

**TOWNSHIP OF MOUNT JOY**

Lancaster County, Pennsylvania

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ORDINANCE NO. CXXX

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**AN ORDINANCE AUTHORIZING AND REGULATING CABLE SYSTEMS IN THE TOWNSHIP OF MOUNT JOY, LANCASTER COUNTY, PENNSYLVANIA.**

**BE AND IT IS HEREBY ORDAINED AND ENACTED** by the Board of Supervisors of the Township of the Mount Joy, Lancaster County, Pennsylvania, as follows:

Section 1. Title. This Ordinance shall be known and may be cited as the "Mount Joy Township Cable System Ordinance".

Section 2. Definitions.

(a) "Act" shall mean the Cable Communications Policy Act of 1984.

(b) "Cable System" shall mean 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 the Township of Mount Joy, with the exception of those facilities specifically excluded under Section 602 of the Cable Communications Policy Act of 1984.

(c) "Company" is the grantee of rights under this nonexclusive franchise ordinance.

(d) "Gross Receipts" shall mean revenue of the Company based on income from service charges imposed upon residents of the Township, including basic service, premium service, and pay-per-view but not including charges for connections, disconnections, and other charges for services which are normally nonrecurring in nature and which do not involve the transmission of audio or visual programming. Sales taxes or other taxes collected by the Company shall be deducted from the Gross Receipts before computation of the franchise fee due to the Township.

(e) "Streets" shall mean and include all public streets, rights-of-way and roads owned by or under the jurisdiction of the Township of Mount Joy.

(f) "Subscriber" shall mean any person or entity receiving for any purpose cable service from a cable system of the Company.

(g) "Supervisors" are the governing body of the Township of Mount Joy, Lancaster County, Pennsylvania.

(h) "Township" is the Township of Mount Joy, Lancaster County, Pennsylvania.

**Section 3. Nonexclusive Franchise.** Upon application from the Company in compliance with this Ordinance, including acceptance of the terms and conditions contained herein, the Township may grant to the Company a nonexclusive franchise to construct, operate and maintain a cable system for television related services as may be prescribed or permitted by the Federal Communications Commission and to use poles, wires, conduits and appurtenances under, along, across, or upon any or all public streets, ways, alleys or parkways, as the same now or may hereafter exist within the Township and within the boundaries of the said Township as the same may hereafter be extended, for transmitting and distributing electricity and electrical impulses and signals for television purposes, namely to produce reproduction of sights and sounds in combination to the residents of the Township upon the terms and conditions and subject to the limitations herein set forth.

**Section 4. Annexation.** Upon the annexation of any territory to the Township, the portion of any cable system of the Company that may be located or operated within said territory shall thereafter be subject to all the terms of this Ordinance as though it were an extension made hereunder.

**Section 5. Compliance with Applicable Laws and Ordinances.** The Company shall, at all times during the life of this franchise, be subject (i) to the terms of this Ordinance, (ii) to all lawful exercise of the police power by the Township, (iii) to such reasonable regulations as the Township shall hereafter by resolution or ordinance provide which are not expressly forbidden by or inconsistent with the provisions of the Act and (iv) to all other applicable laws, rules and regulations now in effect or hereafter enacted. A permit fee in the amount of Two Hundred Fifty (\$250.00) Dollars, or such other amount as may be established by resolution of the Supervisors from time to time, shall be paid to the Township at the time application is made by the Company to operate under the terms of this Ordinance. In addition the Company shall reimburse the Township for any advertising and legal expenses incurred in connection with the negotiation, drafting or enactment of this Ordinance or the granting of a franchise hereunder.

