

CHAPTER XI

FRANCHISES

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Part 1

Cable Television

Section 101. Short Title. This Ordinance shall be known and may be cited as the "Amity Township Community Antenna Television System (CATV) Ordinance." (Ordinance 81, August 3, 1979, Section 1)

Section 102. Franchising. The Board of Supervisors may grant a non-exclusive franchise to an individual or company operating a cable television system providing such individual or company furnishes to the satisfaction of the Board the following information and data, as explained more fully in sections to follow:

(a) A Map detailing those sections of the Township in which it initially proposes to offer cable television services.

(b) A written Plan by which it intends to offer these services, including the timing involved in (a) extending cable facilities to the Township, (b) further extension of these facilities to the various sections of the Township, and (c) its resolve in offering timely service where underground lines and individual rights-of-way are involved.

(c) A List of the channels, by name, number and origin that it proposes to offer to potential Township customers; also a full explanation of the "Pay TV" services it intends to offer potential Township customers.

(d) A detailed list of installation and operational charges it will initially propose to potential customers. Should a franchise be issued, the above application submittal shall be made a part thereof.

(Ordinance 81, August 3, 1979, Section 2)

Section 103. Definitions. For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(a) Board. The Board of Supervisors of the Township of Amity.

(b) Community Antenna Television System (hereinafter referred to as CATV System or System). Grantee's system of duplex coaxial cables or other electrical conductors and equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and transmit them to subscribers for a fee and other services as required by current regulations of the Federal Communications Commission.

(c) Grantee. Anyone who hereinafter receives a CATV franchise from the Board.

(d) Person. Any person, firm, partnership, association, corporation, company or organization of any kind.

(e) Township. The Township of Amity, Berks County, Pennsylvania.

(f) Township Tree. A tree owned, planted and/or maintained by the Township within a street right-of-way, including a tree in a boulevard mall area, in the planting strip between curb and sidewalk, adjacent to or near the curb where no sidewalk exists, and in Township park lands or recreation areas, and including all parts of the tree, above and below ground, including the root system.

(Ordinance 81, August 3, 1979, Section 3)

Section 104. Grant of Non-Exclusive Authority.

(a) The Township may grant to a grantee the non-exclusive right and privilege to construct, erect, operate and maintain, in strict compliance with the provisions hereof, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out (subject to the conditions of Section 119(d) of this Chapter) or opened in the Township, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the Township of a CATV system for the interception, sale and distribution of television and radio signals; PROVIDED, HOWEVER, that said grant, right and privileges shall not extend to or include Township owned land or Township owned or controlled park lands or recreation areas, unless expressly authorized by the Board.

(b) The right to use and occupy said streets, alleys, public ways and places as aforesaid for the purposes herein set forth shall not be exclusive, and the Township reserves the right to grant a similar use of said streets, alleys, public ways and places to any person at any time and covering any area of the Township.

(Ordinance 81, August 3, 1979, Section 4)

Section 105. Compliance with Applicable Laws, Regulations and Ordinances.

(a) Grantee shall, at all times during the life of a franchise, be subject to all lawful exercise of the police power by the Township and to such reasonable rules and regulations as the Township shall hereafter provide.

(b) Grantee shall comply with all ordinances, laws, rules and regulations of the Township and all laws, rules, regulations, orders and directives of any other governmental agency or body having jurisdiction.

(c) All rules, regulations, orders, directives and signals quality requirements of the Federal Communications Commission, Public Utility

Commission, or other regulatory body or agency having jurisdiction, shall control in the event of any conflict thereof with any provision of this Ordinance, or in the absence of any such application provision in this Ordinance.

(d) Grantee shall obtain and secure any and all necessary easements, rights-of-way or other grants from any and all property owners who may be affected by the construction, operation and maintenance of the CATV system under a franchise.

(e) Prior to any construction or installation of any facilities upon, in or under any State highway within the Township, Grantee shall secure any and all necessary permits from the Commonwealth of Pennsylvania, and shall comply with all applicable rules and regulations of the Commonwealth of Pennsylvania.

(Ordinance 81, August 3, 1979, Section 5)

Section 106. Area Involved. A franchise relates to the present territorial limits of the Township and to any area henceforth added thereto during the term of a franchise. (Ordinance 81, August 3, 1979, Section 6)

Section 107. Requirements Prior to Construction.

