request of the authority, shall promptly furnish the authority the underlying information on which such claim of increased costs is based in such form as the authority may request. The information so furnished by the grantee to the authority under this article shall also be deemed to be a report.
under all applicable provisions of the franchise agreement relating to reports including, without limitation, the provisions of subsections (J) and (K) of section 19 of the franchise agreement in effect as of the effective date of the ordinance from which this article is derived.


Sec. 74-280. Subscriber rebates.

(a) The grantee shall provide a customer with a full day credit or a rebate for a service outage exceeding four hours in duration beyond the time that the customer notified grantees of such outage. No credit or rebate shall be required where the outage was due to matters beyond the immediate control of the grantees, such as, by way of example and not limitation, service outages caused by storms or other natural disasters. In no event shall the customer incur a charge for any outage exceeding 48 hours. The credit specified in this subsection shall be equal to 1/30 of the subscriber's total monthly bill for all services and equipment other than pay-per-view; provided, however, that if such monthly bill includes a charge for a pay-per-view program subject to such outage or significant impairment, then the credit shall be increased by the amount of such charge.

(b) In the event of a violation of the provisions of this article by the grantees which results in a subscriber not receiving cable programming service or receiving only significantly impaired service, the authority after notice to such grantees and an opportunity to be heard may order and direct the grantees to issue a rebate to such subscriber in a reasonable amount determined by the authority to provide monetary relief to the subscriber substantially equal to the subscriber's unliquidated, detriment or loss resulting from such violation, not to exceed the subscriber's monthly bill.

(c) Nothing in this section shall be deemed to preclude a subscriber from requesting and receiving from the grantees a rebate greater than that provided in subsections (a) and (b) of this section.

(Ord. No. 594, § 7.5-139, 7-15-1997)

Sec. 74-281. Security fund.

(a) Subsequent to the effective date of the ordinance from which this article is derived, within ten days after the award of a new franchise or the transfer, extension or renewal of an existing franchise, the grantees shall furnish the authority, on behalf of all of the authority's member communities, and thereafter maintain with the authority, throughout the term of the franchise, a cash deposit of $25,000.00 as security for:

1. The faithful performance by it of all the provisions of this article and the franchise;

2. Compliance with all orders, permits and directions of any agency, commission, board or department of the city having jurisdiction over its acts or defaults under the franchise; and

3. The payment by the grantees of any claims, liens and taxes due the city which arise by reason of the construction, operation or maintenance of the system.

(b) Within ten days after notice to it that any amount has been withdrawn from the security fund, the grantees shall pay to or deposit with the authority a sum of money in the full
amount withdrawn.

(c) If the grantee fails to pay to the city any fees within the time fixed in this article; or fails, after ten days' written notice, to pay to the city any taxes due and unpaid; or fails to repay the city, within such ten days, any damages, costs, or expenses which the city shall be compelled to pay by reason of any act or default of the grantee in connection with a franchise; or fails, after three days' notice of such failure, to comply with any provisions of the franchise which the city reasonably determines can be remedied by a withdrawal from the security fund, the authority, on request of the city, may immediately withdraw the amount, with interest and any additional charges, from the security fund. Upon such withdrawal, the authority shall notify the grantee of the amount and date and shall remit to the city the amount so withdrawn.

(d) The security fund deposited pursuant to this section, including all interest thereon, if any, shall be held by the authority, for the benefit of its member communities, if the franchise is rescinded or revoked by reason of the default of the grantee. The grantee, however, shall be entitled to the return of such security fund, or such portion as remains on deposit at the expiration of the term of the franchise, provided that there is then no outstanding default on the part of the grantee. Any interest earned by the investment of the security fund shall become part of the security fund and, unless consumed by the payment of liquidated damages, fees or other charges under this article, shall be returned to the grantee at the expiration of the franchise term, provided that there is then no outstanding default on the part of the grantee.

(e) The authority shall maintain the security fund in a segregated account and shall not commingle such fund with any other monies of the authority. The authority may, but shall not be required to, invest the security fund so as to earn interest thereon and shall not be liable to the grantee on any claim based upon the lack or insufficiency of interest earned by such fund.

(f) Payment from the security fund shall not constitute a cure of any violation or any act of noncompliance by the grantee. The rights reserved to the city with respect to the security fund are in addition to all other rights of the city, whether reserved by this article or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the city may have.

(g) The security fund provided for in this section shall not be required if the franchise agreement expressly requires grantee to provide a cash security fund, letter of credit or other form of security that is mutually agreeable to the city and the grantee.

(Ord. No. 594, § 7.5-140, 7-15-1997)

Sec. 74-282. Liquidated damages.

