

#29

AN ORDINANCE OF THE
TOWNSHIP OF ROLLIN, MICHIGAN

GRANTING A CABLE TELEVISION FRANCHISE TO

WESTMARC DEVELOPMENT JOINT VENTURE

(Commonly known as AT&T Broadband)

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ORDINANCE NO. 29

An Ordinance of the Township of Rollin Granting a Franchise to WestMarc Development Joint Venture for the Construction and Operation of a Cable System.

The Township of Rollin, having determined that the financial, legal, and technical ability of WestMarc Development Joint Venture is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable related needs of the community, does hereby ordain as follows:

CABLE TV ORDINANCE

Section I

Terms

For the purpose of this Ordinance, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

1.1 “**Access**” Access means the use by various agencies, institutions, organizations, grounds and individuals in the community, including the Township and its designees, or the Cable System to acquire, create and cablecast programming not under the editorial control of the Grantee. Access includes, but is not limited to:

- (a) “**Public access**” means organizations, groups, or individual members of the general public, on a first come, first-served basis, are the primary or designated programmers or users.
- (b) “**Educational access**” means education institutions are the primary or designated programmers or users.
- (c) “**Government access**” means governmental institutions or their designees are the primary or designated programmers or users.
- (d) “**PEG access**” means collectively to Public access, Educational access, and Government access.
- (e) “**Access Channel**” means any channel or portion of a channel made available for access purposes or otherwise made available for the transmission of access programming.
- (f) “**Community Access Channel**” means any channel or portion of a channel utilized for access purposes in whole or in part.

(g) "**Educational Access Channel**" means any channel or portion of a channel, not under the editorial control of Grantee, on which educational institutions or their designees are the primary, programmers or users designated by the Township.

(h) "**Government Access Channel**" means any channel or portion of a channel not under the editorial control of Grantee, on which government agencies are the only designated programmers.

1.2 "**Affiliate**" means an entity which owns or controls, is owned or controlled by, or in under common ownership with Grantee.

1.3 "**Basic Cable**" means the tier of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals and PEG Access.

1.4 "**Broadcast signal**" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System off-the-air by antenna, microwave, satellite or any other means.

1.5 "**Cable Act**" means the Cable Communications Policy Act of 1984, as amended.

1.6 "**Cable Service**" means (i) the one-way transmission to Subscribers of video programming or other programming service, and (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or any other programming service.

1.7 "**Cable System**" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple customers within a community, but such term does not include (i) A facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) A facility that services customers without using any public way; (iii) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a Cable System (other than for purposes of Section 621(C) to the extent such facility is used in transmission of video programming directly to customers unless the extent of such use is solely to provide interactive on-demand services; (iv) An open video system that complies with Section 653 of Title VI of the Communications Act of 1934; or (v) Any facilities of any electric utility used solely for operating its electric utility system.

1.8 "**FCC**" means the Federal Communications Commission, or successor governmental entity.

1.9 "**Franchise**" means the initial authorization, or renewal thereof, issued by the Grantor, whether such authorization is designated as a franchise, permit, license,

resolution, contract, certificate or otherwise, which authorize the construction or operation of a cable system.

1.10 "Township", "Grantee" or "Franchising Authority" means the Township of Rollin or the lawful successor, transferee, or assignee thereof.

1.11 "Grantee or Company" means WestMarc Development Joint Venture or the lawful successor, transferee, or assignee thereof.

1.12 "Gross Revenues" shall mean all revenue received by the Grantee from the operation of the Cable System to provide Cable Services in the Township. The term shall not include (i) Any tax, fee or assessment or any kind imposed by the Township or other governmental entity on an cable operator, or customer, or both, solely because of their status as such; (ii) Any tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or customers (including any such tax, fee or assessment imposes, both on utilities and cable operators and their services); and (iii) Any other special tax, fee or assessment such as business, occupation and entertainment tax.

1.13 "Person" means an individual, partnership, association joint stock company, trust corporation, or governmental entity.

1.14 "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Township in the Service Area which shall entitle the Township and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement held by the Township within the Service Area for the purpose of public travel, or for utility or public services use dedicated for compatible uses, and shall include other easements of right-of-way as shall within their proper use and meaning entitle the Township and the Grantee to the use thereof for the purpose of installing or transmitting Grantee's Cable Service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

1.15 "Records" mean information needed to assure compliance with Franchise Ordinance.

