CHAPTER 13

LICENSES, PERMITS AND GENERAL BUSINESS REGULATIONS

Part 1

**Community Antenna Television Supplier**

§**101. Grant of Licensee/Purpose.** White Deer Township, Union County, Pennsylvania, may grant a nonexclusive license to construct, maintain and operate a System within the Township for the purpose of supplementing and complementing the programs and signals of local television and radio stations to any person, firm or corporation offering to construct, maintain and operate such System, under and pursuant to the terms and provisions of this Ordinance.

 **§102. Definitions.** For the purposes of this Part, the following terms, phrases, word abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural include the singular and words in the singular include the plural. The word “shall” is always mandatory and not merely directory.

 CABLE TELEVISION SERVICE — means the one way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection of such video programming or other programming service, sometimes herein referred to as Service.

 CABLE TELEVISION SYSTEM (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 Television Service which includes video programming and which is provided to multiple Subscribers within the Township, but such term does not include: (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any Public Rights-of-Way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621 (c) of the Cable Act) 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; (4) an open video system that complies with federal law; or (5) any facilities of any electric utility used solely for operating its electric utility system.

 LICENSE AREA — means the entire territorial limits of the Township and any area annexed during the Term.

 GROSS REVENUES — shall mean all monthly service revenues received from Subscribers in the License Area by Licensee from the operation of its System for the provision of Cable Television Service within the Township. Gross Revenues shall not include refunds to Subscribers, uncollectable accounts or taxes on Services furnished by Licensee which are imposed directly upon any Subscriber or user by the local or other governmental unit and collected by Licensee on behalf of such governmental unit.

 LICENSEE — shall mean persons, firms, or corporations to whom or which a license under this part is granted by Supervisors.

 PERSON — shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

 SERVICE INTERRUPTION — means any loss of picture or sound on one or more Channels on the System, or the degradation of the picture and/or sound quality on such Channels to the extent that the Subscriber is unable to use the signals.

 SYSTEM OUTAGE — means a Service Interruption affecting more than 10 Subscribers.

 STREET — shall mean the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, sidewalk, parkway, or right of way drive, now or hereinafter existing as such, within the Township

 SUBSCRIBER — shall mean an authorized recipient lawfully receiving Cable Television Service.

 SUPERVISORS - shall mean the Board of Supervisors of White Deer Township, Union County, Pennsylvania.

 TOWNSHIP - shall mean the Township of White Deer, Union County, Pennsylvania.

 **§103. Duration of License.** Any license granted by Township under this Part shall be for a term of five (5) years from the effective date of the grant of license. Township may grant renewal periods. Any such license may be terminated prior to its date of expiration by the Township only as provided for herein.

 (1) Renewals. At the termination of any term Township may renew the license for an additional term of five (5) years provided Licensee is in full compliance with the provisions of this Part, all applicable Township, Commonwealth of Pennsylvania and Federal laws, statutes, regulations and rules and the provisions of the Agreement hereinafter provided for between Township and Licensee.

 (2) Termination. Any license granted pursuant to this Part may be terminated prior to its date of expiration by the Township if (i) Licensee materially violates the provisions of this Part or any Township, Commonwealth of Pennsylvania or Federal law, statute, regulation or rule or the provisions of the Agreement hereinafter provided for between Township and Licensee or becomes insolvent, unable or unwilling to pay the debts or is adjudicated bankrupt.  The following procedures shall be applicable:

 (a) Prior to termination of the License, Township shall give Licensee written notice of its intent to terminate identifying the nature of the breach with reasonable specificity and advising Licensee of its intent to terminate which shall be served by certified mail return receipt requested or by some other means that provides written receipt of the service of said notice.

 (b) Licensee shall, within fifteen (15) days of the receipt of said notice, either cure such failure or advise Township in writing that it contests the termination or state that such failure shall be cured and set forth the method and time for accomplishing such cure, the same to be delivered in the manner provided for delivery of the notice.

 (c) Where Licensee satisfactorily corrects any of the enumerated conditions, within the said fifteen (15) days referred to in Section 103(b) (ii) hereof, then in no event shall the enumerated condition be weighed against Licensee in any subsequent review of its performance.

 (d) In the event Licensee proposes to cure the failure under such terms and methods as is satisfactory to Township and does cure the failure in accordance with said terms and methods then in no event shall the enumerated conditions be weighed against Licensee in any subsequent review of its performance.

