

CABLE TELEVISION

Chapter 105

CABLE TELEVISION

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[HISTORY: Adopted by the Borough Council of the Borough of North Wales 5-11-1994 as Ord. No. 670. Amendments noted where applicable.]

§ 105-1. Definitions and word usage.

A. Definitions. For the purpose of this chapter, the following terms, phrases, words and derivations shall have the

meanings outlined below. In addition, any terms not specifically defined herein shall have the meanings set forth in the Act.

AREA OUTAGE — The condition existing when cable or equipment is damaged, fails or otherwise malfunctions (collectively referred to hereinafter as "malfunctions"), and eight (8) or more subscribers receiving service from that section of cable or that equipment receive unusable or no service as a result of that malfunction.

CABLE ACT or ACT — The Federal Cable Communication Policy Act of 1984, as amended.

CABLE TELEVISION SYSTEM, CATV. SYSTEM or SYSTEM — A facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide video programming and which is provided to multiple subscribers.

COMPANY — A person who is the recipient of a franchise in accordance with the provisions of this chapter.

DOWNSTREAM TRANSMISSIONS — Signals traveling from the head end to the subscriber's location.

FCC — Federal Communications Commission.

GROSS REVENUES — All revenues derived by the company from the provision of cable service, including but not limited to monthly fees charged to subscribers for basic service; monthly fees charged to subscribers for any optional service; pay television fees; pay-per-view fees; FM service fees; commercial service fees; premium service fees; monthly fees charged to subscribers for any tier of service other than basic service; installation, disconnection, and reconnection fees; and convertor rentals or sales. This sum shall be the basis for computing the franchise fee payment. Items to be deducted in computing "gross revenues" include any

taxes paid by the company and which are imposed upon the company or upon any subscriber or user by the state, county, city or other governmental unit; or revenue from subscribers designated by the company as payment of its franchise fee obligation.

HEAD END — The electronic center through which broadcast and cablecast signals are electronically translated or modified for distribution over the system.

INTERACTIVE SERVICES — Services based on the transmission of information on the system from the subscriber's location to the head end.

PARENT — Any person holding direct or indirect ownership or control of twenty percent (20%) or more of the rights of control of a company, and any person holding such ownership or control of a parent of a company.

PERSON — Any individual, firm, partnership, association, corporation, company or legal entity of any kind.

SUBSCRIBER — Any person receiving service from the system.

BOROUGH — The Borough of North Wales, Montgomery County, Pennsylvania.

TWO-WAY CAPABILITY — The ability to transmit audio, video and digital signals upstream and downstream on a cable system.

UPSTREAM TRANSMISSIONS — Signals traveling from subscriber or other originating points on the system to a head end or a sub-head end.

- B. Word usage. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

§ 105-2. Granting and renewal of nonexclusive franchise.

- A. The Borough Council is hereby authorized, in consideration of the faithful performance and observance of the conditions and obligations herein imposed, to grant to a company or companies by resolution the nonexclusive franchise right, privilege, authority and easement to construct, own, operate and maintain a system and to erect, maintain and operate television transmission and distribution facilities and other communication and information services and additions thereto in, under, over, along, across and upon the streets, bridges and other publicly owned places in the borough, and subsequent dedications and additions thereto, for the purpose of transmission and distribution of aural, visual and other communication signals in accordance with the laws and regulations of the United States of America and the Commonwealth of Pennsylvania and the ordinances and regulations of the borough now in effect or hereafter enacted. The nonexclusive franchise, right, privilege, authority and easement granted pursuant to this subsection shall expire automatically at the end of a twelve-year term beginning on the date of the enabling resolution referred to above, subject, however, to the renewal provisions contained in the Act.
- B. The company or companies shall be required, after receiving a grant by resolution of Borough Council, to exercise the nonexclusive franchise to construct, own, operate and maintain a system and to enter into a written franchise agreement with the borough in the manner and form set forth by the Borough Solicitor stating that the company or companies shall agree to adhere to and implement all requirements specified by this chapter.
- C. The company shall have the right to renew the franchise in accordance with the provisions of the Act.

§ 105-3. Right to install facilities or use existing facilities.

