

**WEST PIKELAND TOWNSHIP  
CHESTER COUNTY PENNSYLVANIA**

**ORDINANCE NO. 2005- 204**

**THE MUNICIPALITY OF WEST PIKELAND TOWNSHIP  
CHESTER COUNTY, PENNSYLVANIA**

AN ORDINANCE DELETING IN ITS ENTIRETY  
ORDINANCE OF 1984 OF THE CODE OF THE  
TOWNSHIP OF WEST PIKELAND, AS AMENDED, AND  
REPLACING ORDINANCE OF 1984 AS FOLLOWS TO  
SET FORTH DETAILED REGULATIONS REGARDING  
THE TERMS AND CONDITIONS UNDER WHICH THE  
TOWNSHIP MAY GRANT NON-EXCLUSIVE,  
REVOCABLE CABLE FRANCHISES

BE IT AND IT IS HEREBY ENACTED AND ORDAINED by the Board of  
Supervisors of the Township of West Pikeland, Chester County, Pennsylvania as follows:

1.The Cable Ordinance of 1984, as amended, is deleted in its entirety and  
replaced with the following:

**Section 1. Title.**

This chapter shall be known and may be cited as the “West Pikeland  
Township Cable Television Ordinance.”

**Section 2. Application required.**

Upon application duly made, the Township of West Pikeland may  
grant the right to erect, maintain and operate cable television transmission and distribution  
facilities and additions thereof in, under, over, along, across and upon the streets, lanes,  
avenues, sidewalks, alleys and other public places in the Township of West Pikeland  
(hereinafter referred to as the "Township") and subsequent additions thereof, for the  
purpose of transmission and distribution of audio and visual impulses and television energy  
in accordance with the laws and regulations of the United States of America, of the  
Commonwealth of Pennsylvania and of the Township. The Township may promulgate a  
form for the making of application pursuant hereto, and in the event that such a form is  
promulgated, then application shall be made only on such form. Any right granted pursuant  
to this chapter shall be conditioned on the faithful performance and observance of the  
conditions, regulations and reservations herein specified and shall further be conditioned  
upon the prompt payments of the amounts provided for herein.

Notwithstanding any other provisions or terms of this Chapter, and  
to the extent permitted by federal or state law, the Township shall apply the requirements

of this Chapter to similarly situated users or occupiers of the streets, lanes, avenues, sidewalks, alleys and other public places in the Township.

### **Section 3. Definitions.**

Whenever used in this chapter, the following terms shall have the meanings indicated:

CABLE SERVICE -- The one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, or as cable service is otherwise now or hereafter defined by applicable state or federal law or regulation.

### **Section 4. Poles; fees; tree trimming; service required.**

A. To the extent possible, all facilities erected, maintained or operated pursuant to this chapter shall be attached to poles already in existence in the Township. To the extent that existing poles are insufficient for the purposes hereof, or if anyone being granted the right hereunder (hereinafter referred to as "Licensee") is unable to negotiate agreements satisfactory to the Licensee providing for use of existing poles, the Licensee shall have the right to erect and maintain its own poles as necessary for the construction and maintenance of its television distribution system, with the approval of locating such poles by the Township Engineer; provided, however, that the approval of the Township Engineer shall not be granted for the installation of such poles when, in the professional opinion of the Township Engineer, the installation of such new transmission facilities underground is feasible, considering engineering criteria only, and provided further that all residential areas of the Township which are served by underground electrical utilities shall be served only by underground transmission and distribution facilities. Otherwise, the approval of the Township Engineer shall not be unreasonably held.

B. The Licensee shall have the right, authority, power and privilege to attach any of its system facilities to any existing or future poles, towers or other electrical facilities owned by the Township in a manner which will not interfere with the use of such poles, towers and other electrical facilities by the Township, provided that no such attachment shall take place unless 72 hours' prior notice has been given to the Township and the Township has failed to object to such attachment. The Township shall not unreasonably object to any such attachment.

C. The Licensee shall pay to the Township an annual fee for each pole utilized by the Licensee owned by the Township which fee shall not be less than

\$1.50 per pole. If the Licensee shall negotiate a contract with other entities for the use of their poles, then the annual fee payable hereunder shall be the same as the fee payable pursuant to such negotiated contracts, but not less than the minimum as aforesaid.

