

ORDINANCE NO. 89, 2000

AN ORDINANCE OF THE TOWNSHIP OF CENTRE, BERKS COUNTY, PENNSYLVANIA AUTHORIZING THE GRANTING OF A NON-EXCLUSIVE FRANCHISE TO OPERATE AND MAINTAIN COMMUNITY TELEVISION SYSTEMS AND CLOSED CIRCUIT TELEVISION SYSTEMS IN THE TOWNSHIP OF CENTRE; PRESCRIBING CONDITIONS ACCOMPANYING THE GRANT OF A NON-EXCLUSIVE FRANCHISE; PROVIDING FOR REGULATION OF SUCH SYSTEMS; PROVIDING FOR PAYMENTS TO THE TOWNSHIP OF CENTRE FOR OPERATION OF SUCH SYSTEMS; AND PROVIDING PENALTIES FOR VIOLATION HEREOF

BE IT ENACTED AND ORDAINED by the Supervisors of the Township of Centre, Berks County, Pennsylvania, and it is hereby enacted and ordained by the authority of the same as follows:

Section 1. Short Title. This Ordinance shall be known and may be cited as the "Cable Television Ordinance".

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

- (a) Board of Supervisors. The Board of Supervisors of the Township.
- (b) Person. Any person, firm, partnership, association, corporation, company or organization of any kind.
- (c) Qualifying Company. Any person or entity which is granted a nonexclusive franchise pursuant to the terms of this Ordinance.
- (d) Township. The Township of Centre, Berks County, Pennsylvania.

Section 3. Grant of Authority. The Board of Supervisors may grant the right and privilege to qualifying companies to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, 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 community television system and for closed circuit cable services. Such grants shall be subject to the following conditions:

(a) Nonexclusive Grant. 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 similar rights to any other qualifying company at any time.

Section 4. Compliance with Applicable Laws and Ordinances. Qualifying companies shall, at all times during the life of a franchise granted pursuant hereto, be subject to all federal, state and Township laws, ordinances and regulations and will further comply with the following:

(a) Interference. If there is any interference on any television set, radio or other electronic device not connected with the conductors or fixtures of the qualifying company which is caused by the conductors or fixtures of the qualifying company, the qualifying company shall immediately, at its own cost and expense, eliminate such interference. If such interference cannot be eliminated within forty-eight (48) hours, the Township may direct the suspension of operation of the qualifying company within the Township until such interference is eliminated.

(b) Building Permits. In addition, the qualifying company shall apply for and take out any and all building permits required by the Township for any construction to be undertaken by said qualifying company.

Section 5. Indemnification; Insurance. It is expressly understood and agreed by and between any qualifying company and the Township that the qualifying company shall save the Township harmless from all loss sustained by the Township on account of any suit, judgment, execution, claim or demand whatsoever, resulting from the operations of the qualifying company in the construction, operation or maintenance of its television system in the Township. The Township shall notify the qualifying company's representative in the Township within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the Township on account of any damages or losses as aforesaid resulting from the operations of the qualifying company. The qualifying company shall furnish to the Township, prior to the grant of a franchise hereunder, evidence in writing that the qualifying company has in full force and effect public liability insurance of not less than Five Hundred Thousand Dollars (\$500,000.00) for any one person and One Million Dollars (\$1,000,000.00) for any one accident, and property damage insurance of not less than Five Hundred Thousand Dollars (\$500,000.00), duly issued by an insurance company or insurance companies authorized to do business in this Commonwealth, said insurance to cover all operations by the qualifying company within the Township. Written evidence of the maintenance of such insurance in full force and effect, including coverage of any contractually assumed liability pursuant to this Ordinance or otherwise, shall be furnished annually thereafter to the Township.

Section 6. Qualifying Company Rules. The qualifying 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 qualifying 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, additional regulations or ordinances of the Township, or the laws of the Commonwealth of Pennsylvania or the United States of America.

Section 7. Conditions of Street Occupancy.

(a) Use. All transmission and distribution structures, lines and equipment erected by the qualifying company within the Township shall be so located as to cause minimum interference with the use by 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 abuts said streets, alleys or other public ways and places.

(b) Restoration. As soon as practicable, in case of any disturbance of pavement, sidewalk, driveway or other surfacing, the qualifying company shall, at its own cost and expense and in a manner approved by the Township Engineer or other person designated by the Township 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. Said restoration shall also be subject to the ordinances of the Township and the rules and regulations of the Pennsylvania Department of Transportation, as appropriate.

(c) Relocation. In 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, the qualifying company, 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.

