

**EAST FALLOWFIELD TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2011-01

AN ORDINANCE AMENDING AND REENACTING CHAPTER 13, PART 4 OF THE TOWNSHIP OF EAST FALLOWFIELD CODE OF ORDINANCES BY ENACTING NEW TERMS AND CONDITIONS REGULATING CABLE SERVICE PURSUANT TO SECTIONS 1502, 1503, 1532(A)(2), AND 2322 OF THE SECOND CLASS TOWNSHIP CODE AND PURSUANT TO APPLICABLE FEDERAL AND STATE LAW. EFFECTIVE FIVE DAYS FROM ENACTMENT.

AND NOW, this 22nd day of March, 2011, the Board of Supervisors of East Fallowfield Township hereby enacts and ordains as follows:

Section 1. Chapter 13, Part 4 of the Township of East Fallowfield Code of Ordinances is hereby amended and reenacted to read as follows:

Part 4

Cable Service Regulations

§ 13-401. **Title.** This ordinance shall be known and may be cited as the "East Fallowfield Township Cable System and Service Ordinance."

§ 13-402. **Authority.** This ordinance regulates cable service pursuant to the township's power to protect and manage the rights-of-way, require minimum standards of construction and maintenance of a Cable System erected upon, under, over, along, across, or in the township's streets, roads and/or the aforesaid rights-of-way, exercise the township's general police powers, enforce the Second Class Township Code and exercise authority pursuant to federal and state law.

§ 13-403. **Conflict with federal and state law.** It is the intent of the township that this ordinance conforms to federal and state law. If a court of competent jurisdiction holds, by its final order, any provision of this ordinance to be in conflict with federal and state law, federal and state law will control and this ordinance, only to the extent that any provision is so held to be in conflict with federal and state law, shall not apply.

§ 13-404. **Construal of provisions.** This ordinance shall be construed broadly to promote the maintenance of peace, good government and public health, safety and general welfare.

§ 13-405. **Repealer.** Ordinance No. 2001-03 and Ordinance No. 2007-02 and all other ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

§ 13-406. Definitions and word usage. For purposes of this ordinance, the following terms shall have the meanings indicated, unless otherwise expressly stated or the context clearly indicates otherwise. When not inconsistent with the text, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. Unless otherwise expressly stated, words not defined in this section shall be given the meaning set forth in Title 47 of United States Code, 47 U.S.C § 521 et seq., as amended, and, if not defined therein, their common and ordinary meaning.

ACCESS CHANNEL – Any channel, bandwidth, or other type of space, access or capacity on a cable system designed for non-commercial public, educational and/or governmental use.

CABLE SERVICE or SERVICE – (A) The one-way transmission of (i) video programming or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

CABLE SYSTEM or SYSTEM -- A facility consisting of a set of transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service to subscribers within the township, but such term does not include:

A. A facility that serves only to retransmit the television signals of one or more television signals of one or more television broadcast stations.

B. A facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control or management, unless such facility or facilities use any public right-of-way, including streets or easements.

C. A facility of a common carrier or utility, only to the extent that regulation of such common carrier or utility is prohibited by federal or state law.

EDUCATIONAL ACCESS CHANNEL – Any channel, bandwidth, or other type of space, access or capacity on a cable system designated for noncommercial educational use by any public school system serving the township.

FRANCHISE -- The nonexclusive rights granted in accordance with this ordinance to construct, operate and maintain a cable system along the public rights-of-way within all or a specified area of the township. No such franchise authorization shall mean nor include any license or permit required for the privilege of transacting and carrying on a business within the township as required by the ordinances and laws of the township or for excavating or performing other work in or along public rights-of-way.

FRANCHISEE -- A cable operator granted a non-exclusive franchise by the township under the terms and conditions of this ordinance.

GOVERNMENTAL ACCESS CHANNEL – Any channel, bandwidth, or other type of space, access or capacity on a cable system designated for non-commercial local government use.

