

ORDINANCE NO. 87 - 4

AN ORDINANCE REGULATING CABLE COMMUNICATIONS IN THE TOWNSHIP OF PENN FOREST, SETTING FORTH THE TERMS AND CONDITIONS TO BE INCLUDED IN THE GRANT OF A NON-EXCLUSIVE FRANCHISE; PROVIDING FOR MUNICIPAL REGULATIONS AND USE OF THE SYSTEM; PROVIDING FOR CONDITIONS ON STREET OCCUPANCY AND PROVISIONS FOR REGULATORY ACTION; PROVIDING FOR PAYMENT TO THE MUNICIPALITY FOR OPERATION OF A CABLE SYSTEM IN THE TOWNSHIP OF PENN FOREST, PENNSYLVANIA.

BE IT ORDAINED by the Board of Supervisors for the Township of Penn Forest, duly assembled as follows:

SECTION 1. TITLE

This Ordinance shall be known as the Cable Communications Ordinance.

SECTION 2. PURPOSES

The purpose of this Ordinance is:

(a) To regulate the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of a cable communications system in, upon, along, across, above, over, under or in any manner connected with the streets, public ways and public property within the geographic limits of the Township of Penn Forest, as now or in the future may exist; and

(b) To establish fees for the use of the public rights of way in the operation of cable communications systems;

(c) To provide for the development of cable communications for educational, governmental and other public purposes;

(d) To prescribe penalties for the violation of this ordinance.

SECTION 3. DEFINITIONS

For purposes of this ordinance or any agreement awarding a franchise, the following terms, phrases, words and their derivations shall have the meaning given herein unless otherwise specifically provided in this ordinance, unless the context clearly indicates otherwise or unless such meaning would be inconsistent with the manifest intent of the Board of Supervisors:

(a) "Basic Cable Service" means any service tier which includes the retransmission of local television broadcast signals.

(b) "Cable channel" or "channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as such has been defined by the Federal Communications Commission;

(c) "Cable operator" means one who operates a cable communications system.

(d) "Cable service" means

(1) the one-way transmission to subscribers of video and audio programming; and

(2) subscriber interaction to select video or audio programming.

(e) "Cable Communications System" means a nonbroadcast facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service to multiple subscribers with the Township of Penn Forest. A cable communications system does not include:

(1) a broadcast television facility; or

(2) a master antenna system; or

(3) a facility of a common carrier; or

(4) the facilities of an operating electric utility.

(f) "Franchise" means an agreement between the Township and a cable operator providing for the construction and operation of a cable communications system in the Township of Penn Forest.

(g) "Other programming service" means information that a cable operator make available to all subscribers generally over the system.

(h) "Public, Educational or Governmental Access Facilities" means:

(1) channel capacity designated for public, educational or governmental use; and

(2) facilities and equipment for the use of such channel capacity.

(i) "Service Tier" means a category of cable service or other services provided by cable operator and for which a separate rate is charged by the cable operator.

(j) "Total Local Gross Revenues" means all cash, credits, property of any kind or nature, or other consideration whatsoever in any form arising from or attributable to the sale or exchange of cable communications services by the cable operator within the Township of Penn Forest or in any way derived from its operation of its cable communications system there, including, but not limited to, any interconnection between its system in the Township and any other system. Total Local Gross Revenues shall not include 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 cable operator directly to the taxing authority.

(k) "Video Programming" means programming generally comparable to programming provided by a local broadcast television station.

SECTION 4. FRANCHISE FOR OPERATION

(a) It shall be unlawful to commence or engage in the business of construction or operating a cable communications system in the Township of Penn Forest without having first entered into a franchising agreement with the Township. Franchise agreements shall

be non-exclusive and the Township reserves the right to grant the similar use of said streets, alleys, public ways and places to any person at any time during the period of the franchise.

(b) During the duration of any franchise agreement with the Township the franchisee shall at all times be subject to all lawful exercise of the police power of the community and to such other reasonable regulations as the franchising authority shall provide.

SECTION 5. CONSTRUCTION OF CABLE COMMUNICATIONS SYSTEMS

(a) Before commencing construction or repair and maintenance work on its cable communications system, the cable operator shall first obtain a construction permit and pay the fees established by the Board of Supervisors therefore. The application for such permit and the permit shall be in form approved by the Board.

(b) Before commencing construction or repair of any facilities attached or connected to utility poles, the cable operator shall have first obtained the written permission of the utility company whose pole is affected.

(c) It shall be unlawful for the franchisee to open or otherwise disturb the surface of any street, sidewalk, driveway, public way or public place for any purpose whatsoever without obtaining a permit to do so in accordance with Section (a) and (b) hereof.

