

TOWNSHIP OF WEST COCALICO

Lancaster County, Pennsylvania

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ORDINANCE NO. 151

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AN ORDINANCE OF THE TOWNSHIP OF WEST COCALICO, LANCASTER COUNTY, PENNSYLVANIA, GRANTING TO BLUE RIDGE CABLE TECHNOLOGIES, INC., T/A BLUE RIDGE COMMUNICATIONS, A NONEXCLUSIVE FRANCHISE TO ERECT, INSTALL, MAINTAIN AND OPERATE A CABLE SYSTEM IN, UNDER, OVER, ALONG, ACROSS AND UPON THE STREETS, SIDEWALKS, ALLEYS, BRIDGES, ROADS, HIGHWAYS AND OTHER PUBLIC PLACES IN THE TOWNSHIP OF WEST COCALICO AND SUBSEQUENT ANNEXATIONS THERETO INCLUDING IN CONNECTION THEREWITH THE RIGHT AND PERMISSION TO ERECT, INSTALL, AND MAINTAIN POLES AND TO INSTALL, ATTACH AND MAINTAIN WIRES, CABLES, APPLIANCES AND OTHER FACILITIES TO SUCH POLES AND TO EXISTING UTILITY POLES FOR THE PURPOSE OF TRANSMISSION AND DISTRIBUTION OF TELEVISION AND OTHER ELECTRONIC SIGNALS AND FOR OTHER PURPOSES FOR A TEN YEAR TERM; AUTHORIZING BLUE RIDGE CABLE TECHNOLOGIES, INC., T/A BLUE RIDGE COMMUNICATIONS, TO PROVIDE CABLE SERVICE TO THE MEMBERS OF THE PUBLIC DESIRING SUCH SERVICE IN THE TOWNSHIP OF WEST COCALICO; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE SAID FRANCHISE; PROVIDING FOR TOWNSHIP REGULATION AND USE OF THE CABLE SYSTEM; AND PROVIDING PENALTIES FOR VIOLATIONS.

CABLE FRANCHISE AGREEMENT  
WEST COCALICO TOWNSHIP, LANCASTER COUNTY, PENNSYLVANIA

THIS FRANCHISE AGREEMENT BY AND BETWEEN WEST COCALICO TOWNSHIP, LANCASTER COUNTY, COMMONWEALTH OF PENNSYLVANIA (hereinafter "Township"), and BLUE RIDGE CABLE TECHNOLOGIES, INC., T/A BLUE RIDGE COMMUNICATIONS (hereinafter "Blue Ridge"), IS AUTHORIZED BY ORDINANCE NO. 151 ORDAINED AND ENACTED ON THE 2nd DAY OF June, 2022.

RECITALS

WHEREAS, pursuant to the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications

Act of 1996, and Pennsylvania law, the Township is authorized to grant or renew franchises to construct, operate and maintain a Cable System utilizing public rights-of-way and properties within the Township's jurisdiction; and

WHEREAS, Blue Ridge desires to enter into a new franchise agreement with the Township to maintain, construct, operate and upgrade its Cable System over, under and along the aforesaid rights-of-way for use by the Township's residents; and

WHEREAS, the aforesaid rights-of-way to be used by Blue Ridge are valuable public properties held in trust on behalf of the citizens by the Township, and the right to use said rights-of-way is a valuable property right governed by the Cable Act and FCC regulations; and

WHEREAS, the Township desires to protect the aforesaid rights-of-way, obtain cable services for its public buildings and provide for the current and future cable-related needs of its residents.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, and it being the intention of the parties to be legally bound hereby, the Township and Blue Ridge agree as follows:

BE IT ENACTED and ORDAINED by the Board of Supervisors of the Township of West Cocalico and it is hereby enacted and ordained as follows:

## **SECTION I. RECITALS**

The foregoing recitals are incorporated by reference and set forth as substantive parts of this Agreement.

## **SECTION II. DEFINITIONS**

A. For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings 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. Unless otherwise defined herein, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended.

B. "Affiliate" means, when used in relation to Blue Ridge, another Person who or which owns or controls, is owned or controlled by, or is under common ownership or control with, Blue Ridge. For the purpose of this definition the words "owns", "owned", and "common ownership" shall mean a direct or indirect stock, partnership, membership or other equity interest of twenty-five (25%) percent or more.

C. "Basic Cable Service" means any service tier which includes the retransmission of local television broadcast signals.

D. "Cable Act" means Title VI of the Communications Act of 1934, 47 U.S.C. §§ 521-561 (hereinafter the "Cable Act"), as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and as now or hereafter further amended.

E. "Cable Service" means the following:

1. the one-way transmission to subscribers of video programming or other programming service, and
2. subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

F. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include the following:

1. a facility that serves only to retransmit the television signals of one (1) or more television broadcast station(s);
2. a facility that serves subscribers without using any public right-of-way;
3. a facility of a common carrier which is subject, in whole or in part, to 47 U.S.C. §201-276, except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. §541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
4. an open video system that complies with 47 U.S.C. §573; or
5. any facilities of any electric utility used solely for operating its electric utility system.

G. "Blue Ridge" means Blue Ridge Cable Technologies, Inc., t/a Blue Ridge Communications

H. "FCC" means the Federal Communications Commission or successor governmental entity thereto.

I. "Franchise" means the initial authorization, or renewal thereof, issued by West Cocalico Township, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction and operation of the Cable System for the purpose of offering Cable Service to Subscribers in the Franchise Area.

J. "Franchise Agreement" or "Agreement" are used interchangeably herein and shall mean this Agreement and any mutually agreed to amendments or modifications hereto.

K. "Franchise Area" means the present legal boundaries of the Township as of the effective date of this Ordinance, and shall also include any additions thereto, by annexation or other legal means.

L. "Gross Revenue" means all revenues derived by Blue Ridge from the operation of the Cable System in the Franchise Area to provide Cable Services. Gross Revenue amounts shall be calculated in accordance with Generally Accepted Accounting Principles which include but shall not be limited to, revenue from all monthly subscriber fees for Basic Cable Service, standard service, digital service, premium service(s), pay-per-view fees, installation fees, fees received for additional outlets, relocations, disconnections, reconnections, cancellations, change-in-service fees, subscriber equipment rental and sales fees (such as converters and remote control devices), locally derived advertising fees, locally derived home shopping commissions, Leased Access fees, fees for video-on-demand service, late payment fees, NSF check charges and franchise fees, revenue received from provision of any lawful Cable Service in the Township. These items shall be paid to the Township whether they are earned directly by Blue Ridge or by an Affiliate of Blue Ridge providing Cable Service in the Township.