GROSS ANNUAL REVENUES -- Any and all cash, credits, property or other consideration of any kind or nature, received during a defined twelve-month period, directly or indirectly, by the franchisee, its affiliates or any person in which the franchisee has a financial interest or by any other entity that is an operator of the system arising from, in connection with, attributable to or in any way derived from the provision by the franchisee of cable service in the township, including the studios and other facilities associated therewith. Gross annual revenues include, but are not limited to, monthly fees charged subscribers for any cable service, including but not limited to basic, programming, optional, premium, per-channel or per-program service or tier of service; installation, disconnection, reconnection and change-in-service fees, leased channel fees, late fees and administrative fees; revenues from converter rental or sales, studio rental, production equipment and personnel fees; advertising revenues; barter; and revenues from home shopping channels. This provision is to be construed in its broadest sense, to include all present and future sources of revenue derived from cable service unless specifically excluded. Gross annual revenue shall be the basis for computing the franchise, user or equivalent fee under this ordinance. Gross annual revenue shall not include franchise fees or any sales, service, occupation or other excise tax to the extent that such taxes are charged separately from normal service charges and are remitted by the franchisee directly to the taxing authority. Subscriber-based revenue shall be calculated by determining revenue derived from subscribers within the township. Non-subscriber-based revenue shall be calculated on a pro rata basis (revenue/subscribers times the number of subscribers within the township). In the event that a change in the federal law modifies the definition of cable service to include a service not currently classified as cable service then franchisee agrees that it will apply the resultant effect on revenues derived from such cable service to its computation and collection of franchise fees within a reasonable period of time, but no later than sixty (60) days after receiving written notice from the franchise authority.

PUBLIC ACCESS CHANNEL -- any channel, bandwidth, or other type of space, access or capacity on a cable system designated for noncommercial use by the township, township residents or resident-organized noncommercial organizations within the township and which is available for such use on a nondiscriminatory basis.

PUBLIC RIGHT-OF-WAY -- The surface, the air space above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement or similar property in which the township now or hereafter holds any property interest which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a cable system. No reference herein to a public right-of-way shall be deemed to be a representation or guaranty by the township that its interest or other right to control the use of such property is sufficient to permit its use for such purposes and a franchisee shall be deemed to gain only those rights to use as are properly in the township and as the township may have the undisputed right and power to give.

STREET -- The surface of and the space above or below any public street, public roadway, public highway, public freeway, public lane, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or public right-of-way now or hereafter held by the township or in which the township otherwise holds an interest, which shall entitle the franchisee to the use thereof for the purposes of installing over

poles which wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and appurtenant to the operation of the system.

TOWNSHIP or FRANCHISING AUTHORITY -- The Township of East Fallowfield, Chester County, Pennsylvania or the lawful successor, transferee, designee, or assignee thereof.

§ 13-407. Grant, renewal or modification of franchises.

A. A written application shall be filed with the township for grant of an initial franchise, renewal of a franchise or modification of a franchise pursuant to this ordinance. The township may require the applicant to demonstrate in its application compliance with all requirements of this ordinance and all applicable laws.

B. All applications accepted for filing shall be made available by the township for public inspection.

§ 13-408. Application for grant of an initial franchise.

A. A person may apply for an initial franchise by submitting a request for issuance of a request for proposal ("RFP") and requesting an evaluation of the resulting proposal pursuant to this section. Upon receipt of a request for an RFP, and should the township determine that the cable related needs and interests of the community exist, the township shall promptly issue an RFP and proposed franchise terms, which shall be mailed to the person requesting its issuance and made available to any other interested party. The applicant shall respond within the time directed by the township, providing the information and material set forth in this section. The procedures, instructions and requirements set forth in the RFP shall be followed by each applicant as if set forth and required herein. The Board of Supervisors or its designee shall be authorized to seek additional information from any applicant and to establish deadlines for the submission of information.

B. Notwithstanding the provisions of this section, a person may apply for an initial franchise by submitting an unsolicited proposal, providing the information and material set forth in this section and requesting an evaluation of that proposal pursuant to this section.

