

ORDINANCE NO. 49

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO SOMERSET COUNTY CABLE TELEVISION, INC., A PENNSYLVANIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A COMMUNITY CABLE SYSTEM IN THE BOROUGH OF INDIAN LAKE, SOMERSET COUNTY, PENNSYLVANIA; SETTING FORTH CONDITIONS, ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR BOROUGH REGULATION AND USE OF THE COMMUNITY CABLE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

BE IT ORDAINED by the Council of the Borough of Indian Lake, Somerset County, Pennsylvania, and it is hereby enacted by authority of the same:

SECTION 1. Short Title.

This Ordinance shall be known and may be cited as the "Somerset County Cable Television, Inc., Franchise Ordinance."

SECTION 2. Definitions.

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

- (1) "Borough" is the Borough of Indian Lake, Somerset County, Pennsylvania.
- (2) "Company" is Somerset County Cable Television, Inc., a Pennsylvania corporation.
- (3) "Council" is the Borough Council of the Borough of Indian Lake, Somerset County, Pennsylvania.
- (4) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

SECTION 3. Qualifications of Company and Grant of Authority

On August 18, 1981, a public hearing was held at Indian Lake, Pennsylvania, concerning the franchise contained herein. Public notice of said hearing was given as provided for by law on August 4, 1981, which notice invited interested parties to participate in said hearing and comment upon the legal, character, financial, technical and other qualifications of the Company, to operate a cable television system in the Borough of Indian Lake. Said hearing having been fully opened to the public and the Borough having received at said hearing all comments regarding the qualifications of the Company to receive this franchise, the Borough hereby finds that the Company possesses the necessary legal, financial, character, technical and other qualifications and that the Company's construction arrangements are adequate and feasible. The Borough hereby grants the Company a non-exclusive franchise, right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof and additions thereto, in Indian Lake Borough, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the Borough of a community cable system. It is understood that all wires, cables and fixtures above ground shall be placed on existing poles through an arrangement with either the General Telephone Company of Pennsylvania or the Pennsylvania Electric Company wherever possible.

SECTION 4. Compliance with Applicable Laws and Ordinances.

The Company shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the Borough, and to such regulations not in conflict with the provisions hereof as the Borough shall hereafter by resolution or ordinance provide.

SECTION 5. Company Liability - Indemnification.

It is expressly understood and agreed by and between the Company and the Borough that the Company shall save the Borough harmless from all loss sustained by the Borough on account of any suit, judgment, execution, claim or demand whatsoever, resulting from negligence on the part of the Company in the construction, operation or maintenance of its cable system in the Borough. The Borough shall notify the Company's representative in the Borough within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the Borough on account of any negligence as aforesaid on the part of the Company.

SECTION 6. Insurance

No work or construction shall be begun by the Company under authority of this Ordinance until it shall have first obtained insurance policies for the protection of the public in general and the protection of the property located within the Borough; such insurance against personal injury shall be in the amount of \$100,000 - \$300,000 and such insurance against property damage shall be in the amount of \$25,000 - \$200,000. Company shall maintain insurance throughout the term of this franchise. Company further agrees to carry and maintain workmen's compensation insurance for any and all of its employees. Company agrees to provide copies or certificates of all such insurance and deposit same with the Borough Secretary.

SECTION 7. Service Standards.

The Company shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are, or may be, set forth by the Council as provided for in Section 12 of this Ordinance, or by the Public Utility Commission of the State of Pennsylvania, or such other agency as may be required by law.

(1) 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 do so at such time as will cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its customers.

SECTION 8. Company Rules .

The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of laws of the State of Pennsylvania, and shall be subject to approval by the Public Utility Commission of the State of Pennsylvania, or such other agency as may be required by law.

SECTION 9. Conditions on Street Occupancy.

(1) Use. All transmission and distribution structures, lines and equipment erected by the Company within the Borough shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

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

(3) Relocation. In the event that at any time during the period of this franchise, the Borough shall lawfully elect to alter, or change the grade of, any street, alley or other public way, the Company, upon reasonable notice by the Borough,

shall remove, relay, and relocate its wires, cables, underground conduits, man-holes and other fixtures at its own expense.