- A. The further right, privilege and authority is hereby granted to the company to lease, rent, subscribe to, service or in any other manner obtain the use of towers, poles, lines, cables, facilities, services, licenses and franchises within the limits of the borough; and to use towers, poles, line, cables and other equipment and facilities, including those owned by Bell of Pennsylvania and PECO Energy, subject to all existing and future laws and regulations of the United States of America and the Commonwealth of Pennsylvania and the ordinances and regulations of the borough. The poles used for the company's distribution system shall be those erected and maintained by the above-named telephone and/or electric company when and where practicable, provided that reasonable rental agreements can be entered into with said other companies.
- B. To the extent possible, the company shall make attachments to poles already in existence within the borough. To the extent that existing poles are insufficient, or if the company is unable to negotiate reasonable agreements for the use of existing poles, the company shall have the right to erect and maintain its own poles as necessary for the construction and maintenance of its system, subject to borough approval in accordance with all of its laws, ordinances, rules and regulations. Any pole use agreement which provides for pole license fees payable by the company in accordance with FCC rules and standards or which are approved by the FCC or which provides for pole license fees which are substantially comparable to pole license fees in other Montgomery County cable television pole use agreements shall be deemed reasonable for purposes of this section. The system plant shall be underground wherever the electric and telephone utility plant is underground, including being moved underground in all areas where the utility plant which is now aerial is

hereafter placed underground. In the event that any utility or like company is reimbursed by the borough for relocation of its facilities as part of the same work that requires the company to move its facilities, the company shall be reimbursed upon the same terms and conditions.

§ 105-4. Construction and maintenance of facilities; conditions of occupancy.

- A. To the extent provided for under § 105-3 of this chapter, the company shall have the right and privilege to construct, erect, operate, and maintain in, upon, along, above, across, over and under the publicly owned, dedicated streets of the borough such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to its system, provided that permits are issued for the location of such poles subject to the written approval of the borough and, in addition, to so use and operate similar properties rented or leased from other persons for such purpose. All structures, lines and equipment erected by the company within the borough shall be so located as to cause the least interference with the use of the streets, alleys, easements and other public ways and places and with the rights and reasonable convenience of property owners. Further, the company shall comply with all ordinances of the borough now or hereafter in force.
- B. The company's rights and privileges shall be subordinate to any prior lawful use or occupancy of the streets or other public property, and shall not be exercised so as to interfere with the existing improvements or with new improvements the borough may deem proper to make such that the exercise of the company's rights and privileges tend to hinder or obstruct the free use of the streets, alleys, bridges or other public property. In the event that any equipment or facilities of the company shall interfere with any such improvement existing or

intended to be made by the borough, the company shall, upon notice from the borough, forthwith relocate said equipment and facilities at the company's expense so as to eliminate said interference.

- C. In case of disturbance of any street, sidewalk, alley, public way, paved area or other surface caused by the direct actions of the company, the company shall, at its own cost and expense and in a manner approved by the Borough Engineer, replace and restore such street, sidewalk, alley, public way or other surface so disturbed to the condition existing before the disturbance occurred. Further, any opening or obstruction made by the company or its agents in the streets or other public places of the borough shall be guarded and protected at all times by the company by the placement of barrier fencing or boardings, the bounds of which shall be designated by warning lights between dusk and dawn. The extent and adequacy of barrier fencing, boardings and warning lights shall be determined by the Borough Manager. The company shall also restore to its original condition any private property damaged in the course of, or arising out of, the exercise of its rights and privileges hereunder. All restoration work done by the company pursuant to this Subsection C shall be done as soon as practicable after completion of the work or disturbance necessitating such restoration. At the discretion of Borough Council, the company may be required to enter into an escrow agreement or similar guaranty to ensure completion of the work required by this Subsection C.
- D. If, at any time during the term of the franchise, the borough shall elect to alter or change the grade or alignment or route of any street, sidewalk, alley, or other public way, the company shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense. In the event that any utility or like company is reimbursed by the borough for relocation of its facilities as part of the same work that requires the company to move its facilities, the

company shall be reimbursed upon the same terms and conditions.

- E. Any poles or other fixtures shall be placed in such a manner as not to interfere with the usual travel on streets, bridges and other public ways.
- F. The company shall have the authority, in consultation with the Borough Manager, to trim trees upon and overhanging the streets and other public ways and places of the borough so as to prevent the branches of such trees from coming into contact or interfering with the wires and cables of the company. At the borough's option, such tree trimming may be done by the borough with the reasonable cost thereof to be paid by the company.
- G. The company shall, upon request of any person in possession of a building moving permit issued by the borough, temporarily raise or lower its wires to permit the moving of a building. The cost and expense for such temporary raising or lowering of wires shall be chargeable to the permit holder.
- H. Upon written request from the Borough Manager, the company shall supply to such Borough Manager: true and accurate maps or plats of all existing aerial and underground feeder lines, trunk lines, and sub-trunk lines, vaults, pedestals and manhole covers; and a list of educational and municipal buildings to which special services are being provided.
- I. Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code, Sixth Edition, as it is amended and/or revised, and in compliance with any applicable rules, regulations or orders in effect as issued by any federal or state commission or any other public authority having jurisdiction.