C. A proposal for the grant of an initial franchise, whether unsolicited or in response to an RFP, shall require at minimum the following information:

(1) Name and address of the applicant and identification of the ownership and control of the applicant, including the names and addresses of the 10 persons holding the largest interests in the applicant and affiliates of the applicant and all persons with 5% or more ownership interest in the applicant and its affiliates; the persons who control the applicant and its affiliates; all officers and directors of the applicant and its affiliates; the extent of the ownership interest of each of the aforementioned persons and any other business affiliation and cable system ownership interest of each named person.

(2) A demonstration of the applicant's technical ability to construct and/or operate the proposed cable system, including identification of key personnel.

(3) A demonstration of the applicant's legal qualifications to construct and/or operate the proposed cable system, including but not limited to a demonstration that the applicant meets following criteria:

(a) The applicant must not have submitted an application for an initial or renewal franchise to the township, which was denied on the ground that the applicant failed to propose a system meeting the needs and interests of the community or as to which any challenges to such franchising decision were finally resolved adversely to the applicant within three years preceding the submission of the application.

(b) The applicant must not have had any franchise validly revoked by any franchising authority within three years preceding the submission of the application.

(c) The applicant must have the necessary authority under Pennsylvania law to operate a cable system.

(d) The applicant must have or show that it is qualified to obtain the necessary federal licenses or waivers required to operate the system proposed. A franchise will not be issued to an applicant that may not hold the franchise as a matter of federal or state law.

(e) The applicant shall not be issued a franchise if, at any time during the 10 years preceding the submission of the application, the applicant was convicted of any act or omission of such character that the applicant cannot be relied upon to deal truthfully with the township and the subscribers of the cable and other telecommunication system or to substantially comply with its lawful obligations under applicable law, including obligations under consumer protection laws and laws prohibiting anticompetitive acts, fraud, racketeering or other similar conduct.

(f) An applicant shall not be issued a franchise if it files materially misleading information in response to an RFP issued by the township or intentionally withholds information that the applicant lawfully is required to provide. An applicant shall not be issued a franchise if an elected official of the township holds a controlling interest in the applicant or an affiliate of the applicant. Notwithstanding the foregoing, the township shall provide an opportunity to an applicant to show that it would be inappropriate to deny it a franchise due to such controlling interest, by virtue of the particular circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom, the lack of involvement of the applicant's principals or the remoteness of the matter from the operation of cable systems.

- (4) A statement prepared by a duly authorized financial officer regarding the applicant's financial ability to complete the construction and operation of the cable and other telecommunication system proposed.
- (5) A description of the applicant's prior experience in cable system ownership, construction and operation and identification of communities in which the applicant or any of its principals have or have had a franchise or license or any interest therein.
- (6) Identification of the area of the township to be served by the proposed cable system, including a description of the proposed franchise area's boundaries.
- (7) A detailed description of the physical facilities proposed.
- (8) Where applicable, a description of the construction of the proposed system, including an estimate of plant mileage and its location, the proposed construction schedule and a description, where appropriate, of how services will be converted from existing facilities to new facilities and information on the availability of space in conduits, including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.
- (9) The proposed rate structure, including projected charges for each basic, programming, optional, premium, per-channel or per-program service or tier of service, installation, converters and other equipment or services.
- (10) A demonstration of how the applicant's proposal will reasonably meet the future cable related needs and interests of the community, including descriptions of how the proposal will meet the needs described in any recent community needs assessment conducted by or for the township and how the proposal will provide adequate public, educational and governmental access channel capacity, facilities, financial support and program production capability to meet the community's needs and interests.
- (11) Pro forma financial projections for the proposed franchise term, including a statement of projected income and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules.
- (12) If an applicant proposes to provide cable service to an area already served by an existing franchise, the identification of the area where the overbuild would occur, the potential subscriber density in the area that would encompass the overbuild and the ability of the streets to accommodate an additional system.
- (13) Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this ordinance.
- (14) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments and certifying that the proposal meets all federal or state law requirements, as well as requirements under this ordinance.

D. In evaluating an application for a franchise, the township shall consider, among other things, the following factors:

- (1) The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing franchise granted by the township.
- (2) Whether the quality of the applicant's service under any existing franchise in the township, including signal quality, response to customer complaints and billing practices, has been reasonable in light of community needs and interests.
- (3) Whether the applicant has the financial, technical and legal qualifications to provide cable service.
- (4) Whether the applicant's proposal is reasonable to meet the future cable related needs and interests of the community, taking into account the cost of meeting such needs and interests.
- (5) Whether, to the extent not considered as part of this section, the applicant will provide adequate public, educational and governmental access channel capacity, facilities or financial support.
- (6) Whether issuance of a franchise is warranted in the public interest considering the immediate and future affect on the public right-of-way and private property which would be used by the cable system, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services or use of the public rights-of-way; the effect of granting a franchise on the ability of the township to meet the cable related needs and interests of the community; and, to the extent permissible pursuant to the provisions of federal or state law, the comparative superiority or inferiority of competing proposals.
- (7) Whether the applicant or an affiliate of the applicant owns or controls any other cable system in the township or whether grant of the application may eliminate or reduce competition in the delivery of cable and other telecommunication service in the township.

E. If the township finds that it is in the public interest to issue a franchise considering the factors set forth above, it shall issue a franchise, effective upon written acceptance of the applicant. If the township denies a franchise, it will issue a written decision explaining why the franchise was denied. Prior to deciding whether to issue or not to issue a franchise, the township may hold one or more public hearings or implement other procedures under which comments from the public on an applicant's proposal may be received. The township also may grant or deny a request for a franchise based on its review of an application without further proceedings. The township may reject any application which is incomplete or fails to respond to an RFP. This ordinance is not intended and shall not be interpreted to grant any applicant or existing franchisee standing to challenge the issuance of a franchise to another.

F. If the township grants, renews or modifies a franchise effective upon the written acceptance of the applicant, the applicant shall submit such acceptance within 30 calendar days from the date of the township resolution or ordinance granting, renewing or modifying the franchise. This period may be extended for good cause. If such acceptance is not submitted within 30 calendar days from the date of the township resolution or ordinance granting, renewing or modifying the franchise or if the period is not extended by the township, the franchise grant, renewal or modification will be null and void without action by the township.

§ 13-409. Application for grant of a renewal franchise. Renewal shall be conducted in a manner consistent with section 626 of the Cable Act, 47 U.S.C. § 546. If neither the franchisee nor the township activates or can activate the renewal process set forth in 47 U.S.C. § 546(a) through (c) (including, for example, if the provisions are repealed), the provisions of Section 8 shall apply and a renewal request shall be treated in the same manner as a request for an initial franchise. The following additional requirements shall apply to all applicants seeking renewal after the effective date of this ordinance where the procedures set forth in 47 U.S.C. § 546(a) through (c) are activated.

A. Upon completion of the review and evaluation process set forth in Section 626(a)(1) and (2) of the Cable Act, 47 U.S.C. § 546(a)(1) and (2), should that process be invoked, an operator seeking renewal of the franchise may, on its own initiative or at the request of a franchising authority, submit a proposal for renewal.

B. Upon receipt of the proposal for renewal, the township shall publish notice of its receipt and make copies available for review by the public.

C. Within four months of the date it receives the proposal for renewal and based on the standards set forth in Section 626(c) of the Cable Act, 47 U.S.C. § 546(c), the township will either:

(1) Pass a resolution or ordinance agreeing to renew the franchise, subject to the negotiation of franchise terms mutually satisfactory and agreeable to the township and the franchisee and subject to written acceptance by the franchisee as provided for in Section 8.F. of this ordinance; or

(2) Pass a resolution that makes a preliminary assessment that the franchise should not be renewed.

D. If a preliminary assessment is made that a franchise should not be renewed, at the request of the franchisee, the township will commence a proceeding in accordance with Section 626(c) of the Cable Act, 47 U.S.C. § 546(c), to address the issues set forth in Section 626(c)(1)(A) through (D) of the Cable Act, 47 U.S.C. § 546(c)(1)(A) through (D).

E. Notwithstanding any other provisions of Subsection A through D of this section, an operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time and a franchising authority may, after affording the public adequate notice and opportunity for comments, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of Subsections A through D of this section shall

not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with Subsections A through D.

F. Notwithstanding any other provisions of this section, no course of dealing between the township and franchisee, nor any delay on the part of either party in exercising any renewal rights hereunder, shall operate as a waiver of any such rights of the parties or acquiescence in the actions of either party in contravention of such rights, except to the extent expressly waived by the township or franchisee.

§ 13-410. **Application for modification of a franchise.** An application for modification of a franchise agreement shall include, at minimum, the following information:

- A. The specific modification requested;
- B. The justification for the requested modification, including the impact of the requested modification on subscribers and the township and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, inter alia, submission of financial pro formas;
- C. A statement whether the modification is sought pursuant to Section 625 of the Cable Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545;
- D. Any other information that the applicant believes is necessary for the township to make an informed determination on the application for modification; and
- E. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application and certifying that the application meets all federal or state law requirements, as well as requirements under this ordinance.

§ 13-411. **Competitive Equity.**

A. The franchisee acknowledges and agrees that the Franchising Authority reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, however, that no such franchise agreement shall contain terms or conditions more favorable or less burdensome to the competitive entity than the material terms and conditions herein, including, but not limited to: franchise fees; insurance; system build-out requirements; performance bonds or similar instruments; public, education and government access channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. If any such additional or competitive franchise is granted by the Franchising Authority which, in the reasonable opinion of the franchisee, contains more favorable or less burdensome terms or conditions than this Franchise Agreement, the Franchising Authority agrees that it shall amend this Franchise Agreement to include any more favorable or less burdensome terms or conditions.

B. In the event an application for a new cable franchise is filed with the Franchising Authority proposing to serve the Franchising Area, in whole or in part, the Franchising Authority shall serve or require to be served a copy of such application upon any existing franchisee or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.

§ 13-412. Public hearings.

An applicant shall be notified of any public hearing held in connection with the evaluation of its proposal and shall be given an opportunity to be heard in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Pennsylvania. All notice requirements shall be met by providing Franchisee at least thirty (30) days prior written notice via certified mail - return receipt requested - of any public hearing concerning this franchise.

§ 13-413. Grant of franchise. The township may grant one or more franchises, and each such franchise shall be awarded in accordance with and subject to the provisions of this ordinance. This ordinance may be amended from time to time; however, no such amendment shall foreclose the franchisee's vested right hereunder to occupy the franchise for its duration except as otherwise provided hereunder.

§ 13-414. Franchise required.

A. No person may construct or operate a cable system over, on or under public streets in the township without a franchise granted by the township unless otherwise authorized by law.

B. Any person who occupies township streets or public rights-of-way for the purpose of operating or constructing a cable system and who does not hold a valid franchise from the township shall be subject to all provisions of this ordinance, including but not limited to its provisions regarding construction and technical standards and franchise fees. In its discretion, the township at any time may require such person to apply for a franchise within 30 days of receipt of a written notice by the township that a franchise is required and/or require such person to remove its property and restore the area to a satisfactory condition and charge the person the costs therefor. In no event shall a franchise be created unless it is issued by action of the township and subject to the provisions of this ordinance.

§ 13-415. Franchise finding. The township finds that the streets and public rights-of-way of the county, state, and township to be used by a franchisee for the operation of a cable system are valuable public property acquired and maintained by the county, state, and township at great expense to the taxpayers. The township further finds that the grant of a franchise or other allowance to a user to use streets and public rights-of-way is a valuable property right without which a franchisee would be required to invest substantial capital. The township further finds that as a result of any grant to a franchisee and regulation of same, it will incur substantial costs.

§ 13-416. Franchise fee payments.

