

AMITY TOWNSHIP ORDINANCE NO. 82

AN ORDINANCE AMENDMENT TO ORDINANCE NO. 81 OF THE TOWNSHIP OF AMITY, BERKS COUNTY, PENNSYLVANIA, ESTABLISHING AMENDMENTS TO THE ORDINANCE PROVIDING A NON-EXCLUSIVE FRANCHISE FOR THE OPERATION OF A CABLE TV SYSTEM WITHIN THE BOUNDARIES OF AMITY TOWNSHIP; PROVIDING FOR AMENDMENTS TO THE REGULATION AND USE OF SUCH SYSTEM; PROVIDING FOR PAYMENTS TO THE TOWNSHIP OF AMITY FOR THE OPERATION OF SUCH SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION THEREOF.

BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of Amity, and it is hereby enacted and ordained by the authority of the same as follows:

SECTION 8. LIABILITY AND INDEMNIFICATION

C. Grantee shall maintain, and by its acceptance of a Franchise specifically agrees that it will maintain throughout the term or terms of a Franchise, liability insurance with an acceptable insurance company, insuring the Township and the Grantee with regard to all damages mentioned in subsection A above in the following minimum amounts:

1. \$300,000 per person, \$500,000 per accident for bodily injury or death.
2. \$250,000 property damage resulting from any one accident.
3. \$100,000 for infringement of patents or copyrights.
4. \$100,000 for all other types of liability.

The above amounts may be reviewed and adjusted by Township should economic conditions warrant such action.

D. A Grantee shall supply the Board with a performance guarantee, acceptable to the Board, which will protect the Township against any damage incurred by it as a result of the operations of the Grantee within the Township.

E. The insurance policy or policies of the Grantee shall be with an insurance company licensed to conduct business in Pennsylvania. Such insurance policy or policies shall contain a provision that any and all notices which shall be given by the insurer or surety to the insured or principal shall also be given to the Township. Certificates evidencing the above insurance with amounts and expiration dates shall be given at appropriate intervals to the Township.

SECTION 11. SIGNAL QUALITY REQUIREMENTS

Grantee shall:

- A. Produce a picture, whether in black and white or in color, that is undistorted, reasonably free from ghost images and accompanied with

proper sound on typical standard production TV sets in good repair, and as good as the state of the art allows at the time of said picture production. In no case should the picture or sound received by sets in Amity Township be inferior to others in neighboring political subdivisions serviced by the same Grantee.

- F. Demonstrate by instruments and otherwise, at the request of the Township, that the CATV System in any given area is free from leakage or other interference, or is not interfering with other broadcast or receiving signals of TV, radio or other signals, or other electrical or electronic systems or equipment.

SECTION 15. SERVICE TO TOWNSHIP FACILITIES, SCHOOLS, ETC.

Upon request of the Township, Grantee shall provide basic system service at no charge to the following Township facilities if passed by its cable: the Township administrative office, police office, fire apparatus rooms of fire companies in the township and public school locations. The cost of installing said service, other than a normal aerial installation, from the street to the facility and within the facility shall be borne by the user.

SECTION 16. OTHER BUSINESS ACTIVITIES

- A. Neither Grantee, nor any shareholders or officer of Grantee, shall engage in the business of selling, repairing or installing television or radio receivers within the Township of Amity during the term of a Franchise, and Grantee shall not allow any of its shareholders or officers to so engage in any such business. Nothing in this section, however, shall prohibit Grantee from installing converters or similar accessories to cable TV installations.

SECTION 17. SAFETY REQUIREMENTS

- D. Grantee shall have sufficient employees in the general area to provide safe, adequate and prompt service for its facilities.

SECTION 18. NEW DEVELOPMENTS

The Township may amend a Franchise, upon notice to and consultation with the Grantee, when necessary to secure the advantages of any new developments so that the system may more effectively, efficiently or economically serve the cable subscribers and not unduly have an adverse effect on Grantee. This section shall not be construed, however, to require the Township to make any such amendments to the Franchise.

SECTION 19. CONDITIONS OF STREET OCCUPANCY

- I. When individual services are supplied above ground, the same shall cross only the property so served, unless express consent is given by the owner or owners of property so crossed. Where any existing telephone or electric individual service is underground, the CATV individual service shall be underground unless expressly otherwise authorized by the Board of Supervisors.
- J. Should the Grantee anticipate a potential need to install any new utility poles along the Cable route, this information should be clearly brought to the attention of the Township.

SECTION 20. REGULATIONS REGARDING TOWNSHIP TREES

- A. At or before the time of original installation of a Cable TV system in the Township, Grantee shall inform the Board of any potential work area involving Township trees and the scope of the work to be performed there.
- F. Grantee shall have authority for minimum trimming of Township trees, as required, to maintain its cable distribution system. Township reserves the right to monitor any such tree trimming operations.
- H. Grantee shall be liable for and hold the Township harmless from any and all claims arising out of work performed by Grantee in, on or around Township trees.

SECTION 22. REMOVAL OF FACILITIES AND EQUIPMENT

Upon termination of service to any subscriber, Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon request of the subscriber or the owner of the premises. Grantee's facilities or equipment within the Township rendered inoperable or inoperative, unusable or unused, shall be removed by Grantee upon request of the Township. Failure to so remove the same within 15 days after notice shall constitute a violation of this Ordinance and the Franchise.

SECTION 23. TRANSFER OF FRANCHISE

Grantee shall not transfer or assign a Franchise to any other person, firm or corporation without prior approval of the Board of Supervisors by Ordinance. The sale, assignment, or transfer of the majority or controlling interest of shares of voting stock in Grantee, shall constitute a transfer or assignment under this Section. Approval of the Board of Supervisors shall be predicated on the experience, financial ability and background of the transferee and shall not be unreasonably withheld.

