

TOWNSHIP OF SOUTH BEAVER

ORDINANCE NO. 28

AN ORDINANCE PROVIDING FOR THE GRANTING OF A FRANCHISE TO A CABLE TELEVISION SYSTEM IN THE TOWNSHIP OF SOUTH BEAVER, BEAVER COUNTY, PENNSYLVANIA, SETTING FORTH CONDITIONS FOR THE OPERATION AND MAINTENANCE OF SUCH A SYSTEM ACCOMPANYING THE GRANT OF A FRANCHISE.

Section 1. DEFINITIONS: For the purpose of this Ordinance the following terms, phrases, words, abbreviations, and their derivations shall have the meaning herein given. When not inconsistent with the context, words used in the present tense include the future tense, words used in the plural number include the singular number, and words used in the singular number include the plural number.

- (a) "Municipality" shall mean the Township of South Beaver.
- (b) "Company" shall mean the grantee of franchise rights under this Ordinance.
- (c) "Person" shall mean the person, firm, partnership, association, corporation, company or organization of any kind.
- (d) "Franchise area" shall mean that area within the corporate limits of the Municipality.
- (e) "Street" shall mean the surface of and the space above and below any public street, or similar public right of way, road, highway, freeway, bridge, lane, path, alley, sidewalk, or easement, now or hereafter existing and under the control and jurisdiction of the Municipality within the franchise area.
- (f) "Property of company" shall mean all property owned, installed, or used by a company in the conduct of a cable television system business in the Municipality.

- (g) "CATV" shall mean a cable television system as hereinafter defined.
- (h) "Cable Television System" shall mean a system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, or any other conductors, convertors, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable audio/visual radio, television electronic or electrical signals to and from persons, subscribers and locations in the franchise area.
- (i) "Basic CATV Service" shall mean the distribution of broadcast television signals by the Company.
- (j) "Subscriber" shall mean any person or entity receiving a CATV service.
- (k) "Gross Annual Basic Subscriber Revenue" shall mean any and all compensation and other consideration received directly by the company from subscribers in payment for regularly furnished basic CATV service. Gross annual basic subscriber revenues shall not include any taxes or services furnished by the company imposed directly on any subscriber or used by any Municipality, state or other governmental unit and collected by the Company for such governmental unit.

Section 2. GRANT OF AUTHORITY: Upon the Municipality determining the legal status, character, technical and other qualifications of a Company and the adequacy and feasibility of the Company's construction arrangements and compliance with requirements of the Federal Communications Commission's requirements, the Municipality may grant a Company the right and privilege to engage in the business of operating and providing a CATV system in the

Municipality, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across, and along any public street, public way, and public place, now laid out and all extensions thereof, and additions thereto, in the franchise area, such poles, wires, cable, conductor, ducts, conduit vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system: and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms or corporations including but not limited to any public utility or other grantee franchised to do business in the Municipality. Such grantee of a franchise shall sign an acceptance of such grant, acknowledging and agreeing to comply with all terms of this Ordinance.

Section 3, NON-EXCLUSIVE GRANT: The right to use and occupy said streets, and other public ways for the purpose herein set forth shall not be exclusive, and the Municipality reserves the right to grant a similar use in said streets to any person.

Section 4. TERM OF FRANCHISE: The franchise and rights herein granted shall take effect and be in force 30 days from and after the grant of the franchise by the Municipality and upon filing of the aforesaid acceptance by the Company. The granting of a franchise shall be by Resolution adopted by the governing body of the Municipality. The Company's acceptance shall be made within thirty (30) days of adoption of such franchise. Such franchise shall continue in force and effect for a term of 15 years after the effective date of this franchise. A franchise may be renewed for an additional 15 year period, provided the Company notifies the Municipality in writing within 90 days of the expiration of the prior franchise period of its desire to renew the franchise under the terms and conditions set forth in this Ordinance or any subsequent amendments hereof, and the Company is in compliance with such terms and conditions.

Section 5. CONDITIONS OF STREET OCCUPANCY:

- (a) All transmission and distribution structures, lines and equipment erected by the Company within the franchise area shall be so located as to cause no interference with the proper use of streets and other public ways and places, and to cause no interference with the right and reasonable convenience of property owners who join any of the said streets or other public ways and places. The CATV system shall be constructed and operated in compliance with all Municipality, Commonwealth and National construction and electrical codes and shall have all its wires, cable, fixtures, and other equipment installed and placed in such a manner that same will not interfere with any installations of the Municipality or of a public utility serving the Municipality.
- (b) In case of disturbance of any street, public way or paved area, the Company shall, at its own expense and in a manner approved by the Municipality, replace and/or restore such street, public way or paved area in as good a condition as before the work involving such disturbance was done.
- (c) If any time during the period of the franchise the Municipality shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, the Company, upon reasonable notice by the Municipality, shall remove, relay, and relocate its poles, wires, cable, underground conduits, manholes, and other fixtures at its own expense.
- (d) The Company shall, on the request of any person holding a building moving permit issued by the Municipality, or other

appropriate governmental Entity, temporarily raise or lower its wires to permit the moving of a building. The Company may charge the expense of such temporary removal or raising or lowering of wires to the person requesting the same, and the Company shall have the right to require such payment in advance. The Company shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes. In no event shall the Municipality bear any responsibility of the cost of such movement of wires.

