

WASHINGTON TOWNSHIP

ORDINANCE NO. 165

AN ORDINANCE GRANTING A FRANCHISE TO SERVICE ELECTRIC CABLE TV, INC., ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A COMMUNITY AND TENANT TELEVISION SYSTEM IN THE TOWNSHIP OF WASHINGTON AND ALSO GRANTING THE PRIVILEGE OF PLACING A SYSTEM OF CABLES OR WIRES IN, OVER, OR ALONG THE STREETS, ALLEYS, AND PUBLIC WAYS WITHIN THE TOWNSHIP OF WASHINGTON FOR THE PURPOSE OF TRANSMITTING THEREON AND DISTRIBUTING THEREBY TELEVISION AND RADIO SIGNALS AND OTHER ELECTRONIC IMPULSES.

BE IT ORDAINED AND ENACTED and it is hereby ordained and enacted by the Board of Supervisors of Washington Township, Northampton County, Pennsylvania, pursuant to the authority granted by the Local Tax Enabling Act of December 31, 1965, P.L. 1257, No. 511, 53 P.S. 6901, et seq., as amended:

Section 1. Title.

This Ordinance shall be known as cited as the Service Electric Cable TV, Inc. franchise ordinance.

Section 2. Definitions.

For the purposes of this notice, unless otherwise expressly used, the following terms shall have the meanings herein respectively indicated:

- (a) "Township" shall mean the Township of Washington.
- (b) "Supervisors" shall mean the Board of Supervisors of Washington Township.
- (c) "Company" shall mean Service Electric Cable TV, Inc.
- (d) "Person" shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.

(e) "Street" shall mean any street, alley, public way, or public place as now laid out, whether opened or unopened, dedicated to public use, and all extensions or additions thereof as may now or hereafter be made.

(f) "Gross Receipts" shall mean monetary charges of any character whatever, including donations, contributions, dues or membership fees (periodic or otherwise), charged or paid or in any manner received, as herein provided, from the general public, directly or indirectly, for the privilege of receiving any television signal or electronic impulse which is transmitted through cable or wires, or over a system of cables or wires, within the Township of Washington. "Gross Receipts" shall not include any revenue received by the Company as installation charges and shall not include fees for reconnections, inspection, repairs or modifications or any installations or fees from advertising.

(g) "Cable Television System" or "System" shall mean a system of antennas, cables, wires, lines, towers, waveguides, or other conductors, converters, equipment or facilities, designed and

constructed for the purpose of producing, receiving, amplifying, and distributing, audio, video, and other forms of electronic or electric signals, located in the Township.

Section 3. Public Hearing.

A public hearing concerning the granting of the franchise herein granted to Company was held on the 9th day of November, 1983, at the Washington Township Municipal Building, Flicksville Road Ackermanville, Pennsylvania. Public notice of said hearing was given by advertisement in The Easton Express, a newspaper of general circulation in the Township of Washington, on October 22, 1983, October 29, 1983, and November 5, 1983, which notice invited interested parties to participate in said hearing and comment upon the legal, character, financial, technical and other qualifications of the Company to continue to operate a Cable Television System in the Township. Said hearing having been held on the date and at the place stated above, said hearing having been fully open to the public, and the Township having received at said hearing, all comments regarding the qualifications of the company to receive this franchise the Township hereby finds that the Company possesses the necessary legal, technical, character, financial and other qualifications and that the Company's construction arrangements are adequate and feasible and that therefor the Township hereby grants to the Company a non-exclusive franchise, right and privilege to construct, erect, operate, modify and maintain, in, upon, along, across, above and over and under the highways, streets, alleys, sidewalks, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the Township, poles, wires, cables, underground

conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the Township of a Cable Television System for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs, and various communications and other electronic services to the public. The right so granted includes, the right to use and occupy said streets, alley, public ways and public places and all manner of easements for the purposes herein set forth but does not include or purport to include the right to utilize the private property real or personal, of any other person or firm.

#### Section 4. Pole Attachments.

There is hereby further granted to Company the right, privilege, and authority to lease, rent, or in any other manner obtain the use of tower, poles, lines, cables, and other equipment and facilities from any and all holders of public licenses and franchises within the corporate limits of the Township including the Pennsylvania Bell Telephone Company, Commonwealth Telephone Company, Pennsylvania Power and Light Company and the Metropolitan Edison Company, and to use such towers, poles, lines, cables, and other equipment and facilities subject to all existing and future ordinances and regulations of the Township. To the extent possible, the poles used for company system shall be those erected and maintained by the Pennsylvania Bell Telephone Company, Commonwealth Telephone Company, The Metropolitan Edison Company and Pennsylvania Power and Light Company, when and where applicable, providing mutually satisfactory rental agreements can be entered into with said companies. It is the desire of the Township that Company and the various public utilities operating in the Townshi

shall co-operate by allowing Company's joint usage of the utility pole and pole-line facilities whenever possible or wherever such usage does not interfere with normal operations of said poles and pole-lines so that the number of new or additional poles constructed by Company within the Township may be minimized.