D. In the event that the Licensee negotiates a contract fee per year per pole with other entities, providing for different fees to each of those entities, the annual fee per pole payable to the Township for each pole owned by the Township and utilized by the Licensee shall be the higher of the two negotiated contract fees, subject to the minimum as aforesaid.

E. In the event that the Licensee does not negotiate an agreement for the use of the poles of other entities, the fee payable by the Licensee to the Township shall be the minimum as aforesaid, an annual fee of \$1.50 for each pole owned by the Township and utilized by the Licensee. In the event that a Licensee shall use a pole for less than a full year, then the charge for such pole shall be prorated from the day when the use of the pole began.

F. The Township hereby states its desire that all holders of public licenses and franchises within the corporate limits of the Township shall cooperate with every Licensee hereunder to allow usage of existing poles and pole line facilities wherever possible and wherever such usage does not interfere with the normal operation of said pole and pole line so that the number of new or additional poles constructed in the Township shall be minimized.

G. Each Licensee shall extend to the Township, free of any expense, joint use of any and all poles owned by any Licensee for any proper municipal purpose insofar as may be accomplished without interference with the use and enjoyment of the Licensee's own or other pre-existing wires and fixtures. The Township shall hold each Licensee harmless from any and all action, causes of action or damage caused by any action of the Township in placing wires or appurtenances upon the poles of the Licensee.

H. Insofar as it is within the power of the Township to grant the following right, the approval of any application made hereunder shall grant to the Licensee whose application is approved the authority to trim trees upon and overhanging all streets, alleys, easements, sidewalks and other public places within the Township, so as to prevent the branches of such trees from coming into contact with the facilities of the Licensee.

I. The Township shall condition approval of any application, either at the time application is made or at the time of renewal application, upon the Licensee making Cable Service available to all areas of the Township that have a density of at least 35 dwelling units per mile of extension from the Licensee's then-existing cable distribution facilities.

J. Each Licensee shall provide to subscribers a diversity of programming services. Any system installed, constructed, upgraded or reconstructed shall be materially equivalent to that provided to other municipalities served by the Licensee within the County of Chester.

K. Use of channel capacity for public, educational and governmental ("PEG") access shall be provided by Licensee in accordance with the Cable Communications Policy Act ("Cable Act"), as amended, at Section 611, and as further set forth below. Upon written request of the Township, the Licensee shall non-exclusively reserve for non-commercial educational and governmental uses, without charge, a minimum of two channels for PEG use, delivering a signal the technical quality of which is equivalent to the technical quality of other channels on the system. Licensee and the Township may evaluate from time to time the need for provision of additional PEG access channels. When additional PEG access channels are deemed necessary by agreement between the Township and the Licensee after an evaluation, the Licensee shall reserve the same for PEG use. Nothing herein shall require the Township to offer any programming described herein unless the Township so authorizes. Further, nothing herein shall require the Licensee to provide more than the use of two channels for non-commercial PEG programming absent agreement between the Township and the Licensee. Nothing in this Ordinance or any prior franchise agreement is or was intended to confer third-party beneficiary status of any member of the public to enforce the terms of this ordinance or a franchise granted to the Licensee.

Because blank or underutilized PEG channels are not in the public interest, in the event the Township elects to not fully program the channel(s), Licensee may program unused time on those channels in accordance with the Cable Act, subject to reclamation by the Township upon no less than sixty (60) days notice.

Licensee does not relinquish its ownership of or ultimate right of control over a channel location by designating it for PEG use. A PEG access user - whether an individual, educational or government user - acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use.

L. Licensee shall provide free basic and standard Cable Service and free installation at a minimum of one outlet to each Township owned or leased building designed for occupation and located within the Township, as well as all Township accessory buildings or structures, if said accessory buildings or structures are within one hundred fifty (150) feet of the primary Township building. Licensee shall provide the Township with one complimentary high speed internet connection and service at one

Township building as selected by the Township.

Licensee shall further provide free basic and standard Cable Service and free installation at a minimum of one outlet to any fire department, police department, ambulance service, or public library located within the Township and within one hundred twenty-five (125) feet of the Licensee's distribution line.