(4) Placement of Fixtures. The Company shall not place fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant or main, and all such fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways. No pole or wire shall be placed without prior permission of Borough Council. All poles erected hereunder shall be subject to any Pole Tax as now or hereafter in effect in the Borough.

(5) Temporary Removal of Wire for Building Moving. The Company shall on request of any person holding a building moving permit issued by the Borough, temporarily raise or lower its wires to permit the moving of a building. The expense of such temporary removal, raising or lowering of wires shall be paid by the Company. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(6) Tree Trimming. The Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the Borough so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company, all trimming to be done under the supervision and direction of the Borough and at the expense of the Company, and provided the Company first obtains permission of the owner of the property on which the tree is located.

SECTION 10. Preferential or Discriminatory Practices Prohibited.

The Company shall not, as to rates, charges, service facilities, rules, regu-

lations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled. It shall be obligation of the Company to serve all residents of the Borough described in Section 3 hereof, except to the extent that the density of homes, adverse terrain, or other factors rendered providing service impracticable, technically unfeasible or economically non-compensatory. This policy was subject to public review at a public hearing held on August 18, 1981, at Indian Lake, Pennsylvania, which the public was given notice as provided for by law, and at which interested members of the public were given an opportunity to comment and participate.

SECTION 11. No Transfer of Rights

The Company may not transfer any of its rights hereunder without the prior, express written consent of the Borough.

SECTION 12. Borough Rights in Franchise

(1) Borough Rules. The right is hereby reserved to the Borough to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power.

(2) Supervision and Inspection. The Borough shall have the right to supervise all construction or installation work performed subject to the provisions of this Ordinance and to make such inspection as it shall find necessary to insure compliance with governing ordinances.

(3) Franchise Fee. The Borough shall receive an amount equal to Three (3) Percent of the gross revenue realized from providing cable television service to the residents of the Borough described in Section 3 hereof. Such payment shall be made

on a semi-annual basis and the Borough shall have all reasonable rights of inspection of the books and accounts of the Company.

SECTION 13. Term of Franchise.

This franchise and rights herein granted shall take effect and be in force from and after the final passage hereof, as required by law, and upon filing of a certificate of acceptance by the Company with the Borough Secretary, and shall continue in force and effect for a period of fifteen (15) years after the effective date of this franchise. Provided, that if the acceptance is not filed within thirty (30) days, then irrespective of any other provision of this franchise, the permission hereby granted may be cancelled by action of the Borough Council. This franchise and rights herein granted shall be renewable for a term of not more than fifteen (15) years, following a public proceeding affording due process at which the Company's qualifications to continue to operate the system are considered and approved.

SECTION 14. Penalties.

Any violation by the Company, its vendee, lessee or successor, of the provisions of this franchise or any material portion thereof, or the failure promptly to perform any of the provisions thereof, may be cause for the forfeiture of this franchise and all rights hereunder after written notice to the Company and continuation of such violation, failure or default.

SECTION 15. Separability.

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

SECTION 16. Complaint Procedures.

Company shall maintain a business office at a suitable location in or near the community so that cable television maintenance service shall be promptly available to subscribers upon telephone request during reasonable business hours. All subscribers' complaints regarding the quality of service, equipment malfunctions and similar matters shall be acted upon by the Company as soon as possible, but in no more than ten (10) business days from the date of their receipt. Subscribers will be notified in writing with their first monthly bill of the location of the Company's local office and the procedures for registering and resolving subscriber complaints. The Borough Secretary is designated as the official in charge of cable television franchise matters in the Borough of Indian Lake.

SECTION 17. Incorporation of Changes in FCC Regulations.

Any modification of Section 76.31 of the Rules and Regulations of the Federal Communications Commission shall, to the extent applicable, be considered to be part of this Agreement as of the effective date of the amendment to Section 76.31; such modification shall be incorporated hereby by specific amendment hereto by the lawful action of the Borough Council within one (1) year from the effective date of the Amendment to Section 76.31, or at anytime of any renewal of this Agreement, whichever occurs first.

SECTION 18. Ordinances Repealed.

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

ORDAINED AND ENACTED this 18th day of August 1981.

Attest:

Beverly J. Brown
Secretary

/s/ Frank A. Bedois
President of Council

Examined and approved by me this 18th day of August, 1981.

/s/ John Meehan
Mayor