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TELEVISION AND CABLE SERVICES – CHAPTER 120

CHAPTER 120.
Television and Cable Services

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[HISTORY: An Ordinance of Waymart Borough adopted on September 2, 2003 as Ordinance No. 2003-2.]

§ 120-01. Short Title.

This Ordinance shall be known and may be cited as the "Waymart Borough Cable Television System Franchise Ordinance".

§ 120-02. Definitions.

For the purposes 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

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number include the plural number. The word "shall" is always mandatory and not merely directory.

- A. "Borough" is the Borough of Waymart in the State of Pennsylvania.
- B. "Council" is the Borough Council of the Borough of Waymart.
- C. "Company" is the grantee of rights under this ordinance awarding a franchise to South Canaan Telephone Company, Wayne County, Pennsylvania.
- D. "FCC" is the Federal Communications Commission, Washington, D.C. 20554.
- E. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- F. "Cable television system" or "CATV system" shall mean 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 are received directly, or indirectly, over the air and are amplified or otherwise modified and distributed primarily by wire or cable to subscribing numbers of the public who pay for such service.
- G. "Gross Subscriber Revenues" shall mean 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 origination channels, if any. As specified by the Federal Communications Commission (FCC) gross subscriber revenues shall not include any revenue 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 channels 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.

§ 120-03. 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 such finding, the Council hereby grants the Company a nonexclusive 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, cable, underground conduits, manholes and other television conductors and fixtures necessary, for the maintenance and operation of a cable television system for the purpose of distribution to the public television and radio signals, other electronic impulses in order to furnish television and radio programs, and various communications and other electronic services.

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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.

A. Service Standards.

- (1) Company shall, during the continuance of this ordinance and franchise agreement, provide facilities and services sufficient to meet the needs of the public welfare and shall maintain its facilities and services up-to-date and in keeping with technical progress.
- (2) Company shall maintain and operate its cable system and render sufficient services in accordance with the rules and regulations as are or in the future may be set forth by the Federal Communications Commission, state government, federal government or any authorized agencies thereof. The Borough shall maintain all authorized police power.
- (3) The cable system shall be installed and maintained in accordance with good engineering practices, and any spurious electromagnetic radiation must fall within the limits specified by the Federal Communications Commission.
- (4) Any interference caused by the cable systems to television sets not part of the system shall be immediately addressed by the Company and a suitable filter or other satisfactory device that will remove a problem is available, it shall be provided to the resident in question. All construction must be done in a good and workmanlike manner, free of obvious defects that may be a hazard to life and limb and in conformance with the standards set forth in the national Electric Safety Code.
- (5) The location of the cable system, including antenna site, towers, poles and associate equipment, shall be chosen with due regard for highest technical performance with aeronautical safety considerations and shall be subject to standards established by the FCC, FAA or other government agencies having jurisdiction over matters addressed in this subsection.

B. Continuous Service. Company's service shall be continuous daily during the regular telecast operation hours of the stations and cable networks whose broadcasts are being transmitted.

C. Interference. Company shall at all times operate the cable system so as not to adversely affect or interfere with existing radio and television reception and shall prevent radiation from Company's cable system to antennas located in the Borough. In this regard, Company shall operate the cable system in compliance with FCC standards.

§ 120-04. Removal of Cable System and Equipment.

Subject to federal and state law, Company shall remove or cause to be removed from the streets, alleys and public ways of the Borough and from all public property all of the cable system, wires, poles, installations and other of Company's equipment of any kind or nature whatsoever which had been installed under the authority of this ordinance and franchise agreement, cessation of operations under this ordinance and franchise agreement by Company or its successors and assigns or the forfeiture or revocation of this permission under any of the provisions of this ordinance and franchise agreement, for any reason whatsoever.

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§ 120-05. Liability and Indemnification.

The Company shall pay and by its acceptance of this franchise, the Company expressly agrees that it will pay, all damages and penalties which Borough may legally be required to pay as a result of Company's negligence in the installation, operation or maintenance of the cable television's system authorized herein. The Borough shall notify Company's representative within fifteen (15) days after the presentation of any claim or demand to the Borough, either by suit or otherwise, made against the Borough on account of any negligence as aforesaid on the part of the company.

The Company shall, for the full term of this Ordinance, carry and pay the cost of the following liability insurance in support of its undertaking to hold the Borough harmless from loss sustained by either on account of the negligence of the Company, in at least the amounts indicated below for injury to or death of persons and injury to or destruction of property:

- A. \$200,000 for property damage to any one person;
- B. \$500,000 for property damage in any one accident;
- C. \$500,000 for personal injury to any one person;
- D. \$1,000,000 for personal injury in any one accident.

Said insurance shall designate the Borough as an additional insured.

The Company shall comply with all the provisions of the Workmen's Compensation Law of the State of Pennsylvania.

