

ORDINANCE 2011-02

AN ORDINANCE OF BETHEL TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, GRANTING NON-EXCLUSIVE CABLE FRANCHISES TO ANY CABLE SERVICE PROVIDER DETERMINED TO BE A DULY LICENSED COMPANY AND ONE SUITABLE FOR PROVIDING CABLE SERVICES TO THE RESIDENTS OF THE TOWNSHIP TO OPERATE AND MAINTAIN CABLE SYSTEMS AND OTHER CABLE SERVICES IN BETHEL TOWNSHIP; PRESCRIBING CONDITIONS ACCOMPANYING THE GRANT OF A NON-EXCLUSIVE FRANCHISE, PROVIDING FOR REGULATION OF SUCH SYSTEMS, PROVIDING FOR FRANCHISE FEE PAYMENTS TO BETHEL TOWNSHIP FOR OPERATION OF SUCH SYSTEMS; AND PROVIDING PENALTIES FOR THE VIOLATION HEREOF.

WHEREAS Bethel Township, Berks County, Pennsylvania (Township) may by law grant franchises cable service within its borders; and,

WHEREAS the Township desires to update and modernize its ordinances and regulations regarding the same;

NOW THEREFORE the Board of Supervisors of Bethel Township, Berks County, Pennsylvania, in public session lawfully convened does hereby ENACT and ORDAIN as follows:

SECTION 1. Short Title. This Ordinance shall be known and may be cited as the "Cable Service Provider Ordinance."

SECTION 2. Definitions. For the purpose of this Ordinance, the following terms, phrases and words shall have the following meanings:

1. "Cable Service Provider" means any Person qualified to and approved to offer Cable Service.
2. "Cable Service" means the transmission to subscribers of video programming or other programming service and subscriber interaction, if any which is required for the selection or use of such video or other programming service.
3. "Cable 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 Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include: (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right

of way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of 47 U.S.C. §201 et. seq. except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with 47 U.S.C. §573; or. (E) any facilities of any electric utility used solely for operating its electric utility system.

4. "Franchising Authority" is Bethel Township, Berks County, Pennsylvania.
5. "Gross Revenue" means all receipts of income by Cable Service Providers derived from offering Cable Service through a Cable System within the Township that are allowed to be the subject of franchise fees under federal and/or state law, including any such revenues from, basic, premium, and pay-per-view video fees, installation fees, subscriber equipment rental fees, advertising revenue (excluding agency commissions), and locally derived revenue or commissions from home shopping channels. Gross Revenue does not include refundable deposits, bad debts, late fees, investment income, advertising sales commissions, or taxes, franchise fees or assessments imposed by any governmental authority. Notwithstanding anything to the contrary, Gross Revenue also does not include any income against which Townships are not entitled to collect Franchise fees under federal and/or state enabling legislation as amended from time to time.
6. "Grantee" is any person or entity which is granted a non-exclusive franchise pursuant to the terms of this Ordinance.
7. "Other programming service" means information that a Cable Provider makes available to all subscribers generally.
8. "Person" is any individual, firm, partnership, association, corporation, Limited Liability Company, or other company or organization of any kind, whether for profit or not for profit.
9. "Township" is Bethel Township.
10. "Video programming" means programming provided by, or generally considered comparable to programming provided by television broadcast station.

SECTION 3. Require a Franchise to Operate. No Person or Cable Service Provider shall provide any Cable Service or operate a Cable System within the Township without first obtaining a franchise from the Township pursuant to the terms of this Ordinance. A non-exclusive franchise to construct, operate and maintain a Cable System and to provide Cable Service within all or any portion of the Township is required of any Person desiring to provide Cable Service in the Township. A franchise may be granted by the Board of Supervisors by

Resolution or written approval of a franchise agreement to any person, firm, or corporation, whether operating under an existing franchise or not, who or which offers to furnish and provide such Cable Service. Such franchises shall be Non-exclusive. No right to use and occupy said streets, alleys, public ways and places granted pursuant to this Ordinance shall be deemed to be exclusive, and the Township reserves the right to grant co-extensive rights to any other qualified Cable Service Provider at any time and from time to time in the future.

