

ORDINANCE NO. 112 - J

CABLE TELEVISION FRANCHISE AGREEMENT

AN ORDINANCE GRANTING A FRANCHISE TO MILLERSBURG T.V. COMPANY, INC., FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A CABLE TELEVISION SYSTEM IN THE TOWNSHIP OF JEFFERSON, COUNTY OF DAUPHIN, PENNSYLVANIA

WHEREAS, the Township of Jefferson (hereinafter the "Township") is authorized to grant, renew and deny franchises for the installation, operation and maintenance of cable television and other telecommunications systems within the Township's boundaries by virtue of (i) Federal and State statutes, (ii) the Township's policy powers, and (iii) the Township's authority over its public right of way;

WHEREAS, Millersburg T. V. Company, Inc., (hereinafter "Millersburg T.V.") has applied to the Township Supervisors (hereinafter the "Township Supervisors") of the Township for a franchise to construct, operate and maintain a cable television system within the township; and

WHEREAS, the Township hereby finds that it would serve the public interest of the citizens of the Township to grant to Millersburg T.V. a cable television franchise in the Township subject to the terms and conditions hereinafter set forth.

NOW THEREFORE, be it enacted by the Township Supervisors that a non-exclusive cable television franchise be granted to Millersburg T.V., under the terms and conditions as hereinafter set forth:

Section 1. Definitions

For the purposes of this ordinance, the following terms, phrases, words, abbreviations, 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 include the singular and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

A. Cable Television Service means the two way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

B. Cable Television 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 Television Service which includes video programming and which is provided to multiple Subscribers within a community, but such terms do not include (1)

a facility that serves only to retransmit the television signals of one or more television broadcast stations, (2) a facility that serves only certain residents in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; or (3) any facilities of any electric utility used solely for operating its electric utility systems.

C. Person shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

D. Street shall mean any street, alley, lane, sidewalk or other public place of the Township.

E. Subscriber shall mean an authorized recipient lawfully receiving Cable Television Service.

Section 2. Grant of Franchise

The non-exclusive right is hereby granted to Millersburg T.V. for the Term (as hereinafter defined) and subject to the terms, conditions, and limitations hereinafter stated, to use the streets, alleys, lanes and public places of the Township now laid out or dedicated, and all extensions thereof, and additions thereto, to construct, erect, operate, and maintain in, upon, along, across, above, over, and under the aforementioned streets, alleys, lanes and public places of the Township, poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the Township of a Cable Television system for the reception, sale, and distribution of television and radio signals and for any and all other lawful purposes except as otherwise hereinafter provided.

Section 3. Area of Operation

Millersburg T. V. shall have the right to construct, operate, and maintain, in, on, along, across, above, over and under the streets, alleys, lanes and public places of the Township, poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the Township of a Cable Television system at such locations as are reasonable suitable and convenient for the purposes of Millersburg T.V. and the Township, subject to the lawful exercises of the police power heretofore or hereafter granted to the Township by the General Assembly. Millersburg T.V. agrees to provide service to any customer's residence within three hundred (300') feet of existing cable facilities or lines. The cost of extending service beyond said three hundred (300') feet shall be paid by the customer.

Section 4. Acceptance; Effective Date; Term

A. After the Township has taken final action to approve the granting of this franchise, Millersburg T.V. will file its acceptance with the Township by countersigning this Franchise. Such acceptance will acknowledge that Millersburg T.V. agrees to be bound by and to comply with the provisions contained herein.

B. The Franchise granted herein will take effect and be in full force from and after final passage by the Township, subject to the acceptance provided in paragraph A above and shall continue in full force and effect for a period of fifteen (15) years.

Section 5. Conditions on Use of Streets and Roads

A. Trimming/Cutting Trees. Millersburg T.V. shall have the right to trim and keep clear of its poles, wires, cables, underground conduits, manholes, and other conductors and fixtures, the trees in and along the Streets. In the exercise of such right, Millersburg T.V. shall not cut or otherwise injure any such tree to any greater extent than is reasonable necessary. This provision shall not be construed as granting permission on behalf of any property owner from whom Millersburg T.V. shall be required to obtain consent by law, statute or regulation.

B. Restoring Streets. Millersburg T.V. shall restore, reconstruct, or repair any Street, and any sewer or gas or water main, or pipe, or fire alarm, disturbed, or destroyed by the exercise of any right granted to Millersburg T.V. by this Franchise, in a manner reasonably satisfactory to the Township. In the event that the Township determines that Millersburg T.V. has not made such restoration, reconstruction or repair in a reasonably satisfactory manner, the Township, after giving Millersburg T.V. notice and opportunity to correct such failure, shall have the right to carry out such restoration, reconstruction or repair, and Millersburg T.V. shall reimburse the Township in full for all reasonable expenses incurred by the Township in carrying out all or part of such restoration, reconstruction or repair.