- J. All installations of equipment shall be durable, of a permanent nature, and installed in accordance with good engineering practices as outlined by the National Bureau of Standards, the American Institute of Electrical Engineers and the American Society of Mechanical Engineers. The company shall comply with all borough regulations, ordinances, and state and federal laws now existing or hereinafter enacted. Further, the company shall not interfere with the rights of the public or individual property owners and shall not unduly interfere with the travel upon and use of public places during the construction, repair and removal of the company's facilities.
- K. All structures, lines, equipment and connections in, over, under and/or upon the streets, sidewalks and other public ways and places of the borough, wherever situated, shall be kept and maintained at all times in a safe, suitable and substantial condition and in good order and repair.
- L. In the construction, conduct, maintenance, and operation of its business the company shall comply with all requirements of Borough ordinances, resolutions, laws, rules, regulations and specifications heretofore or hereafter enacted or established, including but not limited to those concerning street work, street excavation, use and removal and relocation of property within a street.
- M. The company shall not begin any construction, modification, replacement, removal or any major change whatever of its facilities in any public place without filing with the Borough Manager a plan of such work and receiving written approval therefor. This Subsection M does not apply, however, to actions taken by the company that are a normal part of operating and maintaining its service.

§ 105-5. Use of facilities by borough.

The company shall grant to the Borough, free of any cost or expense, joint use of any and all poles owned by the company. The borough shall pay to the company any make-ready and additional maintenance costs incurred as a result of the borough's use of these poles.

§ 105-6. Emergency use of facilities.

After the rebuild of the system [described in § 105-19C(1) below], the company shall incorporate emergency audio or alphanumeric override capabilities. Activation of this emergency override capability shall give the borough or other agent control of all channels for a limited period of time sufficient for the purpose of transmitting brief audio or alphanumeric information and instructions to viewers to turn to a borough access channel for detailed information on the emergency. Upon rebuild, the access channel will be available for transmission of an alphanumeric signal from a modulator (supplied by the company at no expense to the borough) and an alphanumeric character generator (provided by the borough) under the control of the borough.

§ 105-7. Company office.

The company shall maintain an office in the borough or within a fifteen-mile radius of the borough for the purpose of accepting payments by subscribers and exchanging converters. The company shall maintain a toll-free telephone number for the purpose of receiving inquiries and complaints from its subscribers and the general public.

§ 105-8. Charges to subscribers.

- A. Pursuant to the Act and FCC regulations, the borough does not now have the authority to regulate expanded service charges to subscribers. In the event that the

borough obtains the right under applicable law or regulation to regulate expanded service charges to subscribers, consistent with these laws and regulations, the borough may require that such charges be subject to borough approval.

- B. The company shall not subject any person to any prejudice or disadvantage, preference or advantage in connection with rates, charges, service facilities, rules or regulations. Nothing herein contained shall prohibit reduced rates for senior citizens or charitable institutions or other discounts allowable under law.
- C. Any change in rates by the company shall be preceded by at least thirty (30) days' written notice thereof to the borough. The company shall set forth in writing its billing practices and policies and shall furnish a copy thereof, and updated changes in such policies or practices as they occur, to the Borough Manager and to each subscriber.
- D. In the event that a subscriber's service is terminated, monthly charges for service shall be prorated on a daily basis to the date service was terminated.
- E. The company shall have the right to disconnect a subscriber for failure to pay an overdue account, provided that:
 - (1) The company billing practices and policies set forth conditions under which an account will be considered overdue;
 - (2) The company provides at least seven (7) days' written prior notice of the proposed disconnection and the reason therefor; and
 - (3) The subscriber's account is at least thirty (30) days delinquent.

§ 105-9. Transmission and maintenance standards and requirements.

The company shall:

- A. Promulgate and adhere to a preventative maintenance policy directed toward maximizing the reliability (mean time between malfunctions) and maintainability (based upon mean time to repair) of the system with respect to its delivery of service to subscribers.
- B. Upon request from the Borough Manager, submit to the borough copies of the most recent performance tests of the system submitted by the company to the FCC. The Borough shall have the right, at its expense, to employ consultants to conduct independent testing of system performance.
- C. For every service outage in excess of twenty-four (24) continuous hours, upon request from the affected subscriber(s), rebate a pro rata portion of the regular monthly charge to each subscriber so affected. The twenty-four-hour period shall commence at the time the company first becomes aware of the outage. For purposes of this subsection, loss of basic service or receipt of less than two-thirds ($\frac{2}{3}$) of the available channels shall be considered a service outage.
- D. Transmit signals of adequate strength to produce good pictures and good sound at all outlets without interfering with other electrical or electronic systems or equipment or with television reception of sets in the area not connected to the system.
- E. Have a local listed telephone so operated that requests for repairs or adjustments can be received at any time, twenty-four (24) hours a day, seven (7) days a week. Under normal circumstances, the company will respond within four (4) hours to any area outage and shall respond within twenty-four (24) hours to a no-picture call from any subscriber.