M. "Person" means any natural person or any association, firm, partnership, joint venture, limited liability company, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Township.

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

appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

O. "Service Area" means the geographic area of the Township presently served by Blue Ridge Cable Service and any future additional areas where service is mandated herein.

P. "Subscriber" means a person or user of the Cable System who contracts with Blue Ridge and lawfully receives Cable Services distributed by the Cable System with Blue Ridge's express permission within the Service Area.

Q. "Township" means the Township of West Cocalico, Lancaster County, Commonwealth of Pennsylvania.

R. "Trouble Call" means any oral or written communication to Blue Ridge reporting a service interruption resulting in a work order requiring a service response and/or "truck roll" that was not caused by circumstances beyond Blue Ridge's direct control.

### **SECTION III. GRANT OF AUTHORITY**

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

B. Term of Franchise. Unless terminated earlier in accordance with applicable provisions of this Agreement, the Franchise granted pursuant to this Agreement shall commence upon the date of execution by all parties necessary to sign the document and shall expire ten (10) years from the date of execution.

C. Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, 47 U.S.C. §546, as amended.

D. Reservation of Authority. Nothing in this Franchise Agreement shall:

1. abrogate the right of the Township to perform any public works or public improvements of any description, or

2. be construed as a waiver of any codes or ordinances of general applicability promulgated by the Township, or

3. be construed as a waiver or release of the rights of the Township in and to the Public Ways.

E. Competitive Equity.

1. Blue Ridge acknowledges and agrees that the Township reserves the right to grant one or more additional franchises to provide Cable Services or operate an open video system within the Township; provided, however, that no such franchise shall contain Material Obligations, as specifically defined in Section III.E.2., that are more favorable or less burdensome to the competitive entity than those contained in this Agreement.

2. For the purposes of this Section III.E., "Materials Obligations" are limited to the following: Blue Ridge's obligations under this Agreement to pay franchise fees; Blue Ridge's obligations under this Agreement to meet the customer service standards; and Blue Ridge's obligations under this Agreement to provide cable service in its Service Area.

3. In the event an application for a new franchise for Cable Service or an open video system is submitted to the Township proposing to serve Subscribers within the Township, then the Township shall notify Blue Ridge of the submission of the application.

#### **SECTION IV. THE SYSTEM**

A. Permits and General Obligations. Blue Ridge shall be responsible for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by Blue Ridge for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way. Blue Ridge shall not be required to obtain prior approval or permits from the Township for routine repair and maintenance of its Cable System, such as service drops to individual subscribers or work involving a single pedestal.

B. Conditions on Street Occupancy.

1. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then Blue Ridge shall, upon reasonable advance written notice from the

Township (which shall not be less than twenty (20) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any Person using such street or public right-of-way for the purpose of defraying the cost of any of the foregoing, the Township shall upon written request of Blue Ridge make application for such funds on behalf of Blue Ridge.

2. Relocation at Request of the Township.

a. Upon receipt of reasonable advance written notice (except under exigent circumstances) Blue Ridge shall, in a timely manner and at its own expense, locate, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way or other property owned by the Township, any property of Blue Ridge when lawfully required by the Township by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Township; provided, however, Blue Ridge in all such cases shall share proportionately with utility companies in any federal, state, or county funds awarded to the Township specifically for any of the purposes enumerated above. Nothing in this section shall be construed to require the Township to make application for or seek a grant for any such funds.

b. Upon the failure of Blue Ridge to commence, pursue, or complete any relocation work required by law (or by the provisions of Blue Ridge's franchise, or any other applicable federal, state or local law, ordinance, rule or regulation) to be done in any Public Way or other public place within the time prescribed (*or if not prescribed in a timely manner*), and to the satisfaction of the Township, the Township, at its option, may cause such work to be done, and Blue Ridge shall pay to the Township the cost thereof in the itemized amounts reported by the Township to Blue Ridge within thirty (30) days after receipt of such itemized report. However, Blue Ridge, upon prior approval of the Township, may elect to abandon any or all of its underground property, which prior approval shall not be unreasonably withheld.

3. Relocation at Request of Third Party. Blue Ridge shall, upon reasonable prior written request of any Person holding a permit issued by the Township to move any structure, temporarily move its wires to permit the moving of such structure; provided

a. Blue Ridge may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and further provided

b. Blue Ridge is given not less than twenty (20) business days advance written notice to arrange for such temporary relocation.

4. Restoration of Public Ways. If, in connection with the construction, operation, maintenance, or repair of the Cable System, Blue Ridge disturbs, alters, or damages any Public Way, Blue Ridge agrees that it shall at its own cost and expense, replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance.

5. Safety Requirements. Blue Ridge shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal, state, and local safety regulations. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

6. Trimming of Trees and Shrubbery. Blue Ridge shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with Blue Ridge's wires, cables, or other equipment. All such trimming shall be done at Blue Ridge's sole cost and expense. Blue Ridge shall be liable for any damage caused by such trimming.

7. Use of Blue Ridge's Poles and Conduit by the Township. Except as already set forth in this Agreement and subject to any applicable state or federal regulations or tariffs, the Township shall have the right to make additional use of any poles or conduits controlled or maintained exclusively by or for Blue Ridge in any Public Way; provided, however, that (a) such use by the Township does not interfere with a current or future use by Blue Ridge; (b) the Township holds Blue Ridge harmless against any and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to, reasonable attorneys' fees and costs except for claims and damages arising out of the willful or negligent acts caused by Blue Ridge, and, © at Blue Ridge's sole discretion, the Township may be required either to pay a reasonable rental fee or otherwise reasonably compensate Blue Ridge for the use of such poles, conduits or equipment; provided, however, that Blue Ridge agrees that such compensation or charge shall not exceed those paid by public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the Franchise Area.

8. Emergency Usage. Blue Ridge shall comply with emergency or disaster notification requirements of the FCC and state emergency or disaster agencies.

