

AN ORDINANCE PROVIDING FOR THE GRANTING OF NON-EXCLUSIVE FRANCHISES TO QUALIFIED APPLICANTS TO PERMIT THEM, THEIR SUCCESSORS AND ASSIGNS, TO BUILD, CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE TOWNSHIP OF HILLTOWN AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE

The Board of Supervisors of Hilltown Township hereby ordain and enact the following:

SECTION 1 - Title. This Ordinance shall be known and may be cited as the "Cable Television Ordinance".

SECTION 2 - Preamble. This Ordinance was passed after a full, open and public hearing upon prior notice and opportunity of all interested parties to be heard and upon careful consideration of an application for said non-exclusive franchise and the adequacy and feasibility of its construction arrangements.

SECTION 3 - DEFINITIONS. For the purpose of this Ordinance, and when not inconsistent with the context, words used herein in the present tense include the future; words in the plural include the singular and vice versa. The word "shall" is always mandatory. The captions supplied herein for each section are for convenience only. The following terms and phrases, as used herein, shall be given the meaning set forth below:

A. "Township" is the Township of Hilltown, a municipal corporation under the laws of the Commonwealth of Pennsylvania.

B. "Grantee" is any qualified applicant meeting the standards of the Ordinance and approved by the Supervisors.

C. "Township Supervisors" are the Township Supervisors of Hilltown Township or its designated representative.

D. "Federal Communications Commission" or "FCC" is the present Federal agency of the name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

E. "Person" is an individual, firm, partnership, association, corporation, company or organization of any kind.

F. "Gross subscriber revenues" shall include any and all compensation or receipts derived from installation, disconnection and reinstallation charges and periodic service charges in connection with the carriage of broadcast signals and Federal Communications Commission mandate non-broadcast services, but shall not include any refunds or credits made to subscribers or any taxes imposed on the services furnished by Grantee. Nor shall it include revenue from "ancillary" or "auxiliary" services, which include, but are not limited to, advertising, leased channels and programming supplied on a per program or per channel charge basis, if any.

G. "Regular subscriber services" shall include the carriage of broadcast signals and FCC mandated non-broadcast services, but shall not include "ancillary" or "auxiliary" services, which include, but are not limited to, advertising, leased channels and programming supplied on a per program or per channel charge basis, if any.

SECTION 4. GRANT OF AUTHORITY. It is hereby granted by the Township of Hilltown to Grantee the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over or under the public streets, alleys, easements, public ways and public places now laid out and duly ordained and dedicated and all subsequently duly dedicated and ordained extensions thereof and additions thereto in the Borough, all poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the Township of a cable television system for the transmission of television signals and other signals either separately or upon or in conjunction with any public utility maintaining the same in the Township with all of the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby include the use of, as by leasing or licensing, all lines and equipment necessary to a cable television system and the right to make connections to subscribers and the right to repair, replace, enlarge and extend said lines, equipment and connections. The

rights herein granted for the purposes herein set forth shall not be exclusive, and the Township reserves the right to grant a similar use of said public streets, alleys, easements, public ways and places to any person at any time during the period of this franchise; provided that nothing contained herein shall be deemed to require the granting of additional franchises if, in the sole and exclusive discretion of the Hilltown Township Board of Supervisors, it is in the public interest to restrict such franchises to one or more.

SECTION 5 - POLICE POWER. Grantee shall at all times during the term of this franchise be subject to all lawful exercise of the police power of the Township. The right is hereby reserved to the Township to adopt, in addition to the provisions herein contained and any other existing applicable ordinances, such additional applicable ordinances as it shall find necessary in the exercise of its police power; provided that such additional ordinances shall be reasonable, shall not conflict with or alter in any manner the rights granted herein and shall not conflict with the laws of the Commonwealth of Pennsylvania, the laws of the United States of America or the rules of the Federal Communications Commission.

