

Chapter 140: Telecommunications Facilities

[HISTORY: Adopted by the Board of Commissioners of the Township of Lower Merion as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

- Building construction — See Ch. 62.
- Historic districts — See Ch. 88.
- Natural features conservation — See Ch. 101.
- Streets and sidewalks — See Ch. 133.
- Subdivision and land development — See Ch. 135.
- Zoning — See Ch. 155.
- Fees — See Ch. A167.

Article I: Wireless Communication Facilities

[Adopted 5-20-1998 by Ord. No. 3489]

§ 140- Purpose and goals.

The purpose of this article is to establish general guidelines for the siting of wireless communication facilities. The goals of this article are to:

- A. Provide procedures and guidelines for the location, placement and construction of wireless communication facilities in the Township and for payment of fees and charges that are uniformly applied to all persons.
- B. Provide clear performance standards and review requirements addressing the siting of wireless communication facilities.
- C. Encourage the location of wireless communication facilities on existing structures, including utility poles, signs, water towers, buildings and other wireless communication facilities where feasible.
- D. Ensure that wireless communication facilities will be safe and blend into their environment to the greatest extent possible.
- E. Encourage collocation and site sharing of new and existing wireless communication facilities.
- F. Encourage the use of public property and structures for wireless communication facilities to the greatest extent possible and provide for mechanisms to achieve fair and equitable rental for the use of such property.
- G. Enhance the ability of providers of wireless communication services to provide such services to the Township quickly, effectively and efficiently.
- H. Establish guidelines and standards for use of the rights-of-way ("ROW").
- I. Preserve the residential character of adjacent neighborhoods.
- J. Comply with the Telecommunications Act of 1996.

§ 140- Definitions.

Unless otherwise expressly stated or where the context clearly indicates a different meaning, the following words and phrases shall be construed throughout this article to have the meanings indicated in this article:

ANTENNA ARRAY

One or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omnidirectional antenna (rod), directional antenna (panel) and parabolic antenna (disc). The antenna array does not include the support structure defined below.

APPLICANT

Any person that applies for a wireless communication facility building permit, zoning approval and/or for permission to use the ROW or other Township owned land or property.

APPLICATION

The process by which a person submits a request to develop, construct, build, modify or erect a wireless communication facility upon a parcel of land. Application includes all written documentation, verbal statements and representations, in whatever form or forum, made by an applicant to the Township concerning such a request.

ATTACHED WIRELESS COMMUNICATION FACILITY

A wireless communication facility, some component of which is attached to an attachment structure.

ATTACHMENT STRUCTURE

A building which is 35 or more feet in height or an existing structure suitable for the support of a wireless communication facility, but which has been designed and constructed for another purpose. Such existing structures shall include, but not be limited to: utility poles, signs, water towers and municipally-owned towers.

BOARD OF COMMISSIONERS

The Board of Commissioners of the Township of Lower Merion, Pennsylvania.

COMMUNICATION FACILITIES COMMITTEE

A staff committee appointed by the Township Manager which shall include the Director of Building and Planning and the Township Engineer.

[Amended 1-19-2002 by Ord. No. 3631

DEVELOPMENT STANDARDS

Those standards set forth in this article and in Chapters 135, Subdivision and Land Development, and 155, Zoning.

DIRECTOR OF BUILDING AND PLANNING

A Township of Lower Merion official whose duties include, as Zoning Officer, the administration of Chapter 155, Zoning.

[Amended 1-19-2002 by Ord. No. 3631

ENGINEER

Any engineer licensed by the Commonwealth of Pennsylvania.

EQUIPMENT FACILITY

Any structure or enclosure used to contain ancillary equipment as a component of a wireless communication facility, including a cabinet, shelter, a build-out of an existing structure or a pedestal.

IN

When used in conjunction with "ROW," means above, along, in, over, under, upon or within the ROW.

MICRO FACILITY

A wireless communication facility consisting of an equipment facility capable of being mounted onto the attachment or support structure and antenna that is either:

- A. No more than five feet in height with a face area of not more than 580 square inches; or
- B. If a tubular antenna, no more than four inches in diameter and no more than seven feet in length.

OWNER

Any person, including the Township, with fee title or a long-term (exceeding 10 years) leasehold to any parcel of land within the Township.

PERSON

Any individual, corporation, partnership, joint venture, agency, unincorporated association or municipal corporation or agency within the Commonwealth of Pennsylvania, or any combination thereof.

PROVIDER

A person, not a public utility, who is licensed by the Federal Communications Commission to provide telecommunications service to the public.

PUBLIC UTILITY

An entity regulated by the Pennsylvania Public Utility Commission.

RAILROAD RIGHT-OF-WAY (RAILROAD ROW)

The surface, air space above the surface and the area below the surface of any railroad.

RIGHT-OF-WAY (ROW)

The surface, air space above the surface and the area below the surface of any street.

STEALTH

Any wireless communication facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened and/or landscaped antenna arrays and equipment facilities and support structures designed to look other than like a support structure, such as a light pole, a power pole, a component of a building or a tree.

STREET

A right-of-way, publicly or privately owned, serving as a means of vehicular and pedestrian travel and furnishing access to abutting properties and space for sewers and public utilities.

SUPPORT STRUCTURE

A structure designed and constructed to support an antenna array or micro facility and may include a utility pole, a monopole, self-supporting (lattice) or guy-wire support tower and other similar structures.

USE PERMIT

The authorization from the Township that must be obtained to occupy the ROW to provide wireless communication services.

WIRELESS COMMUNICATION SERVICE

Any personal wireless service as defined by the Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services, including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and similar services that currently exist or that may in the future be developed.

WIRELESS COMMUNICATION FACILITY

Any unstaffed facility for the transmission and/or reception of wireless communication services, usually consisting of an antenna array or micro facility, connection cables, an equipment facility and a support structure or attachment structure to achieve the necessary elevation.

§ 140- Applicability.

- A. Pre-existing wireless communication facilities. Wireless communication facilities for which a permit has been issued prior to the effective date of this article shall not be required to meet the requirements of this article, except as provided in § 140-12, nonconforming wireless communication facilities.

- B. Exclusion for amateur radio facilities. This article shall not govern the installation of any amateur radio facility that is owned or operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.
- C. Relationship to other chapters. This article shall supersede all conflicting requirements of other chapters of this Code regarding the locating and permitting of wireless communication facilities.
- D. The placement of wireless communication facilities in a ROW shall be governed by this article and shall not be subject to the requirements of Chapter 155, Zoning. The placement of wireless communication facilities outside of a ROW shall be governed both by the requirements of this article and those of Chapter 155, Zoning.

§ 140- Intentions.

- A. It is intended that the requirements in this article shall permit the Township to evaluate a variety of different circumstances relating to the location, placement and construction of wireless communication facilities in the Township. Through the review process, the Township may approve the use of wireless communication facilities, issue building permits, establish requirements for construction, permit the use of Township-owned lands, ROW and attachment structures and collect applicable fees and charges. The Township seeks to encourage collocation, the use of existing structures, minimalizing visually intrusive installations and the development of microcell design.
- B. Because the design technologies and siting requirements of wireless communication facilities vary from applicant to applicant, the application and review procedures set forth herein are intended to permit the Township the greatest amount of latitude in reviewing such applications.
- C. This article is intended to regulate the construction and maintenance of wireless communication facilities in the ROW and on public and private property. All such construction must conform to the construction standards set forth herein and in Chapter 133, Streets and Sidewalks. The use of private property outside of the ROW for the construction and maintenance of wireless communication facilities must also conform to the provisions of Chapter 155, Zoning.
- D. In distinguishing micro facilities from other wireless communication facilities solely on the basis of physical size and not technology, the Township seeks to encourage the use of facilities creating less visual impact and reduce the proliferation of large equipment facility enclosures.

§ 140- Regulations applicable to all wireless communication facilities.