In addition, the Licensee shall provide free basic and standard Cable Service and free installation at one outlet to (a) each public K-12 school and (b) each non-public K-12 school that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended, not including "home schools," located within the Township and within one hundred twenty-five (125) feet of the Licensee's distribution line.

M. Licensee shall meet or exceed customer service standards as set forth in Part 76 of the FCC regulations, 76 C.F.R. § 76.309, as amended, and any other applicable FCC customer service standards or requirements.

#### **Section 5. Interference; maintenance.**

A. All structures, lines and equipment erected by any Licensee within the Township shall be located so as to minimize or eliminate, if possible, interference with the use of streets, alleys, easements and other public ways and places and with the rights and reasonable convenience of property owners, and each Licensee shall comply with all ordinances of the Township now or hereafter in force.

B. In case of any disturbance of pavement, sidewalk, driveway or other surface, the Licensee shall, at its own expense and in a manner approved by the Township, remove, replace and restore all pavement, sidewalk, driveway or surface so disturbed to as good condition as before any such disturbance.

C. In the event that the Township shall at any time lawfully elect to alter or change any street, alley or other public way requiring the relocation of any of the facilities of any Licensee, upon reasonable notice, the Licensee shall remove and relocate any such facilities at the Licensee's own expense.

D. Whenever it shall be necessary for any Licensee to raise or lower its lines to permit the moving of any building or other structure, the Licensee shall accomplish the same upon the request of any person lawfully entitled to move such building or other structure. The actual expense of raising or lowering or temporarily removing the Licensee's lines shall be paid by the person requesting the same, and the Licensee shall have the right to require payment in advance of the reasonably estimated

cost of such raising, lowering or temporary removal. If it shall be necessary for Township purposes and shall be done at the request of the Township, then such raising, lowering or temporary removal shall be accomplished by the Licensee at no charge to the Township.

- E. All poles, lines, structures and other facilities of the Licensee in, on, over or under the streets, sidewalks, alleys, easements and other public grounds or places within the Township shall be maintained at all times by the Licensee in a safe and appropriate condition.

#### **Section 6. Compliance with regulations.**

A. Nothing herein contained shall be deemed to render any Licensee a public utility except as may be otherwise provided by the laws of the Commonwealth of Pennsylvania.

B. Each Licensee shall maintain and operate its system and render service in accordance with this Chapter and any grant of franchise or license authorized herein.

C. Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, installations or adjustments, the Licensee shall do so at such time as will cause the least amount of inconvenience to its customers, consistent with the needs and requirements of the Licensee.

D. Each Licensee shall maintain a customer service telephone number, which shall be toll free to the caller for calls originating from within West Pikeland Township, for the purposes of receiving inquiries and complaints from the Licensee's customers and from the general public. Each Licensee shall provide sufficient maintenance personnel to respond to routine service calls during normal business hours, seven days per week, except in the case of major outages due to storms, civil unrest or acts of God. Upon written request, each Licensee shall report to the Township Manager of West Pikeland Township as to compliance with Part 76 of the FCC regulations, 76 C.F.R. § 76.309, as amended, and any other applicable FCC customer service standards or requirements.

**Section 7. Insurance required; claims.**

Throughout the term of any franchise agreement granted under this Ordinance, the Licensee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance and provide the Township with certificates of insurance designating the Township and its officers, boards, commissions, councils, elected officials, agents and employees as additional insureds and demonstrating that the Licensee has obtained the insurance required in this section.

Such policy or policies shall be in the minimum amount of One Million Dollars (\$1,000,000) for bodily injury or death to any one person, One Million Dollars (\$1,000,000) for bodily injury or death of any two or more persons resulting from one occurrence, and One Million Dollars (\$1,000,000) from property damage resulting from any one accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice of the Township. The Licensee shall provide workers' compensation coverage in accordance with applicable law.