Company shall have the right to erect and maintain its own poles as may be necessary for the proper construction and maintenance of the system. The location of any poles must be approved by the Supervisors or a public official designated by them.

Section 5. System Construction, Maintenance and Procedures.

(a) Upon grant of this Franchise to construct and maintain a community television system in the Township, the Company may enter into contracts with any Public Utility Companies or any other owner or lessee of any poles located within or without the Township to whatever extent such contract or contracts may be expedient and of advantage to the Company for use of poles and posts necessary for proper installation of the System, obtain right-of-way permits from appropriate State, County and Federal officials necessary to cross highways or roads under their respective jurisdictions to supply main trunk lines from the Company's receiving antennas, obtain permission from the Federal Aviation Authority to erect and maintain antennas suitable to the needs of the System and its subscribers and obtain whatever other permits a Township, County, State or Federal Agency may require. In the construction, installation and maintenance of its System, the Company will use steel, cable and electronic devices, all of specialized and advanced design and type; in the operation of its Systems, the Company will employ personnel with training, skill and experience in

electronics and communications. Material and/or personnel of this sort may not be available to the Company for its System in the event of war or other similar national emergency.

(b) The Company's System, poles, wires, and appurtenances shall be located, erected and maintained so that none of them shall endanger or interfere with the lives of person, or interfere with any improvements the Township may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

(c) The Township acknowledges that the proposed System of Company will serve an acceptable portion of the Township. However, in the event that the Township should annex further territory as authorized by law and if Company's System is in the area of the Township which abuts the annexed territory, the Company shall extend energized trunk cable to the remaining portions of the Township so annexed within one (1) year thereafter, unless additional time is granted by the governing body of the Township upon request of the Company for good cause shown. Extension of Service shall not be required into an area which does not meet the requirements set forth in Section 6 of this franchise.

(d) All transmission and distribution structures, lines and equipment erected by the Company within the Township shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places

(e) In case of any disturbance of pavement, sidewalks, driveway or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the Township, replace and restore

all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced.

(f) In event that at any time during the period of this Franchise, the Township shall lawfully elect to alter or change the grade of any street, alley or other public way, the Company upon reasonable notice by the Township shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixture at its own expense.

(g) The Company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant or main, or sewer main or appurtenance, and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such manner as not to interfere with the usual travel on said streets, alleys and public ways.

(h) The Company, shall, on the request of any person holding a building moving permit issued by the Township, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising, or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(i) The Company shall have the authority to trim trees located within the legal right-of-way of any streets, alleys, sidewalks and public places of the Township so as to prevent the branches

of such trees from coming in contact with the wires and cables of the Company, all trimming to be done under the supervision and direction of the Township and at the expense of the Company. As a condition for granting approval for the cutting of any trees, if such cutting could result in liability on the part of the Township, the Township may require Company to provide, in advance, such security as the Township may reasonably require to save harmless the Township from and indemnify Township of and from any claims for damages arising out of any such cutting whether or not Township has requested security in advance.

Section 6. Line Extensions.

(a) It shall be the obligation of the Company to serve all residents of the Township except to the extent that density of homes, adverse terrain or other factor render providing service impracticable, technically infeasible or economically noncompensatory. For purposes of determining compliance with the provisions of this Section, and to provide for a reasonable and nondiscriminatory policy governing extensions of cable service within the Township, which policy was subject to public review in the Public proceedings leading to the award of this Franchise, Company shall extend service to new subscribers, at the normal installation charge and monthly rate for customers of that classification, under the following terms and conditions:

(i) Where the new subscriber or nearest subscriber of a group



of new subscribers is located within 500 feet of existing trunk cable, and

- (ii) Where the number of homes to be passed by such new extension cable plant bears the same proportional ratio to the total amount of new cable plant as the average number of homes passed per mile of existing cable plant.

(b) In the event the requirements of Subsection (2) (i) and (a) (ii) are not met, the installation cost per subscriber shall be determined in accordance with Company's rate schedule in effect at the time, which rate schedule shall be fair and reasonable in the circumstances.

Section 7. Compliance With Standards.

All facilities and equipment of Company shall be constructed and maintained in accordance with the requirements and specifications of the National Electricity Safety Code and such applicable ordinances and regulations set forth by the Township and/or any other local, State or Federal agencies.

Section 8. Payments to the Township.