- A. All applications for installation of a wireless communication facility shall include a sworn affidavit from a radio frequency engineer that the placement of the wireless communication facility will not interfere with public safety communications and the usual and customary transmission or reception of radio, television or other communication services enjoyed by adjacent residential and nonresidential properties.
- B. The Telecommunications Act of 1996 gives the FCC sole power to regulate radio frequency ("RF") emissions and does not allow the Township to condition or deny on the basis of RF impacts the approval of any wireless communication facilities which meet or exceed FCC standards. In order to make available information to Township citizens, the applicant shall provide to the Township copies of ongoing FCC information and RF emission standards for transmissions from a wireless communication facility with support structure or an attached wireless communication facility. Applicants shall be required to submit information on the proposed power intensity of their wireless communication facilities. Applicants shall demonstrate that the proposed wireless communication facilities meet or exceed FCC standards and shall supplement that information upon the request of the Township no less frequently than annually. Once installed, any technical change that could increase power or output of the wireless communication facility shall be immediately reported to the Township.
- C. All applications shall include a copy of the provider's current Federal Communications Commission license. The provider shall maintain with the Township the current name, address and emergency telephone number of the owner or operator of the support or attachment structure on which the antenna array is mounted.

- D. Upon receipt of an application, the Township shall mail notice thereof to the owner or owners, if their residence is known, or to the occupier or occupiers of every residentially zoned property on the same street within 500 feet of the site of the proposed facility and of every residentially zoned property not on the same street within 150 feet of the proposed facility, provided that failure to give notice required by this subsection shall not invalidate any action taken with respect to the application.

§ 140- **Wireless communication facilities within the right-of-way.**

- A. Uses permitted. Micro facilities are the only type of wireless communication facilities permitted in a ROW.
- B. Support structure. The antenna array must be mounted on a monopole support structure, such as a utility pole, in compliance with construction standards approved by the Township Engineer. The support structure must be located in proximity to other similar support structures within the right-of-way and cannot exceed them in height by more than five feet.
- C. ROW use agreement. Every provider who desires to construct, install or maintain wireless communication facilities in the ROW must enter into a right-of-way use agreement with the Township as a prerequisite to the issuance of ROW use permits.
- D. ROW use permit required. Every provider who constructs, installs or maintains a wireless communication facility in the ROW must obtain a ROW use permit for each such facility by making application to the Department of Building and Planning for each location and paying a fee therefor as prescribed in Chapter **A167**. A single application may request permits for multiple sites.

[Amended 1-19-2002 by Ord. No. 3629

- (1) Nature of grant. A use permit shall not convey title, equitable or legal, in the ROW. A use permit grants the right to occupy a ROW in the Township and may also grant the right to erect a new support structure.
 - (2) Support structure attachment agreement. If the antenna array is to be erected on a third party's support structure, the consent of the third party must be attached to the application. If the antenna array is to be erected on a Township support structure, the application shall include a request therefor. If granted, the provider must enter into a support structure attachment agreement with the Township and pay an annual fee for the use of the Township's facilities.
 - (3) Transfer of permit. Use permits may be transferred upon notification to the Township and acceptance by the transferee, but only to a provider who is a party to a current ROW use agreement with the Township.
 - (4) Term of use permits. Use permits shall have a one year term, automatically renewable, subject to then current code provisions and the payment of an annual user fee to the Township.
 - (5) Location. The Township shall refuse to issue a use permit if the proposed location of the wireless communication facility interferes with the use of the ROW by others or is contrary to public safety. The Township shall require a permitted wireless communication facility to be relocated at the permittee's expense if necessary to accommodate the location or relocation of the ROW facilities of the Township or a public utility or to protect the public safety.
- E. Equipment facility. In the event that any equipment facility of an outside volume exceeding eight cubic feet is installed in the ROW, such equipment facility must be installed so that the roof or lid is either below or is flush with local ground-level grade. All such equipment facilities shall be shown in the application. The Board of Commissioners may grant a waiver to this requirement, on a case-by-case basis, upon the applicant's showing of need, provided that the facility does not constitute an obstruction in the ROW which would endanger public safety.
- (1) Equipment cabinets of any size on a support base located outside of the ROW used in conjunction with a wireless communications facility within the ROW will not be considered a separate use of the property upon which they are located, except in a residentially zoned district.

§ 140- Wireless communication facilities within railroad right-of-way.

[Amended 1-19-2002 by Ord. No. 3629; 9-23-2009 by Ord. No. 3891

- A. Uses permitted. Any wireless communication facility is permitted in a railroad ROW.
- B. Support structure. The antenna array must be mounted on an attachment structure no more than 100 feet in height if within 150 feet of a residential zoning district. If elsewhere, it may be mounted on an attachment structure no more than 200 feet in height. In all cases, the construction must comply with standards approved by the Township Engineer.
- C. Building permit required. Every provider who constructs, installs or maintains a wireless communication facility in a railroad ROW must obtain a building permit for each such facility by making application to the Department of Building and Planning.
 - (1) Support structure attachment agreement. If the antenna array is to be erected on a third party's support or attachment structure, the consent of the third party must be attached to the application.
 - (2) Location. The Township shall refuse to issue a building permit if the proposed location of the wireless communication facility interferes with the use of a ROW by others or is contrary to public safety. The Township shall require a permitted wireless communication facility to be relocated at the permittee's expense if necessary to accommodate the location or relocation of ROW facilities of the Township or a public utility or to protect the public safety.
- D. Equipment facility. An equipment facility required for a wireless communications facility shall comply with the following requirements:
 - (1) The equipment facility must be located within the railroad right-of-way unless it complies with Subsection D(1)(a) and (b) below.
 - (a) The equipment facility may be located outside the railroad right-of-way, provided that such equipment is located in an adjacent public utility right-of-way/easement.
 - (b) Approval from the owner of the land on which the wireless equipment is located shall be obtained prior to installation of any equipment authorized under this section.
 - (2) All equipment facilities shall be screened from adjacent residential properties by a planted buffer that provides a total visual screen of any equipment. The buffer plantings shall be installed and maintained by the wireless communication facility applicant.
 - (3) In the event that any equipment facility of an outside volume exceeding eight cubic feet is installed in the ROW, such equipment facility must be installed so that the roof or lid is either below or is flush with local ground level grade. All such equipment facilities shall be shown in the application. The Board of Commissioners may grant a waiver to this requirement, on a case-by-case basis, upon the applicant's showing of need.

§ 140- Wireless communication facilities outside right-of-way.

[Amended 1-19-2002 by Ord. No. 3631

- A. Attached micro facilities. A micro facility may be erected outside of a ROW on any attachment structure over 35 feet in height in compliance with Chapter 155, Zoning, upon application to the Director of Building and Planning. The provider's application shall include:
 - (1) The name, address and telephone number of the owner and lessee of the parcel of land upon which the micro facility is proposed to be situated. If the applicant is not the owner of the parcel of land or of the attachment structure, the written authorization of the owner shall be evidenced in the application.
 - (2)

The legal description, parcel number, block and unit number and address of the parcel of land upon which the micro facility is to be situated.

- (3) A description and illustration of the stealth design, which shall be subject to the approval of the Communication Facilities Committee.
- B.** Wireless communication facilities other than attached micro facilities. Wireless communication facilities other than attached micro facilities may be erected outside of a ROW in compliance with Chapter **155**, Zoning, upon application to the Director of Building and Planning. If a special exception is required by § 155-141.1.1, the application shall be made to the Zoning Officer. The provider's application shall include:
- (1) A scaled plan and a scaled elevation view and other supporting drawings, calculations and documentation showing the location and dimensions of the wireless communication facility and all improvements associated therewith, including information concerning attachment structure specifications, antenna locations, equipment facility, landscaping, fencing and, if relevant, topography, adjacent uses and existing vegetation.
 - (2) The name, address and telephone number of the owner and lessee of the parcel of land upon which the wireless communication facility is proposed to be located. If the applicant is not the owner of the parcel of land or of the attachment structure, the written authorization of the owner shall be evidenced in the application.
 - (3) The legal description, parcel number, block and unit number and address of the parcel of land upon which the wireless communication facility is to be situated.
 - (4) A description and illustration of the stealth design, which shall be subject to the approval of the Communication Facilities Committee. In order to assist the Township in evaluating visual impact, the applicant shall submit with its application color photo simulations showing the proposed site of the wireless communication facility with a photo-realistic representation of the proposed wireless communication facility as it would appear viewed from the closest residential property, adjacent roadways and additional locations as necessary.
 - (5) Written, technical evidence from an Engineer acceptable to the Fire Marshal and the Director of Building and Planning that the proposed wireless communication facility does not pose a risk of explosion, fire or other danger to life or property due to its proximity to volatile, flammable, explosive or hazardous materials, such as LP gas, propane, gasoline, natural gas or corrosive or other dangerous chemicals.