(a) Grantee shall completely engineer the planned installation of its CATV system within the Township, and shall submit to the Township for its approval a plan or map indicating the complete route to be used in installing the system or any later extension thereof and complete specifications of equipment to be used.

(b) Grantee shall supply information to the Township indicating pole rights acquired, existing poles to be utilized and the number and location of new poles required, if any.

(c) Grantee shall supply information to the Township indicating where installation of its system will be overhead and where it will be underground.

(d) Grantee shall file a map showing the extent and/or perimeter of installation, and shall also file an extension policy beyond the perimeters shown.

(e) Grantee, by the acceptance of a franchise, agrees that it will not begin construction or installation of its system or any extension thereof unless and until the above documents and information have been supplied to and approved by the Board.

(f) Any construction work shall be done under applicable Township permits. During any such construction, Grantee shall pay all inspection fees. Such permits shall not duplicate permits required by other governmental bodies or public utilities.

(Ordinance 81, August 3, 1979, Section 7)

Section 108. Liability and Indemnification.

(a) Grantee shall pay, and by its acceptance of a franchise specifically agrees that it will pay, all damages and penalties which the Township may legally be required to pay as a result of the grant of a franchise. These damages or penalties shall include, but shall not be limited to, damages arising out of copyright or patent infringements, and all other damages arising out of the installation, operation or maintenance of the CATV system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by a franchise.

(b) Grantee shall pay, and by its acceptance of a franchise specifically agrees that it will pay, all expenses incurred by the Township in defending itself with regard to all damages and penalties mentioned in subsection (a) above. These expenses shall include all out-of-pocket expenses, such as attorneys' fees, and shall also include the reasonable value of any services rendered by the Township solicitor, employees of the Township, experts or consultants.

(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) Three Hundred Thousand Dollars (\$300,000.00) per person, and Five Hundred Thousand Dollars (\$500,000.00) per accident for bodily injury or death.

(2) Two Hundred Fifty Thousand Dollars (\$250,000.00) property damage resulting from any one (1) accident.

(3) One Hundred Thousand Dollars (\$100,000.00) for infringement of patents or copyrights.

(4) One Hundred Thousand Dollars (\$100,000.00) for all other types of liability.

The above amounts may be reviewed and adjusted by the 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.

(Ordinance 81, August 3, 1979, Section 8; as amended by Ordinance 82, February 15, 1980, Section 8)

Section 109. Pay TV. Existing regulations of the Federal Communications Commission or other governmental agency having jurisdiction shall be complied with in utilizing pay TV. (Ordinance 81, August 3, 1979, Section 9)

Section 110. Color TV. The facilities used by grantee shall be capable of distributing color TV signals, and when the signals grantee distributes are received in color they shall be distributed in color. (Ordinance 81, August 3, 1979, Section 10)

Section 111. 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.

(b) Transmit signals of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with regular broadcast or receiving signals of TV, radio and other signals, or other electrical or electronic systems or equipment.

(c) Limit failure to a minimum by locating and correcting malfunctions promptly, but in no event longer than forty-eight (48) hours after notice.

(d) Operate the system in such a manner so as to avoid intermittent or sporadic malfunctioning to any one subscriber.

(e) Demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered.

(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.

(g) Utilize instruments and equipment in keeping with modern and current design and technology.

(h) All technical standards set forth in current Federal Communications Commission Regulations shall be minimum requirements.

(Ordinance 81, August 3, 1979, Section 11; as amended by Ordinance 82, February 15, 1980, Section 11)

Section 112. Operation and Maintenance of System.

(a) Grantee shall render efficient and prompt service, make repairs promptly and interrupt service only for good cause and for the shortest possible time. Where possible, such interruptions shall be preceded by notice to subscribers and shall occur during periods of minimum use of the System.

(b) Grantee shall maintain an office in the Township or a reasonable distance therefrom. This office shall be open during usual business hours, shall have a listed telephone or telephones or be so operated that complaints and requests for repairs or adjustments may be received at any time.

(c) Grantee shall provide facilities and service to meet the needs of its subscribers, shall operate and maintain its system so as not to interfere with those residents and inhabitants of the Township who may not be subscribers and shall maintain its facilities and service in keeping with technical progress. Installation and maintenance shall be in accordance with good engineering practices.

