

ORDINANCE 2008-6

BOROUGH OF KULPMONT
NORTHUMBERLAND COUNTY, PENNSYLVANIA

CABLE TELEVISION FRANCHISE ORDINANCE

AN ORDINANCE REQUIRING THAT THE PROVIDING OF CABLE TELEVISION SERVICE BE AUTHORIZED BY FRANCHISE; GRANTING A FRANCHISE TO SERVICE ELECTRIC CABLEVISION, INC., A PENNSYLVANIA CORPORATION AND THE SUCCESSOR IN INTEREST TO SERVICE ELECTRIC CABLE T.V., INC., ITS SUCCESSORS AND ASSIGNS, TO INSTALL, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM; PRESCRIBING TERMS AND CONDITIONS; ALSO PROVIDING REGULATIOONS FOR USE OF THE SYSTEM; AND OTHER LEGAL REQUIREMENTS.

BE IT ENACTED AND ORDAINED, and it is hereby enacted and ordained, as follows:

SECTION I. - SHORT TITLE

This Ordinance shall be known and may be cited as the "Cable Television Franchise Ordinance" or "Ordinance."

SECTION II. - DEFINITIONS

For the purposes of this Ordinance, 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 include the future, words in the plural number, and words in the masculine gender shall include the feminine gender. The word "shall" is always mandatory and not merely directory.

- (a) "Municipality" is Kulpmont Borough, Northumberland County, Pennsylvania, acting through its duly constituted governing body.
- (b) "Cable Television Service" or "Service" shall mean the business of furnishing video and/or audio programming or other information to

subscribing customers by means of a Cable Television System.

- (c) "Cable Television System" or "System" shall mean any facility or group of facilities which, in whole or in part, receives, modifies or originates television, FM radio or other electrical or fiber optic signals for the purpose of transmitting or distributing such signals by wire, cable or other means to subscribing members of the public or to selected customers, as herein contemplated. This definition shall include those systems which do not occupy or cross over or under the public ways and places of the Municipality.
- (d) "Company" is Service Electric Cablevision, Inc., its successors and assigns.
- (e) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- (f) "Basic Cable Television Service" shall mean that tier of Cable Television Service to which all users must subscribe in order to obtain the transmission of local broadcast television signals and for which a charge is made.
- (g) "Expanded Basic Cable Television Service" shall mean a second tier of services for which a charge is made.
- (h) "Optional Cable Television Service" shall mean the furnishing to Cable Television Service for which per-channel charge is made additional to that for Basic Cable Television Service.

(f), (g) and (h) are hereby collectively the "Cable Television Service."

SECTION III. - FRANCHISE REQUIRED

From and after the enactment of this Ordinance, no Cable Television System shall be constructed, installed or operated in the Municipality unless such construction, installation and operation shall first have been authorized by a duly enacted Ordinance of the Municipality.

SECTION IV. - GRANT OF AUTHORITY

Having determined that the continued availability of Cable Television Service affords significant social, educational and entertainment benefits to the public in the Municipality, and the Company has provided a high quality of such service, has been responsive to the needs and desires of residents of the Municipality, and such continued service can best be assured by granting a franchise to the Company, and the Company has the legal, character, financial, technical and other qualifications to continue to construct, erect, own, operate and maintain the Cable Television Service serving this Municipality; the Municipality hereby grants unto the Company the non-exclusive right and privilege to construct, erect, operate and maintain a Cable Television System in, under, over, along, across or upon the public streets, highways, sidewalks, rights-of-way and places within the boundaries of the Municipality, to the extent permitted by law. Municipality also grants the Company permission to attach or otherwise affix or install its cables and other equipment to and in the facilities of any public utility even though the same may occupy or cross over or under the public ways and places of the Municipality; provided, however, the Municipality shall not grant a franchise to

any other person, firm or entity to operate a System or provide Service within the Municipality unless such franchise imposes at least the same terms, conditions and restrictions upon such person, firm or entity as herein set forth.

