

27-1989

UPPER BERN TOWNSHIP, BERKS COUNTY, PENNSYLVANIA

AN ORDINANCE AUTHORIZING THE GRANTING OF NON-EXCLUSIVE FRANCHISE TO OPERATE AND MAINTAIN COMMUNITY TELEVISION SYSTEMS AND CLOSED CIRCUIT TELEVISION SYSTEMS IN THE TOWNSHIP OF UPPER BERN: PRESCRIBING CONDITIONS ACCOMPANYING THE GRANT OF A NON-EXCLUSIVE FRANCHISE: PROVIDING FOR REGULATION OF SUCH SYSTEMS: PROVIDING FOR PAYMENTS TO THE TOWNSHIP OF UPPER BERN FOR OPERATION OF SUCH SYSTEMS: AND PROVIDING PENALTIES FOR THE VIOLATION HEREOF

BE IT ENACTED AND ORDAINED by the Board of Supervisors of the Township of Upper Bern, Berks County, Pennsylvania, as follows:

SECTION 1.

SHORT TITLE. This Ordinance shall be known and may be cited as the "Cable Television Ordinance."

SECTION 2.

Definitions. For the purposes of this ordinance, the following terms, phrases and words shall have the following meanings:

- (1) "Township" is the Township of Upper Bern.
- (2) "Qualifying Company" is any person or entity which is granted a non-exclusive franchise pursuant to the terms of this Ordinance.
- (3) "Board of Supervisors" is the Board of Supervisors of the Township of Upper Bern.
- (4) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

SECTION 3.

Grant of Authority. The Board of Supervisors may grant the right and privilege to qualifying companies 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 the Township, poles, wires, cables, underground conduits, manholes and other televisions conductors and fixtures necessary for the maintenance and operation in the Township of a community television system and for closed circuit cable services. Such grants shall be subject to the following conditions:

(a) **Non-Exclusive Grant.** No right to use and occupy said streets, alleys, public ways and places granted pursuant to this Ordinance shall be deemed to be exclusive, and the Township reserves the right to grant similar rights to any other qualifying company at any time.

SECTION 4.**Compliance with Applicable Laws and Ordinances.**

Qualifying companies shall, at all times during the life of a franchise granted pursuant hereto, be subject to all federal, state, and township laws, ordinances, and regulations, and will further comply with the following:

(a) **Interference.** If there is any interference on any television set, radio or other electronic device not connected with the conductors or fixtures of the qualifying company which is caused by the conductors or fixtures of

the qualifying company, the qualifying company shall immediately, at its own cost and expense, eliminate such interference. If such interference cannot be eliminated within forty-eight (48) hours, the Township may direct the suspension of the operation of the qualifying company within the Township until such interference is eliminated.

(b) **Building Permits.** In addition, the qualifying company shall apply for and take out any and all building permits required by the Township for any construction to be undertaken by said qualifying company.

SECTION 5.

Indemnification; Insurance. It is expressly understood and agreed by and between any qualifying company and the Township that the qualifying company shall save the Township harmless from all loss sustained by the Township on account of any suit, judgment, execution, claim, or demand whatsoever, resulting from the operations of the qualifying company in the construction, operation or maintenance of its television system in the Township. The Township shall notify the qualifying company's representative in the Township within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the Township on account of any damages or losses as aforesaid resulting from the operations of the qualifying company. The qualifying company shall furnish to the Township, prior to the grant of a franchise hereunder, evidence in writing that the qualifying company has in full force and effect public liability insurance of not less than \$500,000.00 for any one person and \$1,000,000.00 for any one accident, and property damage

insurance of not less than \$500,000.00, duly issued by an insurance company or companies authorized to do business in the Commonwealth of Pennsylvania, said insurance to cover all operations by the qualifying company within the Township. Written evidence of the maintenance of such insurance in full force and effect, including coverage of any contractually assumed liability pursuant to this Ordinance or otherwise, shall be furnished annually thereafter to the Township.

SECTION 6.

Qualifying Company Rules. The qualifying 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 qualifying 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, additional regulations or ordinances of the Township, or the laws of the Commonwealth of Pennsylvania or the United States of America.

SECTION 7.

Conditions of Street Occupancy.

(a) **Use.** All transmission and distribution structures, lines and equipment erected by the qualifying company

within the Township shall be so located as to cause minimum interference with the use by others of streets, alleys, and other public ways and places, and to cause minimum interference with the use by others of streets, alleys, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of owners of property which abuts the said streets, alleys or other public ways and places.

(b) **Restoration.** As soon as practical, in case of any disturbance of pavements, sidewalk, driveway or other surfacing, the qualifying company shall, at its own cost and expense and in a manner approved by the Township Engineer or other person designated by the Supervisors, replace and restore all paving, sidewalk, driveway, or surface of any street or alley disturbed in as good condition as before work was commenced.