1.16 "School" means any accredited public educational institution, including primary, and secondary schools, colleges, and universities.

1.17 "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.

1.18 "Service Tier" means a category of Cable Service or other services, provided by Grantee and for which a separate charge is made by Grantee.

1.19 "Subscriber" means a person who lawfully receives Cable Services or other service therefrom with Grantee's express permission.

1.20 "Township" means the Township of Rollin.

1.21 "Township Board" means the governing body of the Township.

1.22 "Video Programming" means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

1.23 "Year" (and "annual" and "annually") means a full calendar year, unless otherwise designated.

Section 2 Nature and Term of Grant

2.1 **Grant.** The Township grants to Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System and offer Cable Service in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for the purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary to appurtenant to the Cable System. Nothing in this Franchise shall be constructed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal, state or local law.

2.2 **Term.** The Franchise granted pursuant to this Ordinance shall be non-exclusive and for a term of fifteen (15) years from the effective date of the Franchise as set forth in this Ordinance, unless otherwise lawfully terminated in accordance with the terms of this Ordinance.

2.3 **Renewal.** Any renewal shall be subject to the provisions of the then applicable provisions of the U.S. Cable Communications Policy Act of 1984, as amended or such other Federal Law that may have superseded such act as of that time.

2.4 **Review.** In order to provide for a maximum degree of flexibility in this Franchise, the Township and Company agree that the following review provisions will apply:

- A. Township reserves the right to adopt rules and regulations controlling the procedures as set forth below and subjects for review sessions. In the

absence of any Township action taken to exercise these rights, Company shall be subject to at least the procedures and subjects described in this Section.

- B. Township may require review sessions within thirty (30) days of the 3rd and 6th anniversary dates of the effective date of this Franchise.
- C. All periodic review sessions shall be open to the public and notice of sessions published in the official newspaper of Township.
- D. Topics which may be discussed at any evaluation session include, but are not limited to application of new technologies, System performance, programming offered, facilities and support, municipal uses of cable, customer complaints, judicial rulings, FCC rulings, line extension policies and any other topics Township or Company deem relevant. However, Grantor and Grantee acknowledge that certain issues may be outside the regulatory scope of this Franchise.
- E. During a review by Township, Company shall fully participate and cooperate with Township and shall provide without cost such information and documents as Township may reasonably request to perform the review. Such review will be performed by the Township at its own cost.
- F. As a result of a periodic review session, Township and Company may agree, only by mutual consent, to modify or otherwise revise the Franchise.

2.5 Acceptance; Effective Date. Grantee shall accept its Franchise by signing this Ordinance and filing same with the Township Clerk or other appropriate official or agency of the Franchising Authority within forty-five (45) days after the passage and final adoption of this Ordinance. Subject to the acceptance by Grantee, the effective date of this Ordinance shall be the thirtieth (30th) day after its passage and final adoption.

2.6 Franchise Area. The area of this Franchise shall be the entire territory included within the Township limits as such limits may change from time to time.

2.7 Charter and General Ordinances to Apply. This Franchise is subject to the general ordinance provisions passed pursuant thereto, affecting matters of general Township concern and not merely existing contractual rights of Grantee, now in effect or hereafter made effective. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the Township regarding permits, fees to be paid, or the manner of construction.

Section 3
Service and Technical Standards

3.1 Conditions of Street Occupancy. All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the convenience of property owners who own property that adjoins any of said Public Ways.

3.2 Restoration of Public Ways. If during the course of Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by Grantee, it shall, at its expense, forthwith replace and restore, such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance that is agreeable to the Franchising Authority.

3.3 Relocation at Request of Franchising Authority. Upon its receipt of reasonable advance notice, not to be less than ten (10) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water piper, or any other type of structures or improvements by the Franchising Authority; but, the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee, provided there is no cost to the Franchising Authority.

3.4 Relocation at Request of Third Party. The Grantee shall, on the request of any person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided; (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than fifteen (15) business days advance written notice to arrange for such temporary wire changes.

3.5 Trimming of Trees and Shrubbery. The Grantee shall, have the authority, after receiving consent from the Street Department for the Franchising Authority, to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. There shall be no charge for such service. The Grantee shall reasonably compensate the Franchising Authority or property owner for any damages caused by such trimming, or shall at its own cost and expense, reasonably replace all trees and shrubs damages as a result of any construction or maintenance of the system undertaken by Grantee.

