

ORDINANCE NO. 6-1987

AN ORDINANCE GRANTING A FRANCHISE TO ADELPHIA CABLE TV INC. OF NEW CASTLE, DBA ADELPHIA CABLE COMMUNICATIONS AND MAINTAIN A CABLE SYSTEM IN THE TOWNSHIP OF SHENANGO, LAWRENCE COUNTY, PENNSYLVANIA, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF A FRANCHISE.

Be it ordained by the Board of Supervisors of the Township of Shenango, Lawrence County, Pennsylvania:

SECTION 1

STATEMENT OF INTENT AND PURPOSE:
AUTHORITY; FRANCHISE APPLICATIONS.

1.01 Statement of Intent and Purpose. Grantee has been operating a cable television system in Shenango Township since November 1965. Township intends, by the adoption of this Franchise, to authorize the continued operation of a System by Adelphia Cable TV Inc. of New Castle, DBA Adelphia Cable Communications.

1.02 Authority. To the extent that the same may be lawfully given and subject to the provisions of any and all acts of the general assembly of the Commonwealth of Pennsylvania and regulations issued thereunder, now or in the future, and, insofar as the State of Pennsylvania has delegated to the Township the authority to grant a Franchise for cable system operation within the Township's territorial boundaries, the Township hereby exercises its authority to grant a non-exclusive Franchise permitting the operation of a cable system within the Township.

SECTION 2
SHORT TITLE

This ordinance shall be known and cited as the "Township of Shenango Cable Franchise Ordinance." Within this document it shall also be referred to as "this Franchise."

SECTION 3
DEFINITIONS

For the purpose of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. Words not defined shall be given their common and ordinary meaning.

3.01 "Cable Service Territory" shall mean the area to be served by the System of Grantee within the Township limits of Shenango, Lawrence County, Pennsylvania.

3.02 "Township" shall mean the Township of Shenango, Lawrence County, Pennsylvania.

3.03 "FCC" shall mean the Federal Communications Commission.

3.04 "Grantee" shall mean Adelphia Cable TV, Inc. of New Castle, DBA Adelphia Cable Communications, and its successors, transferees, or assigns.

3.05 "Gross Revenues" shall mean subscriber monthly fees, subscriber equipment rental fees, and installation and reconnection fees derived by Grantee from the operation of the System within the limits of Shenango Township, less taxes collected on behalf of taxing authorities, subscriber deposits, revenue from sales of equipment, and that portion of revenues paid for copyright and for non-broadcast television programming.

3.06 "Owner" shall mean a person with a legal or equitable interest in ownership of real property.

3.07 "Person" shall mean any corporation, partnership, proprietorship, individual or organization, governmental organization, or any natural person.

3.08 "Public Property" shall mean any real property owned by the Township, other than a street.

3.09 "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive, or any easement or right-of-way now or hereafter held by Township, or dedicated to the Township or to general public use.

3.10 "System" shall mean a system of antennas, cable, wires, lines, towers, waveguides, or other conductors, converters, equipment, or facilities used for distributing video programming to home subscribers, and/or producing, receiving, amplifying, storing, processing, or distributing audio, video, digital, or other forms of electric signals to subscribers.

3.11 "Subscriber" shall mean any person or entity who subscribes to service provided by Grantee by means of the System.

SECTION 4 GRANT AUTHORITY

4.01 Grant of Franchise. For the purposes of operating and maintaining a System in the Cable Service Territory Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Street and Public Property such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appropriate to the operation of the System. Grantee is also authorized to utilize public rights of way and to utilize easements within the Township which have been dedicated for compatible uses, as provided for in Section 621 (a) (2) of the Cable Communications Policy Act.

4.02 Franchise Term. The initial term of this Franchise shall commence on June 12, 1987, and shall expire ten (10) years from said date, unless renewed as herein provided.

4.03 Conditions of Franchise. The rights afforded to Grantee by Section 4.01 and 4.02 are granted subject to the conditions hereinafter provided.

SECTION 5
DESIGN AND SERVICES PROVISIONS

5.01 Technical Requirements. Grantee shall construct and maintain a System that meets at least the technical standards applied by the FCC. Procedures for testing technical capacity of the System shall conform with the technical and testing standards applied to cable system by the FCC.

5.02 Level of Services. Grantee's current basic program services are set forth in Exhibit "A", but Grantee retains the right to delete, replace, and/or rearrange programming during the Franchise term, after notice to Township.