(c) **Relocation.** In the event that at any time during the period of any franchise granted pursuant to this Ordinance the Township shall lawfully elect to alter, or change the grade or location of, any street, alley or other public way, the qualifying company, upon reasonable notice by the Township, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(d) **Placement of Fixtures.** The qualifying company must use existing utility poles of the electric or telephone company if they are available on terms comparable to other pole license agreements to which the cable company is a party or are comparable to pole license agreements in the Berks County area. The qualifying company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrant or main, and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line; those placed in alleys shall be placed close to the line of the lot abutting on said alley, and in such a manner as not to interfere with travel on said alleys. Erection of poles, pedestals, vaults and any other fixtures installed by the cable company shall be subject to all zoning and construction ordinances and regulations. The qualifying company shall indemnify and save harmless the Township from any and all claims arising out of injury or damage to any person or property dealing with the placement of fixtures by the qualifying company.

(e) **Temporary Removal of Wire for Building Moving.** The qualifying company shall, on the request of any person holding a permit issued by the Township, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the qualifying company shall have the authority to require such payment in advance. The qualifying company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(f) **Tree Trimming.** The qualifying company shall have the same authority as the Township to trim trees that overhang onto streets, alleys, sidewalks and public places of the Township so as to prevent the branches of such trees from coming into contact with the wires and cables of the qualifying company. The Township reserves the right to cause the trees to be trimmed either by Township employees or by Township contract if deemed necessary by the Board of Supervisors. The Township will have the right, within thirty (30) days of the date of the tree trimming, to assess the relevant qualifying company or companies for its pro rata share of the cost to the Township.

SECTION 8.

Township Rights in Franchise.

(a) **Township Rules.** The Township may adopt by resolution such additional regulations as it shall find necessary.

(b) **Use of System by Township.** The Township shall have the right, during the life of this franchise, free of charge, where aerial construction exists, of maintaining upon the poles of the qualifying company within the Township wires and fixtures necessary for police communications, fire alarm and civil defense warning systems.

(c) **Inspection.** The Township shall have the right to inspect all construction or installation work during such construction or installation or at any time after completion thereof, in order to ensure compliance with the provisions of this ordinance and all other governing ordinances.

SECTION 9.

Payment to Township. Any qualifying company holding a franchise pursuant to the terms of this ordinance shall pay to the Township for the privilege of operating its community television system under such franchise the sum of five percent (5%) of the annual gross basic cable television service receipts each year thereafter.

The qualifying company shall make payment to the Township of such fees within thirty (30) days following the anniversary date of the grant of its franchise. Such payments shall be accompanied by written proof of the factual basis for computation of payment. Failure to make payments as required may result in the Township's imposition of penalties including those set forth in Section 10 below.

SECTION 10.

Records and Reports. The qualifying company shall at all times maintain adequate records of its gross receipts from cable television subscriptions, which shall be available at all reasonable times to inspection by the Township through its duly designated agents or officers. In the event that any qualifying company fails to supply copies of such records to the Township within five (5) days after written demand is made by the Township, then and in such event the Township shall have the right to take

action under Pennsylvania law to compel the production of such records; take action to obtain the proceeds of the performance bond as hereinafter set forth; and/or take whatever steps are deemed by the Township necessary to terminate the cable service provided by the qualifying company within the Township.

SECTION 11.

Terms of Franchise. Any franchise granted hereunder shall be for the initial term of ten (10) years conditioned, however, that said franchise permit shall thereafter automatically renew for each successive year upon the payment of the fees provided hereunder and compliance with the terms and conditions herein imposed and that the financial condition of the franchise shall remain satisfactory to the Township. Said one (1) year extensions shall be for a maximum of five (5) additional years. The term "Financial Condition" shall be interpreted to mean that the franchise's condition is such that it will permit the franchise to perform all of its services to its subscribers in a timely manner and in accordance with all applicable laws.

SECTION 12.

Miscellaneous Provisions.

(a) A qualifying company will be required to protect or remove the cable system, at the company's own expense whenever the Township determines that the system, or parts of the system, in any way interfere with any present or future public works.

(b) Upon initial application for franchise, all prospective qualifying companies will submit a \$50,000.00 construction completion bond, subject to forfeit to the Township if the system is not built as proposed pursuant to the terms of this Ordinance and any other applicable law as well as the application for franchise submitted by the qualifying company to the Township. Upon completion, and prior to operating the system, the requirement for the \$50,000.00 construction bond will be removed and a \$25,000.00 performance bond, subject to forfeiture to the Township upon violations of this Ordinance, applicable law, or any of the terms and conditions of the application for franchise submitted by the qualifying company, will be submitted to the Township.

(c) Any sale, transfer, or assignment of the rights of a qualifying company to another entity under this Ordinance will be subject to the approval of the Township, which approval will not be withheld except for good reason.

(d) The qualifying company will, upon a written request by any subscriber within the Township, furnish a parental guidance or lock-out key, at a reasonable cost to the subscriber.

(e) The qualifying company shall maintain the capability of at least four (4) hours of standby power at the head-end of the system.