(a) The authority may assess liquidated damages of up to $100.00 per day against the grantee for each day the grantee is in violation of this article. Such assessment may be levied against the security fund specified in section 74-281 or any letter of credit, performance bond, or other security provided for in the franchise agreement.

(b) Assessment of liquidated damages shall not constitute a waiver by the city of any other right or remedy it may have under the franchise agreement or applicable law, including the right to recover from the grantee any costs and expenses, including reasonable
attorney's fees, which are incurred by the city on account of the grantees's violation of this article.

(Ord. No. 594, § 7.5-141, 7-15-1997)
BACKGROUND:

Chapter 66 of the Clawson Code identifies the procedure for permitting work in the public right-of-way. Similarly, Chapter 74 identifies the process specific to telecommunications work in the public right-of-way. In discussions with the Building Official and Public Works Director it has become apparent the City is not following the established procedures. Failure to adhere to established procedures can lead to premature failure of the City infrastructure and serious additional costs in maintenance of our streets and sidewalks. With the anticipated improvements to the City infrastructure and development of good maintenance procedures it is imperative the administration establish a policy governing the required procedures to protect City infrastructure and, in doing so, protect the safety and welfare of the citizens of Clawson.

IMPLEMENTATION GUIDELINES:

The City Engineer is directed to develop the appropriate forms for permits application. The form, in accordance with Chapter 66, will be reviewed and approved by the City Attorney. Once finalized, these forms will be required in every instance where work is performed in the City right-of-way by parties other than City employees working under the direction of the Public Works Director. The administration will recommend to the City Council an appropriate permit fee, which, upon adoption will be the fee charged for such permit. In conjunction with this, the following process is hereby established to ensure adherence to the City Code.

a) Application for a permit shall be accompanied by plans and specifications showing the proposed work to be performed within the public right-of-way.

b) Application for a permit will not be accepted unless it contains all of the required information and plans and is accompanied by the payment of the permit fee as established by the City Council. The proposed plans and specifications shall be reviewed by appropriate city departments, depending on the nature of the work to be performed.

c) If the excavation or installation crosses any sewer service lead, the city engineer shall require as a condition to the issuance of the permit, certification that no such leads have been damaged by the contractor.

d) Permit must be issued prior to the beginning of any construction. Emergency repairs may be authorized by the Public Works Director, however, appropriate permit and bonding must be accomplished as soon as time permits.

e) Liability insurance policies in an amount satisfactory to the city and naming the city as an additional insured must be furnished to the city prior to the commencement of construction. A properly executed certificate of insurance containing evidence that the pertinent policy of insurance or endorsement applies to the provisions under which the permit is issued, and approved as to form by the City
Attorney, shall be filed with the City Clerk.

e) Upon successful completion of work and submission of as-built drawings, bonds may be refunded with an approved release by the City Engineer and Public Works Director. Bonds will subsequently be refunded within fourteen days of release by the Finance Department.

CONSTRUCTION BONDS:

a) As a condition to obtaining a permit, the applicant shall be required to file with the City a cash construction bond in an amount of at least $1,000.00 or five percent, whichever is greater, as established by the City Engineer, based on the applicant’s estimated cost of the project, including labor, materials and overhead, which may be utilized to pay all valid claims for damages resulting from activity within the public right-of-way. The estimated cost of the project shall be consistent with the installed cost of the project as reported for sale and local tax purposes. The cash bond shall be conditioned to pay all damages to the public right-of-way of the City and to hold the City harmless from any damage claim of any nature whether to persons or property for which the City may be held liable by reason of, or which is occasioned by, the doing of a thing or the exercise of the privilege for which the permit upon which the cash bond was based was granted. The applicant must execute an agreement to defend, indemnify and hold the City harmless if a claim arises out of an activity conducted by the applicant within the right-of-way.

b) The owner of any facilities and structures within a public right-of-way must obtain an annual blanket work permit, July 1 to June 30, covering all maintenance and repair activities upon payment of a fee set by resolution of the City council. The posting of a cash maintenance bond in the amount established by resolution and the filing of maps describing the location of all the owner’s facilities and structures within the City shall be provided to the City Engineer. The holder of an annual blanket work permit must file with the engineering department a monthly report describing the nature and location of all maintenance and repair work. The cash bond shall be conditioned to pay all damages to the public right-of-way of the City and to hold the City harmless from any damage claim of any nature, whether to persons or property for which the City may be held liable by reason, or which is occasioned by the doing of a thing, or the exercise of the privilege for which the permit upon which the cash bond was based was granted. The applicant must execute an agreement to defend, indemnify and hold the City harmless if a claim arises out of an activity conducted by the applicant within the right-of-way. If the cash bond is reduced below that amount required in this section, the owner and/or agent shall immediately restore the cash bond to the requirements of this subsection.

c) Applicant will present a copy of the permit application with bond requirements as determined by the City Engineer at the Treasurer’s Office and pay the amount required for bond. Once paid, the Treasurer will issue a appropriate receipt which will be presented to the Public Works Director who, upon presentation of the receipt shall issue the permit.