SECTION 6
CONSTRUCTION PROVISIONS

6.01 Service Area. In new housing districts, areas with occupancy densities of more than thirty (30) homes per mile which are contiguous to the System will be provided with access to service within twelve (12) months of occupation, to the extent service is economically feasible and technically possible. In areas with less than thirty (30) homes per mile, service shall be offered in conformance with Grantee's service extension policies.

6.02 Construction Requirements. Grantee shall make use of existing poles and other facilities available to Grantee. Grantee may also erect its own poles and install its own conduit. All poles and conduit installed within the Cable Service Territory shall be made available for attachment or use by Grantee, at just and reasonable rates applied to public utilities under the formula presently established in 47 U.S.C., §224.

6.03 Construction Codes and Permits. Grantee shall obtain any required permits from Township before commencing construction involving the opening or disturbance of any street or public property. Grantee shall comply with all applicable building and zoning codes. Grantee shall arrange its lines, cables, and other appurtenances, on any street or public property, in such a manner as to cause no unreasonable interference with the usual and customary use of said street or public property by any person.

6.04 Repair of Street and Public Property. Any and all streets or public property which are disturbed or damaged during construction, operation, or maintenance of the System shall be promptly repaired by Grantee, at its expense and to the condition prior to the disturbance or damage.

6.05 Movement of Facilities. In the event it is necessary temporarily to move or remove any of Grantee's wires, cable, poles, or other facilities placed pursuant to this Franchise, in order lawfully to move a large object, vehicle, building, or other structure over the streets of Township, upon two (2) weeks' notice by Township to Grantee, Grantee shall move, at the expense of the person requesting the temporary removal, such of his facilities as may be required to facilitate such movements.

6.06 Prudent Installation and Operation. Grantee agrees that its installation and operation shall be installed, located, and maintained so as not to endanger or interfere with the life and property of any person or thing; not interfere with improvements which the Township may deem proper; not hinder or obstruct the free use of streets, alleys, bridges, or other public or private property. In the event Township relocates a street or makes any other change requiring the removal of utility installations, or in the event Grantee does interfere with the public or private property of others, Grantee, at its sole expense, will remove its installation at this location.

SECTION 7

OPERATION AND MAINTENANCE

7.01 Maintenance and Complaints .

- a) Grantee shall maintain an office within the Cable Service Territory, which territory shall include the City of New Castle and Township, that shall be open during all usual business hours, so as to receive subscriber and non-subscriber complaints and requests for repairs or adjustments.
- b) Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause.

- c) Any complaints from subscribers shall be investigated and acted upon as soon as possible. Grantee shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint, and the time and date thereof. This log shall be made available for periodic inspection by Township.

7.02 Safety.

- a) Grantee shall at all times take reasonable precautions for preventing failures and accidents which are likely to cause damage or injury to the public, to employees of Grantee, and to public or private property.
- b) All lines, equipment, and facilities within the Cable Service Territory shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

7.03 Subscriber Practices.

- a) Grantee shall not deny service, deny access, or otherwise discriminate against subscribers on the basis of race, color, religion, natural origin, sex or age. Grantee shall adhere to the equal employment opportunity requirements of the FCC.
- b) Grantee may conduct promotional campaigns in which standard rates are uniformly discounted or waived.
- c) Grantee may make special contracts for non-profit, charitable, educational, governmental, and religious organizations.
- d) Grantee may offer bulk rate discounts for multiple dwellings, hotels, motels, and similar institutions.

7.04 Rates and Other Charges. The Township recognizes that Grantee operates the System in a competitive market, in competition with other purveyors of information, entertainment, and communication. The Township shall not regulate or oversee Grantee's rates, fees, or charges.

SECTION 8

foregoing payment shall be compensation for use of streets and other public property.

8.02 Payment Periods. Payments due Township under this provision shall be submitted annually on or before April 1st of each year, for the preceeding year.

SECTION 9 REMEDIES, DEFENSES, INSURANCE

9.01 Laws Governing. This Franchise shall be governed by and construed in accordance with the laws of the State of Pennsylvania, and applicable Federal law.

9.02 Notice of Violation. Township shall provide Grantee with a detailed written notice of any Franchise violation upon which it proposes to take action, and a thirty (30) day period within which Grantee may cure an alleged violation. Grantee may, within fifteen (15) days of receiving such notice, notify Township that there is a dispute as to whether a violation has, in fact, occurred. Such notice by Grantee to Township shall rectify the matters disputed by Grantee. Township shall hear Grantee's dispute at the next regularly scheduled Supervisor's meeting. Any Supervisor decision shall be based upon written findings of fact, and shall be non-binding. Township and Grantee shall bear their own costs and attorneys' fees.