**Section 8. Subscriber to pay compensation.**

The Licensee shall have the right to charge and collect compensation from all subscribers to whom it shall furnish service, but the Licensee shall not, as to rate, charges, service, facilities, rules and regulations or any other respect, make or grant any preference or advantage to any person or subject any person to any prejudice or disadvantage, but nothing herein contained shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules, provided that the classification of customers shall be reasonable and any customer coming within a particular classification shall be entitled to the same rates as any other customer coming within that classification. Rates shall be the same for all classifications of customers served by the Licensee from similar facilities. Nothing herein contained shall prevent any Licensee from providing a preferential rate or free service to the Township or for any public purpose.

**Section 9. Effective time for rights granted to Licensee.**

Rights granted to any Licensee hereunder shall take effect and be in full force from and after the date upon which each application is approved by the Township. The length of franchise awarded to Licensee shall not exceed fifteen (15) years. Renewal rights shall be controlled by the Cable Act or other applicable law.

**Section 10. Noncompliance by Licensee.**

A. In the event the Township believes that the Licensee has not complied with the material terms of this Ordinance, it shall notify the Licensee in writing

with specific details regarding the exact nature of the alleged noncompliance or default. The Licensee shall have sixty (60) days from the receipt of the Township's written notice: (A) to respond to the Township, contesting the assertion of noncompliance or default; or (B) to cure such default; or (C) in the event that, by nature of the default, such default cannot be cured within the sixty (60) day period, initiate reasonable steps to remedy such default and notify the Township of the steps being taken and the projected date that they will be completed.

B. In the event of alleged noncompliance or default that the Township asserts is grounds for revocation of the Licensee's rights to operate under a grant of license, and Licensee fails to respond to the Township's notice or the alleged default is not remedied within sixty (60) days or the date projected by the Licensee, the Township shall schedule a public hearing to investigate the noncompliance and determine whether revocation of the license is warranted. Such public hearing shall be held at the next regularly scheduled meeting of the Township that is scheduled at a time that is no less than ten (10) business days therefrom. The Township shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard. The decision of the Township shall be in writing and shall be delivered to the Licensee by certified mail. The Licensee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Township "de novo" and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Township.

C. In addition to any other remedy available under this Ordinance, any Person who shall violate any material provision of this Ordinance shall, upon conviction thereof, pay a fine of not more than \$300.00 for each offense, together with the reasonable cost of prosecution so long as such costs are permitted by law, which fin may be collected by suit or summary proceedings brought in the name of the Township before any District Justice. Every day that a violation of this Ordinance continues shall constitute a separate offense, however no additional fines shall be imposed after a period of thirty (30) days from initial notice and imposition of fine, and assessment of penalties pursuant to this section shall be tolled upon initiation by either party of any legal proceeding related to enforcement of this Ordinance. After prior written notice from the Township setting forth with specificity the violation of the Ordinance, Licensee shall be afforded a sixty (60) day period to cure or commence to cure the violation or violations prior to imposition of fines or penalties. All fines and penalties collected for the violation of this Ordinance shall be paid to the Township treasury.

#### **Section 11. Indemnification.**

A Licensee shall, at its sole cost and expense, indemnify, hold



harmless, and defend the Township, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its system, the conduct of Licensee's business in the Township, or in any way arising out of the Licensee's enjoyment or exercise of a franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Ordinance or a franchise agreement, provided that the Township shall give the Licensee written notice of its obligation to indemnify and defend the Township within ten (10) business days of receipt of a claim or action pursuant to this Section. This provision includes, but is not limited to, the Township's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding. If the Licensee fully undertakes and does in fact indemnify and defend the Township, but the Township nonetheless determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Township.

**Section 12. Payments to the Township by Licensee; recordkeeping.**

A. Each Licensee shall pay to the Township a franchise fee in an amount no less than five percent (5%) of the Licensee's gross annual revenues calculated in accordance with Generally Accepted Accounting Principles (GAAP) and derived by the Licensee from the provision of monthly basic, standard, premium, pay-per-view, video-on-demand, and digital cable or similar services or programming provided as Cable Service in the Township, installation fees, subscriber equipment rental fees, revenues from home shopping or similar channels, and advertising revenues attributable to Cable Service in the Township (prorated on the basis of the proportion of the number of subscribers within the Township to the total number of subscribers served by the Licensee's system); or if the Township elects in its discretion, any other percentage of gross revenues up to the maximum amount permitted under applicable federal law. In the event the Township elects to change the franchise fee permitted herein, it shall do so not more than once in a calendar year, and upon sixty (60) day written notice to the Licensee.