3.6 Use of Grantee's Equipment by Franchising Authority. Subject to any applicable state or federal regulations or tariffs, the Franchising Authority shall have the right to make additional use, for any public purpose, of any poles or conduits controlled and maintained exclusively or by or for the Grantee in any Public Way; provided that (i) such use by the Franchising Authority does not interfere with a current or future use by the Grantee; (ii) the Franchising Authority holds the Grantee harmless against and from all claims, demands, costs or liabilities of every kind and nature including but not limited to, reasonable attorney fees and costs; and (iii) such use shall be at Grantee's cost to the Franchising Authority.

3.7 Safety Requirements. Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.

3.8 Aerial and Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided, that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, Grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any, part thereof, aerially or underground. Nothing contained in this Section 3.8 shall require Grantee to construct, operate, and maintain underground any, ground-mounted appurtenance such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary, contained in this Section 3.8, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Ordinance, Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground. The Grantee will build underground unless the Township gives the Grantee a waiver for aerial construction.

3.9 Required Extensions of Service. Grantee shall extend the Cable System to any person requesting such service in the territorial limits of the Township. Subscriber must pay the Grantee the cost of materials and labor for that part of the drop which is in excess of 150 feet, measured from the tap-off device on the distribution system to the terminal at the set connected to the Subscribers primary outlet.

3.10 **Subscriber Charges for Extensions of Service.** The Grantee shall keep accurate, complete and current maps and records of its system and facilities, to be updated periodically as warranted. Grantee shall furnish, as soon as they are available, two (2) complete sets of route maps to the Township applicable to the Franchise Area. Said maps shall be available for inspection by the public during normal business hours at the Township Hall. The Grantee shall build its Cable System so that it is capable of providing service to all residences located along public rights-of-way located within the Franchise Area. Service will be provided at then prevailing installation charges except as provided below under the following circumstances:

- (A) Where the drop to the Subscriber home is more than 150 feet in length, in addition to the prevailing installation charge, Grantee may charge the Subscriber the difference between Grantee's cost of installing a 150 foot drop and the cost of installing a longer drop.
- (B) In the Franchise Area and any adjacent areas which are annexed by the Township during the term of this Franchise:
 - (1) Where the residence of a Person requesting Cable Service is more than 150 feet from the existing System service will be provided if the person requesting service (or persons, on a pro rata basis) contribute the actual cost of material and labor for the portion of construction that is beyond the named distances; and
 - (2) Where access to the property is denied by the property owner or where a cost is imposed to cross private property the Grantee shall have the option not to provide Cable Service. In such circumstances, however, Grantee will endeavor in good faith to reach agreement with those requesting service in an effort to make extension of the Cable System economically feasible by a contribution in aid of construction by those requesting service. The purpose of such a contribution would be to absorb the excess actual costs of construction in low density areas.

In implementing this subparagraph (2), the Grantee may require that the estimated payment of the Subscribers' capital contribution be paid in advance. Any excess amounts so collected will be returned to the Subscribers upon completion of construction.

(C) **Service Area Line Extension**

- (1) **General Density Requirement.**

During the Term of the Franchise, Grantee shall be required to make service available to areas that have a density of 40 homes per linear cable mile continuous of existing plant, or fractional

equivalent, as measured from the extremity of the system nearest to the area to be served to the farthest dwelling unit in the area to be served.

(2) Annexed Areas.

In areas subsequently annexed, Grantee shall provide service to the annexed area unless the following occurs or is present:

- (a) The annexed area is already served by a cable operator; or
- (b) The annexed area does not meet 40 homes per linear mile minimum density requirement.

(3) Cost-Sharing Arrangements in Less Dense Areas.

Notwithstanding the foregoing density requirements, Grantee agrees that, in areas with fewer homes per linear mile than specified above, Grantee shall make available a cost-sharing arrangement with potential customers.

- (a) **Formula.** In such a cost-sharing arrangement, Grantee's per-home passed share will be the result of dividing the per-mile cost of the entire project by 40. The customer's share will be the result of dividing the per-mile cost of the entire project by the number of serviceable homes per mile passed in the project and subtracting Grantee's share. For example, in a one-mile project that costs \$10,000 and passes 15 homes, Grantee's share per home is \$250 (which is based upon $\$10,000 / 40$ homes per mile), and the customer's share is \$416.66 (which is based upon $\$10,000 / 15$ homes per mile, or \$666.66 minus Grantee's share of \$250).
- (b) **Installment Payments.** In such a cost-sharing arrangement, Grantee will permit customer payment schedules however, any deposit that Grantee may require up front.