SECTION V. - FRANCHISE TERM

This grant shall be for a period of ten (10) years from January 1, 2008 to December 31, 2017, with an option to renew same for an additional five (5) years. Exercise of Company's option shall be written notice to the Municipality at least ninety (90) days prior to the expiration of the then term.

SECTION VI. - ACCEPTANCE OF FRANCHISE

This grant is made upon the express condition that the Company, within thirty (30) days after written notice is given to the Company that this Ordinance has taken effect and becomes operative, shall file with the Secretary or other duly authorized official of the Municipality a written acceptance of the same. When this Ordinance shall have been accepted by the Company, such Ordinance and acceptance shall constitute a contract between the Municipality and the Company for all the uses, services and purposes set forth in this Ordinance. Except as may be otherwise provided by State or Federal law, order or regulation, the rights and obligations of Municipality and Company shall be those specified herein and shall not be enlarged, diminished or altered by unilateral action of Municipality during the term of the franchise or renewal thereof. The Company, by its acceptance of the provisions of this Ordinance, binds itself to establish, operate and maintain the local Cable Television System in order to

provide the necessary Cable Television Service as contemplated in the Ordinance.

SECTION VII. - INSTALLATION AND EXTENSION OF SYSTEM

Company shall serve all residents of Municipality except to the extent that low household density, adverse terrain or other factors render providing service impracticable or technically or economically infeasible. Company shall not be required to install, or to extend the Cable Television System, to areas of Municipality where potential revenues from subscribers to be served therein would produce a return insufficient to economically justify such installation or extension. Without limiting the generality of the foregoing, if otherwise practicable and technically feasible:

- (a) Service shall be provided at normal installation and monthly service rates to an individual customer whose point of connection is located within one hundred fifty (150) feet of in -place distribution cable;
- (b) Company, at its cost, shall make an extension of its cable System where the number of existing households per linear mile of cable to be passed by the extension equals or exceeds the average number of households passed per linear mile of existing cable plant within the Municipality.
- (c) In no event shall Company be required to make an extension where the number of existing households to be passed per mile is less than fifty (50). Company shall not be required to install or extend its System in areas where it cannot: i) obtain necessary rights-of-way over private property at an economically feasible cost, or ii)

obtain permission to attach its facilities to public utility poles, or iii) obtain permission to use necessary conduits.

SECTION VIII. - REGULATORY ACTION

The performance by the Company hereunder is subject to limitations, restrictions, or requirements now existing or which may henceforth be imposed by law, rule, or order of the Federal Communications Commission or other government, board, commission or authority. The Company shall not be deemed in default of any of the requirements of this Ordinance to the extent it acts in compliance with, or refrain from doing anything prohibited by such law, rule or order.

SECTION IX. - CONDITION OF STREET OCCUPANCY

- (a) All transmission and distribution structures, lines, and equipment erected by the Company within the Municipality shall be so located as to cause minimum feasible interference with the proper use of streets, alleys and other public ways, roads and places, and to cause minimum feasible interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways, roads and places. The Company shall obtain any required permits prior to construction.
- (b) In case of any disturbance of pavement, sidewalk, driveway or other surfacing by Company, Company shall, at its expense and in a manner approved by the Municipality, replace and restore the same in as good condition as before said work was commenced.

SECTION X. - STANDARDS OF SERVICE

- (a) The Company shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system. Upon receipt of a complaint from a subscriber(s) regarding the quality of service, equipment malfunctions, and similar matters, the Company shall promptly investigate such complaints.
- (b) Where possible the Company shall commence an investigation of such complaints within 24 hours of their receipt. Resolution of such service complaint(s) shall be made as promptly as possible. The Company shall maintain toll-free telephone access for the receipt of service problems, requests for repairs or customer inquiries.
- (c) The Company shall keep a maintenance service log for a period of one year that will indicate the nature of each service complaint, the date it was received, and the disposition of said complaint. Upon request, this log shall be made available for inspection by the Municipality, during normal business hours.
- (d) As subscribers are connected or reconnected, the Company shall, by appropriate means such as a card or brochure, furnish information to them concerning the procedures for contracting the Company, including its name, address and local telephone number.