9. Aerial and Underground Construction. If all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, Blue Ridge shall place its Cable Systems' transmission and distribution facilities underground, provided that such facilities are actually capable of accommodating Blue Ridge's cable and other equipment without technical degradation of



the Cable System's signal quality. In any regions of the Franchise Area where the transmission or distribution facilities (excluding facilities such as pedestals as well as customer premises equipment and drops) of the respective public or municipal utilities are both aerial and underground, Blue Ridge shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section IV(B)(9) shall be construed to require Blue Ridge to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

10. Maps. Blue Ridge shall make available to the Township within thirty (30) days of the Township's written request to Blue Ridge and for the Township's exclusive use a complete set of strand maps showing the areas in which Blue Ridge's facility exist in all Public Ways.

## **SECTION V. SERVICE OBLIGATIONS**

### **A. General Service Obligation.**

1. Blue Ridge shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least twenty-five (25) customers per mile. For the purposes of this paragraph, a customer shall be a person who has entered into a contract for Blue Ridge Cable Service. Subject to the density requirement, Blue Ridge shall offer Cable Service to all new homes or previously unserved homes located within 125 feet of Blue Ridge's distribution cable ("Normal Installation"). Notwithstanding the above, Blue Ridge shall not be obligated to provide Cable Service where such service is being provided by another multi-channel video programming provider.

2. Blue Ridge may elect to provide Cable Service to areas not meeting the above density standards. Blue Ridge may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation which exceeds the 125 foot standard set forth in Section V.A.I. above.

3. Upon written request for Cable Service from a developer or any of the residents in a low density area, with any and all such low density areas being defined for purposes of this section as an area that fails to meet the density requirements established in Section V.A.1. of this Agreement, Blue Ridge shall respond in writing within sixty (60) days of such request with information regarding the potential for extending Cable Service, or of providing comparable service through alternative means, and all cost-sharing options available, according to the provisions set forth herein.

B. Programming. Blue Ridge shall offer to all Subscribers a diversity of video programming services in broad categories. By way of example, the diversity of programming may include education programming, news and public affairs, local and regional news, sports, weather, music, family programming, children's programming, movies, home and garden programming, and business and financial programming.

C. No Discrimination. Neither Blue Ridge nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, nor any other Person, shall discriminate or permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to Blue Ridge are satisfied.

D. New Developments. The Township shall provide Blue Ridge with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring underground cable facilities. The Township agrees to require the developer, as a condition of issuing the permit, to give Blue Ridge access to open trenches for deployment of cable facilities and at least ten (10) business days written notice of the date of availability of open trenches. Developer shall be responsible for the digging and backfilling of all trenches. Blue Ridge shall be responsible for engineering and deployment of labor applicable to its cable facilities.

E. Prohibition against Reselling Service. No Person shall resell, without the express prior written consent of Blue Ridge, any Cable Service, program or signal transmitted over the Cable System by Blue Ridge.

## **SECTION VI. RATES, FEES AND CHARGES TO CUSTOMERS**

All rates, fees, charges, deposits and associated terms and conditions to be imposed by Blue Ridge or any affiliated Person for any Cable Service as of the effective date shall be in accordance with applicable FCC rate regulations, if applicable. Before any new or modified rate, fee, or charge is imposed, Blue Ridge shall follow the applicable FCC notice requirements and rules and notify affected Subscribers, which notice may be by any means permitted under applicable law.

## **SECTION VII. CUSTOMER SERVICE STANDARDS, SUBSCRIBER BILLS, AND PRIVACY PROTECTION**

A. Customer Service Standards. The Township hereby adopts the customer service standards set forth in Section 76.309 of Part 47 of the FCC's rules and regulations. 47 C.F.R. §76.309. Blue Ridge shall comply in all respects with the customer service requirements established by the FCC. Additionally, Blue Ridge shall have a publicly listed telephone number by which persons can communicate with Blue Ridge. Blue Ridge shall comply with Section VII (B through G) so long as they are consistent with applicable FCC rules and regulations.

B. Notices.

1. Blue Ridge shall provide written notice and information to each Subscriber upon initial subscription and at intervals not more than one (1) year thereafter, annually to the Township, and at any time upon request by the Township or a Subscriber, concerning each of the following areas:

- a. Products and services offered;
- b. Prices and options for programming services and conditions of subscription to programming and other services;
- c. Installation and service maintenance policies;
- d. Instructions on how to use the Cable Service and any converters;
- e. Channel positions and programming carried on the Cable System;
- f. Billing and customer complaint procedures;
- g. Blue Ridge's addresses, telephone numbers and office hours; and
- h. A notice of subscriber privacy rights as required by federal law and contained in Paragraph G below.

2. Blue Ridge shall provide Subscribers and the Township with thirty (30) days' advance notification of any changes in services including, but not limited to, the deletion of channels from the Basic Cable Service tier or the movement of any channel from one service tier to another service tier. Blue Ridge shall also provide Subscribers and the Township with thirty (30) days' advance notification of any changes in rates to be charged Subscribers for service tiers, installation or any other Cable Services provided by Blue Ridge, provided that any such change is within the control of Blue Ridge. This notification shall not be required for the offering of any particular pay-per-view programming. Blue Ridge shall also not be required to provide prior notice to Subscribers of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment or charge of any kind imposed by any federal agency, the Commonwealth of Pennsylvania or the Township on the transaction between Blue Ridge and the Subscriber.

3. Blue Ridge shall maintain such files as required by the FCC to be made available to the public as required pursuant to the FCC's rules and regulations.

4. Blue Ridge shall provide sample bills, showing the cost to the Subscriber of each service tier package, including the franchise fee, to the Township upon request.

C. Subscriber Bills.

1. Bills shall be clear, concise and understandable and will be itemized in accordance with FCC or other federal and state requirements. Bills must be fully itemized, with itemizations including all applicable service tiers and, if applicable, equipment charges and any installation or repair charges. The bill shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances.

2. Blue Ridge shall include on each bill the name of and contact information for Blue Ridge.

3. Blue Ridge shall include on each bill the name of the municipality to which each Subscriber is assigned by Blue Ridge. Upon written request from the Township Blue Ridge shall not include the municipality's telephone number on the bill.

4. Blue Ridge shall provide bill payment facilities at its local business office to accept such payments at least during normal business hours.

5. With respect to advance billing, late fees, and the collection of past due debts owed to it by Subscribers, Blue Ridge may exercise its rights under and shall comply with applicable law.