 (e) In the event Licensee fails to cure the failure or fails to contest the termination within the fifteen (15) days provided for herein hereof or in accordance with the terms and methods provided for herein Licensee shall be in violation of the terms of this Part.

 (f) In the event Licensee contests the termination Township shall, within ten (10) days of receipt of the notice that Licensee is contesting the termination, set a hearing date to take testimony in the matter, said hearing date shall not be less than forty (40) days or more than fifty-five (55) days from the date that Licensee advised Township that it was contesting the termination. Township shall notify Licensee, in writing, of the date, place and time of the hearing in the same manner as provided in Section 103(b)(i) hereof. The hearing shall be open to the public and notice of the same shall be advertised and posted in accordance with the notice requirements for adoption of a non-land use ordinance by the Township. Licensee may present such testimony and other evidence, the same to be relevant, as it desires. The public may also present testimony and other evidence related to the matter. The said hearing shall be conducted by the Township Board of Supervisors. The hearing may be adjourned and reconvened as the Township shall direct.

 (g) Within fifteen (15) days of the conclusion of the hearing the Board of Supervisors shall make a decision with regard to the matter. Said decision shall be in writing, made at a public meeting and shall be delivered to Licensee in the manner set forth in herein. In the event the Board of Supervisors determines that a violation of this Ordinance has occurred it may direct the termination of the License if the violation is not corrected within such time as the Board of Supervisors shall determine to be reasonable. In making a decision the Board of Supervisors shall consider circumstances beyond the control of Licensee and if it shall determine that the violation occurred as a result of matters beyond the control of Licensee then it shall determine that there was no violation.

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 **§104. Area of Operation.**

 (1) The Licensee shall have the right to construct, operate and maintain, in, on, along, across, above, over and under the Streets, as herein defined, of the Township, poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the Township of a System at such locations as are reasonably suitable and convenient for the purposes of Licensee and the Township, subject to the lawful exercise of the police power heretofore or hereafter granted to the Township by the General Assembly.

 (2) Licensee shall make service available to all residences located within the Township in which the density of homes is at least 30 per cable mile, provided, however, that this requirement may be waived by Township if it is satisfied that it is not technologically possible to make service available to all residences in the Township.

 (3) Licensee shall, upon request, make basic service available to all commercial establishments located within 300 feet of its feeder cable at the expense of such commercial establishments.

 (4) Township may exempt Licensee from providing service to areas of the Township for good cause.

 **§105. Work Within Streets and Rights-of-Way.**

 (1) The installation, repair, maintenance, replacement or improvement of the System within any Street or public lands shall be in compliance with all Township, Commonwealth of Pennsylvania and Federal Laws, statutes, regulations, rules and ordinances.

 (2) Licensee shall not trim, cut or remove any tree, shrub or bush from any Street, unless prior written notice of this intention so to do is given to the Township, except in. cases of emergency or when such requirement is waived by the Township in writing. Licensee shall have the right to trim and keep clear of its poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the Township of a System, the trees in and along the Streets of the Township. In the exercise of such right, Licensee shall not cut or otherwise injure said tree, shrub or bush to any greater extent than is reasonably necessary.

 (3) Licensee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. All structures and all lines, equipment and connections in, over, under and upon the Streets of the Township, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

 (4) Licensee shall install and maintain its wire, cables, fixtures and other equipment in accordance with the requirements of any pertinent subdivision restriction, and the applicable section of the National Electric Safety Code as revised from time to time, and in such manner which shall not interfere with any installations of the Township or any Authority or of any public utility serving the Township.

 (5) Licensee 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 or raising or lowering of wires shall be paid by the Person requesting the same, and Licensee shall have the authority to require such payment in advance. Licensee shall be given not less than thirty (30) business days’ advance notice to arrange for such temporary wire changes.

 (6) The Township shall have the right to inspect all construction or installation work performed in, over, under and upon the Streets of the Township subject to the provisions of this Part and make such inspections as it shall find necessary to insure compliance with the terms of this Part and other pertinent provisions of law.

 (7) Where electric and telephone utility wiring is installed underground at the time of Cable System construction, all Cable System lines or wiring shall also be placed underground on a nondiscriminatory basis with other wire line service. In areas where electric or telephone utility wiring is aerial, the Licensee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. Notwithstanding anything herein to the contrary Licensee shall comply with all laws, ordinances and regulations of the Township, the Commonwealth of Pennsylvania or United States of America.