(f) Any qualifying company will maintain a business office to provide access to the Township and customers of the qualifying company who reside in the Township for any business under this Ordinance. Such business office shall be located within thirty (30) miles from the Township building. In addition, the qualifying company shall maintain a toll free number for use of customers having need to contact the business office.

(g) The qualifying company will place all components of the cable system underground wherever feasible and in all areas in which the electric and telephone utilities are placed underground, whether currently underground or if such utilities are placed underground in the future.

(h) The qualifying company will ground all drops at the subscriber's dwelling or structure.

(i) Any qualifying company that operates in the Township as a "stand-alone" system, will provide the Township with

the option to require the availability of access channels. If the qualifying company maintains a system in the Township which is part of the larger system, the Township shall have the option to use such larger system's access channels on a shared basis.

(j) All qualifying companies will provide for prompt service calls which shall be within a maximum of twenty-four (24) hours from the time of complaints (excluding Sundays and holidays) and will provide for same day response for any complaints received by 2 p.m.

(k) Installation of individual service will take place within ten (10) days of application in the cases of aerial installations and within sixty (60) days in cases of underground installations.

(l) Each qualifying company will provide free installation and service to at least one outlet in each municipal building, school building, public library, and police and fire stations.

(m) Each qualifying company will, at least once each year, provide written notice to the Township and all Township subscribers as to current compliance and billing policies. In the event of any change to complaint or billing policies, the company will provide thirty (30) days advance notice prior to implementing such changes.

(n) In the event that, for any reason, service is discontinued to any subscriber for a period of more than twenty-four (24) hours, the qualifying company will rebate, at the time of the next billing, the pro rata amount of such bill that corresponds to the period of lost services.

(o) The qualifying company will maintain at least thirty-six (36) activated downstream television channel capacity with present service of at least twenty-eight (28) basic channels, plus no less than four (4) pay channels.

(p) The qualifying company agrees to reimburse all customers within the Township for any loss of service in excess of twenty four (24) hours. The rebate for lost service shall be pro rated based on the number of days that service is lost. For the purpose of this Ordinance once twenty four (24) hours of continuous service has been lost, the qualifying company shall pay for the first day of lost service once twenty four (24) hours has expired, and thereafter, an additional rebate for a full day of service

shall be paid once the qualifying company has not provided service for an additional hour of the next succeeding day. The rebate as herein set forth will be based on the percentage of days lost in any given month divided into the total monthly charges made by the qualifying company to each customer. The rebate shall either be credited on the customer's next monthly bill or shall be paid directly to the customer, as the customer may decide.

SECTION 13.

Penalties. Any violation by a qualifying company, its servants, agents or employees, of the provisions of this Ordinance, or the failure promptly to perform any of the provisions hereof, or the failure to exercise the rights granted pursuant hereto within two (2) years of the grant of a franchise, shall be cause for the forfeiture of such franchise and all rights thereunder at the election of the Township. After the initial two (2) year period, the Township reserves the right to cancel any franchise of any qualifying company for repeated or several violations of the provisions of this Ordinance or terms of any franchise agreement.

SECTION 14.

Franchise Permits. All applicants for franchise permits shall submit to the Township an application, on a form to be provided by the Township, to include information relevant to the applicant's conducting cable television operations pursuant to this Ordinance and the Federal Cable Communications Act, including a statement containing the following:

- (a) Name of applicant.
- (b) Address of the applicant.
- (c) Evidence of financial condition of the applicant and, if the applicant is a corporation or partnership, the names of the principal stockholders or partners, whichever is applicable. A financial statement of the person or corporation shall be submitted and shall be certified by a certified public accountant.
- (d) A detailed map showing the exact streets which the qualifying company thereby commits to serve.

Such form and additional information desired by the Township shall be determined by a resolution by the Board of Supervisors, from time to time.

SECTION 15.

Completion of Construction and Areas of Coverage. Any qualifying company will complete construction of the basic system within one (1) year of the date that the Township approves a franchise application. Each approved franchise shall contain a map detailing every street within the Township which will be serviced within the installation year. Additional areas, adjacent to the initial cable system as described above, will be provided service whenever the density of living units reaches fifteen (15) living units per mile based on road frontage. Such additional coverage will be provided within six (6) months of the time that the company is notified that such area qualifies.

SECTION 16.

Regulations of Rates, Services, Facilities and Equipment.

The Township hereby reserves all authority for regulations of rates, services, facilities, and equipment to the extent allowed by the Federal Cable Communications Act, as amended.

SECTION 17.

Construction and Severability. In the event any provision, section, sentence, clause or part of this Ordinance shall be held invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of the Township that such remainder shall be and shall remain in full force and effect.

SECTION 18.

Repealer. All ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent herewith.

ENACTED and ORDAINED the 13 day of October, 1989.

BOARD OF SUPERVISORS OF THE
TOWNSHIP OF UPPER BERN

[Signature]

[Signature]

John P. Messner