**Section 6. Liability of Company.** The Company shall indemnify and save the Township and its officers, agents and employees harmless from any and all claims for personal

injuries or property damage, and any other claims and costs, including attorneys' fees, expenses of investigation and litigation of claims and suits thereon, which may arise from the installation and/or operation of the Company's cable system. In case suit shall be filed against the Township, either independently or jointly with the Company, to recover for any claims or damages, the Company, upon notice to it by the Township, shall defend the Township, its officers, agents and employees, against said action, and, in the event of a final judgment being obtained against the Township, either independently or jointly with the Company, the Company shall pay the judgment and all costs and hold the Township harmless therefrom. If a judgment is not obtained against the Township, the Company shall reimburse the Township for all costs and expenses incurred, including reasonable attorneys' fees and costs of investigation. For this purpose, the Company shall carry and at all times keep in force automobile liability insurance, products liability insurance and a general liability insurance policy or policies in the name of the Company and the Township, as their respective interests may appear, insuring the Company and the Township against any and all liability arising from the installation, maintenance and/or operation of the cable system. A certificate or certificates of insurance indicating such coverages and indicating that the Township is an additional insured shall be provided to the Township for review by the Township Solicitor. Such insurance policy or policies shall be in limits of not less than Five Hundred Thousand (\$500,000.00) Dollars for damage to property in any one accident, and not less than One Million (\$1,000,000.00) Dollars for injury or death to any one person, and not less than the sum of Two Million (\$2,000,000.00) Dollars for injury or death to all persons affected by any one accident. Such policies of insurance shall be issued by a company or companies authorized to do business in the Commonwealth of Pennsylvania. The Company shall also carry workers' compensation coverage for all of its employees subject to such coverage and shall submit to the Township Secretary a certificate of insurance showing that workers' compensation coverage is in effect.

Section 7. Payment to the Township. The Company shall pay a franchise fee to the Township during the life of the franchise, said franchise fee to be in the amount of five (5%) percent of the Company's total gross receipts per year as derived from operations in the Township. The franchise fee shall be due and payable in accordance with the following schedule:

<u>Due Date</u>	<u>Gross Receipts Received During</u>
March 1	October 1 through December 31 of the preceding year
June 1	January 1 through March 31 of same year
September 1	April 1 through June 30 of same year
December 1	July 1 through September 30 of same year

In addition to the annual franchise fee paid to the Township, the Company shall provide free basic cable television service to one outlet within any public school, firehouse or municipal building if requested to do so in writing by the Township provided the cable system's existing trunk or distribution service passes such building and the building can be served with a service drop of one hundred fifty (150) feet or less.

Notwithstanding anything to the contrary set forth in this Ordinance, the Township specifically reserves the right to increase the amount of the franchise fee and to change the method of computing such fee to the extent authorized by Federal and State laws in effect from time to time during the term of this franchise or any renewal thereof. In such event the Company may, unless otherwise prohibited by law, pass through to subscribers the amount of any increase in the franchise fee.

Section 8. Public Access Channels. The Company shall provide for the Township, along with those other Lancaster County, Pennsylvania, municipalities under contract with the Company, at least one (1) dedicated, noncommercial, multi-municipality, public access channel for public, educational and municipal government use. The Board shall determine which Township programs shall appear on this public access channel.

Section 9. Service Standards. The Company shall during the continuance of this franchise provide facilities and service sufficient to meet the needs of the public and shall maintain its facilities and provide service in accordance with accepted industry standards. The Company shall maintain, operate and render efficient service in accordance with the Act and under such applicable rules, regulations and standards as are from time to time established by the Township or by any Federal or State agency having jurisdiction. The Township expressly reserves the right to establish lawful rules, regulations and standards during the term of the franchise. The cable system shall be installed and maintained in accordance with good engineering practices. All construction shall be done in a good and workmanlike manner, free of defects which may be a hazard to life and limb, and in conformance with the standards set forth in the National Electric Safety Code. The following additional service standards shall apply to any franchise granted under this Ordinance:

(a) Notice of Interruption for Repairs. Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the Company shall attempt to do so at such times as shall cause the least amount of inconveniences to its customers, and unless such interruption is unforeseen and immediately necessary, it shall attempt to give reasonable notice thereof to its customers.

(b) Continuous Service. Company service shall be continuous daily during the regular telecast operating hours of the stations whose TV broadcasts are being transmitted.

(c) Interference. Subject to Federal technical standards, the Company shall at all times operate the cable system so as not to adversely affect or interfere with existing radio and television reception and shall prevent radiation from the Company's cable system.

(d) Complaints. The Company shall maintain a toll-free telephone line with seven day per week service to receive complaints. The Company shall provide subscribers with a written explanation of the Company's complaint policy. The Company agrees to respond to and investigate all complaints received from its subscribers within the Township and to resolve said complaints in an efficient and timely manner if at all technically and reasonably possible, and the Company's agents or employees shall be available for such purposes in the Township.