(d) Placement of Fixtures. The qualifying company shall use existing utility poles of the electric or telephone companies if they are available on terms comparable to other pole license agreements to which the cable company is a party or are comparable to pole license agreements in Berks County. The qualifying company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrant or main, 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; those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with travel on said streets, alleys and public ways. Erection of poles, pedestals, vaults and any other fixtures installed by the cable company shall be subject to all zoning and construction ordinances and regulations. Any qualifying company erecting any poles, pedestals, vaults or any other fixtures shall be solely liable for harm to any

person as a result of such erection and shall indemnify and hold the Township harmless for any claims relating thereto.

(e) Temporary Removal of Wire for Building Moving. The qualifying company shall, on the request of any person holding a 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 qualifying company shall have the authority to require such payment in advance. The qualifying company shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

(f) Tree Trimming. The qualifying company shall have the authority to the same extent that the Township has such authority, to trim trees that overhang onto streets, alleys, sidewalks and public places of the Township so as to prevent the branches of such trees from coming into contact with the wires and cables of the qualifying company. The Township reserves the right to cause the trees to be trimmed either by Township employees or by Township contract if deemed necessary by the Board of Supervisors. The Township will have the right, within thirty (30) days of the date of the tree trimming, to assess the relevant qualifying company or companies for its pro rata share of the cost to the Township.

Section 8. Township Rights in Franchise.

(a) Township Rules. The right is hereby reserved to the Township to adopt by resolution, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary.

(b) Use of System 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 the qualifying company within the Township wires and fixtures necessary for police communications, fire alarm and civil defense warning systems.

(c) 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. Payment to Township. Any qualifying company owning a franchise pursuant to the terms of this Ordinance shall pay to the Township for the privilege of operating its community television system under such franchise the sum of five percent (5%) of the gross monthly rental charges collected each month, payable annually as herein provided, for as long as the qualifying company operates the system under such franchise,

but not less than One Thousand Dollars (\$1,000.00) each year, whichever shall be the greater sum.

The qualifying company shall make payments to the Township of the amounts it is obliged to pay hereunder within thirty (30) days following the anniversary date of the grant of its franchise. Such payments shall be accompanied by written proof of the factual basis for computation of the payment. Failure to make such payments in a timely manner shall be cause for the Township to issue a penalty to the qualifying company in the amount of One Hundred Dollars (\$100.00) per day for each day that such payment is late and also institute civil proceedings against the qualifying company for collection of the delinquent fees in the Court of Common Pleas or at the District Justice Magisterial District having jurisdiction within the Township.

Section 10. Records and Reports. The qualifying company shall at all times maintain adequate records of the gross receipts from service rental income, which shall be available at all reasonable times to inspection by the Township through its duly designated agents or officers. Failure of the qualifying company to cooperate with the Township and to fully maintain and disclose such records shall give the Township the right to take legal action to compel production of such records and to recover any proceeds, together with costs of suit and reasonable attorneys' fees, due and owing to the Township.

Section 11. Terms of Franchise. Any franchise granted pursuant to the terms of this Ordinance shall be for the initial term of ten (10) years, provided, however, that such franchise shall thereafter automatically renew for successive one (1) year terms provided the qualifying company complies in all respects with the terms hereof and maintains a financial condition satisfactory to the Township. Such successive extensions shall be for a maximum of five (5) additional years. The term "financial condition" shall be interpreted to mean that the franchisee's condition is such that it will permit the franchise to perform all of its services to its subscribers.

Section 12. Miscellaneous Provisions.

(a) A qualifying company will be required to protect or remove the cable system, at the qualifying company's sole cost and expense, whenever the Township determines that the system, or parts of the system, in any way interfere with any present or future public works.

(b) Upon initial application for franchise, all prospective qualifying companies shall submit a Fifty Thousand Dollar (\$50,000.00) construction completion bond, subject to forfeit to the Township if the system is not built as proposed pursuant to the terms of this Ordinance, any other applicable law, as well as the application for franchise submitted by the qualifying company. Upon completion, and prior to operating the system, the requirement for the Fifty Thousand Dollar (\$50,000.00) construction completion bond shall be removed and a Twenty-Five Thousand Dollar (\$25,000.00) performance bond, subject to forfeiture

to the Township upon failure of the qualifying company to comply with the terms of this Ordinance and any other applicable law, as well as the application for the franchise submitted by the qualifying company, shall be submitted to the Township.

(c) Any sale, transfer or assignment of the rights of a qualifying company to another entity under this Ordinance shall be subject to the approval of the Township, which approval shall not be withheld except for good reason.

(d) The qualifying company shall, upon a written request by any subscriber within the Township, furnish a parental guidance or lock-out key, at a reasonable cost to the subscriber.

(e) The qualifying company shall maintain the capability of at least four (4) hours of standby power at the head-end of the system.

