

## ORDINANCE No. 94-5

AN ORDINANCE GRANTING A FRANCHISE TO ADAMS CATV, INC. DOING BUSINESS AS ADAMS CATV, INC., HIS SUCCESSORS AND ASSIGNS, TO OWN, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE BOROUGH OF HOP BOTTOM: SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE: AND PROVIDING FOR REGULATIONS AND USE OF SAID SYSTEM BY SAID BOROUGH.

**SECTION 1. Short Title.** This Ordinance shall be known and may be cited as the HOP BOTTOM CABLE TELEVISION FRANCHISE ORDINANCE.

**SECTION 2. Definition.** For the purpose of this Ordinance the following terms, phrases, words 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 number include the singular number, and words in the singular number, include the plural number. The word "shall" is always mandatory and not merely directory.

BOROUGH - Is the Borough of Hop Bottom in the State of Pennsylvania.

COUNCIL - The Borough Council of the Borough of Hop Bottom.

"COMPANY" - The grantee of rights under this Ordinance awarding a franchise, known as ADAMS CATV, INC.

"FCC" - The Federal Communications Commission, Washington D.C. 20554.

PERSON - Any person, firm, partnership, association, corporation, company or organization of any kind.

CABLE TELEVISION SYSTEM or CATV SYSTEM - A system of antennas, cables, wires, lines, towers, waveguides, or any other conductors, converters, equipment or facilities by which the signals of one or more television or radio stations or other types of programming are received directly or indirectly, over the air or by other means and are amplified or otherwise modified and distributed primarily by wire or cable to subscribing members of the public who pay for such service.

GROSS SUBSCRIBER REVENUES - Only those revenues derived from the installation fees, disconnect and reconnect fees, and the monthly service fees paid by subscribers for regular cable television including the transmission of broadcast signals and access and originations channels, if any.

As specified by the Federal Communications Commission (FCC), gross subscriber revenues shall not include any revenues derived from reimbursement of expenses in the operation of any access channels; advertising, leasing of cable channels, programs for which per-channel or per-program charges are made, furnishing other communications and non-broadcast services either directly or as a carrier for another party, or any other income derived from the system.

**SECTION 3. Qualifications of Grantee and Grant of Authority.**

Having conducted a public proceeding pursuant to public notice concerning the Company's application for the franchise herein granted, which proceeding afforded all interested parties an opportunity to participate in and comment upon, the legal, character, financial, technical and other qualifications of the Company and the adequacy and feasibility of its arrangements for the construction of a cable television system in the Borough, the Council hereby finds that the Company possesses all necessary qualifications and that its construction arrangements are adequate and feasible; pursuant to the franchise right and privilege to construct, erect, operate, modify and maintain in, upon, along, across, above, over and under the highways, streets, alleys, sidewalks, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the Borough, all poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a Cable Television System for the purpose of distributing to the public television and radio signals, other electronic impulses in order to furnish television and radio programs, and any other lawful communications or electronic services. The right so granted includes the right to use and occupy said streets, alleys, public ways, and public places and all manner of easements for the purposes herein set forth.

**SECTION 4. Liability and Indemnification.** The said Company shall at all times maintain its facilities in a safe and orderly manner and shall indemnify and save harmless the Borough for any liability or injury to persons or property due to, or caused by the operation or maintenance of the aforesaid cable system and shall likewise carry liability and property damage insurance to be approved by the Mayor and Members of Council of the aforesaid Borough. The said insurance shall contain a clause wherein any action or any lawsuit wherein the Borough is a Defendant as a result of any injury to persons or property resulting from the television cable system that the insurance carrier will defend any and all lawsuits brought against or wherein the Borough is a Defendant. \$300,000.00 Property Damage, \$500,000.00 Bodily Injury.

The Company shall assume all legal responsibility for any injury to persons or property resulting from the operation of the cable television system.

**SECTION 5. Complaint Procedures.** The Borough and the Company have adopted procedures for the investigation and resolution of all complaints concerning cable television operations in the Borough. The Company shall maintain a non-toll telephone call system for receiving inquiries or complaints regarding cable television operations. All complaints and inquiries will be investigated, responded to or acted upon as promptly as is practical, and unless circumstances otherwise require, within three business days of their receipt. The Company shall by appropriate means, such as a card, or brochure, as subscribers are connected or reconnected to the system, furnish information about the procedures for making inquiries and/or complaints, that is, the name, address and local phone number of the Company employee or agent, and of the Borough's agent to whom such inquiries or complaints may be directed.