§ 140- Payments to Township.

- A.** The fees, charges and rental prescribed by the Board of Commissioners and which must be paid for the installation and maintenance of a wireless communication facility in the Township are set forth in the Telecommunications Fee Schedule contained in Chapter **A167**, Fees, hereof.
- B.** Application fee and escrow deposit.
 - (1) The applicant shall pay the Township an application fee as described in the Telecommunications Fee Schedule at the time of filing the application.
 - (2) An applicant seeking to install one or more wireless communication facilities outside the ROW shall also establish a single escrow deposit with the Township, as set forth in the Telecommunications Fee Schedule, out of which the Township will make payment of the fees and charges of those consultants and professional advisors as deemed necessary by the Township for the processing of the application. The applicant shall be requested to replenish the escrow if sufficient funds are not available to make such payments and shall make such additional payments within 10 business days of the request, in default of which the processing of any of applicant's applications shall be suspended. Failure to make such payment within 30 business days of the request shall result in all pending applications being rejected.
 - (3)

If requested, the Township shall supply the applicant with an itemized statement of the use of the escrow funds at the time any request for additional payment is made and at the time the escrow is closed out, at which time any balance in the account shall be returned.

- C. Payments and charges relating to the construction and maintenance of micro facilities in the ROW.
 - (1) For micro facilities installed in the ROW, the applicant must pay an annual ROW use fee as set forth in Chapter **A167**, Fees.
 - (2) For micro facilities located on Township owned attachment structures in the ROW, the applicant must also enter into a support structure attachment agreement with the Township and pay the Township the rental fees therefore described in the Telecommunications Fee Schedule.
 - (3) Other charges or fees may be applicable as set forth in Chapter **A167**, Fees, depending on the extent of use of ROW, and shall be calculated by the Township Manager or his/her designee in conjunction with the application review.
- D. Payments and charges applicable to wireless communication facilities on Township owned lands and attachment structures not in ROW. The Township Manager or his/her designee is authorized to negotiate the terms of a lease agreement and the appropriate rental for the use of Township owned lands and attachment structures. The availability of space on Township facilities shall be determined on a case-by-case basis and made available to providers on a first-come first-served basis. No building permit for a wireless communications facility will be issued with respect to Township property until the lease agreement has been accepted by the Township.
- E. Timing and place of payment. Unless otherwise agreed to in writing, all fees shall be paid in advance. Payments shall be delivered to the attention of the director of the permitting department.
- F. Taxes and assessments. To the extent taxes or other assessments are imposed by taxing authorities on the use of Township property as a result of an applicant's use or occupation of the ROW or of Township owned or leased property, the applicant shall be responsible for payment of such taxes, payable annually unless otherwise required by the taxing authority. No rental payment shall constitute a payment in lieu of any tax, fee or other assessment, except as specifically provided in this article or as required by applicable law.
- G. Interest on late payments. In the event that any fee is not actually received by the Township on or before the applicable date fixed in the use agreement, interest thereon shall accrue from such date until received at 15% per annum.

§ 140-1 Maintenance.

- A. Wireless communication facility providers shall at all times employ ordinary and reasonable care and install and maintain in use nothing less than the best available technology for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.
- B. Wireless communication facility providers shall install and maintain wireless communication facilities, wires, cables, fixtures and other equipment in substantial compliance with the requirements of the National Electric Code and all FCC, state and local regulations and in such manner that will not interfere with the use of other property.
- C. Wireless communication facilities shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not menace or endanger the life or property of any person.
- D. Noise. Wireless communication facilities shall be operated and maintained so as not to produce noise in excess of the applicable noise standards under state law or the Township code, except in emergency situations requiring the use of a backup generator, where the noise standards may be exceeded on a temporary basis.
- E.

In the event that the use of a wireless communication facility is discontinued, the owner shall provide written notice to the Township of its intent to discontinue use and the date when the use shall be discontinued. If such wireless communication facility is not removed within 90 days, the Township may remove it at the owner's expense.

- F. Inspections. The Township and/or its agents shall have authority to enter onto the property upon which a wireless communication facility is located at any time, upon reasonable notice to the provider (which notice shall provide an opportunity for the provider's supervision of such entry), for any purposes associated with the permitted use of the property, including, but not limited to, the purpose of determining whether the wireless communication facility complies with this article, Chapter 62, Building Construction, of the Lower Merion Township Code and all other construction standards provided by the Township's code and federal and state law.

§ 140-1 Decision on application.

- A. Within seven business days of receipt, the Township may return any incomplete application without taking action, but shall identify the missing documentation or information.
- B. If application is made to the Director of Building and Planning, the decision shall be in writing and shall be rendered within 30 days of the submission of a complete application. A decision to deny the application shall be preliminary and shall become final only after the applicant has received the preliminary decision and has been given 10 days within which to request a hearing before the Building and Planning Committee of the Board of Commissioners. If such a hearing is not requested, the decision shall become final at the end of the ten-day period. If a hearing is requested, a written record shall be made, and the Building and Planning Committee shall render a final, written decision supported by substantial evidence contained in the written record within 45 days of the close of the hearing.
[Amended 1-19-2002 by Ord. No. 3631]
- C. The Township reserves the right to deny any application on its merits and also where any one of the following conditions exist:
- (1) The applicant is not licensed by the Federal Communications Commission as a provider or is not authorized to conduct business in the Commonwealth of Pennsylvania; or
 - (2) The applicant has failed within the past three years to comply or is presently not in full compliance with the requirements of this article; or
 - (3) The applicant is in default of its obligation to pay to the Township fees imposed by this article.
- D. The placement of any wireless communication facility in an historic district or in a ROW adjacent thereto, must receive a certificate of appropriateness from the Board of Commissioners.

§ 140-1 Nonconforming wireless communication facilities.

Wireless communication facilities in existence on the date of the adoption of this article, which do not comply with the requirements of this article (nonconforming wireless communication facilities), are subject to the following provisions:

- A. Any provider maintaining a nonconforming wireless communication facilities in a ROW must enter into a ROW use agreement and secure a ROW use permit within 90 days of the enactment of this article. By doing so the provider may continue, but not expand, use of such facilities, except as provided in this section.
- B. Additional antenna array (belonging to the same or another provider) may be added to a nonconforming wireless communication facility in conformance with the application procedures set forth in this article.
- C. Nonconforming wireless communication facilities which are hereafter damaged or destroyed due to any reason or cause may be repaired or restored at their former location, but must otherwise comply with the Township Code.
- D. A provider may replace, repair, rebuild and/or expand its wireless communication facility in order to improve the structural integrity of the facility, to allow the facility to accommodate collocated antennas or facilities or to

upgrade the facility to current engineering, technological or communication standards without having to conform to the provisions of this article, so long as such facilities are not increased in height by more than 10% and/or setbacks are not decreased by more than 10%.

§ 140-1 **Violations and penalties.**

- A. Any person who shall erect, construct, reconstruct, alter, repair, convert, attach or maintain any wireless communication facility in violation of any of the terms of this article, or who, being the owner or agent of the owner of any lot, tract or parcel of land, shall suffer or permit another to erect, construct, reconstruct, alter, repair, convert, attach or maintain any such facility, shall be deemed to have violated the provisions hereof and shall be subject to a fine of up to \$600 per day during the period such violation shall exist, collected as like fines or penalties are by law collected.
- B. If any wireless communication facility is erected, constructed, reconstructed, altered, repaired, converted, attached or maintained in violation of this article or of any regulations made pursuant hereto, the proper officer of the Township, in addition to other remedies, may institute in the name of the Township any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, attachment or use, to restrain, correct or abate such violation, to prevent the use of such facility and/or to prevent any illegal act, conduct, business or use in or about such facility.