9.03 Indemnity. Grantee shall indemnify and hold harmless the Township at all times during the term of this Franchise, from and against all claims for injury or damage to persons or property, both real and personal, caused by the construction, erection, operation, and maintenance of the System.

9.04 Liability Insurance. Throughout the term of this Franchise, Grantee shall maintain a policy of liability insurance vocering the Grantee, and naming the Township as an additional insured, in the minimum amounts of:

- a) \$50,000 for property damage in any one occurrence;
- b) \$100,000 for bodily injury to any one person; and
- c) \$300,000 for in any one occurrence.

Grantee shall furnish a Certificate of Insurance for the required amounts to Township.

9.05 Other Remedies.

- a) From and after the effective date of Franchise, it shall be unlawful for any person to establish, operate, or to carry on the business of distributing to any persons in the Cable Service Territory any television signals or radio signals by means of a System unless a Franchise therfore has first been obtained pursuant to the provisions of this Ordinance, and unless such Franchise is in full force and effect.
- b) No person shall interrupt or receive signals from the System unless specifically authorized to do so by Grantee.
- c) No person shall tamper with, remove, or injure any cable, wires, or equipment used with the System unless specifically authorized to do so by Grantee.
- d) No person shall intentionally deprive Grantee of a lawful charge for cable service.
- e) No person shall resell Grantee's cable services without Grantee's express, written consent.
- f) Township and Grantee are expressly reserved their applicable rights and remedies available in law or in equity.

SECTION 10
VARIANCE AND RENEWAL

10.01 Variance. Applications for a variance to this Franchise, to accommodate a significant change in circumstances, to prevent unreasonable hardship to Grantee, or to permit technical variations which will satisfy the purpose of this Franchise, may be made by the Grantee to Township. Township shall review the application within fourteen (14) calendar days, or the earliest meeting of the Township Supervisors, and shall issue a report of the findings of Township and shall act on a request within thirty (30) days.

10.02 Franchise Renewal. This Franchise shall be renewed for a period of ten (10) years upon written notice by Grantee to Township, at least six (6) months prior to the expiration of the Franchise term set forth in Section 4.02.

Township may not, upon the expiration of this Franchise, or otherwise, acquire an ownership interest in the System, or require a sale of the System to any other person, unless Township or such other person acquires the ownership interest at not less than fair market value for the System as a going concern, in accordance with the provisions of the Cable Communications Policy Act of 1984.

SECTION 11 MISCELLANEOUS

11.01 Severability. If any law, ordinance, regulation, or Court decision shall render any provision of this Franchise invalid, the remaining provisions of the Franchise shall remain in full force and effect.

11.02 Force Majeure. Prevention or delay of any performance under this Franchise due to circumstances beyond the control of Grantee or Township, unforeseen circumstances, or Acts of God, shall not be deemed noncompliance with or a violation of this Franchise.

11.03 More Favorable Terms. In the event that Township approves or permits a System to operate in the Cable Service Territory on terms more favorable than those contained in this Franchise, such more favorable terms shall be applicable in this Franchise.

11.04 Regulatory Bodies. Grantee shall conduct the operation of its business in accordance with the rules, regulations, and statutes, as amended from time to time, of the Federal Communications Commission and any other duly authorized federal, state, or local authority having jurisdiction. In particular, the Grantee shall, at all times, comply with the rules and regulations governing cable television operations promulgated by the FCC, specifically those set out in The Cable Communications Policy Act of 1984, and of the Fcc Rules and Regulations, and

any FCC Rules and Regulations regarding technical and engineering specifications involved in the construction of the CATV system and signal carriage thereon.

11.05 Modification of FCC Rules. Consistent with the requirements of the Cable Communications Policy Act of 1984, and of the FCC Rules, any modification of the Cable Communications Policy Act of 1984 resulting from amendment thereto by the FCC shall be to the extent applicable, be considered as a part of this franchise as of the effective date of the amendment made by the Cable Communications Policy Act of 1984 and the FCC.

11.06 Repealer. All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

11.07 Severability. If any sentence, clause, section, or part of this ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this ordinance. It is hereby declared as the intent of the Board of Supervisors of the Township that this ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

PASSED AND ADOPTED this 12th day of June,
A.D. 1987.

Township of Shenango

By

Joseph Shinsky
Joseph Shinsky, Chairman
Board of Supervisors

ATTEST:

Teresa K. Peace
Teresa K. Peace, Secretary

Andrew Piccuta
Andrew Piccuta, Vice Chairman
Board of Supervisors

Abner
Earl F. Cunningham, Supervisor
Board of Supervisors