

ARTICLE 323
Cable Television Franchise

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CROSS REFERENCES

Poles and wires - see S.U. & P.S. Art. 915
Underground conduits - see S.U. & P.S. Art. 917

323.01 SHORT TITLE.

The article shall be known and may be cited as the “Cable Television Franchise Ordinance”.
(Ord. 11-2005. Passed 2-15-05.)

323.02 DEFINITIONS.

For the purposes of this article, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense shall include the future; words in the plural number include the singular number; and words in the singular number include the plural number. “May” will be interpreted as permissive and “shall” will be interpreted as mandatory. Other terms not specifically defined will have the meanings generally accorded to them in the cable television industry.

- (a) “Additional services” means any video programming including Expanded Basic, Digital Basic tier, Pay Channels, Pay-Per-View events for additional charges above the charge to Subscriber for Basic Services and provided to Subscribers over the Cable Television System but not including Basic Services.
- (b) “Basic service” means the minimum service transmitted to all subscribers, which shall include at a minimum (1) all signals of domestic television broadcast stations entitled to “must carry” status under FCC rules, and (2) the initial analog public, education and governmental programming channels required by this Franchise Agreement.
- (c) “Cable television system” means a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable services which includes video programming to multiple subscribers within the City, excluding however, those facilities excluded from such definition of cable system in the Cable Act.
- (d) “Cable Act” means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and as further amended by the Telecommunications Competition and Deregulation Act of 1996 and as it may be further amended.
- (e) “Cable services” means the one-way or two way transmission to or from subscribers of video programming, or other cable system services (including music) and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming or service which constitute cable services under the Cable Act.
- (f) “City” means the City of York, Pennsylvania.
- (g) “City Council” means the Legislature of the City of York.
- (h) “Company” means Comcast of Southeast Pennsylvania LLC, a Delaware corporation, and grantee of rights under this Franchise or its assignee or successor.
(Ord. 12-2006. Passed 3-21-06.)
- (i) “Digital basic” means video services other than Expanded Basic, premium or pay-per-view services that are offered as a tier in addition to Basic Service that are transmitted by digital technology.
- (j) “Expanded basic” means the tier of video programming including Basic Service and additional satellite delivered programming.
- (k) “Federal Communications Commission” or “FCC” means the present Federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

- (l) “Franchise” means the non-exclusive right, privilege and authority granted by this Agreement to construct, maintain and operate a Cable Television System in the City, and shall permit in addition to the privilege to operate within the City, the Company to construct, maintain and operate such Cable Television System with whatever wires or components as are necessary, over, under or within all City Streets and Rights-of-Way.
- (m) “Franchise fee” means the payments required to be made to the City by the Company for the right to operate in the City and which are allowed by Federal statute or regulation.
- (n) “Gross revenue” means any and all revenue including, without limitation, cash, credits, property, and in kind contributions received directly or indirectly by Company, or its officials from any source, whatsoever arising from or attributable to the provision of Cable Services within the City, except as otherwise set forth herein. Gross Revenue shall include but not be limited to, the following: Basic Service fees; Additional Services fees charged to subscribers for any kind of Cable Service other than Basic Service; franchise fees, fees charged to subscribers for any optional, per channel, or per program services; installation, relocation, disconnection, reconnection, and change in service fees; fees for leasing of channels; rental or sales of any and all equipment including addressable and non-addressable; converters and remote control devices the portion of revenues attributable to the City as provided in this Agreement from any and all local advertising revenue (excluding agency commissions), revenue derived from national, regional and local advertising received by the area system; commissions received from home shopping channels’ sales generated in the franchise area; fees for any and all music services, including DMX; fees for video-on-demand, sales of program guides, and purchases late payment fees, NSF check charges; revenues from electronic utility meter readings. Gross Revenue shall not include revenue from cable modem service, bad debts, state sales taxes or any taxes on services furnished by Company and directly imposed upon any subscriber or user by the City, state, federal or any other government user or any revenues upon which the City is not permitted by regulation or statute to levy a franchise fee.
- (o) “PEG” means the acronym for Public, Educational and Governmental, used in conjunction with access channels, support and facilities.
- (p) “Person” means any person, firm, corporation, association, trust, organization or other business entity.
- (q) “State” means the Commonwealth of Pennsylvania.
- (r) “Streets and rights-of-way” means the surface of, as well as, the space above and below all streets, roadways, highways, freeways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, easements, rights-of-way or other public ways in the City which have been or may hereafter be dedicated and opened to public use, or such other public property so designated by law which shall within their proper use and meaning entitle City and Company to access thereon for the purpose of installing cable transmission lines over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and pertinent to the Cable Television System in the City.
- (s) “Subscriber” means a person or entity who contracts with Company for, and lawfully receives Cable Services distributed by the Cable System.
(Ord. 11-2005. Passed 2-15-05.)

323.03 GRANT OF AUTHORITY.

(a) Grant of Franchise. Subject to the terms and conditions stated herein, the City hereby grants to Company a non-exclusive and revocable franchise to construct, erect, operate and maintain for a period of fifteen (15) years, a Cable Television System for the reception, origination, amplification, distribution and sale of audio, video, digital and other forms of electronic signals in, upon, along, across, above, over or under the Streets and Rights-of-Way in the City, consisting of all poles, wires, cable, underground conduits, manholes and other conduits and fixtures necessary for the maintenance and operation in the City of a Cable Television System with all of the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby include the right in, over, under and upon the Streets and Rights-of-Way in the City to install, erect and operate all lines and equipment necessary to a Cable Television System and the right to make connections to Subscribers and the right to repair, replace, enlarge and extend said lines, equipment and connections. The rights herein granted for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said Streets and Rights-of-Way to any Person at any time during the period of this Franchise provided that the terms of such other franchise agreements shall not be more favorable or materially less burdensome than this Agreement.

- (1) Notwithstanding this authority, Company shall obtain all necessary government permits, including City permits, for any disturbance of public places and rights-of-way under the jurisdiction of the City, including property over which the City has a sufficient easement or right of way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of video, audio, text, Data, and other electronic signals and impulses.
- (2) If during the term of this Agreement federal law is amended or interpreted by the FCC or a court of competent jurisdiction, which decision is a final order not subject to further appeal to permit local franchise authorities to collect franchise fees on revenues for new or existing services not currently subject to franchise fees or included in the definitions of Gross Revenues, then the Company shall notify the City of its right to have franchise fees remitted on services not previously subject to franchise fees. If the City wants franchise fees on such services it will notify the Company and beginning sixty (60) days after notice from the City, the Company shall begin to collect franchise fees on revenues attributable to such services and revenues from such services going forward shall be considered a part of Gross Revenues. Revenues collected on such services prior to the effective date of the City's notice shall not be subject to franchise fees. The Company shall notify the City at the time of such change in the federal law provided however that such failure to notify shall not be a material default under this Agreement and the City's remedy shall be to collect franchise fees back to the date of the change of the law but in no event for more than one year.

(b) Exercise of Police Powers. All rights and privileges granted hereby are subject to the police powers of City to adopt and enforce local laws and ordinances, rules and regulations necessary to the health, safety and general welfare of the public. City shall not use its legislative powers to alter or amend the provisions of this article subsequent to its effective date in such a manner as to have a material adverse effect on the rights of Company herein or to pass ordinances that are only applicable to Company.

(Ord. 11-2005. Passed 2-15-05.)

323.04 FRANCHISE FEE.

(a) Franchise Fee.

- (1) Company shall pay to the City an amount equal to five percent (5%) of the Gross Revenue received from the operation of its Cable Television System in the City. In the event that federal law is amended to authorize a franchise fee higher than five percent (5%), the City may, at its discretion, direct Company to pay a higher Franchise fee. Any increase in the Franchise fee so directed shall be implemented as soon as practicable, but no later than sixty (60) days following the receipt of written notice from the City requesting the increase. Such written notice shall be accompanied by a copy of the resolution or ordinance authorizing the increase. Conversely, if the maximum Franchise fee allowed by the FCC is reduced or eliminated, then the amount of the said fee shall conform to the federal law or regulations.
- (2) Notwithstanding any other provisions of this article, it is the intention of Company and City that City shall receive an annual franchise fee at the highest rate and levied upon all sources of revenue from all services upon which the City is allowed by law to levy a franchise fee.

(b) Allocation of Revenue. City's annual franchise fee shall be determined by adding the sums obtained in subparagraph (b)(1), (2) and (3) below:

- (1) Five percent (5%) of the Gross Revenue received by Company from subscribers derived from the operation of the Cable Television System within the City.
- (2) If any non-subscriber revenue received by Company is not directly allocable to the City, Company shall calculate said revenue as follows:
 - A. Five percent (5%) of the non-Subscriber revenues attributable to the City where revenues received by the Company are not directly related to the number of Subscribers using a service of the cable system within the City. (i.e. revenues from advertising, home shopping channels or similar revenue based programs). For purposes of this subparagraph (b) (2), non-Subscriber revenues attributable to the City shall be determined by:
 1. Dividing the number of City Subscribers by the total of City plus non-City Subscribers; and
 2. Multiplying the quotient obtained in subsection 1. above by the total revenues received by the Company which were not directly related to the number of Subscribers using a service of the cable system in the City.
 - B. Five percent (5%) of non-Subscriber revenues which are attributable to the City where the revenues received by the Company are directly attributable to the number of customers receiving a particular service (i.e. water company revenues). For purposes of this subparagraph B., non-Subscriber revenues attributable to the City shall be determined by:
 1. Dividing the number of City customers and non-City customers receiving the service; and
 2. Multiplying the quotient obtained in subsection 1. by the total revenues received by Company which were attributable to providing said service.

(c) Payment of Franchise Fees. Payment of the aforesaid Franchise Fee shall be made on a quarterly basis within thirty (30) days after the end of March, June, September and December of each year of service. Failure to pay after ten (10) days notice of default shall result in the addition of a ten (10%) percent penalty charge.

(d) Quarterly Franchise Fee Report. Company shall accompany each quarterly franchise fee payment with a written report containing an accurate statement of the Gross Revenues received for the quarter in connection with the operation of Company's Cable System in the City and a brief report showing the basis for computation of fees. The report will contain a line item for every source of revenue received for which a franchise fee is due and the amount of revenue from each source. The report shall be certified by a financial representative of Company.

(e) Certification. Within ninety (90) days after the close of each calendar year, Company shall provide to City a certification by the Chief Financial Officer of the Company to the correctness and accuracy of the Franchise Fee payments made during the year. In addition, Company, at City's expense, shall permit City to have a certified public accountant conduct an audit of the last four years of the Company's records and of the accounting procedures followed to assure that there is proper payment of the correct sums to the City. If the audit reveals that the amount due City was greater than the amount reported and paid by Company the Company shall pay the additional Franchise Fee owing within ten (10) days. Company shall pay interest on the amount of the underpayment at the prime rate until paid if the underpayment was less than three percent (3%) of the amount owed or interest at prime plus seven and one-half percent (7.5%) until paid if the under payment is greater than three percent (3%) of the amount owed. In addition, if the underpayment was greater than three percent (3%) of the amount paid, the Company shall reimburse City for the full cost of the Audit.
(Ord. 11-2005. Passed 2-15-05.)

323.05 CONSTRUCTION AND MAINTENANCE.

(a) Cable Television System.

- (1) Company shall operate, maintain, construct and extend the Cable Television System to provide high quality signals and reliable service throughout all parts of the City. The Cable Television System, and all construction and maintenance thereof, shall meet or exceed any and all technical performance standards of the FCC, the National Electrical Safety Code, the National Electric Code, and any other generally applicable federal laws and the laws, ordinances and construction standards of the Commonwealth of Pennsylvania and the City.
- (2) The Cable Television System shall have minimum operating capability of 750 Mhz, with two-way capability. The system shall be a hybrid fiber/coax distribution, utility fiber optic trunk and coaxial cable for feeder lines and house drops with accompanying optical transmitters, receivers and amplifiers. The Cable Television System shall be capable of continuous twenty-four (24) hour daily operation, without severe material degradation of signal, except during extremely inclement weather or immediately following extraordinary storms that adversely affect utility services or damage major system components.

(b) State of the Art.

- (1) The Company shall provide technological improvements to the cable system necessary to give the cable system the capability of offering new or expanded services then being offered by at least thirty percent (30%) of cable systems in the nation comparable in size to Company's cable system serving the City. Nothing in this Section shall be deemed to prohibit Company from upgrading its system with any cable television technology at its own discretion.
- (2) The Company's obligation to provide technological improvements shall also be subject to the requirement that such improvements are economically feasible. Economically feasible means that the Company will have a reasonable prospect of earning a reasonable return on its investment in the cable system after installation of equipment for the provision of such technological improvements, such reasonable return to be considered in light of the benefit of the technological changes to the subscribers, provided that the Company shall not be required to provide such improvements if there is no likelihood of a reasonable return on its investment.

(c) Area to be Served.

- (1) Service shall be provided to every dwelling occupied by a person requesting cable service provided that Company is able to obtain from the property owners any necessary easements and/or permits in accordance with Section 621 (a) (2) of the Cable Communications Policy Act of 1984. Company shall not be obligated to provide service to a customer who is or has been delinquent in payment.
- (2) Installation costs shall conform to the 1992 Cable Consumer Protection Act and regulations there under. Any dwelling unit within one hundred fifty feet (150 ft.) aerial or one hundred fifty feet (150 ft.) underground of the cable plant shall be entitled to a standard installation rate. For any dwelling unit in excess of one hundred fifty feet (150 ft.) aerial or underground, Company shall extend cable service at a rate not to exceed Company's actual cost of installation from its main distribution system.
- (3) Provided Company has at least forty-five (45) days prior written notice concerning the opening of residential subdivision trenching, or of the installation of conduit for the location of utilities, it shall install its cable in such trenching or conduits or may seek permission to utilize alternative trenching or conduits within a comparable time frame.

(d) Maintenance and Repair.

- (1) The distribution facilities of Company shall be at all times maintained in good and safe way and condition and shall be constructed and maintained so as not to interfere with television reception by inhabitants of the City not using Company's services.

- (2) In the maintenance and operation of its cable television transmission and distribution system in the City and in the course of construction or addition to its facilities, the Company shall proceed so as to cause the least possible inconvenience to the general public and any opening or obstruction in the streets or other public places made by the Company in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fencings or boardings, the bounds of which during the periods of dusk and darkness shall be designated by warning lights of approved types.
- (3) Whenever the Company shall take up or disturb any pavement, sidewalk or other improvement of any street, avenue, alley, highway or other public place, the same shall be replaced and the surface restored in as good condition as before entry as soon as practicable without unnecessary delay.
- (4) The location of any poles, anchors, wires, cables, conduit, vaults, laterals and other fixtures, or the erection, laying or removal of same, shall not interfere unreasonably with ordinary travel and/or the use of the streets, alleys, bridges, public ways or electrical installations of the City.
- (5) Upon written notice from the City, Company shall remedy a safety deficiency within forty-eight (48) hours of receipt of written notice and shall notify the City when the deficiency has been corrected.

(e) Permits. Company shall apply to the City for all required permits and shall not undertake any construction without receipt of such permits, issuance of which shall not be unreasonably withheld or delayed by the City. Company shall pay any and all required permit fees. This section is not intended to require permits for normal repair and maintenance of the Cable Television System that does not involve disturbance of paved surfaces or excavation in the public rights-of-way.

(f) Relocation of Cable Television System.

- (1) The rights and privileges granted herein to Company shall not be in hindrance to the right of the City or other governmental agency having jurisdiction, to perform or carry on any public works or public improvement. Should the Company's Cable Television System interfere with any construction or repair by the City of public works or improvements, the Company shall, at its own expense, protect or relocate its Cable Television System or part thereof, as directed by City. If funds are available to compensate Company for such relocation then the Company shall not be required to relocate its Cable Television System or part thereof at its own expense.
- (2) The Company shall, at the expense of any Person other than the City requesting said temporary relocation, temporarily raise, lower or remove its wires to permit the improvement of property. In such event, the Company shall be given not less than fourteen (14) days advance written notice to arrange for the temporary wire changes.

(g) Overhead and Underground Construction. The Company shall be permitted to place its cable wires or other equipment overhead when local or state law permits overhead or when other like facilities are overhead. If all other facilities are underground, the Company will place its cable and wires underground.

(h) Clear Access Ways.

- (1) The Company may trim trees or other vegetation within the Streets and Rights-of-Way of the City to prevent their branches or leaves from touching or otherwise interfering with its wires, cables or other structures. The Company shall obtain permission of the owner of any private land, tree or other vegetation before it trims or prunes the same, unless otherwise permitted by the Right-of-Way agreement.
- (2) Except in cases of emergency (e.g., severe weather, acts of God, or other emergency conditions outside the control of Company), any trimming, cutting, removing, or planting trees located in the public rights-of-way shall only be performed pursuant to Sections 913.04 and 913.05 of the Consolidated Ordinances of the City of York and under the exclusive supervision and control of the City. Company shall obtain any and all permits required by ordinance prior to performing any trimming, cutting, removing, or planting trees.
- (3) Company's violation of Section 913.99 may result in the imposition of fines as contained therein.

(i) Emergency Power. The Cable Television System shall incorporate equipment capable of providing standby power to the headend and the Cable Television System for a minimum of two hours upon failure of the power furnished by the power company.

(j) Emergency Override. The Cable Television System shall incorporate emergency audio override capabilities in compliance with the applicable FCC rules, for use in the event of an emergency or vital public information situation. The PEG access channel will be available for transmission by an alphanumeric character generator.

(k) Pole Attachments.

- (1) The poles and posts used for the Company's Cable Television System lines shall be those erected by the Company or by such other Persons, firms or corporations.
- (2) The City shall have the right, where aerial construction exists, during the life of this Franchise, free of charge (but at its expense for construction), of maintaining upon the poles of the Company within the City limits such wire and pole fixtures as are necessary for a police and fire alarm system, such wires and fixtures to be erected and maintained to the satisfaction of the Company. The City, in its use and maintenance of such wires and fixtures, shall at all times comply with the rules and regulations of the Company so that there may be a minimum danger of contact or conflict between the wires and fixtures of the Company and the wires and fixtures used by the City.
(Ord. 11-2005. Passed 2-15-05.)

323.06 LEVEL OF SERVICE.

(a) Level of Service. Company shall provide within the City a Cable Television System, which will be capable of carrying video and audio programming, and data services, internet access and other forms of electronic or electric signals. The programming on said channels may include television programming available off the air and programming imported from distant markets and received from cable satellite networks. Except as otherwise provided in this article Company shall have the right to determine the programming and the time, place and manner in which such programming will be provided to Subscribers.

(b) Compliance with Industry Standards. The Company shall maintain its service in accordance with accepted standards of the industry, to provide its Subscribers with a high level of quality and reliability.

(c) Cable Television System Repairs. Whenever it shall be necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the Company shall do so at such time and as it will cause the least amount of inconvenience to its Subscribers and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its Subscribers.

(d) Repair Service.

- (1) Company shall maintain a repair department comprised of qualified technicians, to provide prompt and efficient repair service.
- (2) Company shall maintain a toll free, locally listed telephone number operated so that requests for service can be received at any time. Company shall respond to requests for service within forty-eight (48) hours of Company's receipt of such a request, provided that response time for service complaints shall be computed excluding Saturdays, Sundays and holidays.

(e) Subscriber Owned Equipment Excluded. The requirements for maintenance and repair shall not apply to television sets or other equipment owned by Subscribers.

(f) Installation of Service. Service to any Subscriber served by a standard aerial drop shall commence not later than seven business days after service is requested; service to any Subscriber served by a standard underground drop shall commence by not later than 45 days after service is requested unless additional time is required by severe weather or other circumstances outside of Company's control. Company shall exert every reasonable effort to commence service to a subscriber served by a non-standard drop as expeditiously as possible. A standard drop, for which the Subscriber shall be charged Company's standard installation fee, is an aerial drop running not more than one hundred fifty feet (150') from feeder cable to the Subscriber's structure; provided, that any installation which requires Company to place a drop underground or cross a street underground shall be considered a non-standard installation. An aerial drop in excess of one hundred fifty feet (150') in length shall be considered a non-standard installation. If the Company fails to meet the above installation deadline, it shall credit the Subscriber's account in the amount of a standard installation charge. If the Company schedules an appointment with a Subscriber for an installation, repair or other service call, and the Company fails to arrive at the Subscriber's premises within 30 minutes of the scheduled time or scheduled window of time (which window shall not exceed four hours) for reasons not caused by the Subscriber, the Company shall not charge the Subscriber for any make-up or late installation. The Company shall apply a twenty dollars (\$20.00) credit to the Subscriber's account for any late service call as defined above.

(Ord. 11-2005. Passed 2-15-05.)

323.07 CUSTOMER SERVICE STANDARDS.

(a) Office Hours and Telephone Availability.

- (1) Company shall maintain a business office in the City which is conveniently located and which shall be open during normal business hours. Company shall also maintain at least one centrally located bill payment center in the City of York which shall be open during normal business hours. The term “normal business hours” is defined herein.
- (2) Company shall provide and maintain a toll free telephone access line which will be available to subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives shall be available to respond to customer telephone inquiries during normal business hours. After normal business hours, the access line may be answered by a service or an automated response system. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.
- (3) Under normal operating conditions, telephone answering time by a customer representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call must be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions.
- (4) Under normal operating conditions, the customer shall receive a busy signal less than three (3) percent of the time.
- (5) Company shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering requirements above unless an historical record of complaints indicates a clear failure to comply. If the City determines, after receiving complaints itself and/or receiving a record of complaints made to Company in accordance with Section 8 below, that there is a clear failure to comply with the telephone answering requirements above, the City shall notify Company in writing that it must measure its compliance with these requirements for the next ninety (90) days and report to the City with its results.

(b) Installations and Service Calls.

- (1) Company shall maintain a competent staff of employees sufficient to provide adequate and prompt service to its subscribers.
- (2) Standard installations will be performed within seven (7) business days after an order has been placed. “Standard” installations are those that are located up to one hundred fifty (150’) feet from the existing distribution system.
- (3) Excluding conditions beyond its control all service calls not affecting public health, safety or welfare shall be commenced within a maximum of forty-eight (48) hours after notice to Company or scheduled at the convenience of the customer.
- (4) Upon scheduling of appointments with the customer for installations, service calls and other activities, Company shall provide the customer with either a specific time or an “appointment window” of a maximum of four (4) hours during normal business hours. Company may schedule service calls and installation activities outside of normal business hours for the express convenience of the customer.

- (5) Company may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If, at any time, an installer or technician is running late, an attempt to contact the customer must be made prior to the time of the appointment. If the appointment must be rescheduled, it must be done so at a time which is convenient for the customer.
- (c) Notices.
- (1) Company shall provide written notice to each subscriber upon initial subscription, at intervals not more than one (1) year thereafter to each subscriber and the City, and at any time upon request, on each of the following areas:
- A. Products and services offered;
 - B. Prices and options for programming services and conditions of subscription to programming and other services;
 - C. Installation and service maintenance policies;
 - D. Channel positions and programming carried on the Cable System;
 - E. Billing and customer complaint procedures;
 - F. Policy and procedures for disconnecting or terminating a subscriber's service;
 - G. Company's address, telephone number and office hours;
 - H. The subscriber's right to obtain a parental control device contained in Section 323.11(f); and
 - I. A notice of subscriber privacy rights as required by federal law.
- (2) Company shall notify subscribers in writing of any changes in rates, programming services or channel positions a minimum of thirty (30) days in advance of such changes. Company shall not be required to provide prior notice to subscribers of any rate change that is the result of a regulatory fee, franchise fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, the Commonwealth of Pennsylvania or the City on the transaction between Company and the subscriber.
- (3) Company shall maintain a file available to the public containing all written notices provided to subscribers pursuant to the requirements contained in 47 C.F.R. §76.305 as set forth on the effective date of this Agreement.
- (d) Billing.
- (1) Bills shall be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Service, Additional Services, if applicable, equipment charges and any installation or repair charges. The bill shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances.
- (2) Company shall provide bill payment locations which are conveniently located and which are open at least during normal business hours.
- (3) Company shall not assess late fees for non-payment of a current bill unless and until thirty (30) days have elapsed since the receipt of the current bill by the subscriber.

- (e) Customer Complaint Procedures. Company shall establish clear written procedures for resolving all customer complaints, which shall include at least the following:
- (1) Company shall provide the customer a written response to a written complaint within thirty (30) days of its receipt. Such response shall include the results of its inquiry into the subject matter of the complaint, its conclusions based on the inquiry, and its decision in response to the complaint.
 - (2) If the City is contacted directly about a customer complaint, it shall notify Company in writing. When Company receives such notification, the time period for Company to respond as required above shall commence.
 - (3) Any subscriber who, in good faith, disputes all or part of any bill sent by Company has the option of withholding the disputed amount, without finance charges, the initiation of collection procedures or disconnection until Company has investigated the dispute in good faith and has made a determination that the amount is owed provided that:
 - A. The subscriber provides a written complaint to Company in a timely fashion and includes identifying information;
 - B. The subscriber pays all undisputed charges; and
 - C. The subscriber cooperates in determining the appropriateness of the charges in dispute.
 - (4) Company shall maintain a record of customer written complaints, which shall contain the date each such complaint is received, the name and address of the affected subscriber, a description of the complaint, the date of resolution, and a description of the resolution. Subject to the privacy protections of subsection (h) herein, Company shall provide such information (not including names of subscribers) to the City upon specific written request.
 - (5) Company shall submit to the City upon request, a report showing the number of complaints that have generated a work order and/or necessitated a response ("trouble calls") received during a specified reporting period, and the general nature of the complaints generating the calls.
- (f) Disconnection. Company may disconnect or terminate a subscriber's service for cause:
- (1) If at least thirty (30) days have elapsed from the due date of the bill in which subscriber has failed to pay; and
 - (2) If Company has provided at least ten (10) days written notice to the affected subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection; and
 - (3) If there is no pending written dispute regarding the bill to which Company has not issued a final decision in writing; or
 - (4) If at any time and without notice Company determines in good faith that subscriber has tampered with or abused Company's equipment or is engaged in theft of cable service.

(g) Credit for Service Outages. In the event that Company's service to any subscriber is completely interrupted for six (6) or more consecutive hours, and upon that subscriber's written or credible oral request, it will grant such subscriber a pro rata credit or rebate, of that portion of the service charge during the next consecutive billing cycle, or, at its option, apply such credit to any outstanding balance that is currently due. Company shall give a loss of service credit of fifty percent (50%) for a loss of service which is due to Unforeseen or Uncontrollable Acts that exceeds twelve consecutive hours from the time of notification. For purposes of this paragraph, loss of service shall be considered a Subscriber's receipt of less than two-thirds of the available channels. The credit shall be determined by dividing the number of hours of loss of service by the total hours in a month multiplied by the subscriber's monthly bill multiplied by fifty percent (50%).

(h) Privacy.

- (1) Company shall protect and abide by the rights of privacy of every subscriber and shall not violate such rights through the use of any device or signal associated with the Cable System. Company shall at all times comply with the privacy provisions of Section 631 of the Cable Act and all other applicable federal, state and generally applicable local privacy laws and regulations.
- (2) Company shall be responsible for carrying out and enforcing such privacy policy, and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personal subscriber information is handled and protected strictly in accordance with this policy and all applicable laws and regulations.
- (3) Company shall notify all third parties who offer cable services in conjunction with Company, or independently over the Cable System, of the subscriber privacy requirements contained herein.
- (4) Neither Company nor its designee shall tap, monitor, arrange for the tapping or monitoring, or permit any person to tap or monitor, any cable, line, signal, input device, or subscriber outlet or receiver for any purpose, without the prior written authorization of the affected subscriber or user, provided, however, that Company may conduct system-wide or individually addressed "sweeps" solely for the purpose of verifying system integrity, checking for illegal taps, controlling return-path transmission, billing for pay services or monitoring channel usage in a manner not inconsistent with the federal law. Company shall report to the affected parties any instances of monitoring or tapping of the Cable System or any part thereof, of which it has knowledge, whether or not such activity has been authorized by Company. Company shall not record or retain any information transmitted between a subscriber or user and any third party, except as required for lawful business purposes.
- (5) Except as permitted by Section 631 of the Cable Act as amended, neither Company nor its designee nor its employees shall make available to any third party, including the City, information concerning the viewing habits or subscription package decisions of any individual Subscriber. If a court authorizes or orders such disclosure, Company shall notify the subscriber not less than fourteen (14) calendar days prior to disclosure, unless such notification is otherwise prohibited by applicable law or the court.

- (6) Upon a request by a subscriber, Company shall make available for inspection at a reasonable time and at its local principal place of business all personal subscriber information that Company maintains regarding said Subscriber. Company shall ensure that all information related to billing and service requests is accurate and up to date and shall promptly correct any errors upon discovery.
- (7) Company shall not make its subscriber list or lists, or any portion thereof, available to any person or entity, with or without remuneration, except where expressly permitted by applicable law.
(Ord. 11-2005. Passed 2-15-05.)

323.08 REGULATION BY THE CITY.

(a) Right to Regulate Rates.

- (1) As a franchising authority certified by the FCC, the City has the right to regulate cable rates and service to the full extent authorized by applicable federal, state, and local laws.
- (2) If the City desires to regulate rates and has met all legal requirements to do so, Company shall file all required forms and documentation for any increase in rates or charges for any cable television service or equipment with the City on or before the notification period required by applicable federal, state and local law. Such documentation shall include, but not be limited to, FCC Form 1240 for increases in the cable rate and FCC Form 1205 for increases in rates for equipment and installation.

(b) Right to Inspect.

- (1) The City shall have the right, upon ten (10) business days written notice and during normal business hours, to inspect all documents, records and other pertinent information maintained by Company at its principal place of business, which relate, directly or indirectly, to the terms of this Agreement.
- (2) In addition, Company shall maintain for inspection by the public and the City all records required by the FCC and as specified in 47 C.F.R. §76.305, in the manner specified therein.
- (3) Notwithstanding anything to the contrary set forth herein, all information specifically marked by Company as proprietary or confidential in nature and furnished to the City or its designated representatives shall be treated as confidential in conformity with Pennsylvania law. Information and documentation marked by Company as proprietary or confidential shall include a brief written explanation as to its proprietary nature or confidentiality. The City, and its officially designated representatives agree in advance to treat any such information or records which Company reasonably deems would provide an unfair advantage for Company's competitors (e.g., system design maps, engineering plans, and programming contracts, etc.) as confidential and only to disclose it to City employees, agents, or representatives that have a need to know or

in order to enforce the provisions of the Agreement. In the event a request is made by an individual or entity not an employee, agent or representative of the City acting in their official capacity for information related to the franchise and marked by Company as confidential and/or proprietary, the City shall immediately notify Company of such request and permit Company to take whatever action Company deems necessary to protect its interests before providing documents or access to documents to the requestor. Company shall not be required to provide subscriber information in violation of Section 631 of the Cable Act [47 U.S.C. §551], or information which is not relevant to regulation of the Franchise (e.g., employee files, tax returns, etc.).

(c) Right to Conduct Compliance Review. The City or its representatives may conduct a full compliance review and hold public hearings with respect to whether Company has complied with any material terms of this Agreement so long as it provides Company with twenty (20) business days written notice in advance of the commencement of such reviews and public hearings.

(d) Government Reports. Company shall provide to the City, copies of any and all communications reports, documents, pleadings and notifications of any kind which Company or any of its affiliated entities have submitted to any federal, state or local regulatory agencies, courts or other governmental bodies if such documents relate exclusively to Company's Cable System within the City. Company shall provide copies of such documents no later than thirty (30) days after their filing, mailing or completion. Company shall not claim confidential, privileged or proprietary rights to such documents unless such documents have been determined to be confidential, privileged or proprietary by a court of competent jurisdiction or a federal or state agency.

(e) Reserved Authority. The City reserves the regulatory authority arising from the Cable Act, any amendments thereto and any other relevant federal, state or local laws or regulations. (Ord. 11-2005. Passed 2-15-05.)

323.09 INSURANCE AND INDEMNIFICATION.

(a) Company Insurance. Company shall maintain during the term of the Franchise insurance as will protect it and the City from any claims which may arise from Company's ownership, construction, repair, maintenance or operation of the Company's Cable Television System in the City, such insurance policies to have the following coverages and limits:

- (1) Workers' Compensation coverage as required by statute.
- (2) Property insurance on all insurable Company assets.
- (3) General Liability insurance with combined single limit for bodily injury, personal injury, death and property damage in an amount of at least five million dollars (\$5,000,000) per occurrence (which may be supplied by a combination of primary and excess policy limits) and Company's liability insurance shall include contractual liability, including so much of the indemnity specified herein as is reasonably insurable.

(b) Additional Insured. The liability insurance policy shall name City as an additional insured.

(c) Evidence of Insurance. Not later than thirty (30) days after the effective date of this Agreement, Company shall furnish to City current certificates of insurance demonstrating compliance with the insurance coverage requirements of this Section.

(d) Authorized Carrier. All insurance coverage shall be with a company authorized to do business in the Commonwealth of Pennsylvania.

(e) Change in Limits. City shall have the right, effective at the end of the seventh year of the term hereof, to require an increase in the amounts of insurance specified in subsection (a) hereof; provided that the City gives Company at least ninety days' notice of any such increase and provided further that the increase bears some reasonable relation to increases in the cost of living since the grant of this Franchise.

(f) Indemnification. Company shall indemnify and hold the City harmless with respect to the Company's construction; maintenance or operation of the Cable Television System from and against any and all expenses, losses and claims, demands, payments, suits, actions, receiver and judgments, other than as a result of City's negligence or intentional acts, including reasonable attorney's fees. In the event of the commencement of any action against City, City will give notice thereof to Company within ten (10) days after City is formally served in any such action, and Company shall have the right to select counsel for the defense of such action at no cost to the City. City's failure to give timely notice shall relieve the Company of its obligation under this Section if such failure to give notice causes prejudice to Company's ability to defend any such claim. Settlement of any action or claim shall be made by Company or its counsel without the approval of City unless the City has an affirmative obligation as part of the settlement. Further, City's approval is not required when Company's defense is provided under the terms of an insurance policy that does not allow for the insured's approval of settlements. The City will cooperate with Company as reasonably required for the defense of any such action.
(Ord. 11-2005. Passed 2-15-05.)

323.10 COMMUNITY SERVICES.

(a) PEG Channels.

- (1) The Company will provide one analog PEG channel in the Basic Service tier by reserving channel 16 as a public access channel throughout the portion of the Cable Television System operated by Company in York County, Pennsylvania 24 hours per day, 7 days per week on which access programming is currently broadcast. Access programming on Channel 16 will be added to service in additional municipalities that request such access service. Channel 4, which is currently used for local origination programming, shall be used exclusively by Company.
- (2) Company shall provide one analog channel in addition to the channel provided in (a)(1) on the Basic Service tier exclusively for public, educational and governmental access use by City or its designees and such channel shall be available throughout the Cable Television System. Such channel shall be made available within ninety (90) days of a request from the City. The PEG Channel shall be available for PEG access programming on a twenty-four (24) hour basis, seven days a week.

- (3) All PEG access programming shall be distributed as received and Company shall not interfere with the content of any PEG access channel distributed by Grantor or its designee except as otherwise permitted by law. City shall be responsible for the quality of the audio/video signal up to the cable insertion equipment.

(b) Use of PEG Channels. The City, or its designees, shall have the exclusive use of the PEG access channels. The City shall have the right to administer and operate the PEG access channels. Use of the PEG access channels shall be subject to such rules as City may adopt. The City agrees not to use PEG access channels to provide commercial services except to the extent necessary to support the services and programming provided. There shall be no charge by Company for the use of the PEG access channels.

(c) Additional PEG Channels.

- (1) Company shall be required to make available a third analog channel on the Expanded Basic tier whenever cable casts of the non-duplicated, programming of local or regional interest on the initial PEG Channel or the two PEG channels as the case may be, either exceeds fifty percent (50%) of the total time available on such channel(s) between the hours of 10:00 a.m. and 10:00 p.m., or seventy-five percent (75%) of the total time available on such channel between the hours of 8:00 am and 4:00 pm, for at least sixty (60) days in a seventy-five (75) day period, as verified by programming logs. Such additional channel shall be provided by the Company within ninety (90) days after a request from the City.
- (2) At any time after the fifth complete year of this Agreement measured from the date of passage of this Agreement as an Ordinance, the City may request and the Company shall provide within 120 days thereafter, bandwidth in the digital spectrum equal to the bandwidth necessary to operate one analog channel. The use of the bandwidth shall be within the discretion of the City (except that the bandwidth may not be used for a commercial video channel or a commercial use competitive with the Company) and may include but not be limited to public, educational or governmental access uses or for public safety use.
- (3) If Company rebuilds the Cable Television System to a capacity in excess of 750Mhz, Company shall provide 3% of the expanded bandwidth above 750Mhz to the City for its use within ninety (90) days of the City's request. The channel shall not be used for uses competitive with the Company.

(d) Regional Access Studio.

- (1) Company will support the relocation of the PEG access facilities from 1050 East King Street to a location to be designated by the City as the Regional Access Studio.

- (2) As part of said relocation and regional access support, Company will contribute one hundred fifty thousand dollars (\$150,000) which shall be paid to the City within sixty (60) days after written notice from the City that the money is necessary to fund equipment purchases for the studio. Company's contributions may be used by City only for construction and, equipment expenses of the Regional PEG access studio and for no other purpose. In addition, the Company shall contribute to the City for capital improvements to the PEG channels the following amounts on the dates indicated: twenty thousand dollars (\$20,000) on each of April 1, 2007, 2009, 2011; thirty thousand dollars (\$30,000) on each of April 1, 2013 and 2015 and thirty-five thousand dollars (\$35,000) on each of April 1, 2017 and 2019.
 - (3) Company will also provide technical assistance in the development of a business plan, acquisition of equipment and design of the PEG Regional Access Studio.
 - (4) Company will provide support for City's applications for grants, and for its efforts to form a regional municipal cooperative to fund and operate the Regional PEG Access Studio.
- (e) Indemnification of PEG Access Programming Procedures and Users.
 - (1) All local producers and users of any of the PEG access facilities or channels shall agree in writing to hold harmless Company and City from any and all liability or other injury (including the reasonable costs of defending claims or litigation) arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, State or Federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the Company or City; and for any other injury or damage in law or equity, which claims result from the use of a PEG access facility or channel.
 - (2) Should the liability protection outlined in the paragraph above prove to discourage PEG use, as evidenced, for example, by numerous refusals to sign the release on the part of would-be users, Company and City agree to work together to modify the safeguards without putting themselves or citizens at risk.
- (f) Service to Community Facilities. At no charge to the City Company shall provide the following services to all City Buildings staffed at least during normal business hours, all firehouses, all City community resource centers all, County Government Buildings within the City and all public and non-profit private school buildings and libraries within the City:
 - (1) Company shall provide one cable drop, outlet and Basic and Expanded Basic service package to each of the buildings. No charge shall be made for installation or service except that Company may charge for installation and service for more than one drop in each building or any such connection beyond a "standard installation" in accordance with installation of service as defined in Section 323.05(c)(2).

- (2) Company shall provide one high speed internet service via cable modem to each building designated by the City. No charge shall be made for installation, except that Company may charge for installation for more than one cable modem connection in a building or any such connection beyond a standard installation in accordance with Section 323.05(c)(2) hereof. The modem service shall be provided at fifty percent (50%) of the monthly commercial data rates offered by the Company.
- (3) Company shall provide to the City permanently located cablecast equipment that will allow the City to do live cablecasts from three locations being, the Mayor's office and two locations to be designated by the City that are passed by the Cable Television System. In addition, the Company will provide equipment necessary to do mobile videocasts including a camera, audio equipment and a modulator.
- (4) Additional connections or service beyond Basic or Expanded Basic, to any municipal or educational building may be charged at the lowest rate presently in existence for bulk rate customers of similar size. Any internal wiring with the designated buildings will not be Company's responsibility but if Company agrees to do such internal wiring, Company shall be paid on a time and material basis.

(g) Leased Channel. The City reserves the right to lease a channel for commercial cablecast programming. City shall be entitled to lease a channel for commercial purposes on the most favorable terms extended to lease channel customers at the time that the City elects to lease the channel. (Ord. 11-2005. Passed 2-15-05.)

323.11 PROGRAMMING.

(a) Channel Capacity. Company shall meet or exceed programming and channel capacity requirements set forth in the Cable Act consistent with the requirements of federal regulation and law.

(b) Broadcast Channels.

- (1) Company shall make available to all residential subscribers a Basic Service tier including, but not limited to:
 - A. All signals of domestic television broadcast stations entitled to "must carry" status under FCC rules and
 - B. The initial analog public, education and governmental programming channels required by this Franchise Agreement, and
 - C. C-Span.
- (2) Company shall provide in the Expanded Basic Tier a channel devoted to PCN 24 hours per day, 7 days per week.
- (3) The Company shall have twelve (12) months from the date of this Franchise Agreement to effect the changes required in this section.

(c) Signal Scrambling. Company shall not scramble or otherwise encode, for the entire term of this franchise, any of the Basic tier except in accordance with federal law. When Company scrambles signals for services other than Basic tier, it shall scramble or otherwise encode the video portions of the signal.

(d) Continuity of Service. It shall be the right of all subscribers to continue to receive service from Company provided their financial and other obligations to Company are honored. Subject to the force majeure provisions in Section 323.16 and routine maintenance, Company shall use its best efforts to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances. For the purpose of construction, routine repairing or testing of the Cable System, Company shall use its best efforts to interrupt service only during periods of minimum use. When necessary service interruptions of more than twenty-four (24) hours can be anticipated, Company shall notify subscribers in advance of such service interruption.

(e) Stereo TV Transmissions. All television signals that are transmitted to Company's headend in stereo shall be transmitted in stereo to subscribers in accordance with FCC standards.

(f) Parental Control Capability. Upon request, and at no separate, additional charge, Company shall provide subscribers with the capability to control the reception of any video and/or audio channel on the Cable System in accordance with FCC standards pursuant to 47 U.S.C. §561 (a). (Ord. 11-2005. Passed 2-15-05.)

323.12 TRANSFER OF CONTROL.

(a) Except as provided herein, Company shall, at all times during the term of this Franchise, be the owner and have complete possessory rights to all facilities and property of the Cable Television System, except the PEG system. Any transfer of control of this Franchise whether by forced or voluntary sale, transfer of stock or any other form of disposition shall require approval of City which shall not be unreasonably withheld.

(b) Nothing contained herein shall be deemed to preclude the Company from entering into any pledge, mortgage, or collateralization of any assets of the Cable Television System in conjunction with any financing or refinancing in the normal course of business. No transfer to a lender or foreclosure shall be effective without the consent of the City which shall not be unreasonably withheld.

(c) Neither Company nor its parent nor any affiliated entity shall change, transfer, or assign, through its own action or by operation of law, its control of the Cable Television System without the prior written consent of the City. Such consent shall not be unreasonably withheld.

(d) Neither Company nor its parent nor any affiliated entity shall sell, convey, transfer, exchange or release more than twenty-five percent (25%) of its equitable ownership in the Cable Television System without the prior written consent of the City. Such consent shall not be unreasonably withheld.

(e) Company shall make written application to the City for consent to any transfer assignment as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state and local statutes and regulations regarding transfer or assignment. Within thirty (30) days of receiving a request for transfer, the City in accordance with FCC regulations, shall notify Company in writing of the information it requires to determine the financial ability technical skills and legal qualifications for the transferee. The City shall have one hundred twenty (120) days from the receipt of all required information in which to take action on the transfer or assignment beyond which consent to the transfer shall be deemed given.

(f) The consent of the City to any transfer or assignment as described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding document stating that it shall be bound by all the terms and conditions contained in this Agreement. (Ord. 11-2005. Passed 2-15-05.)

323.13 OWNERSHIP AND USE OF THE CABLE TELEVISION SYSTEM.

Company shall have the unrestricted right and availability to utilize the Cable Television System for telecommunication purposes other than cable television service, including but not limited to telephony, internet access, point-to-point data and voice message transmission so long as said uses do not interfere with the cable television service being provided to Subscribers. (Ord. 11-2005. Passed 2-15-05.)

323.14 COMPANY'S RULES.

Company shall have the right to prescribe service rules and regulations for the conduct of its business not inconsistent with the provisions of this Ordinance or any ordinances of the City. (Ord. 11-2005. Passed 2-15-05.)

323.15 TERMINATION FOR CAUSE BY CITY.

(a) The City may terminate this Franchise at any time prior to its expiration date upon any material breach of any material term or condition of this Agreement. The City shall notify the Company in writing of its intent to terminate and the reason for its revocation. The Company shall be afforded sixty (60) days during which to adequately explain what has caused the alleged material breach or other grounds for termination. If it is determined that such breach was inadvertent, Company shall be afforded sixty (60) days during which to cure the alleged breach or to take affirmative action to commence to cure said breach. If the Company fails to cure or take affirmative action toward curing the breach within such sixty (60) day period and it appears that such breach was not inadvertent or immaterial, then the City shall schedule a public hearing on its intent to revoke the Franchise or impose the lesser penalty. Company shall be afforded the due process rights including notice, representation, the right to be heard and to examine and cross examine witnesses at such public hearing. After such public hearing, the City shall have the right to revoke the Franchise for just cause if said cause is established, or to impose a lesser penalty if so desired.

(b) In the event that revocation is imposed upon the Company, Company shall have the right to sell, transfer and convey the Cable Television System and its business operations within the City to a qualified purchaser at fair market value so long as the same is diligently pursued. Company shall be obligated to continue its operation of the Cable Television System and operation within the City until such sale. Prior to transfer or assignment of the Cable Television System to any purchaser Company must first obtain the written consent of City. (Ord. 11-2005. Passed 2-15-05.)

323.16 UNFORESEEN AND UNCONTROLLABLE ACTS.

The Company shall not be liable or responsible for any delay or failure of performance of its Franchise if prevented from doing so by acts of God including flood, storms, fires, explosions, strikes, lock-outs, riots, wars, whether or not declared, insurrections, epidemics or any law, rule or acts of any court or instrumentality whether Federal, State or municipal government or any causes beyond its control, provided that the same is not willfully done or brought about for the purpose of excusing failure or omissions to perform under the Franchise and providing that using reasonable care, the same could not have been avoided by the Company. In the event Company is rendered unable to perform in whole or in part, the Company shall begin to perform its Franchise as soon as is practical after such conditions cease to exist. (Ord. 11-2005. Passed 2-15-05.)

323.17 TAXATION.

During the term of this Franchise, City shall not impose or enact any ordinance or resolution which imposes a tax or fee on Company or its operations that are discriminatory. Company shall occupy the same tax status as any other owner of real or personal property doing business in the City. (Ord. 11-2005. Passed 2-15-05.)

323.18 REPEALS.

Upon the effectiveness of this article, all ordinances or parts of ordinances and all agreements or parts of agreements conflicting with the provisions of this article shall be and the same are hereby repealed or suspended and of no further force and effect. (Ord. 11-2005. Passed 2-15-05.)

323.19 SEVERABILITY.

If any section, sentence, clause or phrase of this article is deemed to be unconstitutional or otherwise held invalid or preempted by State or Federal statutes or regulations, said section, sentence, clause or phrase shall be null and void. The remaining portion of this article shall remain valid and binding upon the City and the Company. (Ord. 11-2005. Passed 2-15-05.)

323.20 FRANCHISE VIOLATIONS, DAMAGES AND REVOCATION.**(a) Violations.**

- (1) If City has reason to believe that Company violated any provision of this Agreement, it shall notify Company in writing, by certified mail, of the nature of such violation and the section of this Agreement which it believes has been violated.
- (2) Company shall have forty-five (45) days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that it cannot be fully cured within forty-five (45) days due to circumstances outside of Company's control, the period of time in which Company must cure the violation shall be extended by the City in writing for such additional time necessary to complete the cure, provided that Company shall have promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the City.
- (3) If the violation has not been cured within the time allowed under subsection (a) (2) above, then Company shall be liable for liquidated damages in accordance with subsection (b) below.

(b) **Liquidated Damages.** Because Company's failure to comply with provisions of this Agreement will result in injury to the City and because it will be difficult to measure the extent of such injury, the City may assess liquidated damages against Company in the following amounts provided Company has had an opportunity to cure in accordance with subsection (a)(2) hereof. Such damages shall not be a substitute for specific performance by Company, but shall be in addition to such performance.

- (1) For failure to comply with the requirements specified in Sections 323.05(a) and (b): Two hundred fifty dollars (\$250.00) per day for each day the violation continues;

- (2) For failure to provide and maintain cable service as specified in Section 323.05(c): Two hundred fifty dollars (\$250.00) per day for each day the violation continues;
 - (3) For failure to make repairs and restorations as specified in Section 323.05(d): One hundred fifty dollars (\$150.00) per day for each day the violation continues;
 - (4) For failure to obtain and maintain construction permits as specified in Section 323.05(e): One hundred fifty dollars (\$150.00) per day for each day the violation continues;
 - (5) For failure to disconnect, relocate or remove equipment as specified in Section 323.05(f): One hundred fifty dollars (\$150.00) per day for each day the violation continues;
 - (6) For failure to comply with customer service standards as specified and in accordance with Section 323.07: One hundred fifty dollars (\$150.00) per violation;
 - (7) For failure to provide information in conformity with the City's right to regulate as specified in Section 323.08: One hundred fifty dollars (\$150.00) per day for each day the violation continues;
 - (8) For failure to carry all the insurance required in Section 323.09: Two hundred dollars (\$200.00) per day for each day the violation continues;
 - (9) For failure to provide services to the community as specified in Section 323.10: Two hundred fifty dollars (\$250.00) per day for each day the violation continues;
 - (10) For failure to comply with programming requirements as specified in Section 323.11: One hundred fifty dollars (\$150.00) per day for each day the violation continues;
 - (11) For failure to comply with transfer or renewal provisions as specified in Section 323.12: Two hundred fifty dollars (\$250.00) per day for each day the violation continues.
 - (12) For failure to provide a performance bond as specified in Section 323.20(b): Two hundred dollars (\$200.00) per day for each day the violation continues;
- (b) Performance Bond.
- (1) Company shall obtain and maintain during the franchise term, at its sole cost and expense, a performance bond running to the City with a company surety satisfactory to the City to ensure Company's faithful performance of its obligations. The performance bond shall provide that the City may recover from the principal and surety any and all liquidated damages incurred by the City for Company's violations of this Agreement, after opportunity to cure, in accordance with subsection (a)(2) above.
 - (2) The amount of the bond shall be one hundred dollars (\$100,000). Company shall not reduce, cancel or materially change said bond from the requirement contained herein without the express prior written permission of the City.

- (3) Notwithstanding subsections (b)(1) and (2) above, Company shall not be required to provide a performance bond until such time as Company commits a material breach of this Agreement or the City determines in good faith that Company is unable or may become unable to meet its financial obligations under this Agreement
 - (4) Upon transfer, a performance bond shall be required.
- (d) Revocation.
- (1) In addition to the other rights, powers and remedies retained by the City under this Agreement, the City reserves the separate and distinct right to revoke this franchise if:
 - A. Company practices any fraud or deceit upon the City in its operation of its Cable System or any other activities pursuant to this Agreement;
 - B. Company seeks, or an involuntary case is brought against Company seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency or other similar law or seeking the appointment of a trustee, receiver, custodian or other similar official of a substantial part of Company's property and such proceeding shall remain undismissed or un-stayed for a period of one-hundred-twenty (120) days;
 - C. Company transfers or assigns this franchise, the Cable System or any significant portion thereof, in violation of Section 323.12, herein;
 - D. Company repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in Section 323.05(a) of this Agreement;
 - E. Company repeatedly violates, after notice and opportunity to cure, any of the material terms or conditions of this Agreement.
 - (2) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Company or occurs as a result of circumstances beyond its control. Company shall not be excused from the performance of any of its obligations under this franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers, or employees.
 - (3) A revocation shall be declared only by a written decision of the City Council upon recommendation of the Mayor after an appropriate public hearing which shall afford Company due process and full opportunity to be heard, to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate 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 Company at least thirty (30) days prior written notice of any public hearing concerning the proposed revocation of this franchise. Such notice shall state specifically and in detail the grounds for revocation. The City Council, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise terminated or excuse such grounds upon a showing by the Company of mitigating circumstances or good cause for the existence of such grounds.
(Ord. 11-2005. Passed 2-15-05.)

This article shall constitute a contract between the City and the Company upon passage of this article and the Company's written acceptance of the terms of this article. The City shall not use its legislative powers to amend this article in any manner that would have an adverse or detrimental impact on the Company. (Ord. 11-2005. Passed 2-15-05.)

323.22 EFFECTIVENESS.

This article shall become effective in accordance with law.
(Ord. 11-2005. Passed 2-15-05.)