- F. Whenever it is necessary to interrupt service for the purpose of making repairs, adjustments or installations, do so at such times as will cause the least amount of inconvenience to subscribers. The company shall give reasonable notice to affected subscribers of all interruptions in service, unless unforeseen and immediately necessary.
- G. Keep a record of all written complaints and trouble calls received in connection with service to the borough's residents. Such records may be disposed of after three (3) years from the date of the complaint or trouble call giving rise to the record. The trouble call records will note the nature of the call, the remedial action taken and the period of time required to satisfy the reported complaint. Upon request from the Borough Manager, the company shall furnish to the borough copies of performance reports, financial reports or other relevant FCC filings.

§ 105-10. Franchise fee.

- A. The company shall pay to the borough a franchise fee in the amount of five percent (5%) of gross revenues. Payment shall be computed quarterly for the preceding three (3) months (or lesser period with respect to the first payment hereunder) as of March 31, June 30, September 30 and December 31 of each calendar year. Each payment shall be accompanied by a statement showing the factual basis for the computation of the fee.
- B. In addition, the company shall reimburse the borough for its publication and notification costs in connection with the establishment of any franchise and publication and notification costs incurred in the course of modification of the terms of any franchise. Payment shall be made within thirty (30) days after receipt of billing therefor.
- C. The company shall file with the borough within ninety (90) days of the expiration of any calendar year during

which a franchise is in force a financial summary report showing gross revenues as defined herein, certified on behalf of the company by a certified public accountant. The report shall contain assurance that the company is in compliance with the financial terms and provisions of this chapter.

- D. The company shall keep records of account showing payments and dates received. A duly authorized agent of the borough shall have the right to inspect and audit the current records of gross revenue of the company during normal business hours after two (2) weeks' written notice of the same is conveyed to the company. The borough shall have the right, at its own expense, to audit the records of gross revenue of the company for any annual period at any reasonable time within three (3) years after expiration of the subject annual period. If any such audit shows that the company has underpaid the franchise fee by five percent (5%) or more, the company shall reimburse the borough for the cost of such audit.
- E. No acceptance by the borough of any payment shall be construed as an accord that the payment is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim that the borough may have for further or additional sums payable under the provisions of this chapter.

§ 105-11. Change of ownership or control.

A thirty-day prior written notice to the borough and written approval by the borough shall be required for a change of ownership or control of the system, the franchise, system property or facilities which will leave the company unable to substantially perform its obligations hereunder, or any transfer in which direct or indirect ownership or control of fifty percent (50%) or more of the rights of control of the company or any parent company is acquired by one (1) or more persons who do not then own or control ten percent (10%) or more of such right of control singularly or collectively. In reviewing a request for

sale or transfer pursuant to this section, the borough may only inquire into the legal, technical and financial qualifications of the prospective controlling party. The borough shall not reasonably delay or withhold approval. Any pledge or collateralization of assets or stock of the cable system or transfer of assets or stock to a financial institution for refinancing purposes shall be excluded from the provisions of this section, but the exercise of any right to foreclose upon or seize such assets shall be included.

§ 105-12. Removal of facilities from subscriber's premises.

If a subscriber or the person in possession of a premises served by the system so requests, and only upon such request, the company shall promptly remove all of its overhead facilities and equipment from such subscriber's premises without charge. Any subscriber may terminate service pursuant to this section at any time.

§ 105-13. Removal of facilities from borough.

At the expiration of the term for which the franchise is granted or any extension thereof or upon its termination and cancellation as provided for herein, the borough shall have the right to require the company to remove at its own expense all aerial and underground portions of the system from all public ways within the borough. The Borough may deem abandoned any portion of the system not removed within twelve (12) months after expiration or termination of the franchise and may, as its sole option, assume title thereto or, with respect to aerial plant only, may remove such aerial plant at the company's expense.

§ 105-14. Offering of service.

The company shall furnish cable service to all locations in the borough which are capable of receiving service under normal

circumstances from the company's system plant. Service to any subscriber to be served by an aerial drop shall commence within ten (10) days after service is requested; sixty (60) days for underground service, under normal circumstances. Cable television service shall be provided to any subscriber who requests service and who is located within one hundred fifty (150) feet of the feeder cable at the regular installation charge. Subscribers located beyond one hundred fifty (150) feet from the feeder cable will be charged the regular installation fee plus the extra cost of labor and materials required to extend the drop beyond one hundred fifty (150) feet.

§ 105-15. Parental control.

The company shall make available at cost to any subscriber so requesting a parental-guidance or lockout device which will permit the subscriber to eliminate comprehensible reception of any or all of the pay cable channels. Such device may be part of a converter, remote control or similar equipment.