The Company generally need not maintain a performance bond in favor of the Borough. It is recognized that the costs associated with such bonds and other surety may ultimately be borne by the subscribers in the form of increased rates for cable services. In order to minimize such costs, the Borough will only require bonds and other surety in such amounts and during such times as there is a reasonably demonstrated need therefor.

Except as otherwise provided herein, the Borough agrees that in no event shall it require a bond or other related surety in an aggregate amount greater than ten thousand (\$10,000) dollars, conditioned upon the substantial performance of the material terms, covenants and conditions of this Ordinance and franchise agreement. In the event that a bond or surety is required in the future, the Borough agrees to give Company at least sixty (60) days prior notice thereof stating the exact reason of the requirement. such reasons must demonstrate a change in the Company's legal, financial or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the franchise or afford compliance therewith.

§ 120-06. Local Office or Agent and Complaint Procedures.

The Company shall maintain a local business office or agent within or in close proximity to the Borough,

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for receiving, via a non-toll telephone call, inquiries or complaints regarding quality of service, equipment malfunctions, billing disputes and similar matters. Inquiries or complaints shall be received during normal business hours, 9:00 a.m. to 5:00 p.m., Monday through Friday. 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 telephone number of the company employee or agent and of the Borough's agent to whom such inquiries or complaints may be directed. The Company shall maintain a maintenance service log indicating the date and time complaints are received and resolved, and the nature of the complaint and resolution. This log shall be made available for reasonable inspection by the Borough.

The Borough appoints its Borough Secretary as the official with primary responsibility for the continuing administration of this franchise and implement 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.

§ 120-07. Condition on Road Occupancy.

- A. The Company may enter into one or more contracts with the light, gas and water or telephone company or the owner or lessee of any poles located within the Borough to whatever extent such contract or contracts may be expedient and of advantage to the Company in furnishing the service covered by this franchise to its customers.
- B. 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. The Company shall, at all times, comply with all applicable line and pole maintenance safety procedures, as well as other pertinent FCC or other Federal, State and Local regulations, laws and requirements.

§ 120-08. 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 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.

§ 120-09. Payments to the Borough.

The Company shall annually pay the Borough 5% of "Gross Subscriber Revenues" as defined herein. Should a similar fee payment be required by any State agency now or subsequently charged with the

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regulation of cable television, the fee provided for herein and the fee payable to said State agency when added together, shall not exceed the maximum amount permitted by applicable federal law, rules or regulations. The Company's annual "Gross Subscriber Revenues" during the preceding year and such other information as the Borough may reasonably require with respect to properties and expenses related to the Company's services. 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.

§ 120-10. Records and Reports.

The Company shall keep full, true, accurate and current books of account reflecting its investment and its operations under this franchise, which books and records shall at all reasonable times be made available for inspection and copying by the Borough Secretary or his authorized representative. The Company's books and records shall be treated as confidential by the Borough and shall not be disclosed to the public.

§ 120-11. Rates.

The Company's rates for services to residential customers shall be set and regulated by Borough Council to the extent such is permitted and in accordance with applicable FCC or other Federal and State regulations. Services for which charges are permitted are restricted to initial installation, monthly service, installation of additional outlets and monthly services for more than one outlet. No changes in the rates charged to subscribers shall be made except as authorized by council pursuant to a resolution of Council after an appropriate public proceeding affording interested parties due process. A certified copy of said resolution shall be on file with the Borough Secretary and a copy shall be attached to the ordinance, and a copy shall be sent to the Company.

§ 120-12. Procedures for Inquiries and Proceedings Initiated by the Council.

- A. The Council shall initiate any inquiries, proceedings, investigation or other action concerning the Company's operation of the cable television system 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 served directly on the Company. The Company shall be given at least fifteen (15) days to respond in writing and/or at hearing, as may be specified by the Council.
- B. 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 procedure for such participation. The Company shall be a necessary party to any hearing conducted in regard to its operations.

§ 120-13. Franchise Term.

The franchise granted the Company herein shall terminate five (5) years from date of grant, subject to renewal for a period of five (5) years' duration on the same terms or conditions as contained herein, or on such different or additional terms and conditions 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

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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 FCC rules have been considered.

§ 120-14. Construction Schedule.

Within one (1) year from the date the FCC grants the Company a certificate of compliance authorizing cable television operations in the Borough, the Company shall accomplish a significant construction of its cable television system. It shall thereafter reasonably and equitably make cable service available to twenty percent (20%) of the Borough each year, until service is available throughout the Borough. Additional time to complete construction may be granted by Council for good cause shown upon request of the Company.

§ 120-15. Line Extensions.

It shall be the obligation of Company to offer service throughout the Borough except to the extent that density of homes, adverse terrain or other factors render such service technically unfeasible or economically non-compensatory. To provide for a reasonable policy requiring extension of energized trunk lines of the CATV system within the Borough so as to achieve compliance with the obligations imposed by this section, Company shall extend such lines to all areas of the Borough having a minimum density of ten (10) homes each linear street mile of such plant.