3.11 Service to Public Buildings. The Grantee shall provide, upon request, without charge, one (1) outlet of Basic Service to the Franchising Authority's office buildings at Township Hall, fire station, that is passed by its Cable System. The outlets of Basic Service shall not be used to distribute or sell Cable Services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this

Section 3.11, the Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds one hundred fifty (150) cable feet, unless it is technically feasible and so long as it will not adversely affect the operation, financial condition, or market development of the Cable System to do so, or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet. In the event that additional outlets of Basic Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials. Grantor agrees that it will only use cable drops for the distribution of the Grantee's Cable Services.

3.12 Emergency Override. In the case of any emergency or disaster, the Grantee shall, upon request of Lenawee County Sheriff or the designee of the Franchising Authority, make available its facilities for the Franchising Authority to provide emergency information and instructions during the emergency or disaster period. The Franchising Authority shall hold the Grantee, its agents, employees, officers, and assigns hereunder, harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorney fees and costs.

3.13 Technical Standard. The Grantee shall meet all relevant FCC technical and maintenance standards. Upon request, the Grantee shall make available all technical specifications and performance test results that may be conducted by the Grantee during the term of this Franchise or before, which shall be provided at no expense to the Township.

3.14 Customer Service Standards. Grantee shall meet or exceed the performance standards set forth by the Federal Communications Commission. A set of said performance standards will be attached and made a part of this Ordinance. Depending on community needs and interests and the Township's regulatory concerns, the Township may charge these minimum service levels from time to time.

3.15 Maintenance. The Grantee Shall:

- (A) Respond to subscriber service complaints and render efficient service, locate and provide appropriate technical response to malfunctions promptly within 24 hours after notice. Repair service shall be available 24 hours a day, seven days a week, all days of the year. Failure by the Grantee to respond to malfunctions shall permit the subscriber to request and receive a pro-rata rebate of subscriber fees for each 24 hour period during which service is not provided.
- (B) Interrupt service only for good cause and for the shortest time possible. Such interruptions insofar as possible shall be preceded by notice, and shall occur during periods of minimum use of the

system. "Good Cause" shall represent that set of facts and circumstances which, in an individual case, a reasonable person would adjudge to be beyond the company's reasonable control and which would therefore represent a justifiable excuse of performance. Depending on the facts and circumstances, Good Cause may include, but shall not be limited to, delays, or interruptions arising from necessary utility changes, rearrangements, power outages, the fulfillment of governmental or regulatory, restrictions or requirements, national emergency, uncontrollable material shortages, fire, earthquake, or the elements and Acts of God.

- (C) Operate the system continuously, with operating personnel on call 24 hours per day. Offices shall be open during all usual business hours and have a listed telephone so that complaints and requests for repairs or adjustments may be received at any time. When channels are shared by more than one service, the Grantee shall maintain remote controlled state-of-industry switching equipment accessible to on-call personnel 24 hours per day to assure appropriate and timely switching of channels.

Section 4 Compensation and Auditing

4.1 **Franchise Fee.** Starting with the sixtieth (60th) day after the effective date of the Franchise Agreement, the annual Franchise fee shall be five percent (5%) of the Gross Revenues (as defined in Section 1.12 of this Franchise) received by the Grantee from the operation of the Cable System to provide Cable Services on an annual basis. The Township shall have the ability to adjust the Franchise fee, and may increase it above five percent (5%) if permissible under federal law in the 5th and 10th year. This action may be done by resolution. The Franchising Authority shall provide Grantee 90 day notice of any changes. Grantee may credit against any such payments (i) any tax, fee, or assessment of any kind imposed by Franchising Authority or other governmental entity on a cable operator, or subscriber, to both, solely because of their status as such; (ii) any tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or Subscribers (including any such tax, fee, or assessment imposed, both on utilities and cable operators and their services), and (iii) any other special tax, assessment, or fee such as a business, occupation, and entertainment tax. For the purpose of this section, the 12-month period applicable under the Franchise of the computation of the Franchise fee shall be the calendar year, unless otherwise agreed to in writing by the Township and Grantee. The Franchise fee payment shall be due and payable ninety (90) days after the close of the preceding calendar year. Payments not received within ninety (90) days shall be assessed interest at the rate of twelve (12%) percent per annum. Each payment shall be accompanied by a brief report from a representative of Grantee showing the basis for the computation. In no event shall the Franchise fee payments required to be

paid by Grantee exceed five percent (5%) of Gross Revenues received by Grantee in any 12-month period.