§ 105-16. Violation and termination of franchise.

- A. Notice of violation. Upon the Borough Manager serving the company with written notice that the company has failed to comply with any provision of this chapter, a twenty-day period shall begin to run, during which time company shall cure such violation. In the alternative, the company may, within ten (10) days of receiving such notice, notify the borough in writing that there is a dispute as to whether a violation has occurred. Such notice by the company to the borough shall specify the matters disputed by the company. The Borough Council shall then hear the company's dispute at the next regularly scheduled council meeting, if possible.
- B. Council hearing. If the dispute is not heard at the next regularly scheduled Council meeting no damages or other penalties shall accrue against the company during the period of time after the subject regularly scheduled

Council meeting and before the time the dispute is in fact heard by Council. The borough and the company shall bear their own costs and attorney's fees for such hearing. After the binding determination of Council at a hearing provided for in this subsection, the company may appeal a disputed matter to arbitration in accordance with the provisions of § 105-37.

C. Revocation procedures. In the event that the Borough determines that there has been a material breach or continuing violation of this chapter, or breach of any material provision of an applicable federal, state or local law, the borough may give the company notice of its intent to pursue revocation proceedings and make a written demand on the company that it remedy such breach or violation. If the violation, breach, failure, refusal or neglect is not remedied within thirty (30) days following such demand or within such other period as both parties mutually agree or if the company is not diligently working toward a cure or if the material violation, breach, failure, refusal or neglect by the company is not due to acts of God or other causes which result from circumstances beyond the company's control, the following process shall govern:

- (1) A public hearing shall be held before Council upon seven (7) days' written notice to the company of the time and the place of the hearing. The breach or violation giving rise to the hearing shall be set forth in such notice.
- (2) If after such hearing the borough determines there is a material or continuing violation, breach, failure, refusal or neglect, the borough shall direct the company to correct or remedy the same within such additional time, in such manner and upon such terms and conditions as the borough may direct.
- (3) If after such hearing the borough determines there was a material or continuing violation, breach, failure, refusal or neglect, then the borough may

declare, by resolution, the franchise previously granted to the company revoked and canceled and of no further force and effect unless there is compliance within such period as the borough may fix, such period not to be less than twenty (20) days.

- (4) The issue of revocation shall automatically be placed upon the Council agenda at the expiration of the time set by it for compliance. The borough then may terminate the franchise previously granted forthwith upon finding that the company has failed to achieve compliance or may further extend the period, in its discretion.
- (5) Upon expiration or termination of the term of the franchise the company shall remove, at its own expense, all aerial portions of the system from all public ways and places within the franchise area.

§ 105-17. Violations and penalties.

- A. If the company fails to observe any of its franchise obligations specified in this chapter, the borough may assess the company and the company agrees to pay to the borough a monetary penalty in accordance with the schedule set forth in Subsection F below. Such assessment shall not constitute a waiver by the borough of any other right or remedy it may have under the franchise or under applicable law, including without limitation, its rights to recover from the company and its sureties such additional damages, losses, costs and expenses as may have been suffered or incurred by the borough by reason or arising out of such breach of the franchise or this chapter.
- B. Upon the borough's assessing a penalty pursuant to Subsection A above, notice of such assessment shall be sent to the company with a concise reason for the statements therefor.

- C. Within ten (10) days after receipt of a notice pursuant to Subsection B, the company may request a hearing to be held before Borough Council pursuant to § 105-16 above.
- D. The company shall pay the full amount of any penalty within twenty (20) days after receipt of a notice pursuant to Subsection B; provided, however, that in the event that the company cures the subject violation within those twenty (20) days no penalty shall be imposed. If the company requests a hearing pursuant to Subsection C above, the company shall not be obligated to pay such penalty until a final determination of Council is rendered pursuant to § 105-16B above.
- E. Amounts received by the borough as penalties pursuant hereto may be used by the borough for any purpose.
- F. The following is a schedule of penalties:

Violation	Penalty
Failure to comply with § 105-4H	\$10.00 per day
Failure of the system to perform pursuant to § 105-6 during an emergency or public information situation	\$50.00 per occurrence
Failure to make payment of the franchise fee within 30 days of the specified time pursuant to § 105-10	1% of outstanding franchise fee due per day
Failure to reimburse the borough within the specified period pursuant to § 105-10B	\$25.00 per day
Failure to commence service within the specified time period pursuant to § 105-14	\$25.00 per day
Upon revocation of the franchise pursuant to § 105-16	Forfeiture of the performance bond
Failure to maintain insurance pursuant to § 105-18	\$50.00 per day
Failure to maintain the performance bond pursuant to § 105-18	\$25.00 per day

- G. The company shall not be deemed in violation of this chapter and shall be subject to no penalties pursuant to § 105-17 for any failure to perform by reason of act of God, labor dispute or other reason beyond the company's control.