INSPECTION OF WORK; SUSPENSION OR REVOCATION OF PERMIT
FILING OF AS-BUILT PLANS SHALL BE WITH GIS DATA.

a) All construction work done pursuant to any permit issued, shall be inspected by the City to determine the work conforms to applicable local, state and federal provisions. The City may suspend or revoke any permit where the workmanship or materials used do not conform to the approved plans and specifications or to other applicable ordinances. Violation of the terms and conditions of the permit or any other applicable ordinance provision may result in the permit being revoked. It is unlawful to perform any work authorized by any permit or cause any work to be performed after a permit has
been suspended or revoked.

b) As-built maps and plans, in a form satisfactory to the City Engineer, must be submitted by the applicant to the City Engineer as soon as they are completed, but no later than 90 days after completion of the work. A digital geographical information system layer, using a program format and computer media acceptable to the City and containing such information and data as the City may require, which accurately displays the work, shall be provided after completion of the project.

c) To the extent practicable, any facility or structure that is abandoned or replaced shall immediately be removed at the expense of the owner and/or agent.

d) The cost of all inspections shall be paid by the owner and/or agent. The inspection fee shall be in relationship to the expense incurred by the City in its conduct of the inspection.

REJECTION OF PERMIT, APPEAL:

All operations for which a permit is granted pursuant to the terms of this division are under the direction and supervision of the City Manager or designee. If a permit is refused, suspended or revoked, the applicant may, within ten days of the denial, suspension or revocation, appeal that determination to the City Council. The City Council shall, after proper notice to all interested parties, conduct a hearing concerning the action from which the appeal is taken. After conducting a public hearing, the City Council shall either affirm, modify or reverse the decision of the City Manager or designee. The decision of the City Council shall be final.

ADDITIONAL REQUIREMENTS FOR TELECOMMUNICATION CONSTRUCTION IN CITY RIGHT-OF-WAY:

a) The owner and/or agent shall not open or disturb the surface of any streets, or public property, without first obtaining a permit from the City. The lines, conduits, cables and other property placed in the streets, and public property pursuant to such permit shall be located in such part of the street or public property as shall be determined by the City. The owner and/or agent shall, upon completion of any work requiring the opening of any streets or public property, restore the same including the pavement and its foundations to as good a condition as formerly and in a manner and quality approved by the City, and shall exercise reasonable care to maintain the same thereafter in good condition. Such work shall be performed with diligence, and due care. Failure to perform the work promptly, to remove all dirt and rubbish and to put the street or public property back into the condition required, the City shall have the right to put the streets or public property back into such condition at the expense of the owner and/or agent. The owner and/or agent shall, upon demand, pay to the City the cost of such work done.

b) The City may require a maintenance bond in accordance with section entitled Construction Bonds, subparagraph (b) to ensure all wires, conduits, cable and other property and facilities of the owner and/or agent shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, and travel upon, or other use of, the streets and public property of the City. The owner and/or agent shall keep and maintain all of its property in good condition, order and repair so that the property shall not menace or endanger the life or property of any person. The City shall have the right to inspect and examine at all reasonable times and upon reasonable notice the property owned or used, in part or in whole, by the owner and/or agent. The owner and/or agent shall keep accurate maps and records of all of its wires, conduits, cables and other property and facilities located, constructed and maintained in the City. Further, the owner and/or agent shall furnish copies of such maps and records from time to time as requested by the City without charge.
(c) All wires, conduits, cables and other property and facilities of the owner and/or agent shall be constructed and installed in an orderly and workmanlike manner. All wires, conduits and cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

d) The owner and/or agent shall at all times comply with the following codes, rules, regulations, as amended, and any others supplemental to or in substitution thereof:

3. Bell System Code of Pole Line Construction
4. Applicable FCC and other applicable federal, state and local regulations and ordinances. In any event, the installation, operation or maintenance of the system shall not endanger or interfere with the safety of persons or property in the City.

e) Whenever the City shall undertake any public improvement which affects the owner and/or agent’s equipment or facilities, the City may, with due regard to reasonable working conditions and with reasonable notice, direct the owner and/or agent to remove or relocate its wires, conduits, cables and other property located in streets, or public property. The owner and/or agent shall relocate or protect its wires, conduits, cables and other property at its own expense.

f) The owner and/or agent’s plans for constructing its system shall comply with the following minimum requirements:

1. The owner and/or agent shall construct underground in any area where both the electrical and telephone lines have been installed underground.
2. The owner and/or agent shall change from aerial to underground, at its own expense, in any area where both the telephone and electric utilities are hereafter changed from aerial to underground.
3. To enable the owner and/or agent reasonable opportunity to change its wiring from aerial to underground, and also to allow it to prewire all new subdivisions or new development areas, the City shall provide the owner and/or agent with written notice of the following but without liability for failure to provide such notice:
   1. Any underground trenching that may be pending.
   2. All ordinance changes affecting the wiring of the system.

g) The owner and/or agent shall, upon completion of any work on private property (or easements thereon), restore the property including any and all landscape features, plantings, turf, buildings, pipes, and wires (overhead and underground) pavements, sidewalks, foundations or other features whatsoever, to as good a condition as existed before construction.

h) The owner and/or agent shall, prior to construction, make a clear video record of all underground construction and other specially designated areas. Such tapes are to be preserved for three years after completion of the applicable construction.
AT&T MICHIGAN’S VERIFIED COMPLAINT
FOR RESOLUTION OF DISPUTE WITH
CITY OF CLAWSON UNDER UNIFORM VIDEO
SERVICES LOCAL FRANCHISE ACT AND
OTHER RELEVANT AUTHORITIES,
REQUEST FOR DECLARATORY RULING,
REQUEST FOR ORDER TO SHOW CAUSE,
AND REQUEST FOR EXPEDITED RELIEF

MPSC CASE NO. U-15683

OCTOBER 24, 2008

EXHIBIT 4

CONFIDENTIAL – FILED UNDER SEAL
AT&T MICHIGAN’S VERIFIED COMPLAINT
FOR RESOLUTION OF DISPUTE WITH
CITY OF CLAWSON UNDER UNIFORM VIDEO
SERVICES LOCAL FRANCHISE ACT AND
OTHER RELEVANT AUTHORITIES,
REQUEST FOR DECLARATORY RULING,
REQUEST FOR ORDER TO SHOW CAUSE,
AND REQUEST FOR EXPEDITED RELIEF

MPSC CASE NO. U-15683

OCTOBER 24, 2008

EXHIBIT 5

CONFIDENTIAL – FILED UNDER SEAL
AT&T MICHIGAN’S VERIFIED COMPLAINT
FOR RESOLUTION OF DISPUTE WITH
CITY OF CLAWSON UNDER UNIFORM VIDEO SERVICES LOCAL FRANCHISE ACT AND
OTHER RELEVANT AUTHORITIES,
REQUEST FOR DECLARATORY RULING,
REQUEST FOR ORDER TO SHOW CAUSE,
AND REQUEST FOR EXPEDITED RELIEF

MPSC CASE NO. U-15683

OCTOBER 24, 2008

EXHIBIT 6
RIGHT-OF-WAY
TELECOMMUNICATIONS PERMIT

This permit issued this (__) day of ____, 2004 by City of Clawson.

1 Definitions

1.1 Date of Issuance shall mean the date set forth above.

1.2 Manager shall mean Municipality's [Mayor/Manager/Supervisor/Village President] or his or her designee.


1.4 Municipality shall mean City of Clawson, a Michigan municipal corporation.

1.5 Permit shall mean this document.

1.6 Permittee shall mean Michigan Bell Telephone Company D.B.A SBC organized under the laws of the State of Michigan whose address is 444 Michigan Ave., Detroit, MI 48226.

1.7 Public Right-of-Way shall mean the area on, below, or above a public roadway, highway, street, alley, easement, or waterway, to the extent Municipality has the ability to grant the rights set forth herein. Public Right-of-Way does not include a federal, state, or private right-of-way.

1.8 Telecommunications Facilities or Facilities shall mean the Permittee's equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify or provide telecommunication services or signals. Telecommunication Facilities or Facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communications device.

1.9 Term shall have the meaning set forth in Part 7.
2 Grant

2.1 Municipality hereby issues a permit under the METRO Act to Permittee for access to and ongoing use of the Public Right-of-Way identified on Exhibit A to construct, install and maintain Telecommunication Facilities on the terms set forth herein.

2.1.1 Exhibit A may be modified by Manager upon written request by Permittee.

2.1.2 Any decision of Manager on a request by Permittee for a modification may be appealed by Permittee to Municipality’s legislative body.

2.2 Overlashing. Permittee shall not allow the wires or any other facilities of a third party to be overlashed to the Telecommunication Facilities without Municipality’s prior written consent. Municipality’s right to withhold written consent is subject to the authority of the Michigan Public Service Commission under Section 361 of the Michigan Telecommunications Act, MCL § 484.2361.