Section 10. Examination of Company Records. The Company shall keep full, true, accurate and current books and records reflecting its investment and its operations under this Ordinance, which books and records shall be made available on a confidential basis for inspection by officials of the Township, including but not limited to Township auditors, elected or appointed, or an independent certified public account retained by the Township. The Township shall be permitted to make copies of the Company's records with the permission of the Company or as part of discovery proceedings if litigation between the Company and the Township should occur.

Section 11. Program Subject Matter. It is expressly understood that the Township has no control, standard or regulation pertaining to the subject matter of programs distributed by the Company. The Company agrees to indemnify and save harmless the Township, its officers, agents and employees, from all claims, suits and actions at law or equity (including attorneys' fees and expenses of investigation relating thereto) for libel, slander, invasion of privacy and patent or copyright infringement in any action arising out of the subject matter of programs transmitted by the Company. The Company further agrees that in the event the Township is made a party defendant in any action arising out of the subject matter of programs transmitted by the Company, the Company shall at its sole cost and expense defend such action and any appeals therefrom.

Section 12. Transfer of Franchise. The Company shall not sell, transfer or assign this franchise without written notice to the Supervisors. No sale or transfer shall be effective until the vendee, assignee or lessee has filed with the Township Secretary an instrument accepting the terms of the franchise and agreeing to perform all the conditions thereof.

Section 13. Conditions on Street Occupancy. The following conditions shall apply to street occupancy by the Company:

(a) Use. All transmission and distribution structures, lines and equipment erected by the Company within the Township shall be located with the approval of the Supervisors and shall be so located as to cause minimum interference with the

rights and reasonable convenience of property owners and the traveling public who use the streets of the Township. Upon request, the Company shall furnish the Township with a map showing the cable system in sufficient detail to assure the Township of being currently advised as to the location of the cables. Upon request, it shall be the responsibility of the Company to keep the Township advised of any and all changes, additions and removals to the cable system except for the individual subscribers' connection wires.

(b) Restoration. In the case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense, replace and restore all paving, sidewalk, driveway or surface of any street disturbed in as good condition as before said work was commenced.

(c) Relocation. In the event that at any time during the term of a franchise granted hereunder, the Township shall lawfully elect to alter or change the location or grade of any street, road or other public way or if in the opinion of the Supervisors a pole or pole line interferes with the necessary convenience of the Township or a property owner, then upon reasonable notice by the Township, the Company shall remove, relay and relocate its poles, wires and cables or other cable system fixtures at its own expense.

(d) Placement of Fixtures. It is the policy of the Township, and it is understood by the Company, that where distribution lines are to be installed along any public street, the same shall be attached to existing utility poles and not to additional poles placed on the same side of the street as existing utility poles. It is understood and agreed that this restriction and limitation shall extend to any and all streets within the limits of the Township, even though some of said streets may be part of the state highway system. A waiver of this requirement may be granted to the Company by the Supervisors upon written application to the Township by the Company, but said waiver shall be for good cause shown and in the sole discretion of the Supervisors.

Before the Company sets poles or constructs any structure on Township property, streets or rights-of-way, it shall file with the Township detailed specifications showing the exact location, height and dimension of the poles or structures to be erected. The poles or structures shall not be erected thereafter until such specifications shall be approved in writing by the Supervisors. All wires, cables and other overhead equipment shall be at such minimum heights as are or may be required by the Pennsylvania Public Utility Commission, the Pennsylvania Department of Transportation or any nationally recognized building or electrical code.

When the Company makes written application for a waiver or submits specifications for construction and the Supervisors are uncertain as to the exact location of the limits of the right-of-way of any street or road, then in their discretion

the Supervisors may require the same be surveyed by a surveyor selected by them, the cost of said survey to be paid by the Company.

(e) **Underground Placement.** It is the policy of the Township, and it is understood and agreed to by the Company, that all distribution lines, wires and cables shall be located underground in those areas of the Township where utility services are located underground.