SECTION 4. Compliance with Applicable Laws and Ordinances. Grantees shall, at all times during the term of a franchise granted pursuant hereto, be subject to all lawful exercise of the police power by the Township, and to such reasonable regulation, pursuant to the exercise of such police power, as the Township, Commonwealth of Pennsylvania or United States of America shall hereafter by resolution, ordinance, statute or regulation provide including but not limited to:

1. Interference. If there is any interference on any television, radio, or other electronic device not connected with the conductors or fixtures of the Grantee, the Grantee shall immediately at its own cost and expense eliminate such interference. If such interference cannot be eliminated within forty-eight (48) hours after notice to do so Township may direct the suspension of the operation of the Grantee within the affected area of the Township until such interference is eliminated.
2. Building Permits. In addition, the Grantee shall apply for and take out building permits, required by the Township for construction of buildings, placement of poles, attachments to bridges, and cuts into streets and sidewalks to be undertaken by Grantee. Such permits will not be unreasonably withheld or delayed by the Township but shall be issues in the normal course. Grantee shall pay a fee for inspections of any work involved in the public right of way including but not limited repairs to roads due to cuts or other disturbance. No permit shall be required for individual subscriber connections or terminations or for routine maintenance and repair that does not impede traffic or cause occupancy of any public right of way.
3. Fees. The fee shall be fixed by Resolution of the Board of Supervisors from time to time.

SECTION 5. Indemnification Insurance. Grantee shall indemnify and save harmless the Township and its elected and appointed officials, employees and agents from any suit, judgment, claim, demand, loss cost or expense of any kind whatsoever, including all counsel fees and court costs arising out of or in any way relating to the Grantees activities and/or operations within the Township including but not limited to the operation, the construction, maintenance or repair of its Cable System in the Township. The Township shall notify the Grantee as soon as reasonably possible upon the presentation of any suit, claim or demand made against the Township on account of any damages or losses as aforesaid resulting from the operations of the Grantee. The Township shall promptly notify Grantee of any such claim or legal proceeding and afford Grantee the opportunity to participate in and otherwise defend (subject to the duty to cooperate with the Township) any such action or proceeding and any

related compromise, settlement, resolution or disposition of such claim or proceeding. Both parties will cooperate fully with each other in the defense of such claim and make available to Grantee all such information under its control relating thereto. Notwithstanding the foregoing, Grantee shall be solely responsible and liable for all costs, fees, judgments, awards, and/or settlement payments. The Grantee shall furnish to the Township, prior to the grant of a franchise hereunder, evidence in writing that the Grantee has in full force and effect public liability insurance of not less than \$1,000,000.00 for any one person and \$2,000,000.00 for any one incident, and property damage insurance of not less than \$1,000,000.00 duly issued by an insurance company or companies authorized to do business in the Commonwealth of Pennsylvania, said insurance to cover all operations by the Grantee within the Township. Upon request, written evidence of the maintenance of such insurance in full force and effect shall be furnished annually thereafter to the Township and such other terms as shall be provided for in the Franchise Agreement.

SECTION 6. Grantee Rules. The Grantee may promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under a franchise granted pursuant to this Cable Television Ordinance 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, additional regulations, terms and ordinances of the Township, or the laws of the Commonwealth of Pennsylvania or the United States of America.

SECTION 7. Conditions on Street Occupancy.