4.2 **Acceptance of Payment, Re-computation.** No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Township may have for further or additional sums payable as long as claim is made within three years from the time a payment was accepted.

4.3 **Transfer of Franchise.** Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an Affiliate, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, of a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

4.4 **Tax Liability.** Payment of this Franchise fee shall not exempt Grantee from the payment of any other taxes or charges on the business, occupation, property or income of the Grantee that may be imposed by the Township, except as may otherwise be provided in the ordinance or ordinances imposing any such taxes or charges. The Township's right to impose any such taxes or charges shall be subject to any limitations on the Township under applicable law.

Section 5 Compliance and Monitoring

5.1 **Testing for Compliance.** The Franchising Authority may perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving Grantee reasonable notice thereof, not to be less than two (2) business days, and providing a representative of Grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Grantee. In the event that such testing demonstrates that Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the Franchising Authority. Except in emergency circumstances, the Franchising Authority agrees that such testing shall be undertaken no more than two (2) times a year in aggregate, and that the results thereof shall be made available to the Grantee upon Grantee's request.

5.2 **Books and Records.** The Grantee agrees that the Franchising Authority may review such of its books and records, during normal business hours and on a non-disruptive basis, as is reasonably necessary to monitor compliance with the terms of this Agreement. Such records shall include, but shall not be limited to, any public

records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee to it as confidential and only to disclose it to employees, representatives and agents thereof that have a need to know or in order to enforce the Franchise.

Section 6 General Financial, Indemnification and Insurance Provisions

6.1 Insurance Requirements. Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage. Said insurance shall designate the Franchising Authority as an additional insured. Such Insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Grantee shall maintain on file with the Franchising Authority, current certificates of insurance.

6.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System, including, but not limited to, reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within 10 days of receipt of a claim or action pursuant to the Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

6.3 Bonds and Other Surety. Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. Grantor acknowledges that the legal, financial, and technical qualifications of Grantee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. Grantee and Grantor recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for Cable Services. In order to minimize such costs, the Grantor agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefore. The Grantor agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$100,000, conditioned upon the substantial performance of the material terms, covenants, and conditions of the Franchise. Initially, no bond or other surety will be required. In the event that one is required in the future, the Grantor agrees to give Grantor at least sixty (60) days prior written notice thereof.

stating the exact reason for the requirement. Such reason must demonstrate a change in the Grantee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

Section 7 Programming and Channel Capacity

7.1 **General.** Pursuant to section 624 of the Cable Act of 1984 the Grantee shall meet or exceed the programming and channel capacity requirements set forth in this Franchise.

7.2 **Channel Capacity.** Subject to the upgrade schedule set forth in this Ordinance, Grantee shall provide channel capacity of 550 MHz or 77 available channels throughout the Franchise area.

7.3 **Ascertainment of Programming.** At all times during the term of this Franchise, the Grantee shall provide as Cable Service a broad variety of broadcast and cable television programming including at a minimum, children's programming, public affairs programming, and sports programming, taking into account the costs thereof and Subscriber demand.

7.4 **Deletion or reduction of programming services.** Grantee shall not delete or limit any category of programming service within its control without providing at least thirty (30) days notice to the Township and Subscribers of such changes.

7.5 **Obscenity.** Grantee shall not transmit or permit to be transmitted over any channel subject to its editorial control any material that is obscene as defined by Michigan Law or otherwise unprotected by the Constitution of the United States.

7.6 **Parental Control Device.** Grantee will make available to each Subscriber upon request a parental control or lockout device (by selling or leasing) to enable parents or Subscribers to control access to both the Audio and Video portions of any, or all channels. Grantee will inform its subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

Section 8 Public, Educational and Governmental (PEG) Access

8.1 **Access Channel.** The Grantee shall provide one (1) channel for public, educational and government (PEG) use. The PEG access channel shall be activated within ninety (90) days following a written request by the Franchising Authority. The Franchising Authority agrees and understands that the PEG channel will be shared by all jurisdictions served from the same headend and who require a PEG channel as a franchise condition. Furthermore, the Franchising Authority understands that it will be the responsibility of the parties using the channel to allocate the time available among the

parties. The Franchising Authority shall agree to indemnify, save and hold harmless the Grantee from and against any liability resulting from the use of the aforementioned public, educational and government channel by the Franchising Authority. If the Franchising Authority ceases to use the channel, Grantee will have the right to recapture the use of that channel.