 (8) Licensee will, at its expense, protect, support, temporarily disconnect or relocate in the same Street, any property of Licensee when required by Township or the Commonwealth of Pennsylvania by reason of traffic conditions, public safety, street closing or abandonment, highway or street construction, change or establishment of street grade, installation of sewer drains, water pipes, power lines, signal lines, or any other types of structures or improvements; and the Township will not be liable for any disturbance of Licensee’s installation resulting therefrom.

 (9) All transmission and distribution structures, lines, and equipment erected by Licensee within the Township will be so located as to cause minimum interference with the proper use of Streets and to cause minimum interference with the rights and reasonable convenience of owners of property adjacent to the same.

 **§106. Construction.**

 (1) All equipment of Licensee installed, operated or utilized pursuant to the license shall be durable, maintained in proper working order and shall be in compliance with industry standards, all electric codes and all laws, statutes, regulations, rules and ordinances.

 (2) Construction, installation and maintenance of the System shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the Township following accepted construction procedures and practices and working through existing committees and organizations.

 (3) All cable and wire installed above ground shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering consideration.

 (4) Licensee will not intentionally interfere with television reception of Persons not served by it, nor will the System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the Township.

 **§****107. Signal Quality.** Licensee will use its best efforts to:

 (1) Produce a picture that is undistorted and accompanied with proper sound on typical standard television sets in good repair, and in compliance with FCC technical standards.

 (2) Transmit signals of adequate strength to produce good pictures and good sound at all outlets without causing cross modulation in the cables.

 (3) Limit failures to a minimum by locating and correcting malfunctions promptly, except in the event that any malfunction is beyond the control of Licensee.

 (4) If requested by Township, demonstrate by instruments and otherwise that a signal of adequate strength and quality is being delivered.

 (5) Make available upon request by any Subscriber, a lockout device which prevents the viewing of unwanted channels. Licensee shall not be precluded from making a reasonable charge for such services.

 **§****108. Operations.**

 (1) Licensee will render efficient Service, make repairs promptly, and interrupt Service only for good cause and for the shortest time possible. Licensee will use reasonable efforts to assure that such interruptions will occur during periods of minimum use.

 (2) Licensee shall be equipped to respond to System Outages within two hours and to respond to complaints regarding Service Interruptions within twenty—four (24) hours, except in the event of circumstances beyond its control. Those conditions that are not within the control of the Licensee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions.  Licensee shall, in writing, inform each Subscriber of the manner in which service complaints are to be made and resolved and that the office of the Township should be contacted in the event complaints are not resolved by it.

 (3) Licensee shall comply with all Federal Communications Commission rules and regulations, both present and future.

 (4) Licensee shall provide, upon request, one connection and basic service to each public school, fire and police station located within 300 feet of an existing service line situated in the Township upon request of the Township and at no cost to it or any other agency of the Township or the school district or the fire or police station, provided the same is technologically possible.

 (5) The system, as installed, shall be capable of passing color standard TV signals without the introduction of noticeable effects on color fidelity and intelligence.

 (6) The system and all equipment shall be designated and rated for 24 hours per day continuous operation.

 **§****109. Indemnification and Insurance.**

 (1) Licensee shall indemnify and hold Township harmless from any and all liability, damages, penalties, actions, causes of action or charges arising out of or in connection with the installation, operation, maintenance, replacement or improvement of Licensee’s System for which the Township has granted a license. The Township shall give the Licensee timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding covered by this indemnity.  In the event any such claim arises, the Township or any other indemnified party shall tender the defense thereof to the Licensee and the Licensee shall have the right and duty to accept the tender and thereafter to defend, settle or compromise any claims arising hereunder and the Township shall cooperate fully therein.

 (2) Licensee shall, at all times, during the existence of any License issued hereunder, furnish to the Township and maintain in full force and effect at its own cost and expense, a general comprehensive liability insurance policy, in protection of the Township, its officers, boards, commissions, agents and employees, from a recognized company authorized to do business in Pennsylvania and in a form satisfactory to the Township Solicitor protecting against the injury, death and property damage, occasioned by the construction, maintenance or operation of Licensee under such license, with minimum liability limits of one million dollars ($1,000,000.00) for personal injury or death of any one person and two million dollars ($2,000,000.00) for personal injury or death of two (2) or more persons in any one occurrence and five hundred thousand dollars ($500,000.00) for damage to property suffered by any one person and one million dollars ($1,000,000.00) as to any one occurrence.