- (e) Any poles or other fixtures placed in any public way by the Company shall be placed in such a manner as not to interfere with the usual travel on such public way.
- (f) The Company shall, at its own expense, protect, support, temporarily disconnect, relocate in the same place or street, or remove from the street or other public place, any property of the Company when required by the Municipality by reason of traffic conditions, public safety, street vacation, freeway and street conditions, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by public agencies; provided, however, that the Company shall in all such cases have the rights and obligations of abandonment of property of the Company subject to Municipality approval.
- (g) The Municipality shall have the right to make additional use, for any public or municipal purpose, of any poles or conduits controlled or maintained exclusively by or for the

Company in any street, provided such use by Municipality does not interfere with the use of the Company.

Section 6. SAFETY REQUIREMENTS:

- (a) The Company shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failure and accidents which are likely to cause damage, injuries, or nuisances to the public.
- (b) All structures and all lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys and public ways or places of the franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

Section 7. SYSTEM CONSTRUCTION AND EXTENSION:

- (a) It is acknowledged that the Company will construct and energize trunk cable or cables throughout a substantial portion of a serviceable franchise area as shall be detailed at the time of granting of a Franchise. Such construction will be completed within twenty-four (24) months of the acceptance of the Franchise. The Company is also authorized to extend the system within the franchise area, as shall be designated by the Municipality, to the extent that such extension is or may become economically feasible.
- (b) The Company, whenever it shall receive requests for service from at least fifteen (15) subscribers within 1,320 cable feet of an aerial trunk cable, or from at least twenty-five (25) subscribers within 1,320 cable feet of an underground trunk cable, shall extend its system to such subscribers at

no cost to the subscriber for system extension other than usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible. The 1,320 feet shall be measured in extension length of the Company's cable required for service located within the public way or easement and shall not include length of necessary service drop to the subscriber's home or premises.

- (c) No person, firm or corporation in the Company's service area shall be arbitrarily refused service. However, in recognition of the capital costs involved for unusual circumstances, such as requirement for underground cable or more than 150 cable feet of distance from distribution cable to connection of service to subscribers, or subscriber density less than the density specified herein, and in order to prevent inequitable burdens on potential cable subscribers in more densely populated areas, service may be made available on the basis of cost of materials, labor and easement.
- (d) In the event additional adjacent territory is incorporated within the Municipality's limits by annexation or otherwise, Company's rights and duties under this agreement shall be deemed to include such additional territory.

Section 8. OPERATIONAL STANDARDS: The Company shall operate and maintain its cable system in full compliance with the standards set forth by the Federal Communications Commission.

Section 9. COMPLAINTS OR INQUIRIES: The Company shall obtain a "toll free" telephone number to the local business office which subscribers may use during regular office hours without incurring added message or toll

charges, so that complaints or inquiries regarding cable television operations may be promptly reported to the Company.

Section 10. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED: The Company shall not, as to rates, charges, services, facilities, rules or regulations or in any other respect, make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage, provided that nothing in a franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled, and provided further, that connection and service may be waived or modified during promotional campaigns of the Company.

Section 11. FRANCHISE PAYMENTS: A Company granted a franchise shall pay to the Municipality quarterly, a franchise license fee of 3% of the gross revenue derived from residents subscribing to basic cable service and Home Box Office in the Municipality. Sales tax or other taxes levied directly on a per subscription basis and collected by the Company shall not be deemed part of such gross revenue and shall be deducted from any revenues which are subject to the franchise fee application before computation of sums due the Municipality are made. The Company shall provide an annual summary report showing the gross annual basic subscriber revenues received during the preceding year, if requested.

Section 12. RATES TO BE CHARGED: The Company may charge reasonable rates for connection fees and for monthly service charges to a subscriber. The franchise shall file with the Municipality a rate chart disclosing such rates that it is or will be charging. Such rate chart must be so filed thirty (30) days before its effective date of such rates; provided however, rates for motels, hotels, rooming houses, apartment houses, trailer courts, hospitals, and rest homes need not be pre-filed with the

Municipality, but any such rate negotiated and charged shall be filed with the Municipality within thirty (30) days after same is consummated.

Section 13. INDEMNIFICATION OF MUNICIPALITY:

(a) The Company shall at all times protect and hold harmless the Municipality from all claims, actions, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs, and attorney fees, which may accrue, be suffered or claimed by any person or persons arising out of the negligence of the Company in the ownership, construction, repair, replacement, maintenance and operation of said cable television system and by reason of any license, copyright, property right or patent of any article or system used in construction of use in said system. The Municipality shall give the Company prompt notice of any such claims, actions, and suits in writing.