Section 9 Annual Report

9.1 Upon request, no later than April 19 of each year, Grantee shall submit a written report to the Township, which shall include the following information for its operations within the Township Franchise area for the previous calendar year ending December 31:

(A) Systems structural and operating information, including: i) System ownership, (ii) System mileage and homes - passed, iii) Number of Basic Subscribers, pay Subscribers (by service) and pay to basic percentage, iv) Services provided on the system including services begun or dropped, and v) Schedule of rates and charges.

(B) Summary of previous year's activities, including: 1) Development or incorporation of new technology on the system (including but not limited to addressability, interactivity, pay-per-event programming, teletest, data communications or other entertainment and non-entertainment services).

(C) WestMarc Development Joint Venture will provide, to the Township, a Certificate of Revenue supplied by an AT&T Broadband, accountant.

Section 10 Enforcement and Termination of Franchise

10.1 **Notice of Violation.** In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the alleged noncompliance.

10.2 **Grantee's Right to Cure or Respond.** Grantee shall have thirty (30) days from receipt of the notice described in Section 10.1 to (a) respond to the Franchising Authority contesting the assertion of noncompliance, or (b) to cure such default or, in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

10.3 **Public Hearing.** In the event that Grantee fails to respond to the notice described in Section 10.1 pursuant to the procedures set for the in Section 10.2, or in the event that the alleged default is not remedied within sixty (60) days after the Grantee is notified of the alleged default pursuant to Section 10.1, the Franchising Authority shall

schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of the Franchising Authority which is scheduled at a time which is no less than five (5) business days therefrom. The Franchising Authority shall notify the Grantee of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

10.4 **Enforcement.** Subject to applicable federal and state law, in the event the Franchising Authority, after such meeting, determines that Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- (a) Foreclosure on all or any part of any security provided under this Franchise, if any, including without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchising Authority reasonably determines is necessary to remedy the default;
- (b) Commence an action at law for monetary damages or seek other equitable relief;
- (c) Seek specific performance of any provision, which reasonably lends itself to such remedy as an alternative to damages; or
- (d) In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement revoked. Grantee may seek a de novo hearing in an appropriate court upon appeal within twenty-one (21) days.

The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reasons of any failure of the Franchising Authority to enforce prompt compliance.

10.5 **Acts of God.** The Grantee shall not be held in default or noncompliance with the provision of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

Section 11 Miscellaneous Provisions

11.1 **Documents Incorporated and Made a Part Hereof.** The following documents shall be incorporated herein by this reference, and in the case of a conflict or ambiguity between or among them, the document of latest date shall govern:

- (A) Any ordinance of general applicability, in existence as of the date hereof; and

- (B) Any franchise agreement between Grantee and Franchising Authority reflecting the renewal of Franchise, if any.

11.2 Reservation of Township Regulatory Rights. The power and right reasonably to regulate the exercise of the privileges permitted by this Franchise and the public interest shall at all times be vested in the Township Board. Grantee shall not be relieved of its obligation to promptly comply with any provision of this Franchise by failure of the Township to promptly enforce compliance with this Franchise. Services furnished by Grantee under this Franchise shall be rendered using the best practicable commercial methods and practices, insuring the least danger of life and property compatible with the best obtainable service.

11.3 Preemption. If the FCC or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the Franchising Authority shall cease and no longer exist to such extent.

11.4 Actions of Franchising Authority. In any action by the Franchising Authority or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

11.5 Notice. Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Franchising Authority or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service. The notices or responses to the Franchising Authority shall be addressed as follows:

Township of Rollin
P.O. Box 296
Manitou Beach, MI 49253

The notices or responses to the Grantee shall be addressed as follows:

AT&T Broadband
Attn: Director of Operations
217 W. Maumee
Adrian, MI 49221

With copies to:

AT&T Broadband
Attn: Franchising Department
3001 Coolidge Road, Suite 300
East Lansing, MI 48823

AT&T Broadband
Attn: Franchising
188 Inverness Drive West, Suite 600
Englewood, CO 80112

Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

11.6 Descriptive Headings. The captions to Sections contained herein are intended solely to facilitate the reading. Such captions shall not affect the meaning or interpretation of the text.