1. Use. All transmission and distribution structures, lines and equipment erected by the Grantee within the Township shall be so located as to cause minimum interference with the use by all others of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of owners of property which abut the said streets, alleys or other public ways and places.
2. Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, Grantee shall at its own cost and expense and in a manner approved by the Township Engineer or other person designated by the Board of Supervisors, 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.
3. Relocation. In the event that at any time during the period of any franchise granted pursuant to this ordinance, the Township shall lawfully elect to alter or change the grade or location of any street, alley, or other public way, Grantee, upon reasonable notice by the Township, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

4. Placement of Fixtures. Grantee, insofar as it is reasonably possible to do so, shall locate its wires, cables, conduits and other television conductors and fixtures on existing utility poles of either the electric or the telephone company. Grantee shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrant or main or other utilities, and all such poles or other fixtures placed in any ultimate street right of way shall be placed in such a way as not to impede or interfere with sight distances the flow of traffic, or other safety concerns. All facilities shall be located in accordance with all applicable codes and ordinances.
5. Temporary Removal of Wire for Building Moving. Grantee shall, on the request of any person holding a building 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 Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than twenty (20) business days advance written notice to arrange for such temporary wire changes.
6. Tree Trimming. Grantee shall have the authority to the same extent that the Township has such authority, to trim trees and upon overhanging 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 Grantee.

SECTION 8. Township Rights.

1. Township Rules. Township may at any time adopt by Resolution such additional reasonable regulations as it shall find prudent or necessary in the exercise of the police power, provided that such regulations shall not be in conflict with the laws of the Commonwealth of Pennsylvania and the United States.
2. Use of facilities by Township. The Township shall have the right, during the life of this franchise, free of charge, where aerial construction exists, of maintaining upon the poles of Grantee within the Township wires and fixtures necessary for any municipal purpose including but not limited to police communications, fire alarm and emergency management, civil defense or other use systems. Township will be responsible for installation and maintenance of any such systems. If any such systems interfere with operation or maintenance of the Cable System, then the Township shall move or remove the same upon reasonable notice from Grantee.
3. Inspection. The Township shall have the right to inspect all construction or installation work during such construction or installation or at any time after completion thereof, in order to insure compliance with the provisions of this ordinance and all other governing ordinances.

SECTION 9 Service to Institutions. Grantee will, upon request, provide free installation and standard Cable Service to one (1) outlet in each municipal building, public and private school building and police facility, fire and ambulance station within the Township provided such structures are within 200 feet of the existing service area.

SECTION 10. Expansion of Cable Service. Grantee shall have no obligation to extend the Cable System beyond that which exists on the effective date of this Ordinance except in accordance with Grantee's then current line extension policy. Notwithstanding the foregoing, Grantee shall use all reasonable efforts to provide Cable Service to all residents of the Township who request the same. Specifically, Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty-five (35) dwelling units per linear mile and is within one mile of the existing Cable System. Subject to this density requirement, Grantee shall offer Cable Service to all new dwellings or previously unserved dwellings located within one hundred fifty (150) feet of the Grantee's nearest segment of Cable System from which a usable signal is technically available ("Normal Installation"). The Grantee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards.

SECTION 11. Payment to Township. Any Grantee holding a franchise pursuant to the terms of this Ordinance shall pay to the Township a Franchise Fee for the privilege of operating its Cable System the sum of up to 5 percent (5%) of the annual Gross Revenue of the Cable Service Provider. Payment shall be made as agreed between the Township and the Cable Service Provider but in no event later than March 31st of each year for the preceding calendar year.

SECTION 12. Records and Reports. The Grantee shall at all times maintain adequate records of annual Gross Revenue, which shall be available at all reasonable times during regular business hours to inspection by the Township through its duly designated agents or officers..

SECTION 13. Terms of Franchise. Any franchise granted hereunder shall be for the initial term of five (5) years. However, the Township is authorized and may allow longer terms by written agreement with the franchisee. Unless otherwise required by any applicable Federal or State statute, the Franchise may be renewed by the Township five (5) year intervals unless a longer renewal term is agreed in writing, provided that the Grantee complies in all material respects with the terms hereof and maintains a technical, legal, and financial condition satisfactory to the Township.