SECTION 6 - INDEMNIFICATION AND HOLD HARMLESS. Grantee shall save the Township of Hilltown harmless from all loss sustained by the Township on account of any suit, judgment,

execution, claim or demand whatsoever against the Township resulting from alleged or active negligence on the part of Grantee in the construction, operation or maintenance of its cable television system in the Township; and for this purpose Grantee shall carry property damage and personal injury insurance with a responsible insurance company or companies qualified to do business in the Commonwealth of Pennsylvania. The amounts of such insurance to be carried for liability due to property damage shall be Three Hundred Thousand Dollars (\$300,000) as to any one occurrence; and against liability due to injury to or death of persons, Five Hundred Thousand Dollars (\$500,000) as to any one person and One Million Dollars (\$1,000,000) as to any one occurrence. A public liability umbrella policy in the amount of One Million Dollars (\$1,000,000) naming the Township as additional insured shall be maintained by the Grantee and proof of the existence thereof and all renewals shall be provided to the Township annually, or at such other times corresponding with renewal periods. The Township shall notify Grantee, in writing, within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the Township on account of any negligence as aforesaid on the part of Grantee. Where any such claim or demand against the Township is made by suit or other legal action, written notice thereof shall be given by the Township to Grantee not less than five (5) days prior to the date

upon which an answer to such legal action is due or within ten (10) days after the claim or demand is made upon the Township, whichever notice yields Grantee the larger amount of time within which to prepare an answer.

SECTION 7 - COMPLAINT PROCEDURE. Grantee shall maintain a business office or a toll-free telephone listing in the Township for the purpose of receiving inquiries and complaints from its customers and the general public. Grantee shall investigate all complaints within five (5) days of their receipt and shall in good faith attempt to resolve them swiftly and equitably and supply written reports of all complaints and action taken in response thereto to the Township Secretary on a quarterly basis.

SECTION 8 - CONSTRUCTION AND MAINTENANCE.

A. All structures, lines and equipment erected by Grantee within the Township shall be so located as to cause minimum interference with the proper use of public streets, alleys, easements and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners, and Grantee shall comply with all reasonable, proper and lawful ordinances of the Township now or hereafter in force. Existing poles, posts, conduits and other structures of any electric power system in the Township or of any telephone company or other public utility shall be made available to Grantee for leasing or licensing upon reasonable terms and rates and shall be used to the extent practicable in order to minimize interference with travel and avoid unnecessary duplication of facilities.

The Township agrees to cooperate and assist Grantee as reasonably necessary in obtaining reasonable joint pole or conduit use agreements from the owners of existing poles or conduits.

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

C. In the event that at any time during the period of this franchise the Township shall lawfully elect to alter or change any public street, alley, easement or other public way requiring the relocation of Grantee's facilities, then in such event, Grantee, upon reasonable notice by the Township, shall remove, relay and relocate the same at its own expense; provided, however, that where public funds are available for such relocation pursuant to law, Grantee shall not be required to pay the cost.

D. Grantee shall, on the request of any person holding a building moving permit issued by the Township, temporarily raise or lower its lines to permit the moving of the building. The expense of such temporary removal shall be paid by the person requesting the same, and Grantee shall have the authority to require such payment in advance.

E. Grantee, with the approval of the landowner, shall have the authority to trim trees upon and overhanging all streets, alleys, easements, sidewalks and public places of the Township so as to prevent the branches of such trees from coming into contact with Grantee's facilities.

F. All poles, lines, structures and other facilities of Grantee in, on, over and under the public streets, sidewalks, alleys, easements and public grounds or places of the Township shall be kept by Grantee at all times in a safe and well-repaired condition.

G. Should any construction be necessary for the holder of a non-exclusive franchise to provide the cable television service contemplated under a franchise, a significant portion of such construction (at least twenty per cent (20%)) shall be accomplished within one year of the grant of franchise, or if FCC certification is required prior to implementation of the cable television service contemplated under a granted franchise, within one year after the effective date of the grant by the FCC of the necessary certification. In no event shall said construction be permitted to commence after one year after the grant of franchise. If said construction, i.e., at least twenty per cent (20%), is not completed within one year of the grant of franchise, the grant of authority and franchise shall be deemed automatically terminated and void and this period shall extend to previously issued

franchise also. Thereafter Grantee shall equitably and reasonably proceed to complete the necessary construction at a rate of not less than thirty per cent (30%) of the total construction contemplated.

SECTION 9 - RATES.