D. Subscriber Complaint Procedures. Blue Ridge shall establish clear, written procedures for resolving all Subscriber complaints, which shall include at least the following:

1. Blue Ridge shall provide the Subscriber with a written response to a written complaint addressed to the local business office within thirty (30) days of its receipt. Such response shall include the fact that the complaint has been received, the results of its initial inquiry into the subject matter of the complaint and either (1) its decision based on those results, or (2) its need to perform further investigation into the complaint. If Blue Ridge needs to perform further investigation, it shall provide the Subscriber with a written response containing its decision when its investigation is completed. Upon request and the Subscriber's consent, a copy of Blue Ridge's written response(s) shall be sent to the Township.

2. If the Township is contacted directly about a Subscriber complaint, it shall promptly refer the Subscriber to Blue Ridge.

3. Any Subscriber who, in good faith, disputes all or part of any bill sent by Blue Ridge has the option of withholding the disputed amount or the initiation of collection procedures until Blue Ridge has investigated the dispute in good faith and has made a determination that the amount is owed provided that:

a. The Subscriber provides a written complaint to Blue Ridge in a timely fashion and includes identifying information;

b. The Subscriber pays all undisputed charges; and

c. The Subscriber cooperates in determining the appropriateness of the charges in dispute.

4. Blue Ridge shall maintain a record of Trouble Calls received by Blue Ridge that have generated a service response action in the Township. Upon written request, Blue Ridge shall make available to the Township a copy of such records. Blue Ridge agrees to maintain such records for at least twelve (12) months from the date of receipt. If the Township believes that there has been an increase in Trouble Calls, it may request a Trouble Call report and request that Blue Ridge conduct an inquiry concerning Trouble Calls or a service-related issue. Blue Ridge shall complete the inquiry and provide the Township with a written report no later than sixty (60) days after the written request for such a report is received by Blue Ridge.

E. Disconnection. Blue Ridge may disconnect or terminate a Subscriber's service for cause:

1. If at least thirty (30) days have elapsed from the due date of the bill which Subscriber has failed to pay; and

2. If Blue Ridge has provided at least ten (10) days' notice to the affected Subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection; and

3. If at any time and without notice Blue Ridge determines in good faith that Subscriber has tampered with or abused Blue Ridge's equipment or is engaged in theft of Cable Service.

F. Damaged or Lost Equipment. In the event that a Subscriber is unable to provide documentation to substantiate that a converter or other equipment was stolen or destroyed by fire, Blue Ridge shall be entitled to assess a replacement cost for the equipment.

G. Privacy.

1. Blue Ridge shall respect the rights of privacy of every Subscriber and shall not violate such rights through the use of any device or signal associated with the Cable System. Blue Ridge shall at all times comply with the privacy provisions of Section 631 of the Cable Act, 47 U.S.C. §551, and all other applicable federal and state privacy laws and regulations.

2. Blue Ridge shall be responsible for complying with such privacy policy, and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personal subscriber information is handled and protected strictly in accordance with this policy and all applicable laws and regulations.

3. Upon a request by a Subscriber, Blue Ridge shall make available for inspection by the affected Subscriber at a reasonable time and at its principal place of business all personal Subscriber information that Blue Ridge maintains regarding said

Subscriber. Blue Ridge shall ensure that all information related to billing and service requests is accurate and up-to-date and shall promptly correct any errors upon discovery.

4. All references in this section are subject to the provision of Public Law No. 107-56 (October 26, 2001) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001.

## **SECTION VIII. OVERSIGHT AND REGULATION BY THE TOWNSHIP**

A. Franchise Fees. Blue Ridge shall pay to the Township a franchise fee in an amount equal to five percent (5%) of annual Gross Revenue received from the operation of the Cable System to provide Cable Service in the Franchise Area. Said franchise fee may be increased not more than once annually at the sole and exclusive election of the Township to an amount not to exceed the maximum rate allowed by federal law, upon one hundred eighty (180) days' prior written notice to Blue Ridge with a copy of the resolution or ordinance authorizing the rate adjustment. The payment of franchise fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter and sixty (60) days after the end of the fourth quarter of the year. Each franchise fee payment shall be accompanied by a report prepared by a representative of Blue Ridge, which shows the basis for the computation of all Gross Revenue actually received from the operation of the Cable System for the provision of Cable Service in the Franchise Area during the period for which such franchise fee payment is made.

B. Franchise Fees Subject to Inspection.

1. Upon reasonable prior written notice, during normal business hours, at Blue Ridge's principal business office, the Township shall have the right to inspect Blue Ridge's financial records used to calculate the Township's franchise fees; provided, however, that any such inspection shall take place within thirty-six (36) months from the date the Township receives such payment, after which period any such payment not contested by the Township shall be considered final.

2. Upon twenty (20) days' prior written notice, the Township shall have the right to inspect and make extracts at Blue Ridge's local office of the financial records of Blue Ridge directly related to the sources, amounts and computation of Gross Revenues in accordance with Generally Accepted Accounting Principles for the purpose of verifying or identifying franchise fee revenue owed to the Township. Where, in the opinion of the Township, they are reasonably necessary to verify or supplement Blue Ridge's records, the Township may request, and Blue Ridge shall use its best efforts to obtain and furnish, financial records of Affiliates providing Cable Service in the Cable System and make the same available for inspection by the Township at the local office of Blue Ridge. Upon completion of any such inspection by the Township, the Township shall provide to Blue Ridge a final report, which sets forth the Township's findings in detail, including any and all substantiating documentation. Blue Ridge shall have thirty (30) days from the receipt of the report to provide the Township with a written response, including any substantiating

documentation. Any "Finally Settled Amount(s)" due to the Township as a result of such inspection shall be paid to the Township by Blue Ridge within forty five (45) days from receipt of written notice of the acceptance of such Finally Settled Amount from the Township. For purposes of this section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Township by Blue Ridge as a result of any such inspection. The Township shall bear the expense of any inspection of Blue Ridge's books and records. Once the parties agree upon Final Settlement Amount(s), the Township shall have no further rights to audit or challenge the franchise fee payment for that period, but shall have the right to challenge future franchise fee amounts.

3. In the event that any franchise fee or other payment is not made or the requisite documentation and certification is not provided on or before the applicable dates heretofore specified, interest shall be assessed at a rate of six (6%) percent. Any amount recomputed to reflect the correct payment due shall bear annual interest as described from the date such payment was originally due.