SECTION 14. Franchise Applications. All applicants for an initial franchise shall submit to the Township a statement containing the following:

1. Name of the applicant.

2. Address of the applicant.
3. Evidence of financial condition of the applicant and, if the applicant is a corporation or partnership, the names of the principal stockholders or partners, whichever is applicable. A financial statement of the person or corporation shall be submitted and shall be certified by a certified public accountant. Submission of the most recent U.S. Securities and Exchange Commission Annual Report Form 10-K prepared by Grantee shall be deemed as a satisfactory compliance of this section.
4. Description of the area to be covered by the franchise.

Upon receipt of the above information, together with such other information as is requested by the Township, the Board of Supervisors shall determine whether or not it is in the best interests of the Township to grant a franchise to the applicant.

SECTION 15. Termination of Franchise. Upon revocation of the franchise by the Township, or if any franchise is not renewed, Grantee shall remove all of its equipment and other facilities from the Township within a reasonable time, and shall restore as nearly as possible all public and private property affected thereby to the condition it was in prior to the installation of such equipment and facilities by said company. Nothing in this section shall be construed to require removal otherwise prohibited by any applicable Federal or state statute.

In addition to all other rights and remedies retained by the Township under this Ordinance, the Township shall have the right to revoke a franchise if the Grantee knowingly fails to substantially comply with any material provisions of this ordinance or the Franchise Agreement. The Township shall not have the right to revoke a franchise if the Grantee cures the material breach in accordance with Section A below or if the material breach occurs without fault of the Grantee or occurs as a result of circumstances beyond Grantee's control. Revocation shall be by ordinance duly adopted by three-fourths ($\frac{3}{4}$) of all the members of the Board of Supervisors, in accordance with the following procedures:

1. The Board of Supervisors shall notify the Grantee in writing of the alleged failure of compliance, setting forth the reasons for alleging that the failure is knowing, material and substantial. The Grantee shall have sixty (60) days subsequent to the receipt of the notice to correct the failure and respond to the Board of Supervisors.

2. Within thirty (30) days of the receipt of the Grantee's response, or if the Grantee fails to respond, the Board of Supervisors, if it concludes that a basis for revocation still exists, shall notify the Grantee in writing of this conclusion.

3. Within thirty (30) days of the determination that a basis for revocation exists, the Board of Supervisors shall hold a public hearing upon reasonable notice and affording due process to consider revocation. At the public hearing, the Grantee shall be given an opportunity to address the grounds for revocation including the right to present evidence and examine witnesses in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Pennsylvania. The Board of Supervisors will provide a stenographic record of the public hearing. The Board of Supervisors shall, within twenty-one (21) days of the hearing, either determine not to revoke the franchise, or, upon stated grounds, revoke the franchise absolutely or conditionally. No revocation will be deemed effective, however, until either the Grantee accepts in writing the ruling of the Board of Supervisors or has exhausted all its administrative and judicial appeals and the Board of Supervisors' ruling has been upheld by a court of last resort.

4. Unless otherwise noted, all Notices shall be in writing and shall be sent by either U.S. Postal Service via certified mail – return receipt requested, hand delivery or by a nationally recognized overnight courier service that guarantees next day delivery.

SECTION 16. Franchise Renewal. In accordance with Section 626 of the Cable Act [47 U.S.C. § 546], a franchise may be renewed by the Township pursuant to the procedures established in this section and applicable federal and state law and regulations.

1. During the six-month period which begins with the 36th month before the expiration of the franchise, the Township may on its own initiative, and shall at the request of the Grantee, commence proceedings which afford the public in the franchise area appropriate notice and participation for the purposes of:
 - (A) Identifying future cable-related community needs and interests; and
 - (B) Reviewing the performance of the Grantee under the franchise during the then current franchise term. If the Grantee submits, during such six-month period, a written renewal notice requesting the commencement of such a proceeding, the Township shall commence such a proceeding not later than six months after the date such notice is submitted.
2.
 - A) Upon completion of such proceedings, the Grantee may submit a proposal for renewal. Upon the request of the Township, a Grantee shall submit a proposal for renewal.
 - B) Subject to restrictions contained in the Cable Act, including Section 624, any such proposal shall contain such material as the Township may require, including proposals for an upgrade of the cable system.
 - C) The Township may establish a date by which any such proposal shall be submitted.