§ 140-1 **(Reserved)**

Article II: Cable Television Franchises

[Adopted 10-20-1999 by Ord. No. 3545]

§ 140-1 **Intent.**

- A. The Township of Lower Merion (Township), pursuant to applicable federal and state law, is authorized to grant one or more nonexclusive franchises to construct, operate, maintain and reconstruct cable systems within the Township limits.
- B. The Board of Commissioners finds that the development of cable systems has the potential of benefiting the residents of the Township. Because of the complex and rapidly changing technology associated with cable television, the Board of Commissioners further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the Township or such persons as the Township shall designate.
- C. The Board of Commissioners finds that the Township's residents would benefit from educational and public services through cable systems.
- D. The Board of Commissioners finds that the cable industry is in a period of rapid growth and should proceed in accord with regional service objectives.
- E. The Board of Commissioners finds that there is a need to develop a Township cable policy; to promote that rapid development of the cable communications industry responsive to community and public interest; to assure that cable operators provide adequate, economical and efficient service to their subscribers; and to assure channel availability for municipal services, educational television, program diversity and local expression.
- F. It is the intent of this article and subsequent amendments to provide for and specify the means to attain the best possible cable service to the public. Any franchises issued pursuant to this article shall be deemed to include this finding as an integral part thereof.

§ 140-1 Definitions.

For the purpose of this article, the following terms, phrases, words and their derivations shall have the meaning given herein. 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. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this § 140-16. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

ADVISORY COMMITTEE

The Cable Television Evaluation and Advisory Committee of the Township of Lower Merion, Pennsylvania.

BASIC CABLE SERVICE

Shall have the meaning given in 47 U.S.C. § 522(3), as it may be amended from time to time. Currently, this provision defines basic cable service as any service tier which includes the retransmission of local television broadcast signals.

BOARD or BOARD OF COMMISSIONERS

The Board of Commissioners of the Township of Lower Merion, Pennsylvania.

CABLE ACT

The Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-611 (1982 and Supp. V 1987)) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), and as may, from time to time, be amended.

CABLE SERVICE

Shall have the meaning given in 47 U.S.C. § 522(6), as it may be amended from time to time. Cable service shall also include any additional services as defined in the franchise agreement. Currently, 47 U.S.C. § 522(6) defines cable service as:

- A. The one-way transmission to subscribers of video programming or other programming service; and
- B. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

CABLE SYSTEM or SYSTEM

Shall have the meaning given in 47 U.S.C. § 522(7), as it may be amended from time to time. Currently, this provision defines cable system as a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

- A. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- B. A facility that serves subscribers without using any public rights-of-way;
- C. A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201-226, except that such facility shall be considered a cable system to the extent that such facility, whether on a common carrier basis or otherwise, is used in the transmission of video programming directly to subscribers; or
- D. A facility of an electric utility used solely for operating its electric utility system.

CHANNEL or CABLE CHANNEL

Shall have the meaning given in 47 U.S.C. § 522(4), as it may be amended from time to time. Currently, this provision defines channel as a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the Federal Communications Commission.

FRANCHISE

An initial authorization, or renewal thereof, issued by the Township, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of a cable system.

FRANCHISE AGREEMENT

A franchise granted pursuant to this article, containing the specific provisions of the franchise granted, including references, specifications, requirements and other related matters.

FRANCHISE FEE

Any tax, fee or assessment of any kind imposed by the Township or other governmental entity on a grantee or cable subscriber, or both, solely because of their status as such. The term "franchise fee" does not include any tax, fee or assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers); capital costs which are required by the franchise agreement to be incurred by the cable operator for public, educational or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or any fee imposed under Title 17 of the United States Code.

GRANTEE

Any person receiving a franchise pursuant to this article and its agents, employees, officers, designees or any lawful successor, transferee or assignee.

GROSS ANNUAL REVENUES

All revenues derived directly or indirectly by the grantee or an person in which the grantee has a financial interest from or in connection with the operation of the system and based on cable service, pursuant to a franchise granted hereunder, except it shall not include bad debt, sales tax or other taxes or charges imposed on the grantee in addition to its franchise fee and other franchise obligations and collected for direct pass through to state or federal government.

INSTALLATION

The connection of the system to subscribers' terminals, and the provision of cable service.

INSTITUTIONAL NETWORK

Dedicated capacity and equipment, both upstream and downstream, to provide video, voice and data communication services to nonresidential users.

INTERNET SERVICES

The provision of cable modem service and transport over the cable system of Internet and other high-speed data communications.

NORMAL BUSINESS HOURS

The hours during which most businesses in the community are open to serve customers. In addition, normal business hours must include some evening hours at least one night per week and/or some weekend hours.

NORMAL OPERATING CONDITIONS

Those service conditions which are within the control of the grantee. Those conditions which are not within the control of the grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions and significant legislative or regulatory requirements. Those conditions which are ordinarily within the control of the grantee include, but are not limited to, special promotions, regular peak or seasonal demand periods and maintenance or upgrade of the system.

PERSON

Any natural person or any association, firm, individual, government, school, partnership, joint stock company, joint venture, trust, corporation, limited liability company or other legally recognized entity, private or public, whether for-profit or not-for-profit.

PUBLIC, EDUCATIONAL OR GOVERNMENTAL (PEG) ACCESS

- A. Channel capacity designated for noncommercial public, educational or governmental use; and
- B. Facilities and equipment for the use of such channel capacity.

SECTION

Any section, subsection or provision of this article.

SERVICE AREA or FRANCHISE AREA

The entire geographic area within the Township as it is now constituted or may in the future be constituted, unless otherwise specified in the franchise agreement.

SERVICE INTERRUPTION

The loss of picture or sound on one or more cable channels affecting at least 10% of the subscribers on the system.

STATE

The Commonwealth of Pennsylvania.

STREET

Each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Township limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the Township shall permit to be included within the definition of street from time to time.

SUBSCRIBER

Any person who or which lawfully elects to subscribe to, for any purpose, cable service provided by the grantee by means of or in connection with the cable system and who pays the charges therefore, except such persons or entities authorized to receive cable service without charge as described in the franchise agreement.

TELECOMMUNICATIONS ACT

The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. § 251 et seq.), as may be amended from time to time.

TOWNSHIP

The Township of Lower Merion, Pennsylvania, as represented by the Board of Commissioners or any delegate acting within the scope of its jurisdiction.

§ 140-1 Franchise to install and operate.

A franchise granted by the Township under the provisions of this article shall encompass the following purposes:

- A. To engage in the business of providing cable service, and such other services as may be permitted by the franchise agreement.
- B. To erect, install, construct, repair, rebuild, reconstruct, replace, maintain and retain cable lines, related electronic equipment, supporting structures, appurtenances and other property in connection with the operation of a cable system in, on, over, under, upon, along and across streets or other public places within the designated service area.
- C. To maintain and operate said franchise properties for the origination, reception, transmission, amplification and distribution of television and radio signals for the delivery of cable services and any other services permitted by the franchise agreement.
- D. To set forth the obligations of a grantee under the franchise agreement.
- E. This article does not authorize the provision of telecommunication services, as that term is defined by the Telecommunications Act. Such services shall be governed by a separate telecommunications ordinance based on

the authority granted the Township by the Telecommunications Act and any terms specified by a franchise agreement. However, it is recognized that many services may not clearly fit within a standard definition of telecommunications services. For this reason, the Township reserves the right to agree to services, offered by a grantee, as cable service and include in the definition cable service in a franchise agreement made pursuant to this article.

§ 140-1 Franchise required.

It shall be unlawful for any person to construct, install or operate a cable system or to provide cable services in the Township within any street or public rights-of-way without a properly granted franchise awarded pursuant to the provisions of this article.

§ 140-1 Initial franchise applications.