B. The franchise fee is in addition to all other taxes and payments that the Licensee may be required to pay under any federal, state, or local law and to any other tax, fee, or assessment imposed by Licensee for use of their services, facilities or equipment.

C. Payment of the franchise fee shall not be considered in the nature of a tax.

D. No acceptance of any payment by the Township shall be construed as a release or an accord and satisfaction of any claim the Township may have

for further or additional sums payable as a franchise fee under this Ordinance or for the performance of any other obligation of the Licensee.

E. In the event any franchise fee payment or recomputation amount is not made on or before the date specified herein, Licensee shall pay interest charges computed from such due date, at an annual rate equal to five percent (5%).

F. The franchise fee shall be paid quarterly to the Township and shall commence as of the effective date of the franchise, unless otherwise agreed in the franchise agreement. The Township shall be furnished at the time of each payment with a statement verified by a representative of the Licensee showing the calculation of franchise fees in accordance with GAAP and based on gross revenues received from the operation of the system to provide Cable Service in the Township. Quarterly payments shall be made to the Township no later than 45 days of March 30, June 30, September 30, and within 60 days of December 31. Quarterly computation dates are the last days of the months of March, June, September and December.

G. The Township shall have the right to inspect and copy the Licensee's records (subject to reasonable proprietary limitations) and the right to audit and to recompute any amounts determined to be payable under this Ordinance for a period of three (3) years from the date of payment. Audits shall be at the expense of the Township unless the audit discloses an underpayment in excess of five percent (5%), in which case the costs of the audit shall be borne by the Licensee as a cost incidental to the enforcement of the Licensee.

H. Upon the completion of any such audit by the Township, the Township shall provide to the Licensee a final report setting forth the Township's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Licensee shall have thirty (30) days from the receipt of the report to provide the Township with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Final Settlement Amount." For purposes of this Section, the term "Final Settlement Amount(s)" shall mean the agreed upon underpayment, if any, to the Township by the Licensee as a result of any such audit. If the parties cannot agree on a Final Settlement Amount, the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

I. Any Final Settlement Amount(s) due to the Township as a result of such audit shall be paid to the Township by the Licensee within thirty (30) days from the date the parties agree upon the Final Settlement Amount. Once the parties agree

upon a Final Settlement Amount and such amount is paid by the Licensee, the Township shall have no further rights to audit or challenge the payment for that period.

**Section 13. Exclusive rights prohibited.**

Nothing herein contained shall be deemed to render any right granted hereunder to be exclusive to any Licensee.

**Section 14. Transfer or assignment of rights; Severability; Repealer; and Effective Date.**

Neither the Licensee or any other person may transfer the cable system or the franchise without the prior written consent of the Township, which consent shall not be unreasonably withheld or delayed. No change in control of the Licensee, defined as an acquisition of fifty (50) percent or greater ownership interest in Licensee, shall take place without the prior written consent of the Township, which consent shall not be unreasonably withheld or delayed. No such consent shall be required however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, interest of the Licensee in the franchise or in the cable system in order to secure indebtedness, or (ii) a transfer to any entity owned and/or controlled by Licensee or Licensee's parent company. Within thirty (30) days of receiving a request for transfer, the Township shall, in accordance with FCC rules and regulations, notify the Licensee in writing of the information it requires to determine the legal, financial and technical qualifications of the transferee.

2. If any sentence, clause, section 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, sentences, clauses, sections or parts hereof. It is hereby declared the intent of the West Pikeland Township Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

3. All Ordinances and Resolutions, or parts of Ordinances and Resolutions conflicting with any provisions of this Ordinance are hereby repealed.

4. This Ordinance shall become effective five (5) days after adoption.

ENACTED AND ORDAINED this 18<sup>th</sup> day of July, 2005.

West Pikeland Township  
Board of Supervisors

By: \_\_\_\_\_  
Harold Hallman III

By: \_\_\_\_\_  
Linda Glaum

By: \_\_\_\_\_  
William Cracas

Attest:

\_\_\_\_\_  
Norman J. Long, Township Manager

Date: June 20, 2005