SECTION 25. CHANGE OF CONTROL OF GRANTEE

Section 25. of Ordinance No. 81 is hereby revoked and withdrawn without provision for amendment or substitution.

SECTION 27. TOWNSHIP RIGHTS IN FRANCHISE

E. Upon the possible termination and cancellation of a Franchise, as provided for herein, Township shall have the right to require Grantee to remove at its own expense all portions of the CATV system from all streets, alleys, public ways and public places within the Township.

F. The initial term of a CATV Franchise shall be fifteen years but this initial term may be extended for subsequent five year terms, subject only to termination and cancellation for one or more substantive reasons listed below:

1. Substandard picture quality over an extended period of time.
2. Substandard service to subscribers over an extended period of time.
3. Repeated failures to respond to notification of valid complaints over an extended period of time.
4. Failure to extend equal service and picture quality to Amity Township subscribers that is extended to subscribers in other municipalities on the same CATV system.
5. Repeated failure to make timely disclosure to Township of the number of subscribers being serviced or pay over to Township amounts owed to same in a timely manner.
6. Flagrant violations of the terms set forth in this Ordinance or in a Franchise.

G. Within one year prior to the expiration of the initial term of the franchise or any extension thereto, the Township may hold a public hearing to determine whether Grantee has substantially performed in accordance with the terms of the franchise and this ordinance. If so determined, or if no such hearing is held, the term of franchise shall be extended for a five year period.

SECTION 28. MAPS, PLATS AND REPORTS

B. Grantee shall file annually with the Township Secretary a gross receipts statement applicable to its operations in the Township during the preceding twelve (12) months. This report shall be filed not later than 60 days after the end of Grantee's fiscal year. The gross receipts statement should report the following:

1. Identity of subscribers.
2. CATV services rendered to each subscriber at the prevailing rate.
3. Gross receipts from Township subscribers.
4. Gross revenue paid by Grantee to others to provide Home Box Office, Prism and any similar services to subscribers.
5. Net receipts from Township subscribers (gross receipts less Grantee's revenues paid over to suppliers of H.B.O., Prism etc. for these services).

The gross receipts statement must be authenticated by a certified public accountant at the time of its submittal or within ninety (90) days thereafter.

SECTION 29. PAYMENT TO THE TOWNSHIP

- A. Grantee shall pay to Township annually within 60 days of the close of its fiscal year a sum equal to three per centum (3%) of Net Receipts (Section 28.B.5) taken in and received by Grantee in the operation of the system within the Township.
- B. Grantee shall advise Township in writing at the time of acceptance of a Franchise the dates of its fiscal year. The annual payment from Grantee to Township shall be accompanied by a certification by a certified public accountant as to the correctness of the payment.
- C. Said payment to the Township shall be for the use of the streets, alleys, public ways and public places and other facilities of the Township in the operation of the CATV System and for Township supervision thereof. Such payment shall be full payment for the right to operate within the Township and in lieu of any other tax imposed by the Township.

SECTION 30. FORFEITURE OF FRANCHISE

- A.
 1. If Grantee violates any material provisions of this Ordinance or Franchise, or any rule, regulation or determination of Township or Board of Supervisors made pursuant to this Ordinance or a Franchise and fails to cure such violation within thirty (30) days after written notice is given by Township.
 4. If Grantee fails to extend its CATV facilities to the Township within six (6) months after receipt of a Franchise to do so and complete its construction throughout its agreed upon service area within twelve (12) months of said receipt unless delayed due to causes beyond Grantee's reasonable control. Upon request, the Grantee must substantiate in writing reasons for any delay in the

above schedule.

- B. Such termination and cancellation shall be by Ordinance duly enacted after twenty (20) days notice to Grantee, and shall in no way affect any of Township's rights under this Ordinance or Franchise, or any provision of law. Grantee may elect to have a hearing before the Board of Supervisors prior to any decision to terminate and cancel its franchise.

SECTION 33. DURATION AND ACCEPTANCE OF FRANCHISE

- A. A Franchise and the rights, privileges and authority thereby granted shall take effect and be in force from and after final approval thereof, as provided by law, and shall continue in force and effect for a term of fifteen (15) years, provided that within thirty (30) days after the date of the passage of a Franchise Resolution or Ordinance, or Renewal thereof, Grantee shall file with the Township Secretary its unconditional acceptance of said Franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to or acknowledged, by or on behalf of Grantee, before a Notary Public of the Commonwealth of Pennsylvania.
- C. The Franchise shall be automatically extended for additional terms of five years each, unless at the expiration of any such term the Franchise would not be renewed because of failure on the part of the Grantee to substantially perform in accordance with the terms of this ordinance. Township agrees that Grantee may challenge its position to cancel, terminate or fail to renew a Franchise before a court of competent jurisdiction.

SECTION 37. FLOW-THROUGH OF REFUNDS

Rates and charges for television and radio signals distributed in Amity Township under a franchise and the terms of this Ordinance shall not be higher than those charged by the Grantee to subscribers in other political subdivisions being serviced by the same area company.

In all other respects, the Ordinance No. 81 of the Township of Amity is or shall remain in affect.

Ordinance duly enacted by the Board of Supervisors of the Township of Amity assembled in regular session on February 15, 1980.

AMITY TOWNSHIP BOARD OF SUPERVISORS

S/ W. E. LeGrande, Jr.

S/ Jacob S. Oxenford

S/ William S. Embody, Jr.

Attest:
John C. Karst, Secretary