§ 105-18. Indemnity; insurance; bond.

- A. The company shall pay, and by its acceptance of the franchise the company specifically agrees that it will pay, all damages and penalties which the borough may otherwise be required to pay as a result of the company's activities. These damages or penalties shall include, but not be limited to, damages arising out of copyright infringements and all other damages arising out of the installation, operation or maintenance of the system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this chapter.
- B. The company shall pay, and by its acceptance of the franchise specifically agrees that it will pay, all expenses incurred by the borough in defending itself with regard to all damages and penalties noted in Subsection A above. These expenses shall include all out-of-pocket expenses, such as attorney's fees, and shall also include, but not be limited to, the cost of any services rendered by the Borough Solicitor or any other employee of the borough only to the extent, however, that expenses are incurred above and beyond those expenses the borough would pay in normal course and which are directly attributable to the borough defending itself in connection with an action referenced in Subsection A of this section.
- C. Insurance.
- (1) The company shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain, throughout the terms of the franchise liability insurance insuring the borough and the

company with regard to all damages mentioned in Subsection A above, in the minimum amounts of:

- (a) General liability insurance, including motor vehicle, in the amounts of one million dollars (\$1,000,000.) per person, five million dollars (\$5,000,000.) per occurrence for bodily injury or death, and one million dollars (\$1,000,000.) property damage.
 - (b) Statutory workers' compensation insurance and employee liability insurance in the required amounts.
- (2) All policies of insurance shall list the borough as an additional insured and contain a provision stating that the subject policy shall not be terminated, expire or fail in any way to remain effective without sixty (60) days' prior written notice to the borough.

D. Bond.

- (1) The company shall maintain, and by its acceptance of the franchise specifically agrees that it will maintain, throughout the term of the franchise a faithful performance guaranty (in the form of a letter of credit, bond or cash) running to the benefit of the borough in a sum not to exceed ten thousand dollars (\$10,000.) to provide that the company shall well and truly observe, fulfill and perform each term and condition of this chapter and that, in case of any breach of condition of the franchise or this chapter, the amount thereof shall be recoverable from the principal surety thereof by the borough for all damages resulting from the failure of the company to well and faithfully observe and perform any provision of this chapter. The bond shall be in a form satisfactory to the Borough Solicitor. Whether a performance guaranty is required, and the amount thereof, shall be set forth in the franchise agreement by and between the company and the borough.

(2) Relief from the bonding provisions shall be exclusively within the discretion of this Borough Council.

- E. The insurance policies and bonds obtained by the company pursuant to subsections C and D above shall be with companies authorized to do business in the Commonwealth of Pennsylvania. Such insurance policies or acceptable evidence thereof, and bond, along with written evidence of payment of required premiums, shall be filed and maintained with the Borough Manager during the term of the franchise.
- F. All expenses of the above-noted insurance and bond shall be paid by the company.

§ 105-19. Service requirements.

- A. Upon the rebuild [described in Subsection C(1) below], the company shall provide each public, private and parochial school, fire station, public library and the borough hall with one (1) cable outlet and basic service without charge.
- B. Access channels.
 - (1) The company shall comply with the present and future rules and regulations of the FCC in connection with or relating to the operation of its system and shall provide a minimum service offering as follows:
 - (a) Local governmental and emergency access channel. The company shall maintain at least one (1) specifically designated, noncommercial local government and emergency access channel.
 - (b) Educational access channel. The company shall maintain at least one (1) specifically designated channel for use by the North Penn School District, the borough or their designees.

- (2) The company may use the access channels during any periods in which they are not used for access purposes, provided that access use shall have priority at all times.

C. Channel capacity.

- (1) The company shall agree that within thirty-six (36) months from the date of this chapter, it will rebuild its current facilities within the borough or establish a new system so as to provide minimum channel capacity of seventy-seven (77) television channels. This rebuild will entail a hybrid plant consisting of fiber optic and coaxial cables which will have the capability of providing seventy-seven (77) channels through a cable plant of five hundred fifty (550) megahertz (mhz).
- (2) All construction shall be performed in a professional and workmanlike manner and will be in accordance with all specifications of the National Electrical Code. The National Electrical Safety Code and other applicable federal and state codes governing the operation, construction, maintenance and repair of a cable system.
- (3) The company shall additionally agree to meet or exceed the technical standards set forth in 47 CFR 76.601 of the FCC Rules and Regulations.

D. The company shall make available to borough residents portable cameras for the purpose of taping local access programming. All equipment will be available on a first-come, first-serve basis. The company will make available training on the proper use of said equipment and reserves the right to deny use unless residents attend a training class on proper equipment use.