The rates charged by the applicant for installation and regular cable television service shall not be higher than the rates generally charged by cable systems in the Bucks County area.

Cable television service shall be made available to all residents within areas served by the applicant without discrimination. No developer, owner, agent or association representing a multiple dwelling complex shall prevent the installation of cable television facilities to serve residents therein, provided, applicant shall be responsible for any damages caused by the installation of its facilities nor shall any payment be demanded or be made to such developer, owner, agent or association as a condition to provide cable television services to such residents. Each developer of a new residential development shall, as a condition to receiving a permit from the applicant, grant the applicant a recordable right of way covering all installation and maintenance of cable television facilities to all residential units within the development. Such rights of way shall be for the same consideration and similar in form to the rights of way

granted to the telephone company.

SECTION 10 - FCC RULES APPLICABLE. This franchise is governed by and subject to all applicable rules and regulations of the Federal Communications Commission, specifically including Part 76, and by the laws of the Commonwealth of Pennsylvania. Should there be any modifications of the provisions of Section 76.31 of the Rules and Regulations of the Federal Communications Commission which must be incorporated into this franchise, the Township and Grantee agree that such incorporation shall be accomplished within one (1) year after the effective date of the FCC's adoption of the modification or upon renewal of this franchise, whichever occurs first.

SECTION 11 - FRANCHISE TERM. This franchise shall take effect and be in full force from and after the final adoption thereof, subject to acceptance by Grantee as herein provided, and the same shall continue in full force and effect for a term of fifteen (15) years, beginning with the date of such acceptance; provided, however, that should FCC certification be necessary prior to implementation of the cable television service contemplated under this franchise, then the term shall begin upon the effective date of the grant by the FCC of the necessary certification. Notwithstanding, and in any event, said franchise must be accepted and commenced within twelve (12) months of the grant of authority. Otherwise, the franchise shall be deemed automatically terminated and void. Commencement date for a franchise

granted previously is extended to January 1, 1982 and if the same is not accepted by that date, then the franchise shall be deemed automatically terminated and void.

SECTION 12 - RENEWAL PROCEDURE. Grantee shall have the option to request renewal of this franchise for an additional period not to exceed fifteen (15) years. Should Grantee desire to exercise this option, it shall so notify the Township, in writing, not less than six (6) months prior to the expiration of this franchise. Upon exercise of this option by Grantee, the Township shall conduct a full, open and public renewal proceeding upon prior notice and opportunity of all interested parties to be heard. The renewal proceeding shall be held for the purpose of considering Grantee's performance under this franchise in order to determine whether to renew this franchise. Renewal shall not be unreasonably denied. If this franchise is renewed by the Township, all of the terms and provisions contained herein shall be controlling during the renewal period, except to the extent that said terms and provisions are modified by the Township or unless this franchise is superseded by a new franchise. Should the Township, for any reason, be unable to complete the renewal proceeding prior to expiration of this franchise, Grantee shall have the right to continue operation of this cable television system pursuant to the terms of this franchise until such time as the renewal proceeding is concluded. Should the Township

deny renewal of this franchise, such denial shall be accompanied by a written statement setting forth the reasons for the denial. Grantee shall have the right to request review of any such denial by any court of competent jurisdiction. Furthermore, in the event that the Township denies renewal, Grantee shall be afforded a period of six (6) months following denial within which to sell, transfer or convey this cable television system to a qualified purchaser at fair market value. During this six (6) month period, which shall run from the effective date of the final order or decision denying renewal, including any appeal, Grantee shall have the right to operate this cable television system pursuant to the terms of this franchise.

SECTION 13 - FORFEITURE. If the Grantee should violate any of the terms, conditions, or provisions of this franchise, or if Grantees should fail to comply with any reasonable provisions of any ordinance of the Township regulating the use by Grantee of the public streets, alleys, easements or public ways of the Borough, and should Grantee further continue to violate or fail to comply with the same for a period of thirty (30) days after Grantee shall have been notified in writing by the Township to cease and desist from any such violation or failure to comply so specified, then Grantee shall be deemed to have forfeited and annulled and shall thereby forfeit and annul all the rights and privileges granted by this franchise; provided that such forfeiture shall be declared only by written decision of the Board of Supervisors of Hilltown Township; and provided further that the Board of Supervisors may, in its discretion and upon a finding of violation or

failure to comply, impose a lesser penalty than forfeiture of this franchise or excuse the violation or failure to comply upon a showing by Grantee of substantial mitigating circumstances. Grantee shall have the right to appeal any finding of violation or failure to comply and any restraint penalty to any court of competent jurisdiction. In the event that forfeiture is imposed upon Grantee, it shall be afforded a period of six (6) months within which to sell, transfer or convey this cable television system to a qualified purchaser at fair market value.

