

ORDINANCE NO.  
CABLE TELEVISION SYSTEM  
FRANCHISING

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BE it enacted and ordained by the Borough of Montrose as follows:

SECTION 1 Statement of Purpose

Cable Television systems are required by the regulations of the Federal Communications Commission to obtain a certificate of compliance from that agency. A condition of certification is that the cable television system be franchised by the municipality in which it operates, and that the franchiser control and regulate the system in those areas where the Federal Communications Commission has not taken jurisdiction and control. The Borough of Montrose therefore deems it necessary and appropriate to hereafter require cable television systems operating in the Borough to obtain a non-exclusive franchise from the Borough to operate within the Borough limits for a specific term, subject to the payment of an annual franchise fee to pay the cost of regulation.

SECTION 2 Franchise required

All cable televisions systems now operating or hereafter intending to operate in the Borough of Montrose shall be required to obtain a non-exclusive franchise prior to the commencement of operations in the case of a new system.

SECTION 3 Grant

Those systems obtaining a franchise shall be granted to themselves, their successors, heirs and assigns, the non-exclusive right and privilege to erect, place in the Borough and to construct, maintain and operate in, over or under the present and future streets, sidewalks, alleys, public land and places and highways in or of the Borough, towers, poles, lines, cables, necessary wiring and other apparatus for the purpose of transmitting, receiving, amplifying and distributing telephone, telegraph, television and radio signals and other video and aural programming and communications within the Borough and to the inhabitants thereof.

SECTION 4 Term and Renewal

Any franchise granted hereunder shall be for a term of ten (10) years. Holder of a franchise shall have the right to renewal of said franchise under and subject to the following conditions:

- (a) The Franchisee shall make application for renewal, in writing within the first three (3) months of the 10th year of the existing franchise to the Borough Council.
- (b) Council shall advertise, in a newspaper of general circulation, that application for renewal has been made within (10) days of its filing and shall offer to the general public the opportunity to challenge such renewal for cause.
- (c) Any challenge to the renewal of a franchise shall be submitted in writing to Borough Council. Such challenges shall be made within sixty (60) days of the publication of the notice of application for renewal.
- (d) At the end of the sixty days convene a public hearing to consider challenges made, if any, giving due notice of the hearing according to notice procedure as set for hearings on applications for a franchise.
- (e) If no challenges to the franchise renewal are made or if such challenges are found to be without merit, then Council shall grant to the franchisee a renewal franchise of the same term and duration as the franchise then existing.
- (f) Anyone filing a challenge to said franchise renewal shall deposit with the Borough a filing fee of thirty five dollars (\$35.00) to cover hearings, costs and all advertising and administrative costs incurred thereby.

#### SECTION 5 Franchise Area

The franchise rights and obligations set forth in the franchise shall be applicable to the Borough of Montrose.

#### SECTION 6 Service

- (a) The franchisee shall construct, continue to operate and maintain acceptable service within the franchise area in a safe and reliable manner.
- (b) The Franchisee shall construct its cable television system within twelve (12) months following receipt of all approvals, including utility company issuance of pole licenses.

#### Construction Schedule:

1. Construction schedule and sequence will depend on arrangements with local utility companies for make-ready. Installation of all equip-

ment will be accomplished in accordance with all Federal and State agency regulations, the National Electric Code of the National Board of Fire Underwriters, local ordinance and utility companies' regulations.

2. Upon receiving a franchise award, franchisee will make application to the FCC within sixty (60) days.
3. Within thirty (30) days after receipt of the franchise, franchisee will apply for all mandatory construction permits.
- (c) The franchisee shall construct its cable system using materials good and durable quality, and all work involved in construction, installation, maintenance and repair of the cable system shall be performed in a safe, thorough and reliable manner.
- (d) Franchisee shall extend cable television service to those areas within the Borough beyond the initial service area and contiguous to the initial service area if (1) service is requested in writing by fifty percent (50%) of the residents living in the area to be serviced, and (2) the proposed extension would be in compliance with the technical and performance standards of the Federal Communications Commission.
- (e) Prior to the changing of any original program selection a Franchisee representative would meet with the Borough Council and review any new services that would better accommodate the needs of the Borough of Montrose.

#### SECTION 7 Rates to Subscribers

- A. Initial rates which the franchisee charges subscribers for installation of equipment and regular subscriber service shall be reviewed by Council and must be approved by that body at the time a franchise is issued. No changes in rates charged to subscribers shall be made except as authorized by the Borough Council in accordance with the procedure in "B" hereinafter set forth.
- B. No rates or charges other than those contained in the above schedule may be assessed unless first approved by the Borough by the following procedure. The Franchisee notifies the Borough Council by Registered Mail sixty (60) days in advance that the company desires to

increase rates. Should the Council take no action within sixty (60) days of the notice, then the proposed rates would go into effect no sooner than sixty (60) days from the date notice is given.

Should the Council disagree with the rate adjustment proposal, the Council would notify the Company of their objections and then agree to consider the rate adjustment proposal following a meeting with the Council and/or public hearing no later than sixty (60) days from the original notification by the Company.