4. On an annual basis, upon thirty (30) days' prior written notice given on or prior to September 30 of the year following that for which franchise fees have been paid, the Township shall have the right to conduct an independent audit of Blue Ridge's records and the records of its Affiliates providing Cable Service in the Cable System reasonably related to the sources, amounts and computation of Gross Revenue in accordance with Generally Accepted Accounting Principles. In the event that an audit finds an underpayment, Blue Ridge shall pay the amount owed, and if such amount owed is 10% (ten percent) or more, Blue Ridge will pay the cost of such audit.

C. Oversight of Franchise and Testing for Compliance. Blue Ridge shall meet or exceed the technical standards of the FCC, National Electrical Code, and any other applicable federal standards. In accordance with such applicable law, the Township shall have the right to oversee, regulate and, on reasonable prior written notice, periodically inspect the construction, operation and maintenance of the Cable System in the Franchise Area, and all parts thereof, as necessary to monitor Blue Ridge's compliance with the provisions of this Franchise Agreement. Upon written request of the Township, Blue Ridge shall furnish a copy of all FCC-required technical tests performed on the Cable System by it or on its behalf to the Township at no cost or expense to the Township. The Township may perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of Blue Ridge or the Cable System in order to determine whether or not Blue Ridge is in compliance with the requirements herein and all applicable laws, ordinances, rules and regulations. For its technical tests, the Township shall retain, at its sole cost and expense, a professional engineering organization that has been certified by a national technical standards body to conduct such inspections and examinations. Except in emergency circumstances, such tests may be undertaken only after giving Blue Ridge reasonable notice thereof, not to be less than fifteen (15) business days, and providing a representative of Blue Ridge an opportunity to be present during such tests. In the event that such testing demonstrates that Blue Ridge has failed to comply with any FCC technical standard or any technical standard approved by the FCC, the costs of such tests shall be borne by Blue Ridge and

paid to the Township within sixty (60) days. In the event that such testing demonstrates that Blue Ridge has complied therewith, the cost of such testing shall be borne by the Township.

D. Technical Standards. Blue Ridge shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, Blue Ridge shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective.

E. Maintenance of Books, Records, and Files.

1. Books and Records. Throughout the term of this Franchise Agreement, Blue Ridge agrees that the Township, upon reasonable prior written notice to Blue Ridge, may review such of Blue Ridge's books and records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area which are reasonably necessary to monitor Blue Ridge's compliance with the provisions of this Franchise Agreement at Blue Ridge's local business office, during normal business hours and without unreasonably interfering with Blue Ridge's business operations. Such books and records shall include any records required to be kept in a public file by Blue Ridge pursuant to the rules and regulations of the FCC. All such documents pertaining to payment of the franchise fee may be the subject of an inspection by the Township shall be retained by Blue Ridge for a period not to exceed twenty-four (24) months.

2. File for Public Inspection. Throughout the term of this Franchise Agreement, Blue Ridge shall maintain at the appropriate location pursuant to FCC Public Inspection File regulation, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

3. Proprietary Information. Notwithstanding anything to the contrary set forth in this Section VIII, Blue Ridge shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Township agrees to treat any information disclosed by Blue Ridge as confidential and only to disclose it to employees, representatives, and agents of the Township that have a need to know, or in order to enforce this Franchise Agreement and who agree in writing to maintain the confidentiality of all such information, except to the extent such information or records are not exempt from disclosure or are considered a public record within the Right to Know Act, 65 P.S. §§66.1-66.4, or any other applicable open records laws. In the event a request is made by an individual or entity not an employee, agent or representative of the Township or by an employee, agent or representative of the Township not acting in his or her official capacity for information related to the franchise and marked by Blue Ridge as confidential and/or proprietary, the Township shall permit Blue Ridge to protect its interests to the extent permitted by law (e.g., if such information is exempt from disclosure or not considered a public record within the Right to Know Act) before providing documents or access to documents to the requester. Blue Ridge shall reimburse the Township for any reasonable expense related to protecting Blue Ridge's rights, including attorneys' fees, incurred as a result of permitting Blue Ridge



to protect its interests. Blue Ridge shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act, 47 U.S.C. §551. For purposes of this Section VIII, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, Subscriber lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by Blue Ridge to be competitively sensitive.

## **SECTION IX. INSURANCE AND INDEMNITY**

A. Insurance. Throughout the term of this Franchise Agreement, Blue Ridge shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide to the Township, certificates of insurance within sixty (60) days of the execution of this Franchise Agreement and thereafter upon request, Blue Ridge would provide the Township copies of certificates of insurance designating the Township and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that Blue Ridge has obtained the insurance required in this Section IX.A. Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury or death to any one person, and One Million Dollars (\$1,000,000.00) per occurrence for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000.00) per occurrence for property damage resulting from any one accident, and Five Hundred Thousand Dollars (\$500,000.00) per occurrence for libel and slander associated with programming on channels that are directly or indirectly controlled by Blue Ridge. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the Township. Blue Ridge shall provide workers' compensation coverage in accordance with applicable law. In addition to the indemnification language found in Section IX.B. below, Blue Ridge shall indemnify and hold harmless the Township from any Workers' Compensation claims to which Blue Ridge may become subject during the term of this Franchise Agreement.

B. Indemnification. Blue Ridge shall indemnify, defend and hold harmless the Township, its elected and appointed officials, officers, employees, and agents, from and against any liability, damages or claims which arise out of the construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorneys' fees, provided that the Township shall give Blue Ridge written notice of its obligation to indemnify the Township within ten (10) business days of receipt of a claim or action pursuant to this Section IX. If the Township determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Township.

## **SECTION X. SYSTEM DESCRIPTION AND SERVICE**

A. System Capacity. During the term of this Agreement, Blue Ridge's Cable System shall be capable of providing a minimum of 70 channels of video programming with reception available to its Subscribers in the Franchise Area that meets or exceeds the FCC's technical standards.