C. Safety. Millersburg T.V. shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Streets, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair. Any opening or obstruction in the street shall be guarded and protected at all times by the placement of adequate barriers, fences or boarding, the bounds of which will be clearly designated by warning lights.

D. Compliance with Applicable Laws. Millersburg T.V. shall install and maintain its wire, cables, fixtures, and other equipment in accordance with applicable law including any pertinent subdivision restrictions, and the applicable section of the National Electric Safety Code as revised, during the Term and in such manner which shall not interfere with any installations of the Township or of any public utility serving the Township.

E. Temporary Moving of Wires. Millersburg T.V. shall, on the request of any Person holding a building moving permit issued by the Township, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and Millersburg T.V. shall have the authority to require such payment in advance. Millersburg T.V. shall be given not less than five business days advance notice to arrange for such temporary wire changes.

F. Inspection. The township shall have the right to inspect all construction or installation work performed in, over, under and upon the Streets, subject to the provisions of this Franchise and make such inspections as it shall find necessary to insure compliance with the term of this Franchise and other pertinent provisions of law.

G. Poles. The poles used for the distribution system will be, to the extent possible, those erected and maintained by either the power company or the telephone company or both, whenever agreement can be reached with the owners of such poles. Millersburg T.V. will have the right to erect and maintain poles where none exists at the time Millersburg T.V. seeks to install its Cable Television system. No poles or other wireholding structure shall be erected by Millersburg T.V. or cuts made in any Township roads without prior approval of the Township, through established permit procedure. The Township agrees that such prior approval will be given on a timely basis and will not be unreasonably withheld. Location of any pole or structure shall be removed or modified by Millersburg T.V. at its own expense whenever the Township determines that the public health, safety and welfare would be enhanced thereby.

H. Moving of Millersburg T.V. Property. Millersburg T.V. will, at its expense, and upon reasonable notice from the Township, protect, support, temporarily disconnect or relocate its property in the same Street when required by the Township or State by reason of traffic conditions, public safety, street closing or abandonment, highway or street construction, change or establishment of street grade, installation of sewer drains, water pipes, power lines, signals lines, or any other types of structures or improvements; and the Township will not be liable for any disturbance of Millersburg T.V.'s installation resulting therefrom.

Section 6. Construction and Operation

- A. All installation and maintenance of electronic equipment will be durable and installed in accordance with the applicable sections of the current edition of the National Electric Safety Code and all State and local codes where applicable.
- B. All working facilities, conditions, and procedures, used or occurring during construction and maintenance of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.
- C. Construction, installation and maintenance of the Cable Television system shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the Township following accepted construction procedures and practices and working through existing committees and organizations.
- D. All cable and wires installed above ground shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration.
- E. Any antenna structure used in the Cable Television System shall comply with construction, marking and lighting of antennae structures required by the United States Department of Transportation.
- F. Millersburg T.V. will not intentionally interfere with television reception of Persons not served by Millersburg T.V., nor will the Cable Television System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the Township.

Section 7. Signal Quality

Millersburg T.V. will use its best efforts to:

- A. Produce a picture that is undistorted and accompanied with proper sound on typical standard production television sets in good repair, and in compliance with FCC technical standards;
- B. If requested by the Township, demonstrate by instruments and otherwise that the signal is being delivered in compliance with FCC technical standard.

Section 8. Conduct of Operations

- A. Millersburg T.V. will render efficient Cable service, make repairs promptly, and interrupt Cable service only for good cause and for the shortest time possible. Millersburg T.V. will use reasonable efforts to assure that such interruptions will occur during periods of minimum system use.
- B. Millersburg T.V. shall comply with all Federal Communications Commission rules and regulations, both present and future.
- C. Millersburg T.V. shall provide, upon request, one connection and basic service to each public school, fire and police station located in the Township within 150 feet of an existing service line located in the Township upon written request of the Township and at no cost to it or any other agency of the Township.