#### SECTION 8 Complaints

- (a) Franchisee shall maintain a collection station and a toll-free telephone number for the purpose of receiving and responding to cable television subscriber complaints.
- (b) All subscriber complaints or trouble calls shall receive investigative action on the same day such complaint or call is received at the office, if possible, but in no case later than the following business day.
- (c) All subscriber complaints concerning service and/or quality of reception shall be made directly to the franchisee. If the franchisee fails to resolve the matter within fifteen (15) days, the subscriber may file a written complaint with the Franchise Committee along with a complaint fee of thirty five (\$35.00) dollars. The Franchise Committee shall schedule a hearing to resolve the matter.
- (d) Except as otherwise provided in this chapter, the Franchise Committee shall give ten (10) days' notice by regular mail of a hearing and public notice in a newspaper of general circulation at least three (3) days prior thereto. The Franchise Committee may render its decision immediately after consideration of the facts presented but, in any event, shall render a decision within five (5) days of said hearing, in writing, to the parties.

- (e) If the complaint is found to be valid, all costs of the proceedings shall be paid by the franchisee, including reasonable attorney's fees of the Borough and/or Franchise Committee.

#### SECTION 9

Any contract entered into with the franchisee shall require the franchisee to maintain the channel capacity specified by the Borough Council.

#### SECTION 10 Prohibition of Abandonment

Franchisee shall not abandon any service provided under this franchise without the prior written consent of the Borough Council of the Borough of Montrose.

#### SECTION 11 Indemnification - Insurance

- (a) Franchisee shall indemnify and save the Borough of Montrose harmless from all losses sustained by the Borough on account of any suit, judgment, execution, claim, damage or demand whatsoever occasioned by or arising out of the construction, erection, maintenance, repair or operation of Franchisee's cable television system or in the exercise by Franchisee of the franchise rights granted herein. For this purpose, Franchisee shall obtain and carry property damage and personal liability insurance written by an insurance company or companies qualified to do business in the State of Pennsylvania. The amounts of such insurance shall not be less than: \$100,000 for liability due to damage to property, no less than \$100,000 for liability due to injury or death of any person, and not less than \$300,000 for liability due to any one accident. The Borough shall notify Franchisee within thirty (30) days after the presentation of any claim or demand, either by suit or otherwise, made against the Borough on account of any negligence or other conduct on the part of the franchisee.
- (b) Franchisee specifically agrees that it will pay all expenses incurred by the Borough to defend itself in regard to any matter mentioned in Paragraph "a" above. These expenses shall include out-of-pocket expenses, such as reasonable attorney's fees, and shall include the reasonable value of any service rendered by the Borough Attorney or his assistants or any other employee of the Borough.

- (c) A certificate evidencing the insurance coverage required by paragraph "a" above shall be delivered by Franchisee to the Borough clerk within sixty (60) days of the date of this franchise.
- (d) The Franchisee shall also carry Workmen's Compensation Insurance covering all of its employees, subject to the Workmen's Compensation Act of the Commonwealth of Pennsylvania, and shall furnish the Borough with proof of coverage.

SECTION 12 Conditions of street occupancy

- (a) In the maintenance and operation of its audio and television transmission and distribution system in the streets, alleys, and other public places and in the course of any new construction or addition to its facilities, the Franchisee shall proceed so as to cause the least possible inconvenience to the general public. Any opening or obstruction in the streets or other public places made by the Franchisee in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings, the bounds of which during the periods of dusk and darkness shall be clearly designated by red warning lights.
- (b) In case of any disturbance, damage or removal of pavement, sidewalk, driveway or other surfacing by the Franchisee, the Franchisee 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 streets or alley disturbed, damaged or removed, in as good a condition as before said disturbance, damage or removal of pavement, sidewalk, driveway or other surfacing by the Franchisee.
- (c) Wherever the Franchisee shall take up or disturb any pavement, sidewalk, or other improvement of any street, avenue, alley or other public place, it shall comply with all rules, regulations and ordinances of the Borough relating thereto.
- (d) In the event that at any time during the period of a franchise the Borough shall elect to alter or change the grade of any street, alley or other public way, the Franchisee, upon reasonable notice by the Borough, shall remove, relay and relocate its poles, wires, cable, underground conduits, manholes and other fixtures at its own expense.

- (e) Proof of permission to use telephone or electric company poles shall be given to the Franchise Committee at the time of application for a franchise, and the Franchisee shall supply the Franchise Committee with copies of its agreements to use such poles and any changes or replacements of those agreements throughout the period of the franchise.
- (f) Tree trimming necessary to prevent damage to cable wires shall be the responsibility of the Franchisee, who shall bear the entire cost thereof. The Franchisee shall comply with the rules and regulations of the Borough Shade Tree Commission.
- (g) Franchisee will use the facilities of the various utilities in all available locations, and will request permission in writing from the Borough to install poles in areas where no other facilities are available and such installation shall comply with all requirements of the Borough. The poles or towers erected and/or used by the franchisee for its television distribution system shall be so erected as not to interfere with traffic over highways, roads and streets and the location of poles, towers or other obstructions shall be fixed under the supervision of the Borough as to such locations, giving consideration to the reasonable operation of the system, provided further that such locations shall not be vested interests and such facilities shall be relocated by Franchisee whenever the Borough concludes they shall restrict or obstruct the operation or location of highways, roads, streets, public places and such relocations shall be at no cost to the Borough.