(f) **Tree Trimming.** The Company shall have the authority to trim trees upon and overhanging streets, roads and public places of the Township so as to prevent the branches of such trees from coming in contact with wires and cables of the Company, all trimming to be done in accordance with Township regulations and at the expense of the Company.

(g) **Use of Poles and Fixtures.** The Company agrees that it shall, upon request, furnish a copy of any contract entered into with any public utility for the use of their poles by the Company and setting forth the terms, conditions and duration of said contract. The Company agrees that the copy of the aforementioned contract shall be filed upon written request with the Township Secretary prior to starting any installation of wires or other facilities on Township streets or rights-of-way under the franchise.

(h) **Removal of Wires from Premises of Subscriber.** The Company shall, on request of any subscriber, promptly remove all wires, cables and related installations from the premises of such subscriber.

(i) **Removal of Wires, Cables, Poles and Installations from Township Streets.** The Company shall remove or cause to be removed from the streets, roads and public ways of the Township, and from all public property, all of the wires, cables, poles and installations of any kind or nature whatsoever which have been installed under the authority of the franchise granted hereunder upon the termination of the franchise or upon cessation of operation under the franchise by the Company, its successors or assigns, for any reason whatsoever.

**Section 14. Reports Required.** For the purpose of administering this Ordinance, the Company shall, concurrent with the payment of the fee specified in Section 7 hereof, file a verified statement of the gross receipts received from subscribers in the Township for the preceding three-month period.

**Section 15. Term of Franchise.** The franchise and rights herein granted shall be deemed to commence on December 13, 1992, and shall continue in full force for a term of fifteen (15) years from December 13, 1992, expiring on December 12, 2007. If the Company shall commence operations within the Township after December 13, 1992, the franchise and rights herein granted shall commence upon the granting of a franchise by the Township and

shall expire on December 12, 2007. Franchise fees under a franchise granted by this Ordinance shall accrue commencing on the later of December 13, 1992, or the commencement of operations within the Township by the Company.

**Section 16. Development of and Access to Cable Service.** The Company shall extend service to Township residents not serviced as of the effective date of this Ordinance so long as the number of the occupied residences per mile, or fraction thereof, of distribution system (density) within the extension area is equivalent to or greater than forty (40) homes per underground mile of cable plant or twenty (20) homes per aerial mile of cable plant. The Company shall not deny access to cable service to any group of potential residential subscribers because of the income level of the area in which the group resides. The Company may use other alternative methods of extending service into areas where the minimum density is less than set forth herein, including the use of microwave, satellite or other means where, in the opinion of the Company, the extension is not economically feasible, or by negotiating a cost-sharing agreement with the developer of a low density area or any of the residents of a low density area in order to make such an extension of service economically feasible, or the Company may extend service into such low density area at its own discretion. Upon written request for cable service from a developer or any of the residents in a low density area, the Company shall respond in writing within sixty (60) days of such request to the requestor with a copy to the Township 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 herein. Notwithstanding the foregoing, the Company shall not be required to extend cable service into an area which is presently being served by a different company under a franchise granted under this Ordinance.

**Section 17. Forfeiture.** The Supervisors may at any time, subject to the provisions of the Act, declare a forfeiture of this grant for violation or default by the Company of any of the terms thereof, provided that none of the terms of this grant shall be deemed to be violated so as to permit such forfeiture unless the Company shall first be given written notice by the Township of such violation or default and of the attempt to declare a forfeiture. Thereafter, if such violation or default shall continue for a period of more than ninety (90) days, all the rights and privileges of the Company under the provisions of this Ordinance may be forthwith declared forfeited and revoked. If any action shall be instituted or prosecuted directly or indirectly by the Company, or by its stockholders or creditors, to set aside or have declared void any terms of this grant, the whole of this grant may be thereupon forfeited and annulled at the option of the Supervisors. Provided, however, that no forfeiture shall occur if the Company brings a challenge to the Ordinance based upon a future change in state or federal law which would render provisions of this Ordinance invalid. This exception shall not apply if such change to state or federal law contains a provision authorizing the continuation of existing ordinances. Provided, further, the Company shall not be deemed to be in default of performance of any provision of this grant, nor shall forfeiture be invoked for any violation or failure to perform any provision hereof due to strikes, lockouts, insurrections, acts of God, or any cause beyond the control of the Company.



**Section 18. Township Held Harmless.** The Company shall hold the Township harmless from the alleged violation of any utility franchise previously granted by the Township. The granting of a franchise under this Ordinance shall not be construed as an undertaking or guarantee of the efficiency of the Company or maintenance of service by the Company. The Township assumes no responsibility for the acts or omissions of the Company other than to require compliance with this Ordinance.

**Section 19. Manner of Giving Notice.** Whenever, by the terms of this Ordinance, notice is required to be given by the Township to the Company, it shall be given by delivering to an officer or manager of the Company written notice thereof during ordinary business hours at the principal office or any branch office of the Company or by mailing the same by certified mail, postage prepaid, return receipt requested, to said principal or branch office. Whenever the Company is required to give notice to the Township, it shall do so by leaving or delivering written notice at the office of the Township Secretary during ordinary business hours.

**Section 20. Acceptance of Franchise.** This Ordinance shall constitute a contract between the Township and the Company for all the uses, services and purposes set forth herein, and the Company by its acceptance of the provisions of this Ordinance binds itself to provide the necessary cable system and to establish, operate and maintain the cable system contemplated by this Ordinance, continuing without substantial interruption except for causes beyond its control until the expiration of the term of this grant. The Company shall enter into an agreement in writing, in a form satisfactory to the Township, evidencing the Company's acceptance of the terms and conditions of this Ordinance prior to exercising any rights under the franchise granted herein. If any cable operator within the Township refuses to accept the provisions of this Ordinance, such operator shall be considered a franchisee at will and shall be subject to all of the provisions of this Ordinance, including the payment of franchise fees, until the cable operator ceases operations either voluntarily or upon demand of the Township.

**Section 21. Repealer.** Ordinance No. XXXIV and all ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

**Section 22. Severability.** The provisions of this Ordinance are severable, and if any section, sentence, clause, part or provision hereof shall be held to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Supervisors that this Ordinance would have been enacted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

**Section 23. Penalties.** Any person, firm, association, partnership or corporation who or which shall violate any of the provisions of this Ordinance shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than One Hundred

(\$100.00) Dollars nor more than Six Hundred (\$600.00) Dollars, and in default of payment of the fine, such person, the members of such partnership or the officers of such corporation shall be liable to imprisonment for not more than thirty (30) days.

Section 24. Equitable Relief. In addition to or in lieu of the penalties provided in Section 23 hereof, the Township may commence actions to collect franchise fees which are due and payable under this Ordinance, and any violations of this Ordinance may be abated by proceeding against the violator in a court of equity for relief.

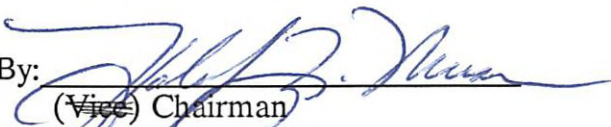
Section 25. Reimbursement of Township Expenses. Upon acceptance of this franchise, the Company shall reimburse the Township for all fees incurred in the preparation, negotiation and advertisement of this Ordinance, including reasonable attorneys' fees.

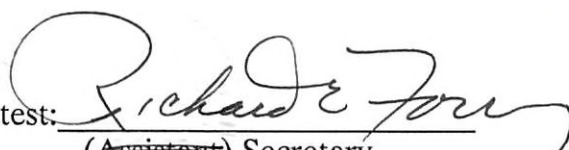
Section 26. Renewal of Franchise. Any franchise granted under the provisions of this Ordinance shall be considered for renewal in accordance with applicable law existing at the time application for renewal of such franchise is made by the Company.

Section 27. Effective Date. This Ordinance shall take effect and be in force five (5) days after its enactment by the Board of Supervisors of the Township of Mount Joy as provided by law.

DULY ORDAINED AND ENACTED this 19th day of October, 1992, by the Board of Supervisors of the Township of Mount Joy, Lancaster County, Pennsylvania, in lawful session duly assembled.

TOWNSHIP OF MOUNT JOY  
Lancaster County, Pennsylvania

By:   
(~~Vice~~) Chairman  
Board of Supervisors

Attest:   
(~~Assistant~~) Secretary

[TOWNSHIP SEAL]