2.3 Nonexclusive. The rights granted by this Permit are nonexclusive. Municipality reserves the right to approve, at any time, additional permits for access to and ongoing usage of the Public Right-of-Way by telecommunications providers and to enter into agreements for use of the Public Right-of-Way with and grant franchises for use of the Public Right-of-Way to telecommunications providers, cable companies, utilities and other providers.

3 Contacts, Maps and Plans

3.1 Permittee Contacts. The names, addresses and the like for engineering and construction related information for Permittee and its Telecommunication Facilities are as follows:

3.1.1 *The address, e-mail address, phone number and contact person (title or name) at Permittee's local office (in or near Municipality) is *see Application Information

3.1.2 If Permittee’s engineering drawings, as-built plans and related records for the Telecommunication Facilities will not be located at the preceding local office, the location address, phone number and contact person (title or department) for them is: Same as stated above.

3.1.3 The name, title, address, e-mail address and telephone numbers of Permittee’s engineering contact person(s) with responsibility for the
design, plans and construction of the Telecommunication Facilities is same as stated above.

3.1.4 The address, phone number and contact person (title or department) at Permittee’s home office/regional office with responsibility for engineering and construction related aspects of the Telecommunication Facilities is *see Application Information*

3.1.5 Permittee shall at all times provide Manager with the phone number at which a live representative of Permittee (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency.

3.1.6 Permittee shall immediately notify Municipality in writing as set forth in Part 12 of any inaccuracies or changes in the preceding information.

3.2 **Route Maps.** Within ninety (90) days after the substantial completion of new Facilities in a Municipality, a provider shall submit route maps showing the location of the Telecommunication Facilities to both the Michigan Public Service Commission and to the Municipality, as required under Section 6(7) of the METRO Act, MCLA 484.3106(7).

3.3 **As-Built Records.** Permittee, without expense to Municipality, shall, upon forty-eight (48) hours notice, give Municipality access to all "as-built" maps, records, plans and specifications showing the Telecommunication Facilities or portions thereof in the Public Right-of-Way. Upon request by Municipality, Permittee shall inform Municipality as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall mark up maps provided by Municipality so as to show the location of the Telecommunication Facilities.

4 **Use of Public Right-of-Way**

4.1 **No Burden on Public Right-of-Way.** Permittee, its contractors, subcontractors, and the Telecommunication Facilities shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. Permittee’s aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the Public Right-of-Way. If Municipality reasonably determines that any portion of the Telecommunication Facilities constitutes an undue burden or interference, due to changed circumstances, Permittee, at its sole expense, shall modify the Telecommunication Facilities or take such other actions as Municipality may determine is in the public interest to remove or alleviate the burden, and Permittee shall do so within a reasonable time period. Municipality will attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.

4.2 **No Priority.** This Permit does not establish any priority of use of the Public
Right-of-Way by Permittee over any present or future permittees or parties having agreements with Municipality or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to Municipality, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.

4.3 Restoration of Property. Permittee, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Permittee’s sole expense, in a manner approved by Municipality, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Telecommunication Facilities, to a reasonably equivalent condition as that which existed prior to the disturbance. In the event that Permittee, its contractors or subcontractors fail to make such repair within a reasonable time, Municipality may make the repair and Permittee shall pay the costs Municipality incurred for such repair.

4.4 Marking. Permittee shall mark the Telecommunication Facilities as follows: Aerial portions of the Telecommunication Facilities shall be marked with a marker on Permittee’s lines on alternate poles which shall state Permittee’s name and provide a toll-free number to call for assistance. Direct buried underground portions of the Telecommunication Facilities shall have (1) a conducting wire placed in the ground at least several inches above Permittee’s cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) stakes or other appropriate above ground markers with Permittee’s name and a toll-free number indicating that there is buried telephone cable below. Bored underground portions of the Telecommunication Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Telecommunication Facilities located in conduit, including conduit of others used by Permittee, shall be marked at its entrance into and exit from each manhole and handhole with Permittee’s name and a toll-free telephone number.

4.5 Tree Trimming. Permittee may trim trees upon and overhanging the Public Right-of-Way so as to prevent the branches of such trees from coming into contact with the Telecommunication Facilities, consistent with any standards adopted by Municipality. Permittee shall dispose of all trimmed materials. Permittee shall minimize the trimming of trees to that essential to maintain the integrity of the Telecommunication Facilities. Except in emergencies, all trimming of trees in the Public Right-of-Way shall have the advance approval of Manager.
4.6 **Installation and Maintenance.** The construction and installation of the Telecommunication Facilities shall be performed pursuant to plans approved by Municipality. The open cut of any Public Right-of-Way shall be coordinated with the Manager or his designee. Permittee shall install and maintain the Telecommunication Facilities in a reasonably safe condition. If the existing poles in the Public Right-of-Way are overburdened or unavailable for Permittee's use, or the facilities of all users of the poles are required to go underground then Permittee shall, at its expense, place such portion of its Telecommunication Facilities underground, unless Municipality approves an alternate location. Permittee may perform maintenance on the Telecommunication Facilities without prior approval of Municipality, provided that Permittee shall obtain any and all permits required by Municipality in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by Municipality.