(f) Any qualifying company shall maintain a business office to provide access to the Township and customers of the qualifying company for transaction of any business under this Ordinance. Such business office shall be located within thirty (30) miles from the Township building. The qualifying company shall maintain a toll-free number for access by customers during normal business hours.

(g) The qualifying company shall place all components of the cable system underground wherever feasible and in all areas in which the electric and telephone utilities are placed underground, whether currently underground or if such utilities are placed underground in the future.

(h) The qualifying company shall ground all drops at the subscriber's dwelling or structure.

(i) Any qualifying company that operates in the Township as a "stand-alone" system shall provide the Township with the option to require the availability of access channels. If the qualifying company maintains a system in the Township which is part of a larger system, the Township shall have the option to use such larger system's access channels on a shared basis.

(j) All qualifying companies shall provide for prompt service calls which shall be within a maximum of twenty-four (24) hours from the time of complaints (excluding Sundays and holidays) and shall provide for same day response for any complaints received by 2:00 p.m.

(k) Installation of individual service shall take place within ten (10) days of application in cases of aerial installations and within sixty (60) days in cases of underground installations.

(l) Each qualifying company shall provide free installation and service to at least one outlet in each municipal building, school building, public library, police station and fire station.

(m) Each qualifying company shall, at least one time per year, provide written notice to the Township and all Township subscribers as to current complaint and billing policies. In the event of any change to complaint or billing policies, said qualifying company shall provide thirty (30) days prior written notice to the Township and all Township subscribers prior to implementing such changes.

(n) In the event that, for any reason, service is discontinued to any subscriber for a period of more than twenty-four (24) hours, the qualifying company shall rebate, at the time of the next billing, the pro rata amount of such bill that corresponds to the period of lost service.

(o) The qualifying company shall maintain at least thirty-six (36) activated downstream television channel capacity with at least twenty-eight (28) basic channels provided pursuant to the basic monthly service charge in addition to at least four (4) channels to be made available upon additional charge.

Section 13. Penalties. Any violation by a qualifying company, its servants, agents or employees, under the provisions of this Ordinance, or the failure promptly to perform any of the provisions hereof, or the failure to exercise the rights granted pursuant hereto within two (2) years of the grant of a franchise, shall be cause for the forfeiture of such franchise and all rights thereunder at the election of the Township. After the initial two (2) year period, the Township reserves the right to cancel any franchise of any qualifying company for repeated or several violations of the provisions of this Ordinance or the terms of any franchise agreement.

Section 14. Franchise Permits. All applicants for franchise permits shall submit to the Township an application, on a form to be provided by the Township, to include information relevant to the applicant's conducting cable television operations pursuant to this Ordinance and the Federal Cable Communications Act, including a statement containing the following:

- (a) the name and address of applicant;
- (b) 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 shall be submitted and shall be certified by a certified public accountant;
- (c) a detailed map showing the exact streets which the qualifying company thereby commits to serve;

(d) a schedule of proposed rates to be charged by the applicant for all services to be rendered within the Township.

Such form and additional information desired by the Township shall be determined by a resolution of the Board of Supervisors from time to time.

Section 15. Completion of Construction and Areas of Coverage. Any qualifying company shall complete construction of the basic system as described in Subsection 14(c) above within one (1) year of the date that the Township approves a franchise application. Additional areas, adjacent to the initial cable system as described above, shall be provided service whenever the density of living units reaches fifteen (15) living units per mile based upon road frontage, and such additional coverage shall be provided within six (6) months of the time that the qualifying company is notified that such area qualifies.

Section 16. Regulation of Rates, Services, Facilities and Equipment. The Township hereby reserves all authority for regulations of rates, services, facilities and equipment to the extent allowed by the Federal Cable Communications Act, as amended.


Section 17. Construction and Severability. If any provision, section, sentence, clause or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sections, sentences, clauses or parts of this Ordinance. It is hereby declared as the intent of the Board of Supervisors of the Township of Centre that this Ordinance would have been adopted had such unconstitutional, illegal or invalid provision, section, sentence, clause or part thereof not been included herein.

Section 18. Repeal of Inconsistent Ordinances. All ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as they are inconsistent with this Ordinance.

Section 19. Effective Date. This Ordinance shall become effective in accordance with law.

ENACTED AND ORDAINED by the Board of Supervisors of the Township of Centre, Berks County, Pennsylvania this 13th day of March, 2000.

TOWNSHIP OF CENTRE



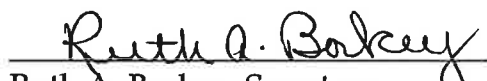
Ronald E. Knepp, Chairman

Lawrence Zimmerman



Clair Miller

Attest:



Ruth A. Borkey, Secretary

SEAL