Section 9. Insurance and Indemnification

- A. By its acceptance of this Franchise Millersburg T.V. specifically agrees that it will pay all damages and penalties which the Township may legally be required to pay which result from any negligent operation of the Cable Television System on the part of Millersburg T.V. These damages or penalties shall include, but shall not be limited to, damages arising out of copyright infringements, and all other damages arising out of the installation, operation, or maintenance of the Cable Television System authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.
- B. Millersburg T.V. will indemnify the Township, its officers and employees, from and against any and all claims, demands, actions, suits, and proceedings by others, and against all liability to others, arising out of the negligence of Millersburg T.V. in the construction and operation of its Cable Television System in the Township, provided that the Township give Millersburg T.V. prompt notice in writing of any such claims, demands, actions, suits and proceedings, without limitations.
- C. The Township, to the extent provided by the statutory and common law of the State of Pennsylvania and by the Constitution of the State of Pennsylvania, will be responsible for acts of negligence or breach of obligation committed by the Township for which the Township is legally responsible, subject to any and all defenses and limitation of liability provided by law. This provision does not and shall not be construed as a waiver, relinquishment or abrogation of the statutory limitation of liability available to the Township. This paragraph in no way waives the Township's limited right of

sovereign immunity or protection under the applicable statutory limitation of liability available to cities generally in this State.

D. Millersburg T.V. shall maintain in full force for the full term of the Franchise and in effect at all times, at the expense of Millersburg T.V., a comprehensive liability insurance policy with the Township named as an insured, written by a company authorized to do business in the Commonwealth of Pennsylvania, protecting the Township against liability for loss, personal injury and property damage occasioned by the operation of the Cable Television System by Millersburg T.V., in an amount not less than \$500,000.00. Such insurance shall be kept in full force and effect by Millersburg T.V. during the existence of the Franchise. Evidence in the form of a certificate of insurance shall be provided to the Township upon request.

\$ 500,000.00
APL
FLL

Section 10. Unauthorized Connections or Modifications

A. It is unlawful for any person to make any connection, extension, or division whether physically, acoustically, inductively, electronically, or otherwise with or to any segment of the Cable Television System for any purpose whatsoever, without the express consent of Millersburg T.V.

B. It is unlawful for any Person to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of the Cable Television System for any purpose whatsoever.

C. Any Person convicted of a violation of this section will be subject to the maximum penalty allowed by Federal, State and local law. The Township agrees to cooperate with Millersburg T.V. in the prosecution of any such violations.

Section 11. Franchise Renewal

Upon completion of the Term, the Township may grant renewal of this Franchise in accordance with the procedures for franchise renewals as established by the Cable Communications Policy Act of 1984.

Section 12. Transfer of Franchise

Millersburg T.V. may transfer this Franchise to another person with prior written notice to the Township.

Section 13. Termination: Cancellation

A. In addition to all other rights and powers pertaining to the Township by virtue of this Franchises or otherwise, the Township reserves the right, after reasonable notice to Millersburg T.V. and the reasonable opportunity of Millersburg T.V. to cure any alleged Franchised violation, and to be heard before Township Supervisors, to terminate and cancel this Franchise and all rights and privileges of Millersburg T.V. hereunder in the event that Millersburg T.V.;

- (i) Willfully fails to reasonably carry out any material provision of this Franchise.
- (ii) Becomes insolvent, unable or unwilling to pay its debts, or is adjudicated bankrupt.

B. Such termination and cancellation shall be by ordinance duly adopted after sixty (60) days notice to Millersburg T.V. and shall in no way affect any of the Township's rights under this Franchise or any provision of law.

Section 14. Force Majeure

With respect to any provision of this ordinance or any franchise agreement granted pursuant thereto, the violation of noncompliance with which could result in the imposition of a financial penalty, forfeiture or other sanction upon a Grantee, such violation or noncompliance shall be excused where such violation or noncompliance is the result of Acts of God, war, civil disturbances, strike or other labor unrest, or similar events, the occurrence of which was not reasonably foreseeable by grantee and is beyond its reasonable control.

Section 15. Miscellaneous

A. If any section, subsection, sentence, clause, phrase or portion of the Franchise 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.

B. The Township and Millersburg T.V. acknowledge that each expressly reserves all of their respective rights under applicable Federal and State constitutions and law.

IT IS FURTHER ORDAINED, that all ordinances or parts of ordinances, inconsistent with this ordinance, to the extent of such inconsistency, are hereby repealed.

First Reading: 5-3-95

Paul Loesch
CHAIRMAN

Second Reading: 6-7-95

Kenneth R. Sabone

ATTEST: Paul Loesch
Township clerk

Millersburg T.C. Company, Inc. hereby accepts the within Franchise and agrees to be bound by and comply with the provisions contained herein.

SWORN to before me this

MILLERSBURG T.V. COMPANY, INC.

____ day of _____,

BY: William B. Helwig

1995.

TITLE: President

Notary Public

My commission Expires: