

SAVILLE TOWNSHIP  
ORDINANCE NO. 93-1

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO VALLEY CABLE SYSTEMS TO CONSTRUCT, MAINTAIN AND OPERATE A CABLE SYSTEM, AND PROVIDING FOR THE REGULATION OF THE FRANCHISE AND ACTIVITIES UNDERTAKEN THEREUNDER.

WHEREAS, Valley Cable Systems, hereinafter referred to as the Company, has requested the non-exclusive right and privilege to utilize public rights-of-way to construct, maintain and operate a Cable System.

WHEREAS, the Township of Saville, Perry County, Pennsylvania, hereinafter referred to as the Township, desires that the Company be granted the non-exclusive right and has determined that such a right would be beneficial to the public welfare.

WHEREAS, certain regulation is necessary in connection with the construction, maintenance and operation of the Cable System.

NOW, THEREFORE, be it enacted by the Township, and it is hereby enacted and ordained as follows:

SECTION I

GRANTING OF AUTHORITY

The Township grants to the Company a non-exclusive right, privilege and franchise to construct, maintain and operate antennas, cables, wires, lines and other facilities in, under,

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over, along, across and upon the streets, lanes, avenues, sidewalks, alleys and any easement or right-of-way now or hereafter held or dedicated for use by the Township or the general public for the purpose of constructing, maintaining and operating a Cable System.

The Township grants to the Company the further right, privilege and authority to lease, rent or obtain, in any lawful manner, the use of towers, poles, lines, cables, underground conduits and other equipment and facilities from any holder of public licenses or franchises within the Township. The poles used by the Company shall be those erected and maintained by local utility companies when practical if mutually satisfactory rental agreements can be obtained.

## SECTION II

### NON-EXCLUSIVE FRANCHISE

The right, privilege and franchise granted hereby is not exclusive and the Township retains the right to grant to others rights identical and/or similar to those granted herein on such terms as the Township may determine and as may be permitted by applicable law with due consideration of the interests of the public and the Company, but in no event on terms which are more favorable to the other operator than the terms hereof.

To induce the Company to construct, own and operate the Cable System, the Township agrees that it will not, directly or

indirectly, construct, own or operate a Cable System except and only to the extent that the Township has any express right to acquire this franchise and the Company's Cable System under applicable law; in the absence of any such express right, the Township shall have no right, directly or indirectly, to construct, own or operate a Cable System.

SECTION III

DEFINITIONS

"Cable System" means a community antenna television system designed to receive, transmit, amplify and distribute television, radio and satellite signals and electronic communications and/or designed for such other uses (the Ancillary Uses") which are compatible therewith, as determined from time to time by the Company, including, but not limited to, the transmission of voice and data.

"Basic Subscriber Service" means television service including, but not limited to, mandatory carriage signals, local access channels, optional premium services and such other television service as the Federal Communications Commission ("FCC") may mandate or the Company may include, but excluding Ancillary Uses which are sold separately from basic tier service.

"Subscriber" means any person who pays the applicable rates to receive Basic Subscriber Service from the Company.

"Television" means transmission of impulses for the

creation of picture and sound on a television set, whether by digital or electrical signals or other transmission.

SECTION IV

CONDITIONS OF STREET/PUBLIC WAY OCCUPANCY

1. All the Company's equipment and facilities shall be located, installed and maintained so as not to cause any interference with the use of streets or other public ways and to assure that the functioning and appearance of the property and the convenience and safety of the public shall not be adversely affected thereby. The Cable System shall be constructed, operated and maintained in accordance with applicable governmental regulations and good engineering practices.

2. In case of disturbance by the Company of any street sidewalk or paved area, the Company shall, at its expense, in a manner reasonably approved by the Township, restore such area to a condition reasonably similar to the condition existing prior to the disturbance.

3. In case of fire, earthquake, flood or other similar event, the Township may temporarily remove any of the Cable System with advance notice being given to the Company as promptly as possible; the Company shall not be entitled to payment for damage caused thereby unless the Township acted with gross negligence or willful misconduct.

4. If the Township alters, changes or makes any

improvements on or about any street, sidewalk, alley or other public way, the Township shall give the Company reasonable advance notice and the Company shall, at its expense, relocate its facilities and equipment or take such other action as may be reasonably necessary to accommodate the public improvements.

5. The Company shall temporarily remove, reroute or move its equipment and facilities to accommodate public or private works, construction, movement of buildings, extra large truckloads, etc., but the Company shall be entitled to reasonable notice prior to such event and reasonable costs from any party causing such relocation other than the Township.

6. Before beginning any construction or installation of equipment or facilities which would materially disrupt the use of public ways, the Company shall provide the Township with reasonable prior notice of work to be performed, the location and the period of time involved in the undertaking. The Township shall have the right to inspect such work.

7. The Company shall compensate property owners for, or restore to the same condition as existed before said damage occurred, all damages caused by the construction, operation or maintenance of the Cable System. The Company shall be primarily responsible for all such damages even though it may have an agreement with a construction company.