§ 105-20. Equal opportunity.

The company shall not hire or refuse to hire or employ nor bar or discharge from employment nor discriminate for or against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin or sex. The company shall not deny service or access or otherwise discriminate against subscribers, programmers or other persons in violation of the Constitution of either the United States or the Commonwealth of Pennsylvania.

§ 105-21. Extension of franchise.

Notwithstanding any other provision of the franchise, in the event of expiration, revocation or termination of the franchise, the borough may, in consultation with the company, nevertheless extend the term thereof beyond such termination, revocation or expiration date for such period of time, not to exceed two (2) years, as the borough may specify by giving the company such notice as is reasonable in the circumstances. In the event of any such extension, the company shall continue to operate its system in accordance with all the provisions of the franchise.

§ 105-22. Identification of vehicles and employees.

The company shall take all reasonable measures to ensure that all of its vehicles and employees are clearly identified to the general public as being associated with the company.

§ 105-23. Court and regulatory agency reports and filings.

Upon request the company shall submit to the borough copies of all pleadings, applications, reports, communications and documents of any kind, except tax returns, submitted by the company to any federal, state or local court, regulatory agency and any other governmental body relating to the company's

cable television operations hereunder which directly involve the franchise or system within a reasonable period of time after request is made. Further, upon request, the company shall submit to the borough copies of all decisions, correspondence and action by any federal, state or local court, regulatory agency and any other governmental body relating to its cable television operations hereunder which directly involve the franchise or system within a reasonable period of time.

§ 105-24. Rights of borough.

- A. The right is hereby reserved to the borough to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power.
- B. Upon request, the borough shall have the right to inspect the books, records, maps, plans, audited financial reports and any other like materials of the company pertaining to the system, at any time during normal business hours, provided that two (2) weeks' notice of such inspection is given to the company. Such inspection shall take place at the company's local, regional business office, and the company shall have a reasonable period of time within which to bring such local office any requested material kept at other locations.
- C. The borough shall have the right to inspect all construction or installation work performed subject to the provisions of this chapter or the franchise and make such inspections as it shall find necessary to ensure compliance with the terms of the franchise and other pertinent provisions of law, including but not limited to the Act.

§ 105-25. System security; tampering; penalty.

The company shall have the right at all times to take any and all legal action it deems necessary to preserve the security of its system and to assure appropriate use thereof by its subscribers. In addition to the foregoing rights reserved to the company, any person who willfully or maliciously damages or causes to be damaged any wire, cable conduit, apparatus or equipment of the company or who taps, tampers with or connects any wire or device to a wire, cable, conduit or equipment of the company with intent to obtain a signal or impulse therefrom without authorization of the company shall, for each and every violation, upon conviction thereof, be subject to a fine or penalty of up to three hundred dollars (\$300.) for each and every offense. Prosecution of any offenses charged hereunder shall be the responsibility of the company.

§ 105-26. Cable Television Advisory Board.

- A. The Borough Council may establish an Advisory Board for Cable Television to be appointed by the Council of the borough.
- B. The Cable Television Advisory Board (the "Board") shall be composed of three (3) members appointed by Borough Council who shall be residents of the borough and shall serve for terms of three (3) years, and the initial term of another member shall be for only two (2) years, so as to ultimately provide for appointment to a three-year term to occur in each successive year. Any vacancy shall be filled by the Council by appointment for the remainder of the term. No employee or person with ownership interest in any cable television franchise granted pursuant to this chapter shall be eligible for membership on the Board. The Board shall annually elect one (1) of its members to serve as Chairperson. Action of the board shall require a vote of three (3) of its members. A company may appoint an ex officio, but nonvoting, member of the Board. The Board shall have the following functions:

- (1) To advise the borough on applications for franchise and on franchise renewals.
- (2) To advise the borough on matters which might be grounds for revocation of the franchise or imposition of penalties in accordance with this chapter.
- (3) To assist in the resolution and disagreements among and between the company, subscribers and/or public or private users of the system.
- (4) To advise the borough in respect to rates, to policy relating to the services provided to subscribers and to the operation and use of public channels and to the availability of channel time for lease or payable programs and business users of informational programming.
- (5) To cooperate with other systems.
- (6) To audit all company records as required by this chapter and, at the board's discretion, require preparation and filing of information additional to that required herein, such additional information to be directly relevant to the company's operation under this franchise.
- (7) To make an annual report to the borough, including the account of franchise fees received and distributed, the total number of hours of utilization of public channels and hourly subtotals for various programming categories, and to review of any plans submitted during the year by the company for development of new services.
- (8) To conduct an evaluation of the system at least every three (3) years, in consultation with the company and utilizing technical consultants if necessary, and pursuant thereto to make recommendations to the Borough for amendments to this chapter.