 (3) The said insurance policy or policies mentioned in the foregoing paragraph shall name the Township, its officers, boards, commissions, agents and employees, as additional insureds and shall contain a provision that a written notice of any cancellation or reduction in coverage of said policy shall be delivered to the Township, thirty (30) days in advance of the effective date thereof.

 (4) No license granted under this Part shall be effective unless and until each of the foregoing policies of insurance as required have been delivered to the Township.

 **§110. Fees.** Licensee shall pay to the Township a fee of 3% of the Gross Revenues. The fee shall be paid to the Township quarterly within 15 days of the end of a quarter. Quarters shall end on the last days of March, June, September, and December. The fee paid for each quarter shall be based upon the Gross Revenues from each quarter. The fee shall be accompanied by a report verified by the Licensee’s chief financial officer.

 **§111. Records and Receipts.**

 (1) Copies of all petitions, applications and communications submitted by Licensee to the Federal Communications Commission, Securities and Exchange Commission or any other Federal or State Regulatory Commission having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to this Part shall be submitted to the Township upon request.

 (2) The Township shall have the right to inspect such books, records, maps, plans, proof of performance tests, and other like materials of Licensee which are directly related to Licensee’s license and are reasonably necessary to monitor its compliance with this Ordinance at a location in the Township during normal business hours upon not less than fourteen days prior written notice specifying those records to be examined and the reason therefore.

 (3) Licensee shall maintain maps and plats of the System and shall update these maps and plats to reflect changes in the system, copies of which shall be furnished to the Township, upon request and at no cost to the Township, annually on or before the February l of each year.

 **§112. Transfer.** Licensee shall not transfer a license issued pursuant hereto to another Person, except to a company controlling, controlled by or under common control with Licensee, without prior written approval of the Township.

 **§113. Force Majeure.** With respect to any provision of this Part or any license granted pursuant hereto, the violation or noncompliance which could result in the imposition of a financial penalty, forfeiture or other sanction upon a Licensee, such violation or noncompliance shall be excused where such violation or noncompliance is the result of Acts of God, war, civil disturbance, strike or other labor unrest, or similar events, the occurrence of which was not reasonably foreseeable by Licensee and is beyond its reasonable control.

 **§114. Agreement.** As a condition for issuance of a license, Applicant shall enter into a written agreement with Township in such form as Township shall determine setting forth the terms under which the license shall be issued.

 **§115. Abandonment.** In the event that the use of any part or all of the System is discontinued for any reason, for a continuous period of twelve (12) months, or in the event such System has been installed in any Street without complying with the requirements of the license, or the license has been terminated, cancelled or expired, the Licensee shall promptly, upon being given notice, remove from the Streets all such property and poles of the System other than any which the Supervisors may permit to be abandoned in place, and shall also remove house distribution cables and connections. In the event of any such removal, the Licensee shall promptly restore the Street from which the System has been removed to a condition satisfactory to the Supervisors or the homeowner.

 **§116. Penalty.** Any person, firm, corporation, partnership, or entity who shall violate the provisions of this Part shall, upon conviction thereof in an action brought before a District Justice in the same manner as provided for the enforcement of a summary offense under the Pennsylvania Rules of Criminal Procedure shall be sentenced to pay a fine not to exceed one thousand dollars ($1,000.00) per violation and *I* or imprisonment to the extent allowed by law for the punishment of summary offenses. Each day or portion thereof that a violation shall occur shall be a separate offense.

 Notwithstanding anything herein to the contrary the provisions of this Part may be enforced through an action in equity brought before the Court of Common Pleas of Union County.

 **§117. Application.** All ordinances or parts of ordinances conflicting with any of the provisions of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

 **§118. Confidentiality.** Subject to the limits of applicable law, Township shall treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent Licensee makes Township aware, whether verbally or in writing of such confidentiality. If Township believes it must release any such confidential books and records in the course of enforcing this Ordinance, or for any other reason, it shall advise Licensee in advance. If Township receives a demand from any Person for disclosure of any information designated by Licensee as confidential, Township shall, so far as consistent with applicable law, advise Licensee and provide Licensee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, Township shall, to the extent permitted by state and federal law, deny access to any of Licensee's books and records that are deemed to be confidential as set forth above to any Person.

 (Ordinance No. 1, adopted April 29, 2004)