(b) The Company shall maintain in full force and effect during the life of any franchise, public liability insurance in a solvent insurance company authorized to do business in the Commonwealth of Pennsylvania at no less than in the following amounts:

1. \$500,000 property damage in any one accident;
2. \$500,000 for personal injury to any one person; and
3. \$1,000,000 for personal injury in any one accident;

provided that all such insurance may contain reasonable deductible provisions not to exceed \$1,000.00 for any type of coverage, and provided further, the Municipality may require that any and all investigations of claims made by any person,

firm or corporation against the Municipality arising out of any use or misuse of privileges granted to the Company hereunder shall be made by, or at the expense of the Company or its insurer.

- (c) No work, construction, erection, installation, operation or maintenance shall be begun by the Company under the authority of this Ordinance until it shall have first obtained the insurance policies for the protection of the public in general and the protection required to be extended to the Municipality in such amounts as set forth above.

Section 14. PROCEDURES UPON TERMINATION: Upon expiration of the franchise, if the Company shall not have acquired an extension or renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon streets, and public ways of the Municipality for the purpose of removing said property. The Company shall refill, at its own expense, any excavation that shall be made by it, and shall leave said streets and public ways and places in as good a condition as that prevailing prior to the Company's removal of its property.

Section 15. APPROVAL OF TRANSFER: The Company shall not sell or transfer its plant or system to another, other than a parent company or a wholly-owned subsidiary of the Company, nor transfer any rights under this franchise to another without the Municipality's approval. Provided, that no sale or transfer shall be effective until the vendee, assignee, or lessee has filed in the office of the Municipality an instrument duly executed reciting the fact of sale, assignment or lease accepting the terms of the franchise and agreeing to perform all the conditions thereof. Such Municipality approval will not be unreasonably withheld and neither this Section nor other Sections of this franchise shall preclude the

mortgaging, hypothecating, or the assignment of certain rights in the system, or the pledge of stock by the Company for the purpose of financing.

Section 16. NEW DEVELOPMENTS: It shall be the policy of the Municipality liberally to amend a franchise upon application of the Company, when necessary to enable the Company to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity to more effectively, efficiently, or economically serve customers.

Section 17. MISCELLANEOUS PROVISIONS:

- (a) When not otherwise prescribed herein, all matters required to be filed with the Municipality will be filed with the Municipality's Secretary.
- (b) The Company shall provide without charge an outlet to each governmental building, fire station, police station, and public and non-profit private school building and/or other charitable institutions that is passed by its cable. The distribution of the cable facility inside each such building and the extent thereof shall be the option, duty and expense of the building owner.
- (c) In case of any emergency or disaster, the Company shall, upon request of the Municipality, make available its facilities to the Municipality for emergency use during the emergency or disaster period.

Section 18. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES: The Company shall at all times during the life of this franchise be subject to all lawful exercise of the police power by the Municipality. The Municipality

reserves the right to adopt from time to time in addition to the provisions herein contained, such ordinances as may be deemed necessary to the exercise of the police power. Such regulations shall be reasonable and not destructive to the right herein granted and not in conflict with the laws of the Commonwealth of Pennsylvania or other laws or regulations.

Section 19. VIOLATIONS:

- (a) From and after the effective date of this agreement, it shall be unlawful for any person to construct, install, or maintain within any public street in the Municipality, or within any other public property of the Municipality, or within any privately owned area within the Municipality which has not yet become a public street on any tentative subdivision map approved by the Municipality, any equipment or facilities for distributing television signals or radio signals through CATV system, unless a franchise authorizing such use of such street or property or area has first been obtained, and unless such franchise is in full force and effect.
- (b) It shall be unlawful for any person, firm, or corporation to make any unauthorized connection, whether physically, electronically, acoustically, inductively or otherwise, with any part of the franchise CATV system within this Municipality for the purpose of enabling himself or others to receive any television signals, radio signals, pictures, sound or program without payment to the operator of said system.
- (c) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove, or injure any cables, wires, or equipment used for distribution of television

signals, radio signals, pictures, programs or sound.

Section 20. SEVERABILITY: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Municipality hereby declares that it would have passed this Ordinance and each section, subsection, clause, phrase or sentence hereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases be declared illegal, invalid or unconstitutional. The validity of any portion of this Ordinance shall not abate, reduce, or otherwise affect any consideration or other obligations required of the Company. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed, provided however, this Ordinance shall not be deemed to repeal any other Ordinance of the Municipality regulating street development, street opening or driveway permits.

Section 21. FEDERAL REGULATIONS: Any modification resulting from an amendment of Section 76.31 ("Franchise Standards") of the Rules and Regulations of the Federal Communications Commission shall be incorporated into this Ordinance as of the date such modification becomes obligatory under FCC regulations, or in the event no obligatory date is established, within one year of adoption or at the time of franchise renewal, whichever occurs first.

Section 22. EFFECTIVE DATE: This Ordinance shall take effect and be in force thirty (30) days from and after its passage.

ADOPTED AND PASSED this 10th day of November, 1980.

ATTEST:

TOWNSHIP OF SOUTH BEAVER

Carol Miller

Secretary

Robert F. Miller

Supervisor

Paul Wogan

Supervisor

Donald A. Wesson

Supervisor