- A. Any person desiring an initial franchise for a cable system shall file an application with the Township. A reasonable nonrefundable application fee established by the Township shall accompany the application or renewal application. Such application fee shall not be deemed a "franchise fee" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), and such payments shall not be deemed to be "payments in kind" or any involuntary payments chargeable against the compensation to be paid to the Township by the grantee pursuant to § 140-29 hereof and applicable provisions of a franchise agreement or part of the compensation to be paid to the Township by the grantee pursuant to § 140-29 hereof and applicable provisions of a franchise agreement.
- B. An application for an initial franchise for a cable system shall contain, where applicable:
 - (1) A description of the proposed franchise and service area, office location, personnel and maintenance and a schedule of construction of the cable system.
 - (2) A resume of prior history of the applicant, including the legal, technical and financial qualifications of the applicant to construct, install and operate a cable system, to provide cable services and to fulfill the Township's needs as determined by the Township.
 - (3) A list of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each shareholder, if a corporation.
 - (4) A list of officers, directors and managing employees of the applicant, together with a description of the background of each such person.
 - (5) The names and addresses of any parent or subsidiary of the applicant or any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant.
 - (6) A current financial statement of the applicant verified by a CPA audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the Township.
 - (7) A proposed construction and service schedule.
 - (8) Any additional information that the Township deems applicable.

§ 140-2 Consideration of initial applications.

- A. Upon receipt of any application for an initial franchise, the Township Manager shall prepare a report and make his recommendations respecting such application to the Board of Commissioners. In addition to consideration of an applicant's legal, technical and financial qualifications, consideration will be given to the applicant's proposal for services, needs of the Township and the effect, if any, on rights-of-way and public property.
- B. A public hearing shall be set prior to any initial franchise grant, at a time and date approved by the Board of Commissioners. Within 30 days after the close of the hearing, the Board shall make a decision based upon the

evidence received at the hearing as to whether or not the franchise(s) should be granted and, if granted, subject to what conditions. The Board may decline to grant any franchise.

§ 140-2 Nonexclusive franchise.

Any franchise granted shall be nonexclusive. The Township reserves the right to grant, at any time, such additional franchises for a cable system or any component thereof, as it deems appropriate, subject to applicable state and federal law; provided, however, that no franchise shall be granted on terms materially less burdensome or more favorable than those in the franchise granted hereunder pertaining to the area served; public, educational and governmental access requirements; or franchise fees. This prohibition shall not apply when the area in which the additional franchise is being sought is not actually being served by any existing cable company holding a franchise for the area.

§ 140-2 Multiple franchises.

- A. The Township may grant one or more franchises for a service area. The Township may, in its sole discretion, limit the number of franchises granted based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations, such as:
 - (1) The capacity of the public rights-of-way to accommodate multiple-fiber and coaxial cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewerage.
 - (2) The impact on the community of having multiple franchises.
 - (3) The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property and the disruption arising from numerous excavations of the rights-of-way.
 - (4) The financial capabilities of the applicant and its guaranteed commitment to make necessary investments to erect, maintain and operate the proposed system for the duration of the franchise term.
- B. Each grantee awarded a franchise to serve the entire Township shall offer service to all residences in the Township, in accordance with construction and service schedules mutually agreed upon between the Township and the grantee, and consistent with applicable law.
- C. The Township may require that any new grantee be responsible for its own underground trenching and the costs associated therewith if, in the Township's opinion, the rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.
- D. Any additional franchise granted by the Township to provide cable service in a part of the Township in which a franchise has already been granted and where an existing grantee is providing service shall require the new grantee to provide service throughout its service area within a reasonable time and in a sequence which does not discriminate against lower-income residents.

§ 140-2 Franchise term and renewal.

- A. A franchise granted hereunder shall be for a term established in the franchise agreement.
- B. Franchise renewals shall be in accordance with applicable law, including, but not necessarily limited to, the Cable Act. The Township and the grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.

§ 140-2 Purchase by Township upon expiration or revocation.

- A. If, subject to the provisions of the Cable Act, a renewal of a franchise is denied, the Township may purchase, to the extent permitted by local law and upon payment to the grantee of the cable system's fair market value as a going concern, exclusive of any value allocated to the franchise itself, that portion of grantee's cable system serving the Township.

- B. Pursuant to the Cable Act, if a franchise is revoked for cause, the Township may, to the extent permitted by local law, acquire that portion of the cable system serving the Township upon payment of an equitable price.

§ 140-2 Franchise territory.

Any franchise shall be valid within all the territorial limits of the Township, and within any area added to the Township during the term of the franchise, unless otherwise specified in the franchise agreement.

§ 140-2 Federal, state and Township jurisdiction.

- A. This article shall be construed in a manner consistent with all applicable federal and state laws, including rules of regulatory agencies.
- B. In the event that the state or federal government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, the Township may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law.
- C. This article shall apply to all cable franchises granted or renewed after the effective date of this article. It shall further apply to the extent permitted by applicable federal or state law to all existing franchises granted prior to the effective date of this article.
- D. Grantee's rights are subject to the police powers of the Township to adopt and enforce ordinances necessary to the health, safety and welfare of the public. The grantee shall comply with all applicable general laws and ordinances enacted by the Township pursuant to that power.
- E. The Township, may modify this article only to the extent that its powers are expanded by applicable federal law or pursuant to its police powers.
- F. The grantee shall not be relieved of its obligation to comply with any of the provisions of this article or any franchise granted pursuant to this article by reason of any failure of the Township to enforce prompt compliance.

§ 140-2 Change in ownership or control of franchise.

- A. The grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, the franchise and/or cable system or any of the rights or privileges granted by the franchise, without the prior consent of the Township's Board of Commissioners, which consent shall not be unreasonably denied or delayed and shall be denied only upon a good faith finding by the Township that the proposed transferee lacks the legal, technical or financial qualifications to perform its obligations under the franchise agreement. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise and/or cable system without the consent of the Board of Commissioners shall be null and void. This provision shall not apply to sales or leases of property or equipment in the normal course of business. No consent from the Township shall be required for a transfer in trust, mortgage or other instrument of hypothecation, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership or other entity controlling, controlled by or under common control with the grantee.
- B. The following events shall be deemed to be a sale, assignment or other transfer of the franchise and/or cable system requiring compliance with this section: the sale, assignment or other transfer of all or a majority of the grantee's assets; the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in the grantee by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in the grantee; the issuance of additional capital stock or partnership, membership or other equity interest by the grantee so as to create a new controlling interest in the grantee; and the entry by the grantee into an agreement with respect to the management or operation of the grantee and/or the system. The term "controlling interest" as used herein means majority equity ownership of the grantee.
- C. In the case of any sale or transfer of ownership of any franchise and/or cable system, the Township shall have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such

information as is required in accordance with Federal Communications Commission regulations, the requirements of this article and such information required by the franchise agreement. If the Township fails to render a final decision on the request within 120 days from receipt by the Township of all required information, such request shall be deemed granted unless the requesting party and the Township agree to an extension of time.

- D. The grantee shall notify the Township in writing of any foreclosure or any other judicial sale of all or a substantial part of the franchise property of the grantee or upon the termination of any lease or interest covering all or a substantial part of said franchise property. Such notification shall be considered by the Township as notice that a change in control of ownership of the franchise has taken place and the provisions under this section governing the consent of the Township to such change in control of ownership shall apply.
- E. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Township may inquire into the qualifications of the prospective transferee or controlling party, and grantee shall assist the Township in any such inquiry. In seeking the Township's consent to any change of ownership or control, the grantee shall have the responsibility of ensuring that the transferee completes an application in form and substance reasonably satisfactory to the Township, which application shall include the information required under state and federal law as well as under Subsections **A** through **H** of § **140-19** of this article. An application in the form of FCC Form 394, plus such additional information as described in § **140-19A** through **H** shall be submitted to the Township within a time period sufficient to allow the Township not less than 120 days for review and approval/disapproval. The transferee shall be required to establish that it possesses the legal, technical and financial qualifications to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If, after considering the legal, financial, character and technical qualities of the applicant and determining that they are satisfactory, the Township finds that such transfer is acceptable, the Township shall transfer and assign the rights and obligations of such franchise. The consent of the Township to such transfer shall not be unreasonably denied.
- F. Any financial institution having a pledge of the grantee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the Township that it or its designee, satisfactory to the Township, shall take control of and operate the cable system in the event of a grantee default in its financial obligations. Further, said financial institution shall also submit a plan for such operation within 30 days of assuming such control that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year unless extended by the Township in its discretion, and during said period of time it shall have the right to petition the Township to transfer the franchise to another grantee.