During the six month period, which shall run from the effective date of the final order or decision imposing forfeiture, including any appeal, Grantee shall have the right to operate this cable television system pursuant to the provisions of this franchise.

SECTION 14 - SURRENDER RIGHT. Grantee may surrender this franchise at any time upon filing with the Township Secretary a written notice of its intention to do so at least three (3) months before the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties and liabilities of Grantee in connection with this franchise shall terminate.

SECTION 15 - TRANSFERS. All of the rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successors

of the Township and the successors and assigns of Grantee; and the same shall not be assigned or transferred without the prior written approval of the Township Board of Supervisors, which approval shall not be unreasonably withheld; provided, however, that this section shall not prevent the assignment of the franchise by Grantee as security for debt without such approval; and provided further that transfers or assignments of this franchise between any parent and subsidiary corporation or between entities of which at least 50% of the beneficial ownership is held by the same person, persons or entities shall be permitted without the prior approval of the Board of Supervisors.

SECTION 16 - FRANCHISE FEE. In consideration of the terms of this franchise, Grantee agrees to pay the Township a sum of money equal to three per cent (3%) of Grantee's gross subscriber revenues per year derived from installation of equipment and regular subscriber services in the Township. Such annual sum shall be payable one-half thereof at the end of each semi-annual period. The semi-annual anniversary shall be the last day of June and the last day of December of each year, and each semi-annual payment shall be paid within sixty (60) days thereafter. The fee set forth herein shall be in lieu of all other license fees or taxes levied upon Grantee by the Township.

SECTION 17 - RECEIVER SALES PROHIBITED. As a condition of this franchise, Grantee agrees that it shall not engage in the

business of sales or repair of television receivers owned by its subscribers; nor shall it be responsible for the operating condition of said receivers; provided, however, that this paragraph shall not apply to converters, decoders, home interactive terminals and other such devices as may be used in furnishing any programming or service via Grantee's cable television system.

SECTION 18 - ACCEPTANCE. This Ordinance when accepted by Grantee shall be and become a valid and binding contract between the Township of Hilltown and the Grantee; provided, that this Ordinance shall be void unless Grantee shall, within thirty (30) days after the final adoption of this Ordinance, file with the Township Secretary a written acceptance of this Ordinance and the franchise herein granted, agreeing that it will comply with all of the provisions and conditions hereof and that it will refrain from doing all of things prohibited by this Ordinance; the acceptance by the Township will be by Resolution which Resolution shall delineate the territory to be serviced by the Grantee.

SECTION 19 - UNLAWFUL ACTS.

A. It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of Grantee's cable television system for the purpose of enabling himself or others to receive any television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over Grantee's cable system without payment to Grantee or its lessee.

B. It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove, or injure any cable, wires or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over Grantee's cable system.

C. It shall be a misdemeanor punishable by a fine of no more than Three Hundred Dollars (\$300.00) or by imprisonment for a term not to exceed ninety (90) days, or both, for any person to violate any of the provisions of this Section.

SECTION 20 - SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Federal or state court or administrative or governmental agency of competent jurisdiction specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 21 - EFFECTIVE DATE.

This Ordinance shall become effective five (5) days after it is adopted by the Board of Supervisors of Hilltown Township.

ORDAINED AND ENACTED this 23 day of November,
A. D., 1981.

BOARD OF SUPERVISORS
HILLTOWN TOWNSHIP

Vincent Pischl
Vincent Pischl, Chairman

E.L. Wentz
Edward L. Wentz, Vice Chairman

Mary Lockhard
Mary Lockhard

Attest:

L. Kathy Kutekunas
Secretary