- (e) Company's construction and maintenance of its transmission and distribution system shall be in accordance with the provisions of the National Electrical Safety Code prepared by the National Bureau of Standards, The National Electrical Code of the National Board of Fire Underwriters and any applicable state and federal laws or regulations now in effect or later enacted regulating or affecting Company's installation or operation.

SECTION XI. - COMPANY LIABILITY - INDEMNIFICATION

The Company shall save the Municipality harmless from all loss sustained on account of any suit, judgment, execution, claim or demand whatsoever, resulting solely from the operation of the Company in the construction, operation or maintenance of its System in the Municipality. The Municipality shall notify the Company within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the Municipality on account of any damages or losses as aforesaid resulting from the operations of the Company. Thirty (30) days from the enactment date of this Ordinance, the Company shall furnish satisfactory evidence in writing that it has in force public liability insurance of not less than a \$1,000,000.00 combined single limit, duly issued by an insurance company or insurance companies authorized to do business in this Commonwealth.

SECTION XII. - LANDLORD - TENANT

- (a) No landlord shall demand payment from Company for permitting Company to provide Cable Television Service on or within said landlord's property or premises. Provided, however, that such landlord

may be entitled to reasonable reimbursement for any direct expenses incurred by him in connection with the installation of Cable Television Service, and to just compensation for any permanent occupation of his property resulting from the installation of Company's facilities therein.

(b) No landlord shall interfere with the installation of cable television facilities upon his property or premises nor shall such landlord discriminate in rental charges, or otherwise, between tenants who receive cable service and those who do not. No landlord shall demand or accept payment from any tenant, in any form, for permitting Cable Television Service on or within his property or premises.

(c) As used in this Section, the term "Landlord" means any individual, entity owning, controlling, leasing, and operating, or managing leased residential premises.

SECTION XIII. - FRANCHISE FEES AND PAYMENTS

Beginning on _____, 20____, and continuing during the balance of the term hereof, as compensation for rights conferred upon it by this Ordinance, including the privilege of engaging in the business of operating a Cable Television System in the Municipality, the Company shall pay to the Municipality an annual franchise fee equal to FIVE (5%) percent of Gross Revenue collected by the Company during the same time period from subscribers in the Municipality who subscribed to Cable Television Service.

"Gross Revenues" means the revenue derived by the Company in the franchise area, calculated in accordance

with generally accepted accounting principles, from charges collected from Cable Television Service. Gross Revenue shall not include charges or fees, such as installation, reconnections, change of service, refundable deposits, bad debts, investment income, and/or assessments imposed and/or assessed by any governmental authority, including franchise fees.

Payment of such annual franchise fees shall be made not later than March 31 of the year following the calendar year in which the fee accrues. Such annual fee shall be reduced by the amount of any tax, assessment fee or other charge imposed, levied made or collected by the Municipality upon or from the Company for the privilege of engaging in business in the Municipality.

SECTION XIV. - PUBLICATION COSTS

The Company shall assume the cost of publication of this ordinance as such publication as required by law and shall pay the same upon demand by the Municipality.

SECTION XV. - SEPARABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance, is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory agency having jurisdiction, such portion shall be deemed a separate, distinct or independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION XVI. - ASSIGNMENT

The franchise or privilege granted hereunder shall only be assignable with the prior written consent of the Municipality, which consent shall not be unreasonably withheld; provided, the Company may assign, without prior

written consent, this franchise to its lenders as collateral security in connection with its financing activities, or any business entity related to the Company.

SECTION XVII. - ORDINANCES/RESOLUTIONS REPEALED

All Ordinances or parts of Ordinances and Resolutions relating to Cable Franchise Ordinance, including but not limited to, Ordinance No. 1050 dated January 1, 1983 and extended January 1, 1998, are hereby repealed.

SECTION XVIII. - ENACTMENT

This Ordinance is hereby duly executed and ordered into law this 8th day of July, 2008.

ATTEST:

**ROBERT M. SLABY
MAYOR**

**JOSEPH A. WINHOFER
PRESIDENT OF COUNCIL**

**ROBERT M. SLABY, JR.
BOROUGH SECRETARY**