§ 140-2 **Geographical coverage.**

- A. The grantee shall design, construct and maintain the cable system to have the capability to serve every dwelling unit, including multiple-dwelling units, commercial establishments and government buildings in the service area, subject to any line extension requirements of the franchise agreement.
- B. After service has been established by activating trunk and/or distribution cables for any part of the service area, the grantee shall provide cable service to any requesting subscriber within that service area within 30 days from the date of request, provided that the grantee is able to secure all rights-of-way necessary to extend service to such subscriber within such thirty-day period on reasonable terms and conditions.

§ 140-2 **Franchise fee.**

- A. Following the issuance and acceptance of a franchise, the grantee shall pay to the Township a franchise fee in the amount set forth in the franchise agreement.
- B. The Township, on an annual basis, shall be furnished a statement within 60 days of the close of the calendar year, certified by an officer of the grantee or audited by a Certified Public Accountant, reflecting the total amounts of gross annual revenues and all payments and computations for the previous calendar year. Upon 10 days prior written notice, the Township shall have the right to conduct an independent audit of the grantee's records, limited

to the previous three full calendar years, in accordance with generally accepted accounting principles. If such audit indicates a franchise fee underpayment of 5% or more, the grantee shall assume the costs of such an audit up to \$4,000.

- C. Except as otherwise provided by law, no acceptance of any payment by the Township shall be construed as a release or as an accord and satisfaction of any claim the Township may have for further or additional sums payable as a franchise fee under this article or any franchise agreement or for the performance of any other obligation of the grantee if the Township deems that the grantee withheld information relating to or affecting the franchise fee.
- D. In the event that any franchise fee payment or recomputed amount is not made on or before the dates specified in the franchise agreement, the grantee shall pay as additional compensation an interest charge, computed from such due date, at an annual rate equal to the prime lending rate plus 1 1/2% during the period for which payment was due.
- E. Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement.

§ 140-3 Design and construction requirements.

- A. The grantee shall not construct any cable system facilities until the grantee has secured the necessary permits from the Township or other cognizant public agencies.
- B. In those areas of the Township where transmission or distribution facilities of all the public utilities providing telephone and electric power service are underground, the grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.
- C. In those areas of the Township where the grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the grantee likewise shall construct, operate and maintain its transmission and distribution facilities underground, at the grantee's cost. Certain of the grantee's equipment, such as pedestals, amplifiers and power supplies, which normally are placed above-ground, may continue to remain in above-ground closures.
- D. Any cable operator wishing to serve an area where the trenches have been closed shall be responsible for its own trenching and associated costs and shall repair all property to the condition which existed prior to such trenching.
- E. In the event that more than one franchise is awarded, the Township reserves the right to limit the number of drop cables and/or pedestals per residence, or to require that the drop cable(s) and/or pedestals(s) be utilized only by the cable operator selected by the resident to provide service. The Township may, under circumstances and at locations where it deems it necessary for safety or aesthetic concerns, require pedestals or other equipment to be located underground or with enclosures suitable to the Township.

§ 140-3 Technical standards.

- A. The grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, Federal Communications Commission technical standards and any standards set forth in its franchise agreement. In addition, the grantee shall provide to the Township, upon request, a written report of the results of the grantee's periodic proof of performance tests conducted pursuant to Federal Communications Commission standards and guidelines.
- B. Repeated and verified failure to maintain specified technical standards shall constitute a material franchise violation.
- C. All construction practices shall be in accordance with all applicable provisions of the Occupational Safety and Health Act of 1970, as amended, and as it may be amended from time to time, as well as all other applicable local, state and federal laws and regulations.
- D. All installation of electronic equipment shall be installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code, as amended, and as may from time to time be amended.

- E. Antennas and their supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable local, state and federal laws and regulations.
- F. All of the grantee's plant and equipment, including, but not limited to, the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the Township may deem appropriate to make or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.
- G. The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage or injury to the public.

§ 140-3 Consumer protection and service standards.

Except as otherwise provided in the franchise agreement, the grantee shall maintain a local office or offices to provide the necessary facilities, equipment and personnel to comply with the following consumer protection standards under normal operating conditions:

- A. Customer service center.
 - (1) The grantee agrees to maintain a regional customer service center staffed 24 hours a day, seven days a week. Voice mail and automated equipment alone do not fulfill this requirement. In addition, the grantee agrees to maintain a local bill payment location which will be open at least during normal business hours.
 - (2) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90% of the time under normal operating conditions, measured on a quarterly basis.
 - (3) The grantee will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
 - (4) Under normal operating conditions, the customer will receive a busy signal less than 3% of the time.
- B. Installations, outages and service calls. Under normal operating conditions, each of the following standards will be met no less than 95% of the time measured on a quarterly basis:
 - (1) Standard installations will be performed within seven business days after an order has been placed. Standard installations are those that are located up to 125 feet from the existing distribution system.
 - (2) Under normal operating conditions, the grantee will begin working on service interruptions promptly and in no event later than 24 hours after the interruption becomes known. The grantee must begin actions to correct other service problems the next business day after notification of the service problem.
 - (3) At the subscriber's request, the appointment window alternatives for installations, service calls and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. The grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.
 - (4) If the grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer must be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

- (5) Any grantee representative or subcontractor making a service call to a customer's home or business to perform a service, such as installation, repair or disconnection, must wear identifying apparel and must carry identification clearly identifying such person as a representative or subcontractor of the grantee.

C. Communications between grantee and subscribers.

(1) Notifications to subscribers.

- (a) The grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- [1] Products and services offered.

- [2] Prices and options for programming services and conditions of subscription to programming and other services.

- [3] Installation and service maintenance policies.

- [4] Instructions on how to use the cable service.

- [5] Channel positions.

- [6] Programming carried on the system.

- [7] Billing and complaint procedures, including the address and telephone number of the Township's cable office.

- (b) Subscribers will be provided effective notification in writing of any changes in rates, programming, services or channel positions at least 30 days in advance of such changes if the change is within the control of the grantee. The grantee's written notice shall include a comparison of current and proposed rates and charges and shall be included in each subscriber's bill. In addition, the grantee shall notify subscribers 30 days in advance of any significant changes in the other information required by the preceding paragraph. In the event that the grantee becomes subject to effective competition as defined by federal law, the Township may waive the notification requirements of this paragraph in order to allow the grantee to respond to competitive circumstances.

- (2) Compatibility information. In accordance with FCC rules contained in 47 C.F.R. § 76.630(d), each grantee must provide in writing a consumer information program on compatibility matters. Such information must be provided at the time of installation and at least annually to all subscribers, and at any time upon request. The grantee may choose the time and means by which it complies with this annual consumer information requirement. The information may be included in one of the grantee's regular subscriber billings. The consumer information program shall include the following information:

- (a) The grantee shall inform its subscribers that some models of television receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the cable system. In conjunction with this information, the grantee shall briefly explain the types of channel compatibility problems that could occur if subscribers connected their equipment directly to the cable system and offer suggestions for resolving those problems. Such suggestions could include, for example, the use of a cable system terminal device such as a set-top channel converter. The grantee shall also indicate that channel compatibility problems associated with reception of programming that is not scrambled or encrypted programming could be resolved through use of simple converter devices without descrambling or decryption capability that can be obtained from either the grantee or a third party retail vendor.

- (b) In cases where service is received through a cable system terminal device, the grantee shall indicate that subscribers may not be able to use special features and functions of their television receivers and videocassette recorders, including features that allow the subscriber to view a program on one channel

while simultaneously recording a program on another channel, record two or more consecutive programs that appear on different channels and use advanced picture generation and display features such as channel review and other functions that necessitate channel selection by the consumer device.