(d) Grantee shall not, as a condition of serving any subscriber, request or require that any subscriber remove any television antenna from the subscriber's premises.

(Ordinance 81, August 3, 1979, Section 12)

Section 113. Transmission of Signals. Grantee shall receive and distribute television and radio signals in full and complete compliance with the rules and regulations of the Federal Communications Commission or other governmental body having jurisdiction. (Ordinance 81, August 3, 1979, Section 13)

Section 114. Program Alterations. All programs of broadcasting stations carried by grantee shall be carried in their entirety as received, with announcements and advertisements, and without additions or deletions. (Ordinance 81, August 3, 1979, Section 14)

Section 115. 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. (Ordinance 81, August 3, 1979, Section 15; as amended by Ordinance 82, February 15, 1980, Section 15)

Section 116. Other Business Activities.

(a) Neither grantee nor any shareholder 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.

(b) A franchise authorizes only the operation of a CATV System as provided herein, and does not take the place of any other franchise, license or permit which might be required by law of grantee.

(Ordinance 81, August 3, 1979, Section 16; as amended by Ordinance 82, February 15, 1980, Section 16)

Section 117. Safety Requirements.

(a) Grantee shall at all times employ ordinary and reasonable care, shall perform all work in a good and workmanlike manner, and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. The provisions of the Occupational Safety and Health Act of 1970 shall be adhered to.

(b) Grantee shall install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of all Township ordinances and State laws, and in accordance with the requirements of the National Electrical Code of the National Fire Protection Association, and in such manner as to not interfere with any installations of the Township or of a public utility serving the Township.

(c) All structures and all lines, wires, cables, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the Township, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

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

(Ordinance 81, August 3, 1979, Section 17; as amended by Ordinance 82, February 15, 1980, Section 17)

Section 118. 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. (Ordinance 81, August 3, 1979, Section 18; as amended by Ordinance 82, February 15, 1980, Section 18)

Section 119. Conditions of Street Occupancy.

(a) All transmission and distribution structures, lines, wires, cables, equipment, connections and other facilities erected, constructed or installed by Grantee within the Township shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners adjoining any of said streets, alleys or other public ways and places.

(b) In case of disturbance of any street, sidewalk or sidewalk area, alley, public way, paved or unpaved area, grantee shall, at its sole cost and expense and in a manner approved by the Township Engineer, replace and restore the same in as good or better condition as existed prior to said disturbance.

(c) If at any time during the period of a franchise the Township or the Commonwealth of Pennsylvania shall elect to alter or change the grade, width or alignment of any street, sidewalk, alley or other public way, or vacate the same, grantee shall, upon reasonable notice by the Township, remove, relay and relocate its poles, wires, lines, cables, underground conduits, manholes and other equipment, fixtures and facilities at its sole cost and expense.

(d) Grantee shall not install or erect any poles, cables, wires, lines, underground conduits, equipment, fixtures, or other facilities in, under or upon any street or alley in the Township which has not been opened or which is not in the process of development for opening, even though the same may be on the Township Topographical Survey or Official Map, unless and until specifically approved by the Board.

(e) Any poles, cables, wires, lines, equipment, fixtures or other facilities installed or erected by grantee on or along any street, alley or public way of the Township shall be installed or erected so as not to interfere with the usual travel on such street, alley or public way.

(f) Installation or erection of all poles, cables, wires, lines, underground conduits, equipment, fixtures or other facilities by grantee shall be done at reasonable hours and shall not unduly interfere with traffic or the rights of the traveling public.

(g) Grantee shall, upon request of any person desiring to lawfully move any building, temporarily raise or lower its wires, cables or lines to permit the moving of such building. The expense of such temporary removal or raising or lowering of wires, cables or lines shall be paid by the person requesting the same, and grantee shall have the right to require such payment in advance. Grantee shall be given not less than forty-eight (48) hours advance notice to make such temporary wire, cable or line changes.

(h) In any area, section, location, tract, plot, lot, piece of land, or portion thereof, in the Township, where the cables, lines, wires, conduits or similar facilities of public utilities are, will be, or are

planned by the Board to be placed underground, grantee shall place its cables, lines, wires, conduits or similar facilities underground to the maximum extent that existing technology reasonably permits grantee so to do.