B. System Specifications. Blue Ridge shall maintain and operate a Cable System(s) covering the Service Area which utilizes at the time of the Effective Date fiber optic receiver nodes located throughout the plant that divides the distribution of cable signals to Subscribers in a manner which provides high quality programming signals and reliable service. Blue Ridge represents and warrants that this Cable System is built with a bandwidth no less than 750 MHZ with addressable technology with video channels reserved for digital or analog transmission and with sufficient portion of said bandwidth capable of delivering reliable two-way Cable Services. Blue Ridge specifically reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the Cable System at any time during the term of the Franchise Agreement, in accordance with the provisions of this Franchise Agreement. Notwithstanding the above, Blue Ridge agrees that no alteration, adjustment, modification, rebuild, upgrade, redesign, or other reconfiguration of the Cable System shall have the effect of reducing the technical capabilities of the Cable System from those that exist on the Effective Date of this Franchise Agreement.

C. New Services.

1. Throughout the term of this Agreement, Blue Ridge shall construct, operate, maintain and upgrade the Cable System consistent with the following provisions: In the event that additional new Cable Services are provided in any communities served by Blue Ridge in Lancaster County Pennsylvania, the Township shall have the option to request a similar future upgrade. The Township may not make such request more than one year after receiving an annual report, as referenced below. Blue Ridge shall be in compliance with this provision as long as the technical quality of the services, associated equipment and facilities is substantially comparable to the communities identified in Exhibit A.

2. Within one hundred and eighty (180) days from the third anniversary of the effective date of this Agreement and annually thereafter, the Township may request from Blue Ridge a written report describing new services. Upon such request, Blue Ridge shall provide the Township with a report describing any and all new services, associated equipment and facilities which have been introduced in the prior year in the communities identified in Exhibit A, and for purposes of information only shall provide information regarding new services, associated equipment and facilities introduced by Blue Ridge within the service area in the prior year. Should the Township determine that Blue Ridge shall commence the provision of new Cable Services, then the Township and Blue Ridge shall enter into good faith discussions to negotiate the schedule for the deployment of such new services. The discussions shall take into consideration the benefits from the provision of such Cable Services, the cost of implementing them in the Township, the technical feasibility of implementing them in the Township, and the impact, if any, on Subscriber rates. Notwithstanding the foregoing, Blue Ridge shall not be required to provide any new services, associated equipment and facilities unless and until the Township has approved a rate plan, where such approval is required by applicable law, that will allow full recovery of the cost of providing any such new services over the then remaining term of the Franchise.

3. Blue Ridge shall not be subject to the terms set forth in Sections X.C.1. and 2 herein above where "Effective Competition" exists in the franchise area, as defined by federal law.

## **SECTION XI. SUBSCRIBER SERVICE RATES**

To the extent permitted by Section 623 of the Cable Act, 47 U.S.C. §543, and the regulations promulgated thereunder, and upon fulfilling the necessary steps to become certified to regulate rates and to the extent permitted by future amendments to the Cable Act, the Township hereby reserves the right to regulate the rates charged by Blue Ridge for Cable Service provided by the Cable System in the Franchise Area, to enforce regulations prescribed by the FCC, and to file complaints challenging a rate as unreasonable to the extent permitted by federal and state law including, but not limited to, the Cable Act.

## **SECTION XII. TRANSFER, ASSIGNMENT AND FORECLOSURE**

A. The Franchise herein granted is personal to Blue Ridge. It cannot be transferred, leased, assigned or disposed of as a whole, or in part, either by sale of stock, forced sale, merger, consolidation, change in control of Blue Ridge, or otherwise, without the prior written consent of the Township expressed by ordinance and then only under such conditions as may be therein prescribed. Subject to compliance by the transferee or assignee with the provisions of Section XII(E) below, no such consent shall be required for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any right, title, or interest of Blue Ridge in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity presently owned and/or controlled by Blue Ridge. For purposes of this Section XII(A) only, the phrase "owned and/or controlled" shall mean an instance where Blue Ridge or one of its subsidiaries is the majority owner of fifty-one (51) percent or more of the voting stock of the transferee or assignee or where Blue Ridge has and continues to have the right to make management decisions concerning the transferee or assignee.

B. Blue Ridge shall make written application to the Township for the Township's consent described in Section XII(A) above. As part of such application, Blue Ridge shall provide the Township with all information required by FCC Form 394 and any other applicable federal, state and local laws and regulations regarding transfer or assignment or change of control. Within thirty (30) days of receiving a request for consent, the Township shall, in accordance with FCC rules and regulations [47 C.F.R. § 76.502(b)], notify the Grantee in writing of the additional information, if any, it requires to determine the legal, financial, and technical qualifications of the transferee or new controlling party. If the Township has not taken action on the request of Blue Ridge for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given [47 C.F.R. § 76.502(a)].

C. The consent of the Township to any transfer or assignment or change of control as described above shall be provided only after a public hearing before the Township Board of Supervisors. Blue Ridge shall be given notice of any such public hearing, and Blue Ridge shall be afforded an opportunity to be heard, call witnesses, and present evidence at any such public hearing.

The consent of the Township to any transfer or assignment or change of control shall not be unreasonably withheld.

D. Any consent by the Township for any transfer or assignment or change of control described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions contained in this Agreement.

### **SECTION XIII. FRANCHISE VIOLATIONS, DAMAGES AND REVOCATION**

#### **A. Violations.**

1. If the Township has reason to believe that Blue Ridge violated any material or substantive provision of this Agreement, it shall notify Blue Ridge in writing, by certified mail, of the nature of such violation and the Section of this Agreement which it believes has been violated.

2. Blue Ridge shall have ninety (90) days to cure or commence to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully cured within ninety (90) days due to circumstances outside of Blue Ridge's control, the period of time in which Blue Ridge must cure the violation shall be extended by the Township in writing for such additional time necessary to complete the cure, provided that Blue Ridge shall have promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the Township. If Blue Ridge is given written notice once in accordance with Section XIII(A)(1) above, the Township need not notify Blue Ridge a second time for the same violation, and Blue Ridge shall be liable for liquidated damages in accordance with Section XIII(B) without an additional opportunity to cure. Notwithstanding the foregoing, Blue Ridge shall not be held liable or responsible under this Agreement for work delays caused by waiting for utility providers to service or monitor their own utility poles on which Blue Ridge's cable and/or equipment is attached, as well as for unavailability of materials and/or qualified labor to perform the work necessary.

#### **B. Liquidated Damages.**

1. Because Blue Ridge's failure to comply with provisions of this Agreement may result in harm to the Township and because it will be difficult to measure the extent of such harm, the Township may assess liquidated damages against Blue Ridge in the following amounts provided Blue Ridge has had an opportunity to cure in accordance with Section XIII(A)(2). Such liquidated damages shall not be a substitute for specific performance by Blue Ridge or for other penalties imposed by other laws or regulation.