- (c) In cases where the grantee offers remote control capability with cable system terminal devices and other customer premises equipment that is provided to subscribers, it shall advise subscribers that remote control units that are compatible with that equipment may be obtained from other sources, such as retail outlets. The grantee shall also provide a representative list of the models of remote control units currently available from retailers that are compatible with the customer premises equipment they employ. The grantee must make a good faith effort in compiling this list and will not be liable for inadvertent omissions. This list shall be current as of no more than six months before the date the consumer education program is distributed to subscribers. The grantee must encourage subscribers to contact the grantee to inquire about whether a particular remote control unit the subscriber might be considering for purchase would be compatible with the subscriber's customer premises equipment.
 - (d) In cases where the grantee offers inside wire maintenance or another service program, the customer information program shall describe such program, including cost information.
- (3) Billing.
- (a) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. The grantee's telephone number shall be clearly displayed on bills.
 - (b) In case of a billing dispute, the grantee must respond to a written complaint from a subscriber within 30 days.
- (4) Refunds. Refund checks will be issued promptly, but no later than 30 days from resolution of the request.
- (5) Credits. Credits for service will be issued no later than 30 days from resolution of the request.
- (6) Complaints. The grantee shall submit a copy of all of its written responses to written subscriber complaints that the Township receives to the Township within 30 days of receipt of such complaint from the Township.
- (7) Nonpayment. A grantee must send at least two notices or statements notifying a subscriber of nonpayment before the grantee may have its representative telephone or otherwise attempt to personally contact the subscriber. The grantee must provide a subscriber with a forty-five-day grace period before terminating service due to nonpayment. The forty-five-day grace period begins running on the day the bill is due for payment.

§ 140-3 **Public, education and government access.**

The Township may require, as part of a franchise or franchise renewal, that a grantee designate channel capacity for public, educational or governmental use. The Township may require a grantee to provide funding, facilities and equipment for such public, educational or government access.

§ 140-3 **Institutional network.**

The Township may require, as part of a franchise or franchise renewal, that a grantee provide an institutional network, as defined in § 140-16 of this article, for governmental and educational use.

§ 140-3 **Rate regulation.**

The Township reserve the right to regulate rates for basic cable service, and any other services offered over the cable system, to the extent permitted by federal or state law. The grantee and the Township shall be subject to the rate regulation provisions promulgated by the Federal Communications Commission at 47 CFR, Part 76.900, subpart N.

§ 140-3 **Trimming of trees.**

The grantee shall have the authority to trim trees, in accordance with all applicable utility, ordinance and easement restrictions, upon and hanging over streets, alleys, sidewalks and public places of the Township so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee. The grantee shall notify the Township Department of Public Works prior to trimming any trees in the rights-of-way. Township representatives shall have authority to supervise and approve all trimming of trees conducted by the grantee.

§ 140-3 **Use of grantee facilities.**

The Township shall have the right to install and maintain, free of charge, upon the poles and within the underground conduits of the grantee, any wires and fixtures desired by the Township to the extent that such installation and maintenance does not interfere with existing operations of the grantee.

§ 140-3 **Indemnification.**

- A. The grantee, under any franchise operated pursuant to this article, shall agree to indemnify, hold harmless, release and defend the Township, its officers, boards, commissions, agents and employees from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, disability, losses or expenses, including reasonable attorneys' fees and costs or liabilities of any nature that may be asserted by any person resulting or in any manner arising from the action or inaction of the grantee in constructing, operating, maintaining, repairing or removing the system, or in carrying on the grantee's business or operations in the Township. This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors and omissions, theft, fire, violation or infringement of any copyright, trademark, trade names, service mark or patent or any other right of any person, firm or corporation, whether or not any act or omission complained of is authorized, allowed or prohibited by this article or any franchise agreement, but shall not include any claim or action arising out of the actions or omissions of Township officers, employees or agents or related to any Township programming or other access programming for which the grantee is not legally responsible.
- B. The Township shall promptly notify the grantee of any claims subject to indemnification by the grantee and shall cooperate with all reasonable requests by the grantee for information, documents, testimony or other assistance appropriate to a resolution of such claims. The grantee shall have full responsibility for and control of any action or undertaking directed at the resolution of such claims.

§ 140-3 **Insurance.**

Each grantee shall provide insurance as specified in its franchise agreement.

§ 140-4 **Security fund.**

Each grantee shall establish and provide to the Township a security fund, in an amount specified in the franchise agreement, as security for the performance of all material provisions of the franchise agreement.

§ 140-4 **Records required and Township's right to inspect.**

- A. The grantee shall at all times maintain:
 - (1) A full and complete set of plans, records and as-built maps showing the location of the cable system installed or in use in the Township, exclusive of subscriber service drops and equipment provided in subscribers' homes.
 - (2) If requested by the Township, a summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis. A summary of such service calls shall be submitted to the Township within 30 days following its request in a form reasonably acceptable to the Township.
- B. Upon 48 hours' written notice, and during normal business hours, the grantee shall permit examination by any duly authorized representative of the Township of all franchise property and facilities, together with any appurtenant

property and facilities of the grantee situated within or without the Township, and all records relating to the franchise, provided that they are necessary to enable the Township to carry out its regulatory responsibilities under local, state and federal law, this article and the franchise agreement. Such records include all books, records, maps, plans, financial statements, service complaint logs, performance test results, records of request for service and other like materials of the grantee. The grantee shall have the right to be present at any such examination.

- C. If any of the records described in the previous subsection are proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by the grantee, such information obtained during such an inspection shall be treated as confidential, making it available only to those persons who must have access to perform their duties on behalf of the Township, including, but not limited to, the Department of Finance, the Township Solicitor and the Board of Commissioners. To the extent any federal requirement for privacy applies to the information to be submitted, said law shall control.
- D. Copies of all petitions, applications, communications and reports submitted by the grantee or on behalf of or relating to the grantee to the Federal Communications Commission, the Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction with respect to any matters affecting the cable system authorized pursuant to this article and any franchise, shall be made available to the Township upon request. Copies of responses from the regulatory agencies to the grantee shall likewise be furnished to the Township upon request.

§ 140-4 Annual reports.

- A. The grantee shall submit a written end-of-the-year report to the Township upon request with respect to the preceding calendar year containing the following information:
 - (1) A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in the development of the cable system, including, but not limited to, services begun or discontinued during the reporting year.
 - (2) A list of the grantee's officers, members of its board of directors and other principals of the grantee.
 - (3) A list of stockholders or other equity investors holding 5% or more of the voting interest in the grantee.
 - (4) Information as to the number of subscribers and the number of basic and pay service subscribers.
- B. The Township, including its agents and representatives, shall have the authority, during normal business hours, to arrange for and conduct an inspection of documents pertaining to, referenced in or used to create the annual reports. The Township shall give the grantee 24 hours' written notice of the inspection request. If the requested information is proprietary in nature or must be kept confidential by state, federal or local law, upon proper request by the grantee, such information obtained during such an inspection shall be treated as confidential, making it available only to those persons who must have access to perform their duties on behalf of the Township, including, but not limited to, the Department of Finance, the Township Solicitor and the Board of Commissioners. To the extent any federal requirement for privacy applies to the information to be submitted, said law shall control.
- C. All reports and records required under this article shall be furnished at the sole expense of the grantee, except as otherwise provided in this article or the franchise agreement.

§ 140-4 Performance evaluation.

The Township may request evaluation and review sessions, as specified in each franchise agreement.

§ 140-4 Cable Television Evaluation and Advisory Committee.