3. Upon submittal by Grantee of a proposal for the renewal of a franchise, the Township shall provide prompt public notice of such proposal and, during the 4-month period which begins on the completion of any proceedings under subparagraph 2(A) above, shall either renew the franchise or issue a preliminary assessment that the franchise should not be renewed and commence at the request of the Grantee or on its own initiative, an administrative proceeding to consider whether:
 - a) the Grantee has substantially complied with the material terms of the existing franchise, Ordinance, and applicable law,
 - b) the quality of the Grantee's cable service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality of cable services or other services provided over the system, has been reasonable in light of community needs,
 - c) the Grantee has the financial, legal and technical ability to provide the cable services, facilities and equipment as set forth in the proposal, and
 - d) the Grantee's proposals are reasonable to meet future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.
4. In any administrative proceeding, the Grantee and the public shall be afforded adequate notice, and the Grantee and the Township shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence and to question witnesses. A transcript shall be made of any such proceeding.
5. At the completion of an administrative proceeding, the Township shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and shall transmit a certified copy of such decision to the Grantee. Such decision shall state the reasons thereof.
6. Any denial of a proposal for renewal shall be based only on one or more adverse findings made with respect to the factors set forth in subparagraph 3, based upon the record of the proceeding. The Township may not base a denial of renewal upon factors 3(a) and 3(b) unless the Township has provided the Grantee with notice and a reasonable opportunity to cure.

7. If a Grantee's proposal for renewal has been denied by a final decision of the Township made pursuant to this section, or if the Grantee has been adversely affected by a failure of the Township to act in accordance with the procedural requirements of this section, the Grantee may appeal such decision or failure pursuant to the provisions of Section 635 of the Cable Act. The court may grant appropriate relief if it finds that any action of the Township is not in compliance with the procedural requirements of this section or that the denial of the renewal proposal by the Township is not in compliance with the procedural requirements of this section or that the denial of the renewal proposal by the Township is not supported by a preponderance of the evidence based on the record of the proceeding conducted under this section.
8. Any decision of the Township on a proposal for renewal shall not be considered final unless all administrative review by the State has occurred, or the opportunity therefore has lapsed.
9. Notwithstanding the provisions of this section, a Grantee may submit a proposal for the renewal of a franchise at any time, and the Township may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced.) The provisions of the above subsections shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a proposal for renewal pursuant to this subsection 9 shall not affect action on a renewal proposal that is submitted in accordance with subsections 1 through 8 of this section.

If the current franchise expires by its own terms before the Township and the Grantee formally agree to an extension of the provisions of the current franchise agreement or before the completion of the formal renewal procedures set forth in this section, the Township shall extend the expiration date of the current franchise until either a new franchise has been granted or the Township's denial has been upheld by the court of last resort.


SECTION 17. Construction and Severability. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of the Township that such remainder shall be and shall remain in full force and effect.


SECTION 18. Repealer. All ordinances or parts of ordinance conflicting with the provisions of this ordinance are hereby repealed insofar as they are inconsistent herewith.


SECTION 19. Effective Date. This Ordinance shall become effective five (5) days after its adoption.


ORDAINED and ENACTED as an Ordinance by the Board of Supervisors of Bethel Township, Berks County, Pennsylvania, in lawful session duly assembled this 21 day of 2, 2011.

BOARD OF SUPERVISORS OF
BETHEL TOWNSHIP


Randall G. Haag, Chairman


Kenneth W. Norton, Supervisor


Attest: Jayne K. Seifrit, Secretary


Herbert R. Zechman, Jr., Supervisor