2. For the liquidated damages set forth in this Section, the maximum period for assessing liquidated damages for each single occurrence of non-compliance shall be sixty

(60) days. The first day for which damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period.

3. The exercise of liquidated damages by the Township shall not release Blue Ridge from its obligations or from any liability under this Agreement, except (a) with regard to any breach for which liquidated damages are paid as provided in this Section or (b) as necessary to avoid duplicative recovery from or payments by Blue Ridge. During such time period as the Township elects to assess liquidated damages for an alleged breach, that remedy shall be the sole remedy for the breach for that time period. Nothing contained in this Section shall be construed to permit duplicative recovery from or payment by Blue Ridge.

a. For failure to comply with the technical requirements specified in Section VIII.D: \$150 per day for each day the violation continues;

b. For failure to provide and maintain Cable Service as specified in Section V.A: \$100 per day for each day the violation continues;

c. For failure to obtain and maintain construction permits as specified in Section IV.A: \$50 per day for each day the violation continues;

d. For failure to make repairs and restorations as specified in Section IV.B.(4): \$100 per day for each day the violation continues;

e. For failure to disconnect, relocate, or remove equipment as specified in Section IV.B.(2): \$100 per day for each day the violation continues;

f. For failure to comply with tree trimming standards as specified in Section IV.B.(6): \$100 per day for each day the violation continues;

g. For failure to comply with any customer service standard set forth in Section VII: \$100 per day for each day the violation continues;

h. For failure to cooperate with the right of inspection as specified in Section VIII.C: \$150 per day for each day the violation continues;

i. For failure to submit reports in a timely fashion as specified in Section VIII.B: \$50 per day for each day the violation continues;

j. For failure to provide a performance bond as specified in Section XIII.C: \$200 per day for each day the violation continues;

k. For failure to carry all the insurance required under Section IX.A: \$200 per day for each day the violation continues;

1. For failure to comply with transfer or renewal provisions specified in Section XII: \$150 per day for each day the violation continues; and

m. For failure to comply with removal of system provision as specified in Section XII.F: \$200 per day for each day the violation continues.

C. Performance Bond.

1. Blue Ridge shall obtain, at its sole cost and expense, within thirty (30) days of the execution of this Franchise, and shall maintain during the franchise term, a performance bond running in favor of the Township to secure faithful performance by Blue Ridge of any and all obligations under this Agreement. Such financial security shall be issued by a bonding company in the form of a surety bond provided that said bonding company is authorized to conduct such business within the Commonwealth. This performance bond, however, shall not limit the liability of Blue Ridge for any failure to perform its obligations under this Agreement.

2. The performance bond shall be in the amount of Ten Thousand (\$10,000.00) Dollars. Blue Ridge shall not reduce, cancel, or change said bond from the requirements contained herein without the express prior written permission of the Township.

D. Revocation.

1. In addition to the other rights, remedies and powers reserved or retained by the Township under this Agreement or otherwise, the Township reserves the right to initiate revocation proceedings against Blue Ridge or any successor thereto in the event of a material breach of the terms and conditions of this Agreement, in accordance with the notice and opportunity to cure provisions. In interpreting this Agreement, material provisions shall include all provisions labeled as such and all others, which, under all the facts and circumstances indicated, are a significant provision of this Agreement. A material breach by Blue Ridge shall include, but is not limited to, the following acts and / or omissions:

a. It is demonstrated that Blue Ridge knowingly practiced any fraud or deceit upon the Township in its operation of its Cable System or any other activities pursuant to this Agreement.

b. Blue Ridge repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in this Agreement.

c. Blue Ridge fails on three (3) occasions, after written notice and opportunity to cure, to remit a franchise fee or other payment together with any requisite statement or certification.

d. Blue Ridge fails to operate over twenty-five (25) percent of the Cable System (as determined by lineal miles or portions thereof) for a period in excess of fifteen (15) consecutive days except when approval of such interruption is obtained from the Township.

e. A court of competent jurisdiction orders the assumption or custody or sequestration of all or a significant part of the Cable System.

f. Blue Ridge fails after notice and opportunity to cure, to maintain the required insurance and performance bond.

g. Blue Ridge fails to comply with any federal, state, county or Township law, code, ordinance, rule or regulation, if such local law, code, ordinance, rule or regulation governs and applies to all multi-channel video programming providers providing Cable Service within the Township at the time any such local law, code, ordinance, rule or regulation is enacted, which has a significant impact on Subscribers.

2. The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Blue Ridge or occurs as a result of a force majeure or of circumstances beyond its control. Blue Ridge shall not be in violation of this Agreement and no revocation shall be affected if Blue Ridge is prevented from performing its duties and obligations or observing the terms and conditions of this Franchise by any Acts of God, labor disputes, manufacturers' or contractors' inability to timely provide personnel or material or other causes of like or different nature beyond the control of Blue Ridge. Furthermore, the parties hereby agree that it is not the intention of the Township to subject Blue Ridge to revocation by the Township where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to Blue Ridge which outweigh the benefit to be derived by the Township or Subscribers.

3. This Franchise may be revoked only by a written decision of the Board of Supervisors of the Township after an appropriate public hearing affording Blue Ridge due process and full opportunity to be heard, to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with federal law and with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Pennsylvania. All notice requirements shall be met by providing Blue Ridge at least sixty (60) days' prior written notice, having been served upon Blue Ridge by certified mail, return receipt requested, of any public hearing concerning the proposed revocation of this Franchise. Such notice shall state the grounds for revocation. The Board of Supervisors, after a public hearing and upon finding the existence of grounds for revocation, may either declare this Franchise terminated or excuse such grounds upon a showing by Blue Ridge of mitigating circumstances or good cause for the existence of such grounds.

E. Equitable and Other Relief. In lieu of the penalties provided in Section XIII (B) of this Agreement, the Township may commence any and all legal actions in equity or at law for a violation of any provision of this Agreement.

F. Removal of Equipment. Upon abandonment of its System or the voluntary relinquishment of the Franchise granted under this Agreement, the Township shall have the right to require that Blue Ridge remove its supporting structures, poles, transmission and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways and other public and private places, in, over, under or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such abandonment or relinquishment, the Township or property owner may deem any property not removed as having been abandoned and the Township may remove it at Blue Ridge's cost.