- A. There shall be a citizen's committee entitled the Cable Television Evaluation and Advisory Committee (Advisory Committee). The responsibilities of the Advisory Committee include, but are not limited to, the following:

- (1) Monitor and advise the Township Board of Commissioners and Township administration on the performance of each grantee under the provisions of this article, a franchise agreement and all applicable federal and state laws and regulations.
 - (2) Serve as an advisory body with respect to the public, educational and government access channels and any institutional network programming and scheduling for the use of such. Encourage the use of the public access channels among the widest range of institutions, groups and individuals within the Township.
 - (3) Advise the Township of objectives to be obtained in the Township's cable system based upon its continued evaluation of the existing franchise(s), cable technology, performance of grantee(s) and the future cable-related needs and interests of the community.
 - (4) Prepare an annual report to the Board of Commissioners on the activities of the Advisory Committee, the performance of each grantee, complaints filed and the resolution and outcome of such complaints.
 - (5) Cooperate with the Township and each grantee in fulfilling its responsibilities herein.
 - (6) Develop a process for handling citizen complaints, including, but not limited to:
 - (a) Receiving, reviewing and investigating complaints.
 - (b) Conducting hearings to resolve complaints.
 - (c) Initiating franchise violation proceedings, including recommendations to the Board regarding the imposition of liquidated damages, as described in the grantee's franchise agreement.
 - (d) Appeals to the Township Hearing Officer.
- B. The composition and terms of Advisory Committee membership shall be as follows:
- (1) The Advisory Committee shall be composed of eight residents of the Township who shall be appointed by the Board of Commissioners and who shall serve without compensation.
[Amended 1-19-2000 by Ord. No. 3555]
 - (2) On the expiration of the term of any Advisory Committee member, a successor shall be appointed by the Board to serve for a term of three years.
 - (3) A vacancy in the office of an Advisory Committee member shall be filled by the Board for the unexpired term.
 - (4) The members of the Advisory Committee shall by majority vote elect a Chairperson for a one-year term each year.
- C. Members of the Advisory Committee must be residents of the Township and should be representative of a cross section of the varied interests present in the Township. They shall not be directors, officers or employees of a grantee, a parent or subsidiary corporation of a grantee or in firms or corporations which do business with a grantee. Members of the Advisory Committee must have a personal interest in cable television or in the fields of information, communications or entertainment. Knowledge of cable television engineering is not necessary.
- D. The grantee's general manager or his/her designated representative is expected to attend all regularly scheduled meetings of the Advisory Committee.

§ 140-4 Franchise violation.

- A. If the grantee fails to perform in a timely manner any material obligation required by this article or a franchise granted hereunder, following notice from the Township and an opportunity to cure such nonperformance, the Township may act to remedy such violation in accordance with the following procedures:
- (1)

The Township shall notify the grantee of any alleged material violation in writing, by personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than 10 days in the case of the failure of the grantee to pay any sum or other amount due the Township under this article or the grantee's franchise and 30 days in all other cases.

- (2) If the grantee fails either to correct the violation within the time prescribed or to commence correction of the violation within the time prescribed and thereafter diligently pursue correction of such violation, the Township shall then give written notice of not less than 20 days of a public hearing to be held before the Board of Commissioners. Said notice shall specify the violations alleged to have occurred.
 - (3) At the public hearing, the Board shall hear and consider relevant evidence and thereafter render findings and its decision. In the event that the Board finds that a material violation exists and that the grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation after notice thereof from the Township and is not diligently proceeding to fully remedy such violation, the Board may revoke the franchise or impose any other penalty permitted by the franchise agreement.
- B. The grantee may appeal a declaration of default or revocation to arbitration within 30 days of receiving default notification. Arbitration shall be optional. Any arbitration held pursuant to this franchise shall be conducted in accordance with the rules of the American Arbitration Association. Parties shall appoint an arbitrator within 15 days of arbitration. Each party shall be afforded due process rights, including the right to introduce evidence and call witnesses. The cost of arbitration, exclusive of attorneys' fees, shall be borne equally by the parties.

§ 140-4 Force majeure; grantee's inability to perform.

In the event that the grantee's performance of any of the terms, conditions or obligations required by this article or a franchise granted hereunder is prevented by a cause or event not within the grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of the grantee shall include without limitation acts of God, strikes, sabotage, riots or civil disturbances, acts or orders of a governmental agency or court, failure or loss of utilities, utility facilities, explosions, acts of public enemies, significant regulatory or legislative developments and natural disasters such as floods, earthquakes, landslides and fires. Within 30 days of the grantee's discovery of an event causing delay or failure, the grantee shall provide the Township written notice describing the cause and estimating the period of time in which such delay or nonperformance will be cured.

§ 140-4 Abandonment or removal of franchise property.

- A. In the event that the use of any property of the grantee within the franchise area or a portion thereof is discontinued for a continuous period of 12 months, the grantee shall be deemed to have abandoned that franchise property.
- B. The Township, upon such terms as the Township may impose, may give the grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the franchise. Unless such permission is granted or unless otherwise provided in this article, the grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from the Township and shall restore any affected street to its former state at the time such facilities and equipment were installed, so as not to impair its usefulness. In removing its plant, structures and equipment, the grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The Township shall have the right to inspect and approve the condition of the public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this article and any security fund provided in the franchise shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this section.
- C.

Upon abandonment of any franchise property in place, the grantee, if required by the Township, shall submit to the Township an instrument, satisfactory in form to the Township, transferring to the Township the ownership of the franchise property abandoned.

- D. At the expiration of the term for which the franchise is granted, or upon its revocation or earlier expiration, as provided for herein, in any such case without renewal, extension or transfer, the Township shall have the right to require the grantee to remove, at its own expense, all above-ground portions of the cable system from all streets and public ways within the Township within a reasonable period of time, which shall not be less than 180 days.
- E. Notwithstanding anything to the contrary set forth in this article, the grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable grantee.

§ 140-4 Extended operation and continuity of services.

Upon either expiration or revocation of the franchise, the Township shall have the discretion to require the grantee to continue to operate the cable system for an extended period of time not to exceed six months from the date of such expiration or revocation. The grantee shall continue to operate the system under the terms and conditions of this article and the franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time.

§ 140-4 Receivership and foreclosure.

- A. A franchise granted hereunder shall, at the option of the Township, cease and terminate 120 days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of the grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless such receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this article and the franchise granted pursuant hereto, and the receivership or trustees within said 120 days shall have remedied all the faults under the franchise or provided a plan for the remedy of such faults which is satisfactory to the Township; and such receivers or trustees shall, within said 120 days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise granted.
- B. In the case of a foreclosure or other judicial sale of the franchise property, or any material part thereof, the Township may serve notice of termination upon grantee and the successful bidder at such sale, in which event the franchise granted and all rights and privileges of the grantee hereunder shall cease and terminate 30 days after service of such notice, unless the Township shall have approved the transfer of the franchise, as and in the manner that this article provides; and such successful bidder shall have covenanted and agreed with the Township to assume and be bound by all terms and conditions of the franchise.

§ 140-5 Rights reserved to Township.

- A. In addition to any rights specifically reserved to the Township by this article, the Township reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the franchise.
- B. The Township shall have the right to waive any provision of the franchise, except those required by federal or state regulation, if the Township determines that it is in the public interest to do so and that the enforcement of such provision will impose an undue hardship on the grantee or the subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the Township. Waiver of any provision in one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the franchise unless the statement so recites.

§ 140-5 Rights of individuals.

- A. The grantee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age, gender or sexual preference. The grantee shall comply at all times with all other applicable federal, state and local laws and regulations relating to nondiscrimination.
- B. The grantee shall adhere to the applicable equal employment opportunity requirements of federal, state and local regulations, as now written or as amended from time to time.
- C. Neither the grantee nor any person, agency or entity shall, without the subscriber's consent, tap or arrange for the tapping of any cable, line, signal input device or subscriber outlet or receiver for any purpose except routine maintenance of the system, defection of unauthorized service, polling with audience participating or conducting audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified.
- D. In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, the grantee shall take reasonable steps to prevent the invasion of a subscribers' or general citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable law. The grantee shall not, without lawful court order or other applicable valid legal authority, utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.
- E. No cable line, wire amplifier, converter or other piece of equipment owned by the grantee shall be installed by the grantee in a subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon the subscriber's property shall be presumed. Where a property owner or his predecessor has granted an easement, including a public utility easement or a servitude to another and the servitude by its terms is compatible with a use such as grantee's intended use, the grantee shall have access to the easement for the installation of cable television equipment as provided for under federal, state and local law.

§ 140-5 Conflicts.

In the event of a conflict between any provision of this article and a franchise agreement entered pursuant to it, the provisions of this article shall control, except as may be specifically otherwise provided in the franchise agreement.

§ 140-5 Severability.

If any provision of this article is held by any court or federal or state agency of competent jurisdiction to be invalid as conflicting with any federal or state law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct and independent part of this article, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof which had been held invalid or modified is no longer in conflict with such law, rule or regulation, said provision shall thereupon return to full force and effect and shall thereafter be binding on the Township and the grantee, provided that the Township shall give the grantee 30 days' written notice of such change before requiring compliance with said provision or such longer period of time as may be reasonably required for the grantee to comply with such provision.