#### SECTION 13 Equal Employment

The Franchisee shall not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions, or privileges or employment because of age, race, creed, color, national origin, or sex.

#### SECTION 14 Additional Regulations

The Borough of Montrose reserves the right to adopt such additional regulations as it shall find necessary in the exercise of its police power, provided such regulations are reasonable and not materially in conflict with the rights and privileges granted in this franchise.

#### SECTION 15 Severability

If any section, subsection, clause, phrase, or portion of this franchise is for any reason held invalid or unconstitutional by any Court or regulatory agency 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 thereof.

#### SECTION 16 Approval and Amendment of Provisions

Should the Federal Communications Commission make such modifications of the provisions of its rules and regulations that would require the amendment of this agreement, such amendment is hereby agreed upon and such necessary provisions or charges are incorporated herein by reference. Necessary amendments will be made within one (1) year or upon the expiration of this agreement, whichever comes first.

#### SECTION 17 Necessary Operating Authorizations

Franchisee shall file requests for all necessary operating authorizations with the Federal Communications Commission within sixty (60) days from the effective date of this franchise.

Franchisee shall make available for public inspection copies of all applications filed with the Federal Communications Commission in the event the Borough does not make them available for public inspection.

#### SECTION 18 Municipal Inspection

The Borough of Montrose shall have the right to inspect all pertinent books, records, maps, plans, and other like material of the Franchisee pertaining to the franchise upon reasonable notice and during normal business hours.

#### SECTION 19 Performance Bond

Franchisee shall maintain during the initial period of construction a performance bond in the sum of \$5,000, which shall be posted prior to the start of construction, conditioned that the Franchisee shall well and truly observe, fulfill and perform each condition of this construction schedule the amount thereof shall be receivable from the principal insurer thereof by the Borough as minimum liquidated damages and shall be in addition to any other legal proceeding available to the Borough as a result of the breach of said condition.



SECTION 20 Free Service Drops

Franchisee shall provide service at no charge to outlets installed in any school (Public, Private or Parochial) or any building owned by the Borough of Montrose, used by the Borough to conduct Borough business.

SECTION 21 Franchise Committee

There is hereby established a Committee to be composed of three (3) members of Borough Council and two (2) non-elected citizens of the Borough, designated as the Franchise Committee, whose responsibility shall be to oversee all franchises granted by Council. It shall be the duty of such Committee to see that all regulations and requirements hereinafter adopted are adhered to by the Franchisee. Council members of the Committee shall be appointed by the President of the Council. The Chairman of the Committee shall be selected by its members. Non-Council members shall be appointed to three-year terms, while Council members' appointments shall be subject to renewal or termination in the years of Council reorganization as established by the Borough Code.

SECTION 22 Noncompliance with provisions; revocation of franchise.

If the Franchisee shall fail to comply with any of the provisions of the franchise and/or this chapter, as determined by the Franchise Committee after public hearing on the questions of failure of compliance, and shall fail within fifteen (15) days after written notice from the Franchise Committee to correct said determined noncompliance, the Franchise Committee shall have the right to revoke the franchise and all rights of the Franchisee thereunder. Such revocation shall be subject to review and reconsideration by Borough Council at its next regularly scheduled meeting following the revocation exercised by the Franchise Committee.

SECTION 23 Removal of Equipment

Upon expiration, termination or revocation of a franchise, the Franchisee shall remove, upon direction of the Franchise Committee, at the sole cost and expense of Franchisee, the coaxial cables and appurtenant devices together with any and all building connections installed, constructed or maintained in connection with the service authorized by said franchise.

SECTION 24 Franchise Fee

Franchisee shall pay the Borough 1% of gross basic service revenues the first year, 2% the second year, and 3% the third and consecutive years. Fran-

chisee will deliver the Borough a check within sixty (60) days of the closing of the fiscal year which is July 31. A customer count by the month for the year will be supplied at the same time.

All costs incurred by the Borough in the publishing and approval of this ordinance will be reimbursed by Franchisee.

SECTION 25 Assignability of franchise.

Any franchise granted under this chapter shall be assignable by the Franchisee to any successor, assignee or designee found to be a responsible party. Determination of a responsible party shall be made by the Montrose Borough Council upon presentation to it of information and proofs as required in an application for a franchise. Such proof may be submitted by affidavit. No public hearing will be required by the Borough unless such is mandated by future state or federal law.

Enacted and ordained by the Borough of Montrose this \_\_\_\_\_ day of \_\_\_\_\_, 1982.

BOROUGH OF MONTROSE

PER: \_\_\_\_\_  
President of Council

ATTEST: \_\_\_\_\_  
Secretary

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 1982.

\_\_\_\_\_  
Mayor

9/13/82  
*Certified as a true copy*

*Catherine D. LaRue*  
*Borough Secretary*