- A. For each franchise granted to a franchisee, the township shall be paid a franchise fee or its equivalent in an amount of five (5) percent of gross annual revenues, or, if greater, the maximum amount permitted by federal or state law. In the event that federal or state law is or becomes silent regarding maximum gross annual revenues permitted, the five (5) percent gross annual revenues shall be the franchise fee or its equivalent paid to the township. In the event that federal law permits, and the township desires, to increase the franchise fee beyond five (5) percent of Gross Annual Revenues as defined in Section 6 of this Ordinance, the township shall notify franchisee in writing, and the requested increase in franchise fees shall take place effective sixty (60) days following franchisee's receipt of such notification.
- B. The franchise fee or its equivalent is in addition to any taxes or other payments that the franchisee may be required to pay under any federal or state law, or local law and to any other tax, fee, or assessment imposed upon franchisee or user by utilities or other operators for use of their services, facilities or equipment.
- C. Payment of the franchise fee or its equivalent shall not be considered in the nature of a tax of general applicability.
- D. No acceptance of any payment by the township shall be construed as a release or an accord and satisfaction of any claim the township may have for further or additional sums payable as a franchise fee or its equivalent for the performance of any other obligation under this ordinance, pursuant to a grant of franchise, or pursuant to a grant of rights to a user.
- E. In the event any franchise fee or equivalent payment or recomputation amount is not made on or before the date specified, franchisee shall pay additional compensation and interest charges computed from such due date, at an annual rate equal to the commercial prime interest rate of the township's primary depository bank during the period such unpaid amount is owed.
- F. The franchise fee or its equivalent and any other costs assessed by the township against a franchisee shall be paid quarterly to the township. Township shall be furnished at the time of each payment with a franchise fee statement. Quarterly payments shall be made to the township no later than 45 days following the end of each calendar quarter. Quarterly computation dates are the last days of the months of March, June, September and December. The township shall require that an annual statement of gross revenues be furnished to the township upon written request.
- G. Following thirty (30) days written notice to franchisee of its intention to do the same, the township shall have the right to inspect and copy the franchisee's records as is necessary to verify the accuracy of franchise fee or equivalent payments, and the rights to audit and to recompute any amounts determined to be payable under this ordinance for a period of two (2) years from the date of payment. Audits shall be at the expense of the township unless the audit disclosed an underpayment of greater than five percent (5%) of the entire amount determined to be payable for the period being audited, in which case the costs of the audit shall be borne by the franchisee. Any additional amounts due to the township as a result of the audit shall be paid within thirty (30) days following written notice to the franchisee by the township of the underpayment, which notice shall include a copy of the audit report.

In accordance with the above, franchisee shall maintain subscriber revenue records for customers within the franchise area on a separate basis, and shall provide such records to the township without providing the identity of the customers. Franchisee shall also provide, upon request, such additional documentation to enable the township to determine the accuracy of franchisee or equivalent fee calculations. Except as public disclosure of the above information is required in the exercise of the township's regulatory authority, the township shall use reasonable efforts to maintain the confidentiality of franchisee's proprietary information.

§ 13-417. Transfers. In any franchise granted, the following requirements shall apply to a subsequent transfer of franchise, subject to the terms of Section 617 of the Cable Act and the regulations promulgated thereunder:

- A. Township Approval Required. No transfer shall occur without prior approval of the township.
- B. Application. An application for a transfer shall provide complete information on the proposed transaction, including details on the legal, financial, technical qualifications of the transferee.
- C. Determination by township. In making a determination as to whether to grant, deny, or grant subject to conditions an application for a transfer of a franchise, the township shall consider the legal, financial, and technical qualifications of the transferee to operate the system.
- D. Transferee's Agreement. No application for a transfer of a franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of the pertinent franchise agreement and this ordinance and that it will assume the obligations and liabilities known and unknown of the transferring franchisee.
- E. Approval Does Not Constitute Waiver. Subject to applicable statutes of limitations, approval by the township of a transfer of a franchise does not constitute a waiver or release of any of the rights of the township under the pertinent franchise agreement and this Ordinance, pertaining to the operation of a cable system before the date of the transfer.