Effective June 1, 1986, the Company, shall during each year of operation under this Franchise, pay to the Township an amount equal to five per cent of the annual gross receipts received by the Company. The annual payment made by the Company to the Township shall be made on a quarterly basis, with the quarterly payments for each calendar year being due on April 15, July 15, September 15 and January 15 of the subsequent year. Any payment not made when due shall be subject to a penalty of five (5%) percent, plus an additional penalty of one

(1%) per cent per month or fractional part thereof until paid. Company shall maintain an accurate record of such gross receipts earnings and it shall submit to Township within thirty (30) days after the expiration of any calendar year during the term of the right granted hereunder, a statement prepared by a Certified Public Accountant showing the gross receipts as defined herein.

Section 9. Rates for Service.

Company's present schedule of rates for service, a copy of which is attached hereto, made a part hereof, and marked Exhibit "A", is hereby approved. Rates charged by the Company for service hereunder shall be fair and reasonable and designed to meet all necessary costs of the service including a fair rate of return on the net valuation of its property devoted thereto, under efficient and economical management. The rate charged by the Company for basic cable TV charges shall not exceed the rates charged by the Company in any Borough or City in Northampton County.

Section 10. Liability of Company; Insurance.

(a) Company shall indemnify and hold the Township of Washington harmless at all times during the term of this grant from and against all claims for injury or damages to persons or property arising out of the granting of this Franchise, and those caused by the construction, erection, operation and maintenance of any structure, equipment, appliance or products authorized or used pursuant to the authority of this Franchise.

(b) Company shall carry insurance in such form and in such companies as shall be approved by the Township Supervisors to protect the Township from any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, erection, operation or maintenance of any structure, equipment

appliances or products authorized or used pursuant to the authority of this Franchise, and the amount of such insurance against liability due to damage of property shall be not less than One hundred thousand (\$100,000.00) Dollars as to any one (1) person and Two hundred thousand (\$200,000.00) Dollars as to any one (1) accident, and against liability due to injury or death of persons, One hundred thousand (\$100,000.00) Dollars as to any one (1) person and Three hundred thousand (\$300,000.00) Dollars as to any one (1) accident.

Section 11. Company Rules and Regulations.

The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this Franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of Federal and State Laws.

Section 12. Compliance with FCC Rules and Regulations.

The Company shall, at all times, comply with the rules and regulations governing CATV operations promulgated by the Federal Communications Commission (FCC). This shall include adherence by the Company to FCC rules regarding technical and engineering specification involved in the construction of the CATV System and signal carriage therein.

Section 13. Publication Costs.

The Company shall assume the costs of the publication of all notices in connection with the grant of this Franchise, the legal cost regarding adoption of this Ordinance and the public hearing held in connection therewith.

Section 14. Activities Prohibited.

(a) The Company shall not allow its cable or other operations to interfere with television reception of persons not served by the Company, nor shall the System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents of the Township.

(b) The Company shall provide service of the system without an installation, monthly service charge or any charge whatsoever to all public and parochial schools, public libraries, municipal buildings, police and fire stations within the Township of Washington to be served under this Ordinance. Except for service to be supplied to the aforesaid, the Company shall not, as to rates, charges, service facilities, rules, regulations, or any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage. Provided, however, that nothing in this Franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classifications would be entitled.

Section 15. Forfeiture.

Any privileges and permission granted under this Ordinance shall be non-exclusive and may at any time be revoked by resolution of the Township Supervisors and shall, at all times, be exercised and maintained subject to the approval of the proper Township officers. Any violation of the terms of this Ordinance shall be deemed and taken to work a forfeiture of any permission and privileges that may have been granted.

Section 16. Acceptance.

The Company shall, under its seal and by its proper officer, within thirty (30) days after notification of the passage of this Ordinance, file with the Township Secretary a written acceptance of the terms of this Ordinance, and shall also furnish certificates of said insurance as hereinabove mentioned, in default of any of which this Ordinance shall be null and void and of no legal effect whatever.

Section 17. Assignment.

The rights granted hereunder to Service Electric Cable TV, Inc. shall not be assigned or transferred without the approval of the Board of Supervisors. However, if the proposed assignee or transferee establishes financial responsibility to the satisfaction of the Board of Supervisors, that is, the said assignee, will comply with all the provisions of this Ordinance, thereafter the Township approval of said transfer or assignment shall not be unreasonably withheld. Township approval shall not be required in the case of an assignment or transfer to a company owned or controlled directly or indirectly by Service Electric Cable TV, Inc. or its parent corporation. However, should such transfer or assignment occur, the Township shall be notified in writing of said transfer or assignment within thirty (30) days thereafter.

Section 18. Severability.

(a) If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

(b) Should any provisions of this Franchise be inconsistent or at variance with any rule, regulation or policy, in whole or in part, of the Federal communications commission or any other agency having jurisdiction, such provision shall be invalid, but the remaining provisions hereof shall not be affected thereby.

ENACTED AND ORDAINED as an Ordinance of Washington Township this 14th day of December, 1988.

Paul B. Wagner Chairman  
Richard A. Kane  
Paul T. Miller

Attest:

Barbara J. Hallet  
Secretary