(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.

(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.

(Ordinance 81, August 3, 1979, Section 19; as amended by Ordinance 82, February 15, 1980, Section 19)

Section 120. 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.

(b) No wire, line, cable, conduit or other facility shall in any way be attached, directly or indirectly, to any Township tree, or part thereof, nor shall any holes be bored or driven into any tree, or part thereof, nor shall any markings be made on any trees.

(c) The installation or erection of any wire, line, cable, conduit or other facility through any Township tree shall be so installed, erected, placed or located as to require a minimum of trimming with no permanent damage or injury to such tree.

(d) No pole or similar facility shall be located so as to injure or damage, or threaten to injure or damage, any Township tree.

(e) No roots of any Township tree shall be cut, weakened or molested so as to render any such tree unstable or imbalanced or otherwise damage, injure or threaten the life of such tree.

(f) Grantee shall have authority for minimum trimming of Township trees, as required, to maintain its cable distribution system. The Township reserves the right to monitor any such tree trimming operations.

(g) The Township reserves the right to require grantee to trim Township trees when grantee's wires, lines, cables, conduits or other facilities are damaging such trees or may, in the Township's discretion, threaten, damage or injure such trees. Should grantee fail to trim such trees, after twenty (20) days notice by Township to grantee, the Township

may cause such trimming to be done and grantee shall promptly reimburse the Township for the cost of the same.

(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.

(i) Grantee shall be liable for and hold the Township harmless from any and all claims arising out of the installation, erection, removing, relocating, dropping or disconnecting of its wires, lines, cables, conduits or other facilities through any Township tree or arising out of the installation or erection of any pole or other facility in the vicinity of any Township tree, including but not limited to the fall or collapse of said tree or the falling or dropping of limbs or branches from said tree.

(Ordinance 81, August 3, 1979, Section 20; as amended by Ordinance 82, February 15, 1980, Section 20)

Section 121. Preferential or Discriminatory Practices Prohibited. Grantee shall not, as to rates, charges, services, service facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage. (Ordinance 81, August 3, 1979, Section 21)

Section 122. Removal of Facilities and Equipment. Upon termination of service to any subscriber, grantee shall promptly remove all of 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 fifteen (15) days after notice shall constitute a violation of this Ordinance and the franchise. (Ordinance 81, August 3, 1979, Section 22; as amended by Ordinance 82, February 15, 1980, Section 22)

Section 123. Transfer of Franchise. Grantee shall not transfer or assign a franchise to any other person, firm or corporation without prior approval of the Board 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 shall be predicated on the experience, financial ability and background of the transferee and shall not be unreasonably withheld. (Ordinance 81, August 3, 1979, Section 23; as amended by Ordinance 82, February 15, 1980, Section 23)

Section 124. Transactions Affecting Ownership of Facilities. Grantee shall at all times be the full and complete owner of all facilities and property, real and personal, of the CATV system. (Ordinance 81, August 3, 1979, Section 24)

Section 125. Filings and Communications with Regulatory Agencies. Copies of all petitions, applications and communications submitted by grantee to the Federal Communications Commission, Securities and Exchange Commission, Public Utility Commission, or any other Federal or State regulatory commission or agency

having jurisdiction in respect to any matters affecting CATV operations authorized pursuant to franchise, shall also be submitted simultaneously to the Board. (Ordinance 81, August 3, 1979, Section 26)

Section 126. Township Rights in Franchise.

(a) The right is hereby reserved to the Board to adopt, in addition to the provisions contained herein and in existing applicable Township ordinances, such additional rules and regulations as it shall deem necessary in the exercise of the policy power; PROVIDED, HOWEVER, that the same shall be reasonable and not in conflict with the rights herein granted unless grantee is in violation of the Ordinance or a franchise.

(b) Proper and adequate records of gross receipts and gross operating revenues from subscribers within the Township shall be maintained by grantee. Upon request, the Township shall be furnished within twenty (20) days from the date of such request a list of the names and addresses of all subscribers within the Township and the gross monthly rate for each subscriber. The Township shall have the right to inspect the books, records, maps, plans, and other like materials of grantee at any time during normal business hours upon twenty-four (24) hours notice.