- (9) To review and make recommendations for any revision of insurance and bond limits.
- (10) To promote and develop the best use by the community of the cable television and communication services offered in the borough.
- (11) To study, review and make recommendations for the purchase of equipment necessary to utilize the local and government access channels.
- (12) To develop ideas for local programming on the local access channel.
- (13) To make recommendations to the North Wales Borough Council for specific programs, and, upon authorization by the North Wales Borough Council, to produce such programming for the public access channel.

C. A company representative shall be given reasonable notice of all Board meetings.

§ 105-27. Effect of other controls; severability.

If any provision of the franchise is held by any court or federal or state agency of competent jurisdiction to be invalid as conflicting with any federal or state law, rule or regulation, now or hereafter in effect, or as held by any such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation (collectively the "law"), said provision shall be considered as a separate, distinct and independent part of the franchise, and such holding shall not affect the validity and enforceability of other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof which had been held invalid or modified is no longer in conflict with the laws then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto.

§ 105-28. Interpretation of provisions; nonliability.

It is fully understood that the borough shall not be liable for any cost of any kind incurred by the company resulting from any portion of this chapter's being held invalid, unauthorized or unconstitutional, nor shall the borough be obligated to litigate the validity of the franchise unless the cost thereof shall first be guaranteed by the company in a manner satisfactory to the Council.

§ 105-29. Effective date.

The rights granted to the company shall become effective upon the execution of a franchise agreement between the borough and the company, binding both parties to comply with the provisions of this chapter.

§ 105-30. Emergency power.

Upon rebuild pursuant to § 105-19C(1)(a), the CATV system shall incorporate equipment capable of providing standby powering of the head end for a minimum of four (4) hours upon failure of the power furnished by the utility company.

§ 105-31. Subscriber lists.

The company shall not make available the names or addresses of any or all of its subscribers to any third party except in accordance with federal law.

§ 105-32. Drop connections.

Insofar as practicable, the company shall adhere to the subscriber's desire with regard to point of entry and inside routing of the drop connection into and through the structure in possession of the subscriber.

§ 105-33. Delegation of authority by borough.

The borough may delegate to any borough official, employee, agency, board or commission the authority to exercise any of the borough's rights and authorities hereunder.

§ 105-34. AB switch.

The company shall furnish to each subscriber so requesting, at cost, a switch permitting the subscriber to change from cable reception to home antenna reception and back at the subscriber's option. The company may require such subscribers to have the home antenna properly grounded, at the subscriber's expense.

§ 105-35. Complaint policy.

The company shall comply with all FCC requirements for reporting and resolving subscriber complaints.

§ 105-36. New technology.

- A. In furtherance of the general policy that the services provided be innovative and modern, a grantee will actively pursue a continuous policy of incorporating new technical developments into the system, insofar as is technically and economically viable as determined by the company.
- B. To facilitate this policy and to achieve a continuing, advanced, modern system:
 - (1) The Council may hold a regular review hearing within thirty (30) days of the third anniversary date of the execution of the franchise. Subsequent review hearings shall be scheduled every third year. All such review hearings shall be open to the public, and notice shall be given by advertisement twice in a newspaper of general circulation at least one (1)

week before each session. In addition, the company shall announce the date and time of each such session on each of at least five (5) days immediately preceding each session at a minimum of six (6) regularly scheduled intervals daily on a channel on the cable system.

- (2) Topics for discussion and review at both the regular and special review hearings shall include, but shall not be limited to, services, application of new technologies, system performance, services provided, programming and subscriber complaints. Either the borough or the company may select additional topics for discussion at any regular or special review hearing.

§ 105-37. Arbitration.

If the company exercises its option to require arbitration pursuant to any of the provisions of the franchise, its notice exercising such option shall include the name of one (1) arbitrator appointed by the company. The borough shall appoint one arbitrator and notify the company thereof within fourteen (14) days after receipt of such notice from the company. The two (2) arbitrators thus selected shall select a third arbitrator or, failing agreement within thirty (30) days, shall request the American Arbitration Association (AAA) to appoint the third arbitrator. Hearings shall be conducted and a decision reached as expeditiously as possible and shall be conducted in accordance with AAA rules. Each party shall be responsible for the costs of its arbitrator and one-half ($\frac{1}{2}$) the costs of the third arbitrator.

§ 105-38. Remedies of law; injunction.

The Borough Solicitor may institute proceedings in law or equity before the appropriate tribunal (including, but not limited to, the Court of Common Pleas of Montgomery County) for the purpose of obtaining judgment against the company and

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collecting any fine or penalty hereby imposed; and/or enjoining any violation or potential violation of this chapter. Any such violation shall be conclusively presumed to be of immediate and irreparable harm to the citizens of the borough.