11.7 Severability. If any Section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of common jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, a paragraph term of provisions hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals.

11.8 Level Playing Field. If during the term of this Franchise Agreement or any extension thereof, the franchising authority grants a franchise consent or right to another operator containing a term of terms more favorable or less burdensome than those granted to the Grantee in this Franchise Agreement, then this Franchise Agreement shall be deemed modified to incorporate the more favorable or less burdensome terms.

11.9 System Upgrade. Should Grantee, or its affiliates, provide a new technical development to any other municipality serviced by the same headend as the Township the same new technical development shall be offered to the Township within a reasonable time, not to exceed 24 months. The Township may waive any new technical development upon an affirmative demonstration to the Township by Grantee that such new technical development is not economically feasible or would not be practical or feasible in the Township due to population density or other relevant factors. The Term "economically feasible" means a majority of the subscribers answering a survey, informing them of new technical development, indicating a willingness to absorb the reasonable cost of technical developments.

11.10 Modification of Agreement. Grantee acknowledges that this Franchise has been entered into by the parties under the terms of the Cable Communications Policy Act of 1984, as amended, and existing law in effect on the effective date hereof.

Other than as provided in this agreement, neither the Township nor the Grantee waive any rights afforded to it by Federal Law.

The effective date of this Ordinance is May 9, 2001

Ray E Walker
Supervisor

Accepted this 9th day of May, 2001, subject to applicable federal, state and local law.

Westmarc Development Joint Venture

By: [Signature]

Tom Unglaub
Senior Vice President
Midwest Market

The Exponent: Please publish the following for Rollin Township.

NOTICE

AN ORDINANCE OF THE
TOWNSHIP OF ROLLIN, MICHIGAN
GRANTING A CABLE TELEVISION FRANCHISE TO
WESTMARC DEVELOPMENT JOINT VENTURE
(Commonly known as AT&T Broadband)

CABLE TV ORDINANCE

Ordinance # 29

Section 1 Terms 1.1 – 1.25 Meaning(s) of the Ordinance terms, phrases, words and abbreviations.

Section 2 Nature and Term of Grant

- 2.1 **Grant.** Nonexclusive franchise authorizing construction and operation of a cable system and the offering of cable services.
- 2.2 **Term.** Non-exclusive franchise for fifteen (15) years.
- 2.3 **Renewal.** Subject to applicable provisions of Federal cable law.
- 2.4 **Review.** Provisions and possible resultant modification or revision of franchise.
- 2.5 **Acceptance; Effective Date.** Stipulations regarding how and when the Ordinance becomes effective the thirtieth (30th) day after passage and final adoption.
- 2.6 **Franchise Area.** Shall be the entire territory included in Township limits.
- 2.7 **Charter and General Ordinances to Apply.** Township codes and ordinances regarding permits, fees to be paid, or manner of construction not to be waived.

Section 3 Service and Technical Standards

- 3.1 **Conditions of Street Occupancy.** Located so as to cause minimum of inconvenience to adjoining property owners.
- 3.2 **Restoration of Public Way.** If disturbed, shall be replaced and restored to a reasonably comparable condition.
- 3.3 **Relocation at Request of Franchising Authority.** Shall protect, support, temporarily disconnect relocate in Public Way or remove from Public Way when lawfully required by the Franchising Authority.
- 3.4 **Relocation at Request of Third Party.** Temporarily raise or lower wires to permit authorized moving of a building.
- 3.5 **Trimming of Trees and Shrubbery.** Authority to trim trees or other natural growth overhanging any of Cable System in the Service Area.
- 3.6 **Use of Grantee's Equipment by Franchising Authority.** Right to make additional use, for any public purpose, of poles or conduits.
- 3.7 **Safety Requirements.** Cable System shall not endanger or interfere with safety of persons or property in Service Area.
- 3.8 **Aerial and Underground Construction.** In areas where telephone and electric services are underground, cable services will also be underground.
- 3.9 **Required Extensions of Service.** Service will be extended to any person in the territorial limits of the Township.
- 3.10 **Subscriber Charges for Extensions of Service.** Service will be provided at prevailing installation charges except as specified.
- 3.11 **Service to Public Buildings.** One outlet of Basic Service to be provided without charge to office buildings at Township Hall/fire station.
- 3.12 **Emergency Override.** In case of emergency facilities are to be made available to provide emergency information and instructions.
- 3.13 **Technical Standard.** Must meet all relevant FCC technical and maintenance standards.
- 3.14 **Customer Service Standards.** Must meet or exceed performance standards set by FCC.
- 3.15 **Maintenance.** Shall respond to complaints, render service, interrupt service only for cause and for shortest time possible, operate continuously with personnel on call 24 hours per day.