8. Upon request by the Township, the Company shall

provide a diagram showing the location of the Cable System.

SECTION V

INDEMNIFICATION AND INSURANCE

1. The Company shall indemnify, protect and hold the Township harmless from all claims, suits, liability, loss expense or damage of every kind and description (including court costs and reasonable attorney's fees), which accrue, are suffered or claimed by the Township by reason of or relating to the Company's construction, operation and maintenance of the Cable System. This does not include damages caused by the Township's own negligence or intentional actions.

2. In order for the Township to be indemnified, defended and held harmless, it shall provide:

(a) Prompt notice to the Company of any claim or proceeding giving rise to such rights; and

(b) Full cooperation with respect to the Company's participation in, defense, settlement, resolution or other disposition of such claim or proceeding.

3. The Company shall, at its expense, maintain insurance at a minimum as follows: property damage -- \$100,000.00 per occurrence, \$300,000.00 aggregate; bodily insurance -- \$300,000.00 per occurrence, \$500,000.00 aggregate; such insurance shall name the Township as additional insured and shall require thirty (30) days notice

to the Township of cancellation. The Company also shall carry insurance coverage for all claims under applicable workers' compensation laws. On request, the Company shall deliver certificates of insurance for the above coverage.

#### SECTION VI

##### FRANCHISE FEE

1. The Company shall pay within sixty (60) days of the effective date of this Ordinance, and yearly thereafter, a franchise fee of \$250.00 per annum.

2. The aforesaid annual fee shall be effective for the initial fifteen (15) year term.

3. The Company shall reimburse the Township the cost incurred in advertising this Ordinance within sixty (60) days of the effective date thereof.

4. Nothing herein shall waive, limit or otherwise affect the right of the Township to adopt ordinances, enforce existing ordinances or to collect other fees and taxes permitted by law.

#### SECTION VII

##### EXPENSES AND FEES

The Company shall reimburse the Township for costs, fees and expenses reasonably incurred for the following;

1. Protection, removal or relocation of the Cable System if the Company has failed to perform its obligations

hereunder.

2. Restoring any damage or condition resulting from construction, maintenance or other work performed by the Company.

3. Enforcing this Ordinance.

#### SECTION VIII

##### TERM

The initial term of this franchise shall be fifteen (15) years from the effective date hereof. The Company may renew the initial term of this franchise for an additional term of five (5) years by giving written notice to the Township not less than ninety (90) days prior to the expiration hereof. If the consent of the Township to such renewal is required by applicable federal or state laws, such consent shall not be withheld unreasonably after public notice and hearing; in deciding whether to consent to a renewal, the Township shall consider those factors prescribed by applicable law, and (1) whether the Company has complied substantially with the material terms hereof; (2) the extent and quality of the Company's service; (3) whether the Company remains financially, legally and technically qualified; and (4) whether the Company's renewal would reasonably meet the future television needs and interest of the Township.

#### SECTION IX

##### SERVICE STANDARDS

1. Technical and Operational Standards. The Company



shall:

a. Provide continuous, reliable and good quality television reception and service.

b. Make repairs promptly. Service interruptions shall be for the shortest time possible and shall, to the extent practicable, be preceded by notice to Subscribers and occur during periods of minimal viewership.

c. Maintain replacement equipment and supplies and personnel trained to perform repairs. In the event of major damage to the Cable System, the Company shall make reasonable efforts to supply alternative means of providing service to as many Subscribers as possible while making repairs.

2. Subscriber Service Standards:

a. The Company shall maintain and notify Subscribers of a toll-free telephone number to receive complaints. The Company may provide separate telephone numbers for complaints made after normal business hours but must be capable of handling complaints twenty-four (24) hours a day.

b. The Company shall respond to interrupted service not later than twenty-four (24) hours after being notified by a subscriber that service has been interrupted.

c. The Company shall maintain records concerning complaints and disrupted services, including the date and nature of the complaint or disruption, the action taken to resolve the

same, date of resolution and reasons for any delay in investigating and resolving the same. The Company shall make these records available to the Township upon request.

d. If there is an interruption caused directly by failure of the Company's equipment of any premium channel or not less than four (4) channels of Basic Subscriber Service for forty-eight (48) consecutive hours or more, an affected Subscriber shall receive upon request a pro-rata reduction of charges if the Subscriber has notified the Company immediately of the interruption and made a claim for credit within ninety (90) days of its occurrence; no credit will be given if the interruption is caused by the Subscriber's equipment or any action taken with respect to the Cable System by someone other than the Company's employees.

e. The Company is not responsible for damage to or the operation, maintenance, service or repair of any Subscriber's television, VCR, receiver or other equipment.

f. Notwithstanding any provision herein, the Company will not be liable for any failure or interruption of service directly or indirectly caused by or resulting from any circumstance beyond its control and such circumstance, during its existence, also shall toll the Company's obligations to perform hereunder.

3. Services to be Provided. The Company shall:

a. Make Basic Subscriber Service available to all Subscribers.

b. Provide upon request and without charge one cable outlet for Basic Subscriber Service to each governmental building, fire station, police station and public school building located in the area served by the Cable System.

c. Make available without charge in case of any emergency or disaster and upon the request of the Township, a public access channel for transmitting information concerning the emergency or disaster by authorized Township personnel.

#### SECTION X

##### REPORT REQUIREMENTS

The Company shall, upon request of the Township, provide copies of public and technical files submitted to the FCC relating to the Cable System. The Township may, on reasonable notice, inspect at the Company's office and during reasonable hours, other FCC files maintained by the Company with respect to the Cable System, only upon a showing of good cause. If such review occurs, the Township will keep confidential any and all information obtained unless otherwise required by law to disclose the same.

#### SECTION XI

##### ASSIGNMENT OR TRANSFER

This franchise shall not be assigned or transferred without the express prior approval of the Township, which

approval shall not be withheld unreasonably. An assignment or transfer of this franchise shall not be deemed to include any: (i) transfer to an entity affiliated with the Company through common control, ownership or otherwise; (ii) transfer of a portion or all of the control of the Company or any of its affiliates; (iii) restructuring or reorganization of the Company or any of its affiliates; and (iv) granting of security interests in, liens or encumbrances on, or collateral assignment of the Cable System or the Company's rights hereunder to secure repayment of indebtedness.

#### SECTION XII

##### FRANCHISE SUBJECT TO POLICE POWER

The Company shall be subject to all lawful exercise of police power by the Township.

#### SECTION XIII

##### OTHER PERMITS REQUIRED

This franchise does not relieve the Company from compliance with any ordinance or regulation which may require the Company to obtain other permits or licenses such as building permits and utility pole agreements.

#### SECTION XIV

##### MODIFICATION OF FRANCHISE

This franchise may be amended or modified only as expressly agreed upon by the Township and the Company.

SECTION XV

FRANCHISE VIOLATIONS AND ENFORCEMENT

1. If the Company violates any material provision of this Ordinance, the Township:

- a. Shall comply with subsection 2 hereafter; and
- b. If the procedures set forth in subsection 2 have not resolved the dispute, the Township may proceed to compel compliance with the provisions hereof to collect any sums due hereunder or to terminate the franchise granted hereby. Except as expressly provided herein, the Company shall not otherwise be liable to the Township. The Company shall not be liable for any incidental or consequential damages.

2. If the Township believes that the Company has violated a material provision hereof, it shall notify the Company in writing (the "Violation Notice") of the alleged violations and the proposed remedy which is acceptable to the Township and the Company shall have thirty (30) days after its actual receipt of the Violation Notice to cure such violation.

If the Company disputes the proposed remedy or the existence of the violation or if such default is not cured within such 30 day period, then the matter shall be referred to a public hearing to be held after public notice and written notice to the Company at least ten (10) days in advance. At the hearing the Township shall list the alleged violations and proposed remedies

set forth in the Violation Notice and shall give the Company and all other interest parties an opportunity to be heard with respect thereto.

Within a reasonable time after the hearing, the Township shall determine whether the Company has violated the Ordinance and shall issue written findings and conclusions with respect thereto and the Company shall have a reasonable opportunity of not less than thirty (30) days after the issuance of said findings and conclusions to remedy the matter. Any such determination shall be subject to judicial review and a de novo hearing before any court of competent jurisdiction and/or to judicial review under any applicable state or federal law.

3. Prevention or delay of any performance due to unforeseen circumstances, acts of God or other circumstances beyond the reasonable control of Company shall not be deemed a violation by the Company of this franchise.

4. It is the intent of the Township and the Company to avoid a forfeiture of this franchise; thus, the Company shall not be in default hereunder if it has delivered a reasonably or functionally equivalent service to that expressly required hereunder. Moreover, if the Township shall propose any remedy under Section XV, the Company shall be deemed to have satisfied such proposed remedy if it provides a reasonably or functionally equivalent service to that proposed.

SECTION XVI

SEVERABILITY

The provisions hereof are severable and if any provision hereof is held to be unconstitutional, invalid or illegal, such decision shall not affect the validity of any other provision hereof. It is declared as legislative intent that this Ordinance would have been enacted had such unconstitutional, invalid or illegal provision not been included herein, and that the court or agency making such determination should reform such provision to the minimum extent necessary to make such provision valid, legal and constitutional.

SECTION XVII

EFFECTIVE DATE

This Ordinance shall become effective on July 11, 1993  
ORDAINED AND ENACTED AS AN ORDINANCE OF THE TOWNSHIP OF  
SAVILLE, PENNSYLVANIA, THIS 6<sup>th</sup> DAY OF July, 1993.

SAVILLE TOWNSHIP BOARD OF SUPERVISORS

ATTEST



Terry K. Ulrich  
Terry K. Ulrich, Secretary

Ronald E. Hampton  
Ronald E. Hampton

Ralph C. Kimmel  
Ralph Kimmel

Lee R. Bear