4.7 **Pavement Cut Coordination.** Permittee shall coordinate its construction and all other work in the Public Right-of-Way with Municipality’s program for street construction and rebuilding (collectively “Street Construction”) and its program for street repaving and resurfacing (except seal coating and patching) (collectively, “Street Resurfacing”).

4.7.1 The goals of such coordination shall be to encourage Permittee to conduct all work in the Public Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by Municipality.

4.8 **Compliance with Laws.** Permittee shall comply with all laws, statutes, ordinances, rules and regulations regarding the construction, installation, and maintenance of its Telecommunication Facilities, whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Permittee shall secure all necessary permits, licenses and approvals from Municipality or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Permittee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) and the National Electric Code (latest edition). Permittee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.

4.9 **Street Vacation.** If Municipality vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of Permittee's Facilities in the vacated Public Right-of-Way, Permittee shall, as a condition of this Permit, consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by Municipality or
a court of competent jurisdiction. Permittee shall relocate its Facilities to such alternate route as Municipality, applying reasonable engineering standards, shall specify.

4.10 **Relocation.** If Municipality requests Permittee to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Permittee shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as Municipality, applying reasonable engineering standards, shall specify. The work shall be completed within a reasonable time period.

4.11 **Public Emergency.** Municipality shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Permittee if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Municipality will attempt to provide notice to Permittee. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Permittee shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by Municipality.

4.12 **Miss Dig.** If eligible to join, Permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL § 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

4.13 **Underground Relocation.** If Permittee has its Facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then Permittee shall relocate its Facilities underground in the same location at Permittee’s sole cost and expense.

4.14 **Identification.** All personnel of Permittee and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Permittee’s name, their name and photograph. Permittee shall account for all identification cards at all times. Every service vehicle of Permittee and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Permittee’s name and telephone number.

5 **Indemnification**

5.1 **Indemnity.** Permittee shall defend, indemnify, protect, and hold harmless Municipality, its officers, agents, employees, elected and appointed officials,
departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (collectively "claim" for this Part 5) (including, without limitation, attorneys' fees) arising out of or resulting from the acts or omissions of Permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the Permittee's use of or installation of facilities in the Public Right-of-Way and only to the extent of the fault or responsibility of Permittee, its officers, agents, employees, contractors, successors and assigns.

5.2 **Notice, Cooperation.** Municipality will notify Permittee promptly in writing of any such claim and the method and means proposed by Municipality for defending or satisfying such claim. Municipality will cooperate with Permittee in every reasonable way to facilitate the defense of any such claim. Municipality will consult with Permittee respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.

5.3 **Settlement.** Municipality will not settle any claim subject to indemnification under this Part 5 without the advance written consent of Permittee, which consent shall not be unreasonably withheld. Permittee shall have the right to defend or settle, at its own expense, any claim against Municipality for which Permittee is responsible hereunder.

6 **Insurance**

6.1 **Coverage Required.** Prior to beginning any construction in or installation of the Telecommunication Facilities in the Public Right-of-Way, Permittee shall obtain insurance as set forth below and file certificates evidencing same with Municipality. Such insurance shall be maintained in full force and effect until the end of the Term. In the alternative, Permittee may satisfy this requirement through a program of self-insurance, acceptable to Municipality, by providing reasonable evidence of its financial resources to Municipality. Municipality's acceptance of such self-insurance shall not be unreasonably withheld.

6.1.1 Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars ($5,000,000).

6.1.2 Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars ($500,000) and providing coverage for claims discovered within three (3) years after the term of the policy.
6.1.3 Automobile liability insurance in an amount not less than One Million Dollars ($1,000,000).

6.1.4 Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.

6.1.5 The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.

6.2 Additional Insured. Municipality shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to Municipality. Permittee shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.

6.3 Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.

6.4 Deductibles. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of $50,000, they shall be approved by Manager in advance in writing. Permittee shall indemnify and save harmless Municipality from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.

6.5 Contractors. Permittee's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Permittee, at its expense, may provide such
coverages for any or all its contractors or subcontractors (such as by adding them to Permittee’s policies).