(c) The Township shall have the right, during the life of a franchise, to install and maintain, at no charge, upon the poles of grantee any wire, line, cable, conduit, fixture or other facility necessary for any Township use; PROVIDED, HOWEVER, that the same does not interfere with the CATV operations of grantee.

(d) The Township shall have the right to make such inspections as it may deem necessary to insure compliance with the terms of this Ordinance and a franchise and other applicable laws, rules and regulations.

(e) Upon the possible termination and cancellation of a franchise, as provided for herein, the 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 the CATV franchise shall be five (5) years, but this initial term may be extended for a subsequent five (5) year term, and thereafter for subsequent one (1) year terms, subject only to termination or 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 Township subscribers that is extended to subscribers in other municipalities on the same CATV system.

(5) Repeated failure to make timely disclosure to the Township of the number of subscribers being serviced or pay over to the Township all amounts owed in compliance with this Ordinance, and any amendments hereto.

(6) Failure to comply with all local, state and federal ordinances, regulations, rules or statutes.

(7) Failure to comply with the terms of this Ordinance or any amendment hereto.

(8) Failure to charge rates that are fair and reasonable.

(g) Within one (1) 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 the franchise shall be extended for a five (5) year period.

(Ordinance 81, August 3, 1979, Section 27; as amended by Ordinance 82, February 15, 1980 Section 27; as further amended by Ordinance 172, April 3, 2000, Section 1)

Section 127. Maps, Plats and Reports.

(a) Grantee shall file with the Township Secretary true and accurate maps or plans of all existing and proposed installations. Such amended, altered and up-dated maps or plans shall be filed from time to time by grantee as may be requested by the Township. Said maps or plans shall show, among other things, as may be requested by the Township, the location of receiving sites, the location of broadcasting sites, the locations of cables, lines, wires and/or conduits to or into the Township, and the location of cables, lines, wires, conduits, manholes, equipment and facilities within the Township.

(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 sixty (60) days after the end of grantee's fiscal year. The gross receipts statement should report the following:

- (1) Identity of all subscribers;
- (2) CATV services rendered to each subscriber at the prevailing rate;
- (3) Gross receipts from all 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.

(Ordinance 81, August 3, 1979, Section 28; as amended by Ordinance 82, February 15, 1980, Section 28)

Section 128. Payment to the Township.

(a) For the time period from June 1, 2000 through February 14, 2001 Grantee shall pay to the Township, within sixty (60) days of the close of its fiscal year, a sum equal to four percent (4%) of net receipts (as defined in Subsection 127(b) (5) of this Chapter) taken in and received by grantee in the operation of the system within the Township. Beginning on February 15, 2001, and annually thereafter, Grantee shall pay to the Township within sixty (60) days of the close of its fiscal year a sum equal to five percent (5%) of net receipts (as defined in Subsection 127(b) (5) of this Chapter) taken in and received by grantee in the operation of the system within the Township.

(b) Grantee shall advise the Township in writing at the time of acceptance of a franchise the dates of its fiscal year. The annual payment from grantee to the 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, public places and other facilities of the Township in the operation of the CATV system for the 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.

(d) Grantee shall not change or alter its fiscal year without prompt notification to the Board and then only upon such conditions regarding payment as the Township may impose or establish.

(Ordinance 81, August 3, 1979, Section 29; as amended by Ordinance 82, February 15, 1980, Section 29; as further amended by Ordinance 172, April 3, 2000, Section 2)

Section 129. Forfeiture of Franchise.

(a) In addition to all other rights and powers pertaining to the Township by virtue of a franchise or otherwise, the Township reserves the right to terminate and cancel a franchise and all rights and privileges of grantee thereunder in the event of any one or more of the following:

(1) If grantee violates any material provisions of this Ordinance or franchise, or any rule, regulation or determination of the Township or the Board made pursuant to this Ordinance or a franchise and fails to cure such violation within thirty (30) days after written notice is given by the Township;

(2) If grantee becomes insolvent, has a receiver appointed, files a voluntary petition in bankruptcy, has an involuntary petition in bankruptcy filed against it, or is adjudged a bankrupt;

(3) If grantee attempts to dispose of any of the facilities, equipment or property of its CATV system for the purpose of preventing the Township from purchasing the same as provided for herein;