(d) The cable operator shall restore any street it has disturbed to the condition it was in prior to any work done by the operator, or to such condition as the Board of Supervisors by Ordinance may have provided. At its own cost and expense, the cable operator shall restore or replace any other property disturbed, damaged or in any way injured by or on account of its activities to as good as the condition such property was in immediately prior to the disturbance, damage or injury, or pay the fair market value of such property to its owner.

(e) The cable operator shall, at its own cost and expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from such street or other public place, any of its property when required to do so by the Township because of street or other public excavation, construction, repair,

regrading and grading; traffic conditions; installation of sewers, drains, water pipes, Township-owned power or signal lines, tracks; vacation or relocation of streets or any other type of structure or improvement of a public agency, or any other type of improvement necessary for the public health, safety or welfare.

(f) Nothing in this ordinance or in any agreement awarding a franchise in accordance herewith shall be construed to authorize the cable operator to erect or maintain new poles in areas serviced by existing poles. The cable operator shall obtain written approval from the Board of Supervisors or their designee, such approval not to be withheld unreasonably, before erection of any new poles or underground conduits where none exist at the time that the cable operator seeks to construct its cable system.

(g) The cable operator shall maintain all wires, conduits, cable and other real and personal property and facilities in good condition, order and repair.

(h) The cable operator shall keep accurate, complete and current maps and records of its system and facilities and shall furnish as soon as they are available two (2) complete copies of such maps and records to the Township Secretary.

(1) Such maps and records shall be available for inspection by the public during normal business hours of the Township.

(i) The cable operator shall not place, or cause to be placed, poles or other equipment in such a manner as to interfere with the rights or reasonable convenience of adjoining property owners, or with any gas, electric or telephone utilities fixtures or property, nor shall the cable operator place, or cause to be placed, such poles or equipment in the right of way between the cartway and the right of way boundary except with the written approval of the Board of Supervisors.

(j) (1) All cable and wires shall be installed parallel with existing telephone and electric utility wires wherever possible;

(2) Multiple configurations shall be in parallel arrangement and bundled, in accordance with engineering and safety considerations; and

(3) All installations shall be underground in those

areas of the Township where both telephone and electric utilities' facilities are underground at the time of installation of the cable operator's system; and

(4) All construction shall be done in accordance with the National Electrical Safety Code prepared by the National Bureau of Standards, the National Electric Code of the National Board of Fire Underwriters and such applicable ordinances and regulations of the Township affecting electrical construction as may now or hereafter be in effect in the Township.

(k) The Township Secretary shall notify the cable operator of street improvements where paving, regrading or resurfacing of a permanent nature is involved.

(1) Such notice shall describe the nature and character of the improvements, the streets upon which they shall be made, the extent of the improvements and the work schedule for the project.

(2) The Township shall allow the cable operator to make additions, alterations or repairs to its facilities in advance of the Township's commencement of such improvements so as to permit the cable operator to maintain continuity of service and so as not to hinder or in any way delay the Township's work.

(1) (1) The cable operator shall, at the request of any person holding a permit to move a building, temporarily raise or lower its wire to permit the movement of such building.

(2) Such temporary removal, raising or lowering of wire shall be at the cost and expense of the person requesting the same, and the cable operator shall have the right to request payment in advance of the performance of the work.

(3) Any interruption in service occasioned by the work shall be done, as far as practicable, during non-peak viewing hours.

(m) The cable operator may trim trees or other vegetation owned by the Township to prevent branches or leaves from touching or otherwise interfering with its wires, cables or other facilities. Such trimming shall be at the cost and expense of the cable operator.

SECTION 6: FRANCHISE TERRITORY AND PROVISION OF SERVICE

(a) Any cable communications franchise agreement entered into in accordance herewith shall apply to the operation of a cable communications system throughout the geographic limits of the Township as now or in the future may exist.

(b) If a cable operator cannot provide service to the specific area, street, building or location within the Township, the cable operator shall so indicate in its proposal to enter into a franchise agreement. Unless an area, street, building or location is excluded from service within the franchise agreement, the cable operator shall install cable communications services within sixty (60) days of the request of a subscriber.

(c) In all cases where new developments or subdivisions are to be constructed and to be serviced in whole or in part by both underground power and telephone utilities, the owner or developer of such areas shall provide the cable operator the trench, backfill and all necessary substructures for television cables in order that the cable operator may install all necessary electronic cable communications facilities, and the owner or developer may charge the cable operator for this work. In no event shall such undergrounding be at the cost or expense of the Township.

(d) Basic service and such cable communications service as may be provided for in any agreement awarding a franchise in accordance herewith shall be made available to all individual dwelling units, institutions and businesses.