6.6 **Insurance Primary.** Permittee’s insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively “them”). Any insurance or self-insurance maintained by any of them shall be in excess of Permittee’s insurance and shall not contribute to it (where “insurance or self-insurance maintained by any of them” includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

7 **Term**

7.1 **Term.** The term (“Term”) of this Permit shall be until the earlier of:

7.1.1 **Five Years (5)** [five years or less] from the Date of Issuance; or

7.1.2 When the Telecommunication Facilities has not been used to provide telecommunications services for a period of one hundred and eighty (180) days by Permittee or a successor or an assignee of Permittee; or

7.1.3 When Permittee, at its election and with or without cause, delivers written notice of termination to Municipality at least one-hundred and eighty (180) days prior to the date of such termination; or

7.1.4 Upon either Permittee or Municipality giving written notice to the other of the occurrence or existence of a default by the other party under Sections 4.8, 6, 8 or 9 of this Permit and such defaulting party failing to cure, or commence good faith efforts to cure, such default within sixty (60) days (or such shorter period of time provided elsewhere in this Permit) after delivery of such notice; or

7.1.5 Unless Manager grants a written extension, one year from the Date of Issuance if prior thereto Permittee has not started the construction and installation of the Telecommunication Facilities within the Public Right-of-Way and two years from the Date of Issuance if by such time construction and installation of the Telecommunication Facilities is not complete.

8 **Performance Bond or Letter of Credit**

8.1 **Municipal Requirement.** Municipality may require Permittee to post a bond (or letter of credit) as provided in Section 15(3) of the METRO Act, as amended
Fees

9 Establishment; Reservation. The METRO Act shall control the establishment of right-of-way fees. The parties reserve their respective rights regarding the nature and amount of any fees which may be charged by Municipality in connection with the Public Right-of-Way.

Removal

10 Removal; Underground. As soon as practicable after the Term, Permittee or its successors and assigns shall remove any underground cable or other portions of the Telecommunication Facilities from the Public Right-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the Public Right-of-Way. Permittee shall not remove any underground cable or other portions of the Telecommunication Facilities which requires trenching or other opening of the Public Right-of-Way except with the prior written approval of Manager. All removals shall be at Permittee’s sole cost and expense.

10.1.1 For purposes of this Part 10, “cable” means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

10.2 Removal; Above Ground. As soon as practicable after the Term, Permittee, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by Manager, remove from the Public Right-of-Way all above ground elements of its Telecommunication Facilities, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

10.3 Schedule. The schedule and timing of removal shall be subject to approval by Manager. Unless extended by Manager, removal shall be completed not later than twelve (12) months following the Term. Portions of the Telecommunication Facilities in the Public Right-of-Way which are not removed within such time period shall be deemed abandoned and, at the option of Municipality exercised by written notice to Permittee as set forth in Part 12, title to the portions described in such notice shall vest in Municipality.

11 Assignment. Permittee may assign or transfer its rights under this Permit, or the persons or entities controlling Permittee may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the ownership or control of Permittee’s business, or by other means, subject to the following:

11.1 No such transfer or assignment or change in the control of Permittee shall be
effective under this Permit, without Municipality’s prior approval (not to be unreasonably withheld), during the time period from the Date of Issuance until the completion of the construction of the Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A.

11.2 After the completion of such construction, Permittee must provide notice to Municipality of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,

11.2.1 Any transferee or assignee of this Permit shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Permit, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Municipality with the information required under Section 3.1; and shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary, and

11.2.2 In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Permittee’s ability to perform under the terms and conditions of this Permit and comply with applicable law; and Permittee shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary.

11.3 Permittee may grant a security interest in this Permit, its rights thereunder or the Telecommunication Facilities at any time without notifying Municipality.

12 Notices

12.1 Notices. All notices under this Permit shall be given as follows:

12.1.1 If to Municipality, to [address], with a copy to [address].

12.1.2 If to Permittee, to [as stated on application].

12.2 Change of Address. Permittee and Municipality may change its address or personnel for the receipt of notices at any time by giving notice thereof to the other as set forth above.

13 Other items

13.1 No Cable, OVS. This Permit does not authorize Permittee to provide commercial cable type services to the public, such as “cable service” or the services of an “open video system operator” (as such terms are defined in the Federal

13.2 **Effectiveness.** This Permit shall become effective when Permittee has provided any insurance certificates and bonds required in Parts 6 and 8, and signed the acknowledgement of receipt, below.

13.3 **Authority.** This Permit satisfies the requirement for a permit under Section 5 of the METRO Act [MCL 484.3105].

13.4 **Interpretation and Severability.** The provisions of this Permit shall be liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision or section of this Permit be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining conditions of this Permit. If any provision in this Permit is found to be partially overbroad, unenforceable, or invalid, Permittee and Municipality may nevertheless enforce such provision to the extent permitted under applicable law.