Section 4 Compensation and Auditing

- 4.1 **Franchise Fee.** Amount, adjustments and changes, applicable period, when due and payable.
- 4.2 **Acceptance of Payment, Re-computation.** Township may make claim for further or additional sums within three year period from time payment was accepted.
- 4.3 **Transfer of Franchise.** Franchising Authority must consent to transfer except when transferred to secure indebtedness.
- 4.4 **Tax Liability.** Other taxes and charges may be imposed by Township subject to applicable laws.

Section 5 Compliance and Monitoring

- 5.1 **Testing for Compliance.** May perform technical test of Cable System to determine whether or not in compliance with terms and applicable state or federal laws.
- 5.2 **Books and Records.** May review to monitor compliance with terms of this agreement.

Section 6 General Financial, Indemnification and Insurance Provisions

- 6.1 **Insurance Requirements.** Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage.
- 6.2 **Indemnification.** Agrees to secure against hurt, loss, damage and to defend against any liability or claims.
- 6.3 **Bonds and Other Surety.** Initially, no bond or other surety required.

Section 7 Programming and Channel Capacity

- 7.1 **General.** Shall meet or exceed the requirements set forth.
- 7.2 **Channel Capacity.** Shall provide channel capacity of 550 MHz or 77 available channels.
- 7.3 **Ascertainment of Programming.** Shall provide a broad variety of programming including children's , public affairs, and sports.
- 7.4 **Deletion or Reduction of Programming Services.** Must provide thirty days notice of changes.
- 7.5 **Obscenity standards.** Shall not permit or transmit any material that is obscene as defined by Michigan law or otherwise unprotected by the Constitution of the United States.
- 7.6 **Parental Control Device.** Will make available a parental control or lockout device.

Section 8 Public, Educational and Governmental (PEG) Access

- 8.1 **Upon request, provide one channel for public, educational and government access.**

Section 9 Annual Report

- 9.1 **Annual Report.** Upon request, a written report shall be submitted to Township for previous calendar year.

Section 10 Enforcement and Termination of Franchise

- 10.1 **Notice of Violation.** Notify in writing of exact nature of alleged noncompliance.
- 10.2 **Right to Cure or Respond.** Thirty days from receipt of notice.
- 10.3 **Public Hearing.** Failure to respond or not remedy alleged default, public hearing will be scheduled.
- 10.4 **Enforcement.** Franchising Authority may foreclose, seek monetary damages or other relief, seek specific performance of any provision, revoke franchise.
- 10.5 **Acts of God.** Grantee not held in default or noncompliance when caused by strikes, acts of God, or other events beyond control.

Section 11 Miscellaneous Provisions

- 11.1 **Documents Incorporated and Make a Part Hereof.** Documents of latest issue shall take govern any enabling ordinance in existence and any franchise agreement.
- 11.2 **Reservation of Township Regulatory Rights.** Township Board shall have power and right to regulate privileges permitted.
- 11.3 **Preemption.** The FCC or any other federal or state body or agency shall preempt and supersede or preclude the exercise of like jurisdiction by the Franchising Authority.
- 11.4 **Actions of Franchising Authority.** Such party shall act in a reasonable manner.
- 11.5 **Notice.** Every notice or response to be served shall be in writing and deemed to have been given to the required party five business days after being properly posted.
- 11.6 **Descriptive Headings.** Captions are intended to facilitate the reading.
- 11.7 **Severability.** Any section determined to be illegal, invalid or unconstitutional shall not affect any other part of agreement.
- 11.8 **Level Playing Field.** All franchise operators must be granted the more favorable, less burdensome terms.
- 11.9 **System Upgrade.** New technical developments offered to any municipality must be offered to the Township within a reasonable time.
- 11.10 **Modification of Agreement.** Should there be material amendments to the Cable Act or the federal regulations, negotiations may be reopened by mutual consent.

This ordinance was adopted by the Rollin Township Board of Trustees at its regular meeting on May 9, 2001. Copies of the complete ordinance may be inspected at the Rollin Twp. Hall, 730 Manitou Road, Manitou Beach, MI 49253.

Roy Walker, Supervisor
Rollin Township