(e) All of the cable operator's equipment shall be removed within one month of a subscriber's request.

SECTION 7: CUSTOMER SERVICE

(a) The cable communications system shall be designed for operation twenty-four hours per day and shall endure service interruptions only for good cause and for a reasonable time.

(b) The cable operator shall have a publicly listed phone number which subscribers can call during normal business hours with respect to their service. Resolution of subscriber complaints shall be the responsibility of the cable operator and not the Township.

(c) The cable operator shall maintain a repair service

capable of responding to subscriber complaints or requests for repairs within twenty-four hours of receipt.

(d) The franchisee shall not deny or delay service or use of community communications facilities or otherwise discriminate against subscribers or users on the basis of age, race, creed, color, sex, national origin, income or marital status.

(e) The cable operator shall designate a channel which will be used for emergency cablecasts and such designation shall be included in any cable communications franchising agreement.

SECTION 8. TECHNICAL PERFORMANCE AND STANDARDS.

The cable operator shall operate the cable communications in accordance with the highest technical standards, which for purposes of this section shall mean those performance and technical standards in force and effect with the Federal Communications Commission on December 7, 1987.

SECTION 9. FRANCHISE FEE

(a) In consideration of the use of the public rights of way and property within the Township, and the privilege of operating its system in the Township, the cable operator shall pay to the Township a franchise fee equal to three percent (3%) of Total Local Gross Revenues.

(b) The franchise fee shall be an annual fee assessed quarterly for the preceding quarter as of March 31, June 30, September 30 and December 31 each year.

(1) Each quarterly payments shall be payable and reportable no less than thirty (30) days after the relevant assessment date.

(2) Each payment shall be on a form approved by the Board of Supervisors showing the basis for the computation of the fee and such other relevant information as the Board of Supervisors may require. Such form shall contain a statement from the chief operating officer of the cable company that the information concerning the franchise fee and its computation contained on the form are true and correct.

(3) The Township shall have the right to select an

auditor of its choice and at its cost and expense to audit the books and records of the cable operator to verify the franchise fee. Such auditor shall have access to the books and records of the cable operator once each year, during normal business hours, for the purpose of performing such audit.

(4) The acceptance of any payment required hereunder by the Township shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the Township may have for additional sums due and payable.

(5) In the event that such audit results in an assessment by and an additional payment to the Township, such additional payment shall be subject to interest at the rate of six percent (6%) per year and to a penalty of six percent (6%) per year, which shall be due and payable immediately.

(6) Nothing in this ordinance shall be construed to limit the liability of the cable operator for all applicable Federal, State and local taxes, including applicable amusement and business privilege taxes.

SECTION 10. OBSCENITY

The cable operator shall comply with all Federal, State and local laws regarding obscenity.

SECTION 11. CHANNELS FOR PUBLIC, EDUCATIONAL OR GOVERNMENTAL USE

Any cable operator shall provide at least one cable channel on its system for public, educational or governmental use. Rules and regulations for the use of such channel shall be made by the Board of Supervisors and implemented by the cable operator.

SECTION 12. PENALTIES

(a) Any person convicted of violating any provision of this Ordinance or any rule or regulation promulgated hereunder shall, upon conviction, be fined an amount not more than the maximum sum then allowable at law and costs for each offense, and in default of payment thereof may be imprisoned for not more than thirty (30) days. Each day of a continuing violation shall constitute a separate and distinct offense.

(b) In addition to any penalty provided or imposed, any condition caused or permitted to exist in violation of any provision of this ordinance shall be deemed to be a public nuisance and may be abated by the Township as provided by law or in equity. Each day such condition continues shall constitute a separate and distinct offense.

SECTION 13. AMENDMENT OF FRANCHISE FEE

The Board of Supervisors of Penn Forest Township shall have the power from time to time to amend the fees set forth in the foregoing Section 9 of this ordinance by a resolution duly adopted by a majority of said Supervisors at any regular or special meeting thereof.

SECTION 14. SEVERABILITY

The provisions of this Ordinance are severable, and if any provision of application is held illegal, unconstitutional or invalid, such holding shall not affect the remaining provisions. It is the legislative intent of the Board of Supervisors that the Ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

SECTION 15. REPEALER

Any ordinance or part of any ordinance, conflicting with this ordinance is hereby repealed so far as the same affects this ordinance.

Enacted this

day of December, 1987.

BOARD OF SUPERVISORS OF PENN
FOREST TOWNSHIP

Alfred M. Forester
Joseph Behrens
Julius A. Zeb

ATTEST:

Clara E. Salliet
SECRETARY