13.5 **Governing Law.** This Permit shall be governed by the laws of the State of Michigan.

[Municipality name] CITY OF CLAWSON

By: Lisa Dwyer

Its: Mayor

Date: 1-6-04

Acknowledgement of Receipt: Permittee acknowledges receipt of this Permit granted by Municipality.

Michigan Bell Telephone d.b.a. SBC

By: Robert Meynell

Its: Operations DIRECTOR

Date: 2-4-04
Exhibit A

Public Right-of-Way to be Used by Telecommunication Facilities:

All existing facilities assumed in all Existing Rights of Way.
Exhibit B

Bond

Letter of Credit to be submitted with Construction Permits at time of Specific Application
STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of AT&T Michigan for resolution of a dispute with the City of Clawson under the Uniform Video Services Local Franchise Act. Case No. U-15683

AFFIDAVIT OF SUSAN FRENTZ IN SUPPORT OF VERIFIED COMPLAINT

Susan Frentz, being duly sworn, deposes and states as follows:

1. This Affidavit is made upon my personal knowledge; I am over 18 years of age and, if called and sworn as a witness, I can testify competently to the facts stated in this Affidavit.

2. I am employed by AT&T in Michigan in the position of Director -Regulatory. In this position, I have responsibilities for AT&T Michigan's efforts to enter into uniform video service local franchise agreements with municipalities in Michigan, including the City of Clawson. My responsibilities include overseeing AT&T Michigan's compliance with the orders of the Michigan Public Service Commission and other applicable legal requirements attendant to AT&T's actions in that regard.

3. The performance of my job responsibilities requires me to have knowledge of AT&T's efforts to secure a uniform video service local franchise agreement with the City of Clawson. As such, I am aware of and have reviewed AT&T's September 30, 2008 proposed Uniform Video Service Local Franchise Agreement to the City of Clawson, including Attachment 1 to the same, and the confidential map submitted by AT&T depicting the video service area footprint to be served within the City of Clawson.
4. I am familiar with the requirements of the Uniform Video Services Local Franchise Act, MCL 484.3301, et seq. (the "Act"). The proposed Uniform Video Service Local Franchise Agreement submitted by AT&T to the City of Clawson and all attachments to the same, including the confidential map, comply in full with all statutory requirements set forth in the Act.

5. I am also familiar with the methodology used to prepare AT&T's confidential video service area footprint maps, such as the confidential map submitted by AT&T to the City of Clawson. I have participated in numerous discussions and meetings concerning the preparation of AT&T's confidential maps, including meetings with AT&T's Network Planning & Advanced Technology Group, to discuss the creation and design of AT&T's video service area footprint maps and the maps' compliance with "national map accuracy standards." I have also reviewed published materials and other supporting documentation concerning the preparation and use of Geographic Information System ("GIS") mapping techniques, which is the type of mapping application AT&T uses to create its video service area footprint maps.

6. I have reviewed AT&T's Verified Complaint for Resolution of Dispute with City of Clawson Under Uniform Video Services Local Franchise Act And Other Relevant Authorities, Request for Declaratory Ruling, Request For Order to Show Cause, and Request for Expedited Relief filed on this date by AT&T Michigan, and the statements and factual matters contained therein are true and accurate to the best of my knowledge.
Further, affiant sayeth not.

Susan Frentz

Subscribed and sworn to before me, a Notary Public in and for said County, this 24th day of October, 2008.

Jacqueline K. Tinney, Notary Public
Wayne County, Michigan
Acting in Washtenaw County, Michigan
My Commission Expires: 7/17/12
STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of AT&T Michigan for resolution of a dispute with the City of Clawson under the Uniform Video Services Local Franchise Act. Case No. U-15683

PROOF OF SERVICE

STATE OF MICHIGAN
COUNTY OF WASHTENAW

Jacqueline K. Tinney, being first duly sworn, deposes and says that she is employed at Dickinson Wright PLLC, and that on October 24, 2008, she caused a copy of the Verified Complaint For Resolution of Dispute With City of Clawson Under Uniform Video Services Local Franchise Act And Other Relevant Authorities, Request For Declaratory Ruling, Request For Order to Show Cause, And Request For Expedited Relief and Affidavit of Susan Frentz in Support of Verified Complaint to be served upon the following parties via email:

City of Clawson
Richard Haberman
Machele Kukuk
Jon Kingsepp
rhaberman@cityofclawson.com
mkukuk@cityofclawson.com
jhkingsepp@aol.com

Subscribed and sworn to before me, a Notary Public in and for said County, this 24th day of October, 2008.

Elaine M. Masters, Notary Public
Washenaw County, Michigan
Acting in Washenaw County, Michigan
My Commission Expires: 9/23/13