§ 13-418. Revocation or termination of franchise. In any Franchise granted, the following requirements shall apply:

- A. Basis for Revocation. A franchise may be revoked by the township for a franchisee's failure to construct, operate, or maintain the cable system as required by this ordinance or pursuant to a pertinent franchise agreement, for defrauding or attempting to defraud the township or subscribers, or for any other material violation of this ordinance, including but not limited to violations of Section 21 or Section 22 hereunder, or a franchise agreement. To invoke the provisions of this section, the township shall give the franchisee written notice via certified mail - return receipt requested-- of the default in its performance. If within thirty (30) calendar days following such written notice from the township to the franchisee, the franchisee has not taken corrective action or corrective action is not being actively and expeditiously pursued to the satisfaction of the township, the township may give written notice via certified mail -- return

receipt requested-- to the franchisee of its intent to revoke the franchise, stating its reasons; provided that, no opportunity to cure shall be provided where it is demonstrated that the franchisee has defrauded or attempted to defraud the township or its subscribers.

B. Procedure. Prior to revoking a franchise, the township shall hold a public hearing, upon thirty (30) calendar days' notice published and sent to the franchisee, at which time the franchisee and the public shall be given an opportunity to be heard. Following the public hearing, the township may determine whether to revoke the franchise based on the information of record. If the township determines to revoke a franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the franchisee via certified mail -- return receipt requested. Nothing herein shall be deemed to limit franchisee's rights to administrative hearings otherwise provided under state law.

C. Rights Upon Revocation. If the township revokes a franchise, or if for any other reason a franchisee abandons, terminates, or fails to operate or maintain service to its subscribers, the following procedures and rights are effective:

(1) The township may require the former franchisee to remove its facilities and equipment at the former franchisee's expense. If the former franchisee fails to do so within a reasonable period of time, the township may have the removal done at the former franchisee's and/or surety's expense.

(2) In the event of revocation, the township, by resolution, may acquire ownership of the cable system at an equitable price as determined by fair market value.

(3) If a cable system is abandoned by a franchisee or the franchisee fails to operate or maintain service to its subscribers or otherwise terminates the franchise, the ownership of all portions of the cable system in public streets or rights-of-way shall revert to the township and the township may sell, assign, or transfer all or part of the assets of the system.

(4) Notwithstanding the above, Franchisee shall not be required to remove its Cable System or to sell the Cable System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Franchisee from providing Cable Service, if the System is actively being used to facilitate any other services not governed by Title VI of the Communications Act of 1934, as amended, or any portion thereof.

§ 13-419. Miscellaneous. In any franchise granted, the franchisee shall comply with negotiated township requirements including but not limited to: construction, design and technical standards of the cable system; system reporting requirements; and insurance and bonding provisions. Further, the franchisee shall design all systems in a manner which reduces intrusions into the public streets or rights-of-way, including, but not limited to, the following:

A. A franchisee shall install all new transmission or other facilities in underground conduit if feasible from an engineering standpoint on streets or public rights-of-way where electrical utility,

telephone wiring, or facilities of any other franchisee are located underground, either at the time of initial construction of a cable system. Nothing in the franchise shall be construed to require franchisee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

B. If underground facilities are not feasible from an engineering standpoint, franchisee shall attach, where otherwise permitted, to existing poles in public rights-of-way, and only if surplus space is available. Copies of agreements for use of conduits, poles or other facilities shall be filed with the township upon request.

C. At minimum, a franchisee, shall serve all residential dwelling units within the township: (1.) in which there exists a minimum of thirty five (35) homes per linear mile into which service can otherwise be extended; and (2.) provided such residential dwelling unit is located within one hundred fifty (150) linear feet of the distribution cable.