(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;

(5) If grantee, within sixty (60) days after acceptance of a franchise, fails to apply to the Federal Communications Commission for a Federal Compliance Certificate and furnish evidence to the Township of such application;

(6) 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 within its agreed upon service area in the Township within twelve (12) months of said receipt. A grantee citing delay because of non-receipt of a Federal Compliance Certificate must document its efforts to obtain said Certificate. A grantee citing other reasons for non-compliance, such as factors beyond its control, must fully substantiate its position;

(7) If grantee fails to serve any new subscriber after said initial construction and initial service within three (3) months after such new request or application for service, unless grantee is prevented therefrom by conditions completely beyond its control.

(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 the Township's rights under this Ordinance or a franchise, or any provision of law. Grantee may elect to have a hearing before the Board prior to any decision to terminate and cancel its franchise.

(Ordinance 81, August 3, 1979, Section 30; as amended by Ordinance 82, February 15, 1980, Section 30)

Section 130. Township's Right of Intervention. Grantee agrees not to oppose intervention by the Township in any suit or proceeding, in law or equity, to which grantee is a party. (Ordinance 81, August 3, 1979, Section 31)

Section 131. Further Agreement and Waiver by Grantee. Grantee agrees to abide by all provisions of this Ordinance, as presently written, and further agrees that it will not at any future time set up as against the Township or the Board the claim that any provision hereof is unreasonable, arbitrary, unconstitutional or void. (Ordinance 81, August 3, 1979, Section 32)

Section 132. 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 approval thereof, as provided by law, and shall continue in force and effect for a term of five (5) years, provided that within thirty (30) days after the date of 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 of 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.

(b) The franchise shall be automatically extended for a subsequent five (5) year term and thereafter for subsequent one (1) year terms, 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. The Township agrees that grantee may challenge its position to cancel, terminate or fail to renew a franchise before a court of competent jurisdiction.

(c) The franchise shall be automatically extended for additional terms of five (5) years each, unless at the expiration of any such term the franchise would no 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.

(Ordinance 81, August 3, 1979, Section 33; as amended by Ordinance 82, February 15, 1980, Section 33; as further amended by Ordinance 172, April 3, 2000, Section 3)

Section 133. Erection, Removal and Common User of Poles and Other Facilities.

(a) No poles, wire-holding structures, towers, signal-holding structures or similar facilities shall be installed or erected in, on, under or above the ground by grantee without prior approval by the Board with regard to location, height, depth, type and other application conditions. However, no location of any such item of grantee shall be a

vested interest and the same shall be removed or modified by grantee at its own expenses whenever the Board for good reason so determines.

(b) Where any pole, wire-holding structure, tower, signal-holding structure, wire, line, cable, conduit or like or similar facility is already existing and available for use by grantee, but grantee does not make arrangements for such use, the Board may require grantee to use the same if it determines that the public convenience, safety or welfare requires it, or if the character of the neighborhood will be preserved, and the terms of the use available to grantee are just and reasonable. Presumptively, the use of the least number of such poles or facilities preserves the character of the neighborhood and enhances the public convenience, safety or welfare.

(c) The Board may require grantee to replace any pole, wire-holding structure or signal-holding structure which is not available for use by grantee by reason of inadequate size or space thereon if the Board determines that the public convenience, safety or welfare requires it or if the character of the neighborhood will be preserved. Presumptively, the use of one (1) pole, structure or facility rather than two (2) or more poles, structures or facilities enhances the public convenience, safety or welfare and preserves the character of the neighborhood.

(d) Where the Township, or a public utility serving the Township, desires to make use of the poles, wire-holding structures or signal-holding structures of Grantee, but agreement therefor with grantee cannot be reached, the Board may require grantee to permit such use for such consideration and upon such terms as the Board shall determine to be just and reasonable if the Board determines that the use would enhance the public convenience, safety or welfare, preserve the character of the neighborhood, and will not unduly interfere with grantee's operations.

(e) Copies of any and all contracts between grantee and any public utility serving the Township shall be filed with the Township Secretary prior to the commencement of any installation or construction of any cables, wires, lines, poles, structures or other facilities.