#### **SECTION XIV. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES**

Blue Ridge shall, at all times during the term of this Agreement, be subject to the exercise of the Police Power by the Township and to such lawful ordinances, rules and regulations, if such ordinances, rules and regulations govern and apply to all multi-channel video programming providers providing Cable Service within the Township at the time any such ordinances, rules and regulations are enacted, as the Township shall hereafter adopt pursuant to such Power(s). There is hereby reserved to the Township every right and power which is required to be herein reserved or provided by any ordinance, rule or regulation of the Township, if such ordinance, rule or regulation governs and applies to all multi-channel video programming providers providing Cable Service within the Township at the time any such ordinance, rule or regulation is enacted, and Blue Ridge shall comply with any lawful action or lawful requirements of the Township in its exercise of such right or power heretofore or hereafter enacted or established. Blue Ridge shall comply with all ordinances, codes, statutes, rules and regulations of the Township, if such ordinances, codes, statutes, rules and regulations govern and apply to all multi-channel video programming providers providing Cable Service within the Township at the time any such ordinances, codes, statutes, rules or regulations of the Township are enacted, to the extent they are not contrary to the terms of this Agreement, the County of Lancaster, the Commonwealth of Pennsylvania, and the United States of America which are now in effect or hereafter enacted.

#### **SECTION XV. WAIVER**

A. No course of dealing between the Township and Blue Ridge nor the failure of the Township to enforce or to timely enforce any provision of this Agreement or any federal, state or local law, code, ordinance, rule or regulation shall be deemed to be a waiver of, or acquiescence in the actions of Blue Ridge in contravention of, that or any other provision, law, code, ordinance, rule or regulation.

B. No course of dealing between the Township and Blue Ridge nor the failure of Blue Ridge to enforce or to timely enforce any provision of this Agreement or any federal, state or local



law, code, ordinance, rule or regulation shall be deemed to be a waiver of, or acquiescence in the actions of the Township in contravention of, that or any other provision, law, code, ordinance, rule or regulation.

C. Any waiver of any provision of this Agreement or federal, state or local law, code, ordinance, rule, or regulations shall be in writing and operate only as a waiver as expressed in such writing, signed by both parties, and shall not be of any other force or effect.

## SECTION XVI. MISCELLANEOUS PROVISIONS

A. Franchise Subject to Applicable Law. This franchise is subject to all orders, rules and/or regulations of the FCC or other federal or state agencies applicable to a Cable System and such other orders, rules and/or regulations as any such agency or agencies may from time to time adopt. In the event any such agency ceases to exist or revokes any applicable orders, rules and/or regulations, Blue Ridge and the Township shall meet and discuss what amendments, if any, would be appropriate to be made to this Agreement.

B. Franchise Authority. The granting of this Franchise under this Agreement by Ordinance shall not be construed as an undertaking or guarantee by the Township of the efficiency of Blue Ridge or maintenance of service by Blue Ridge. It is fully understood that the Township assumes no responsibility for the acts or omissions of Blue Ridge other than to require, to the extent the Township elects to do so, compliance with this Agreement.

C. Antitrust Law. Blue Ridge shall comply with all applicable federal and state antitrust laws and regulations.

D. Force Majeure. If for any reason of force majeure, Blue Ridge is unable in whole or in part to carry out its obligations hereunder, Blue Ridge shall not be deemed in violation of this Agreement during the continuance of such inability. The term "force majeure" as used herein shall have the following meaning: acts of God; acts of public enemies, orders of any kind of the government of the United States of America or of the Commonwealth of Pennsylvania or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots; strikes or labor disputes; epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; tornados; tsunamis; washouts; droughts or other catastrophic act of nature; explosions; and partial or entire failure of utilities.

E. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

The Township:	156B West Main Street P.O. Box 244 Reinholds, Pennsylvania 17569
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with a courtesy copy to: Morgan, Hallgren, Crosswell & Kane, P.C.  
700 North Duke Street  
P.O. Box 4686  
Lancaster, Pennsylvania 17604-4686

Blue Ridge: Blue Ridge Cable Technologies, Inc.  
804 Academy Heights Avenue  
P.O. Box 150  
Ephrata, Pennsylvania 17522  
Attn: Government Affairs

F. Entire Agreement. This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the Township and Blue Ridge with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

G. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

H. Governing Law. This Franchise Agreement shall be deemed to be executed in the Township of West Cocalico, Lancaster County, Pennsylvania, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, as applicable to contracts entered into and performed entirely within the Commonwealth.

I. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Township and Blue Ridge, which amendment shall be authorized on behalf of the Township through the adoption of an appropriate resolution or order by the Township, as required by applicable law.

J. Effective Date. The Effective Date of this Agreement shall be the date of ordination and enactment of the Agreement by Ordinance duly enacted by the Township's Board of Supervisors.

## **SECTION XVII. REPEALS**

All provisions of prior ordinances and parts of prior ordinances are repealed insofar as they be inconsistent with this Ordinance.

This Agreement is accepted the 28<sup>th</sup> day of June, 2022, by BLUE RIDGE CABLE TECHNOLOGIES, INC., T/A BLUE RIDGE COMMUNICATIONS, subject to approval by the Board of Supervisors of West Cocalico Township, Lancaster County, Pennsylvania. The EFFECTIVE DATE of this Agreement is recognized as being the date of ordination and enactment of an Ordinance duly adopted by the Board of Supervisors of West Cocalico Township, Lancaster County, Pennsylvania.

BLUE RIDGE CABLE TECHNOLOGIES, INC.,  
T/A BLUE RIDGE COMMUNICATIONS

By: 

Attest: Christine Bellinger  
Assistant Secretary

THIS AGREEMENT has been authorized and approved by Ordinance No. 151, ordained and enacted at a duly convened and official meeting of the Board of Supervisors of West Cocalico Township, Lancaster County, Pennsylvania, the 2<sup>nd</sup> day of June, 2022.

TOWNSHIP OF WEST COCALICO  
Lancaster County, Pennsylvania

By: Lu S. El

(Vice) Chairman  
Board of Supervisors

ATTEST:

Jeffrey P. Sauder  
Township Secretary

EXHIBIT A  
West Cocalico Township

Section X(C): New Services

Ephrata Township

Warwick Township

Clay Township