§ 120-16. Modification of FCC Rules.

Consistent with the requirement of FCC Rule 76.31, any modification or amendment thereof by the FCC 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 FCC's amendment or at the time of renewal of this franchise, whichever occurs first.

§ 120-17. Borough Not Responsible.

The granting of permission under this ordinance and franchise agreement shall not be construed as any undertaking or guarantee of the efficiency of Company or maintenance of the service of Company. The Borough assumes no other responsibility for the acts or omissions of Company other than to require compliance with this ordinance and franchise agreement.

§ 120-18. Notice of Violation

In the event the Council believes that the Company has not complied with the terms of the franchise, it shall notify Company of the exact nature of the alleged noncompliance.

§ 120-19. Company's Right to Cure or Respond.

Company shall have thirty (30) days from receipt of the notice described in Section 84 to respond to the Council, contesting the assertion of noncompliance or to cure such default or, in the event that, by

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nature of the default, such default cannot be cured within the thirty-day period, initiate reasonable steps to remedy such default and notify the Council of the steps being taken and the projected date that they will be completed.

§ 120-20. Public Hearing.

In the event that Company fails to respond to the notice described in Section 18 pursuant to the procedure set forth in Section 19, or in the event that the alleged default is not remedied within sixty (60) days after the Company is notified of the alleged default pursuant to Section 18, the Council shall schedule a public meeting to investigate the default. In the event that a special meeting is not scheduled for such purposes, such public meeting shall be held at the next regularly scheduled meeting of the Council. The Council shall notify the Company of the time and place of such meeting and provide the Company with an opportunity to be heard.

§ 120-21. Enforcement.

Subject to applicable federal and state law, in the event the Council, after such meeting, determines that Company is in default of any provision of the franchise, the Council may:

- A. Foreclose on all or part of any security provided under this franchise, if any, including, -without limitation, any bonds or other surety; provided, however, that the foreclosure shall only be in such manner and in such amount as the Council reasonably determines is necessary to remedy the default.
- B. Commence an action at law for monetary damages or seek other equitable relief.
- C. In the case of a substantial default of a material provision of the franchise, declare the ordinance and franchise agreement to be revoked, except interia alia, that Company shall nevertheless comply with Section 4.
- D. Seek specific performance of any provision.
- E. Seek any other legal or equitable remedies as may be available to the Council.

§ 120-22. Acts of God.

The Company shall not be held in default or noncompliance with the provisions of this Ordinance and franchise agreement, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages or other events reasonably beyond Company's ability to control.

§ 120-23. Preemption.

If the FCC or any other Federal or State body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of this ordinance and franchise agreement, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the Council, the jurisdiction of the Council shall cease and no longer exist.

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§ 120-24. Notice.

Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Council or Company shall be in writing and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope, by certified or registered mail, postage prepaid, at a post office or branch thereof regularly maintained by the United States Postal Service. The notices or responses to the Council shall be addressed as follows: Borough Secretary, P.O. Box 280, Waymart, Pennsylvania 18472, with a copy to: Borough Solicitor, P.O. Box 329, Waymart, Pennsylvania 18472. The notices or responses to the Company shall be addressed as follows:

§ 120-25. Descriptive Headings.

The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

§ 120-26. Severability.

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.

§ 120-27. Compliance with Applicable Laws and Ordinances.

Company shall at all times be subject to all lawful exercise of the police power by the Borough and to such reasonable regulations as the Borough shall, by resolution or ordinance, provide from time to time. In addition, Company shall be subject to any and all regulations either presently in effect or which shall become so in the future either by the Federal Communications Commission, the Pennsylvania Public Utility Commission, or any other State or Federal regulatory or governmental body.

§ 120-28. Publication Costs.

Company shall assume the initial costs of publication of this ordinance and franchise agreement, as such publication is required by law. Bills for publication costs shall be presented to Company by the Borough Secretary, which bills shall be paid within forty-five (45) days after receipt of the same by Company.

§ 120-29. Acceptance and Default.

The grant of permission in this ordinance and franchise agreement is made upon the express condition that Company, within forty-five (45) days after this Ordinance and franchise agreement is passed by vote of the Borough Council, shall file with the Secretary of the Borough a written acceptance of the same and, when this ordinance and franchise agreement shall have been accepted by Company, such ordinance and franchise agreement shall constitute a contract between the Borough and Company for

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all the uses, services and purposes set forth in this ordinance and franchise agreement. In the event that Company fails to file said written acceptance within the time herein, Company shall be considered in default, and this franchise, together with any rights or liabilities arising out of the proposal hereto made for the furnishing of the cable system for the benefit of the inhabitants of the Borough and acceptance of such proposal by the Borough shall be of no effect and void.

§ 120-30. Repealer.

All ordinances or resolutions or parts of ordinances or resolutions insofar as they are inconsistent herewith are hereby repealed.