(Ordinance 81, August 3, 1979, Section 34)

Section 134. Number of Channels. Grantee's cable distribution system shall be capable of carrying at least twenty (20) channels. Grantee shall update its capacity to serve the public by utilizing new technology and providing additional channels as they may become available. (Ordinance 81, August 3, 1979, Section 35)

Section 135. Rates.

(a) The rates and charges for television and radio signals distributed under this Ordinance and the franchise shall be fair and reasonable and no higher than necessary to meet all costs of service (assuming efficient and economical management) including a fair return on the original cost, less depreciation, of its properties devoted to such service (without regard to any subsequent sale or transfer price or cost

to such properties), and by its acceptance of a franchise, grantee specifically agrees that its rates and charges shall be as provided herein. In any deliberation on rate structure, the Board will investigate and give full consideration to rates for similar services prevailing within the general area of its franchise.

(b) The Board shall have the power, right and authority to cause grantee's rates and charges to conform to the provisions of subsection (a) hereof, and for this purpose, it may deny increases or order reductions in such rates and charges when it determines that, in the absence of such action on grantee's part, grantee's rates and charges or proposed increased rates and charges will not conform to said subsection (a). By its acceptance of a franchise, grantee specifically agrees that the Board shall have such power, right and authority.

(c) No action shall be taken by the Board with respect to grantee's rates and charges under this section until grantee has been given reasonable notice thereof and an opportunity to be heard by the Board with regard thereto.

(d) Initial rates and charges for categories listed below must be made part of any application for a franchise.

- (1) Connection fee (first set);
- (2) Connection fee (additional sets);
- (3) Monthly service charge (first set);
- (4) Monthly service charge (additional sets);
- (5) FM connection fee;
- (6) Monthly service charge, FM only;
- (7) Monthly service charge for FM as an additional connection along with regular service;
- (8) Monthly service charges for PAY TV connections (list by name and separately);
 - (i) First set;
 - (ii) Additional sets;
- (9) Moving service charge, not to exceed: _____;
- (10) Reconnection service charge (after disconnection due to payment delinquency).

(e) Grantee shall neither request nor receive a deposit or advance payment from any subscriber or potential subscriber prior to being able to render immediate service to the subscriber, without approval of the Board.

(f) Grantee shall not impose, request or receive a penalty from any subscriber or potential subscriber.

(g) Grantee shall receive no consideration whatsoever for or in connection with its service to its subscribers other than in accordance with this section.

(h) If in the future any State or Federal agency regulates the rates of grantee for the service provided for in this Ordinance and a franchise, this section shall be of no effect during such regulation to the extent of any conflict therewith.

(Ordinance 81, August 3, 1979, Section 36)

Section 136. Flow-through of Refunds. Rates and charges for television and radio signals distributed in the 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 provisions of this Chapter are or shall remain in effect. (Ordinance 81, August 3, 1979, Section 37; as amended by Ordinance 82, February 15, 1980, Section 37)

Section 137. Subscriber Refunds on Termination of Service. If any subscriber of grantee of less than three (3) years terminates service because of grantee's failure to render service to such subscriber of a type and quality provided for herein, or if service to a subscriber of less than three (3) years is terminated by grantee without good cause or because grantee ceases to operate the CATV system authorized herein for any reason, except expiration of a franchise, grantee shall refund to such subscriber an amount equal to the initial tap-in and connection charges paid by him divided by thirty-six (36) and multiplied by a number equal to thirty-six (36) minus the number of months the subscriber has been in the system. (Ordinance 81, August 3, 1979, Section 38)

Section 138. Publication Costs. Grantee shall assume the cost of publication of this Ordinance or any amendments thereto, as such publication is required by law, and said cost is payable by grantee to the Township within ten (10) days after billing. (Ordinance 81, August 3, 1979, Section 39)

Section 139. Severability. If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance is, for any reason, declared to be illegal, unconstitutional or invalid, by any court of competent jurisdiction, such decision shall not affect or impair the validity of this Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, word, phrase or remaining portion of this Ordinance. The Board hereby declares that it would have adopted this Ordinance and each article, section, subsection, clause, phrase and word thereof, irrespective of the fact that any one or more of the sections, subsections, provisions, regulations, limitations, restrictions, sentences, clauses, phrases or words may be declared illegal, unconstitutional or invalid. (Ordinance 81, August 3, 1979, Section 40)