§ 13-420. Fines, civil penalties and fees

A. Fines.

(1) In the event that an operator does not comply with a decision, order and/or requirement made by the township pursuant to this ordinance, i.e., a violation, the township may assess liquidated damages against the operator as follows: \$100 per day depending on the violation. Each day that a violation continues shall be a separate violation for which a separate fine may be imposed. The invocation of the liquidated damages clause is limited to a one hundred twenty (120) day period. In addition to the fines established hereby, after such time period the township may pursue all of the remedies that it has under statute, law and/or equity.

(2) Prior to assessing liquidated damages or fines for a violation under this section, the township shall provide an operator written notice of such violation and a thirty (30) day period in which to cure the violation.

B. Civil Penalties.

(1) In addition to any fine which may be imposed by the township, any person or operator violating or failing to comply with any of the provisions of this ordinance or any franchise issued pursuant thereto shall be liable for any and all damage to township property, public rights of way or private property arising from such violation, including the cost of restoring the affected area to its condition prior to the violation.

(2) Notwithstanding any other provision of this title, the township may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this ordinance or any franchise issued pursuant thereto when civil or criminal penalties are inadequate to effect compliance.

§ 13-421. Treatment of private property.

- A. Trees and shrubs or other landscaping on the property of a Township resident that are damaged by an operator, or any employee, agent or subcontractor of an operator, during surveying, installation, servicing or construction, or in the process of servicing adjacent properties or structures, shall promptly be restored to their prior condition or replaced. Trees and shrubs on private property shall not be removed without the prior written permission of the owner of the property. Notwithstanding the above, franchisee retains the authority to trim trees or shrubs in the public rights-of-way overhanging any of its cable system so as to prevent contact with wires, cables, or other equipment. All such trimming shall be done at the franchisee's sole cost and expense. No trees or shrubs in a public right-of-way shall be removed without the prior written consent of the township.
- B. An operator shall, at its own cost and expense, and in a manner approved by the property owner, repair any damage or restore any private property to as good as condition as before the work causing such damage or disturbance was initiated. The operator shall repair, replace or compensate all property owners for damages resulting from the operator's surveying, installation, construction, service, or repair activities.
- C. Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, the operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that, in the case of planned construction operations such notice shall be delivered or provided to the property owner at least twenty-four (24) hours prior to entry.
- D. Nothing herein shall be construed as authorizing access or entry to private property, or any other property, upon which an operator does not have a property right.
- E. The operator shall require the clean up of all areas surrounding any work site of debris caused by the operator's activities and ensure that all cable materials are disposed of properly.

§ 13-422. Customer service regulation.

- A. Federal minimum customer service standards adopted. Franchisee shall comply with the minimum customer service standards as set forth at 47 CFR 76.309 or such other or additional standards established by the franchise agreement, federal or state law or regulation or local ordinance, whether now or hereafter enacted, to the extent that such other customer service standards are not preempted by the federal or state law.
- B. Enforcement. The Board of Supervisors, or its designated representative or agent, ninety (90) days after giving notice to the operator of the township's intent to enforce the minimum customer service standards to the fullest extent permitted by the federal or state law and in accordance with all substantive and procedural requirements of the federal or state law, including, without limitation, shall have the authority to:

- (1) Make any and all such orders and assess any and all such penalties for violations of these standards as are permitted by the federal or state law and the township's ordinances.
- (2) Conduct performance evaluations at the time of renewal of the operator's franchise agreement.
- (3) Impose penalties equal to those described in Section 20 of this ordinance.

§ 13-423. Severability. If any provision, paragraph, word, section or ordinance of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provision, paragraphs, words, sections and ordinances shall not be affected and shall continue in full force and effect.

§ 13-424. Cable system and service ordinance controls. In the event that the terms of this Ordinance conflict with the terms of any other agreement between the Township and franchisee, the terms of this Ordinance shall control.

Section 2. This Ordinance shall be effective five (5) days from the date of enactment.

ENACTED and ORDAINED this 22nd day of March, 2011.


ATTEST:


Denise Miller, Secretary

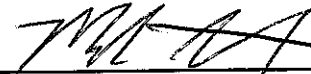
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