The Borough accepts primary responsibility for the continuing administration of this franchise and implementation of these complaint procedures and its agent to receive inquiries or complaints about the Company's operations. The above complaint procedures may be supplemented or amended as deemed necessary during the term of this franchise by regulations adopted by the Borough, and the Company.

**SECTION 6. Condition on Road Occupancy.**

(1) The Company may enter into one or more contracts with the Telephone Company or the owner or lessee of any poles located within the Borough of Hop Bottom to whatever extent such contract or contracts may be expedient and of advantage to Company in furnishing the service, covered by this Franchise to its customers.

(2) The Company's system, poles, wires, and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the Borough may deem proper to make, or hinder unnecessarily or obstruct the free use of streets, alleys, bridges, or public property.

**SECTION 7. Change of Ownership.** Should the Company sell, assign or transfer its system or any right under this franchise to another, written notice of such sale, assignment or transfer shall be given to the Borough, not less than thirty (30) days prior thereto and shall be conditioned upon the vendee, assignee or transferee filing with the Borough an instrument duly executed, reciting the fact of such sale, assignment or transfer, and containing an acceptance of the terms of this franchise and agreeing to perform all requirements thereof.

**SECTION 8. Payments to the Borough.** The Company shall annually pay the Borough 3% "gross subscriber revenues" as defined herein. Should a similar fee payment be required by any state agency now or subsequently charged with the regulation of cable television, the fee provided for herein and the fee payable to said agency when added together, shall not exceed the maximum amount permitted by applicable federal law, rules or regulations. The Company shall furnish the Borough with quarterly reports showing the Company's "gross subscriber revenues" during the preceding year and such further information as the Borough may reasonable require to determine the extent of the Company's "gross subscriber revenues". Any financial information submitted to the Borough by the Company pursuant hereto shall be treated as Confidential by the Borough and not disclosed to the public.

**SECTION 9. Procedures for Inquiries and Proceedings Initiated by the Council.** The Council shall initiate any inquiries, proceeding, investigation or other action concerning the Company's operation of the Cable Television System or concerning any other matter regarding the provision of cable television service in the Borough by giving public notice of the proceeding or action proposed in a local daily or weekly newspaper having general circulation in the Borough; a copy of the notice shall be serviced directly on the Company. The Company shall be given at least fifteen days to respond in writing and/or at hearing, as may be specified by the Council.

The public notice required by this section shall state clearly the action proposed to be taken, the time provided for response and the person or persons in authority to whom responses should be addressed, and such other procedures as may be specified by the Council. If a hearing is to be held, the notice shall state whether or not public participation is contemplated or required and establish the procedures for such participation. The Company shall be a necessary party to any hearing conducted in regard to its operations or any other hearing concerning the provision of cable television service in the borough.

**SECTION 10. Franchise Term.** The franchise granted the Company herein shall terminate 15 years from date of grant, subject to renewal for a period of fifteen years duration on the same terms as may be lawfully specified by the Council, and as are consistent with the requirements of the FCC. No renewal hereof shall be granted unless authorized by the Council following an appropriate public proceeding involving public notice and an opportunity for interested parties to participate, during which proceeding the Company's past performance, the adequacy of the franchise's provisions, and the consistency of those provisions with applicable F.C.C. Rules have been considered.

**SECTION 11. Construction Schedule.** The Borough recognizes that the Company presently provides service substantially throughout the entire area of the Borough. The Company shall continue to provide such service throughout the term of this Franchise.

**SECTION 12. Modification of F.C.C. Rules.** Consistent with the requirements of F.C.C. Rule 76.31, any modification or amendment thereof by the F.C.C. shall, to the extent applicable be considered to be part of this franchise as of the effective date of such amendment, and shall be incorporated herein by specific amendments hereto within one (1) year from the effective date of the F.C.C.'s amendment or at the time of renewal of this franchise whichever occurs first.

**SECTION 13. Separability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court or other authority of competent jurisdiction, or is inconsistent with any federal or state law, regulation or policy such section shall be deemed a separate, distinct, and independent provision, severed herefrom, and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 14. Ordinance Repealed.** All prior ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed.

BE IT FURTHER ORDAINED that this Ordinance take effect from the date it shall have been duly passed by the Council, and become effective as otherwise provided by law.

ENACTED AND ORDAINED into law by the Hop Bottom Borough Council this 16<sup>th</sup> day of December, 1994.

ATTEST

Terence H. Isaac  
SECRETARY

NOTARY SEAL  
[Signature]  
NOTARY

HOP BOTTOM BOROUGH  
Lance M. Benedict  
MAYOR

Charles M. Zolletsky  
PRESIDENT

Dan V. Adams V.P.  
OFFICIAL SIGNATURE-ADAMS CATV