

ORDINANCE NO. 36-1988

AN ORDINANCE OF THE TOWNSHIP OF HONEY BROOK, CHESTER COUNTY, PENNSYLVANIA, CREATING IN ANY QUALIFYING APPLICANT, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE RIGHT AND FRANCHISE TO ERECT, INSTALL, MAINTAIN AND OPERATE A COMMUNITY CABLE TELEVISION SYSTEM AND OTHER CLOSED CIRCUIT FACILITIES IN, UNDER, OVER, ALONG, ACROSS AND UPON THE STREETS, SIDEWALKS, ALLEYS, BRIDGES, ROADS AND HIGHWAYS AND OTHER PUBLIC PLACES IN THE TOWNSHIP OF HONEY BROOK AND SUBSEQUENT ANNEXATIONS THERETO, INCLUDING IN CONNECTION THEREWITH THE RIGHT AND PERMISSION TO ERECT, INSTALL AND MAINTAIN POLES, AND TO INSTALL, ATTACH AND MAINTAIN WIRES, CABLES, APPLIANCES AND OTHER FACILITIES TO SUCH POLES, AND TO EXISTING UTILITY POLES, FOR THE PURPOSE OF TRANSMISSION AND DISTRIBUTION OF TELEVISION, RADIO AND RELATED ELECTRONIC SIGNALS TO PROVIDE RECEPTION SERVICE TO THE MEMBERS OF THE PUBLIC DESIRING SUCH SERVICE IN THE TOWNSHIP, REQUIRING INSURANCE COVERAGE, REQUIRING THE PAYMENT OF FRANCHISE FEES TO THE TOWNSHIP, AND ESTABLISHING SERVICE STANDARDS AND REQUIREMENTS TO BE MAINTAINED BY A FRANCHISEE

WHEREAS, the Board of Supervisors of the Township of Honey Brook has determined that it is in the best interests of, and consistent with the convenience and necessity of the Township of Honey Brook to grant franchises to persons desiring to provide basic cable services within the confines of the Township of Honey Brook on the terms and conditions hereinafter set forth and upon such further conditions and terms as may be described in each franchise agreement; and

WHEREAS, the Board of Supervisors of the Township of Honey Brook has identified the purposes of this Ordinance to be as follows:

1. To provide procedures for the granting of nonexclusive franchises for providing basic cable services in the Township of Honey Brook;

2. To provide for the payment of certain franchise fees and other valuable considerations to the Township which, among other purposes, may be used to pay for the use of public rights-of-way and to regulate the construction and operation, use and development of such a system within the Township;

3. To provide conditions under which such franchised system or systems will serve present and future needs of government, public institutions, commercial enterprises, public and private organizations, and the citizens and general public of the Township; and

4. To provide remedies and prescribe penalties and liquidated damages for any violation of this Ordinance and the terms and conditions of franchises granted pursuant thereto.

NOW, THEREFORE, BE AND IT IS HEREBY ENACTED AND ORDAINED by the Board of Supervisors of the Township of Honey Brook as follows:

ARTICLE I

This Ordinance shall be known and may be cited as the "Cable Television Ordinance of the Township of Honey Brook".

ARTICLE II
DEFINITIONS

A. For 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 number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive.

"Applicant" shall mean any person who applies for a franchise or the renewal of a franchise under this Ordinance.

"Basic Service" shall mean any service tier which is provided to all persons who subscribe to the franchisee's cable services.

"Board of Supervisors" shall mean the duly elected members of the Board of Supervisors of the Township of Honey Brook.

"Cable Services" are defined as the one-way transmission to subscribers of video programming and other programming services together with subscriber interaction, if any, which is required for the selection of such programming and programming services that the cable operator makes available to all subscribers generally. Examples of cable services include: video programming, pay-per-view, voter preference polls in the context of a video program, teletexts, one-way transmission of any

computer software, and one-way videotex services such as news services and stock market information. Noncable services include: shop-at-home and bank-at-home services, electronic mail, one-way and two-way transmission of nonvideo data and information not offered to all subscribers, data processing, video conferencing and voice communication.

"Cable system" shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (a) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way; (b) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or (c) any facilities of any electric utility used solely for operating its electric utility systems.

"Channel" shall mean a band of frequencies, six megahertz wide in the electro-magnetic spectrum capable of carrying either one audiovisual television signal and a few nonvideo signals or a large number

of nonvideo signals.

"Existing franchise" shall mean any franchise granted by the Township to any person prior to the effective date of this Ordinance.

"Franchise" shall mean the nonexclusive rights granted pursuant to this Ordinance to construct and operate a cable system along the public ways in the Township or within specified areas in the Township, and is not intended to include any license or permit required for the privilege of constructing, transacting and carrying on a business within the Township as may be required by other ordinances of the Township or the laws of the Commonwealth of Pennsylvania or the laws of the United States of America.

"Franchise agreement" shall mean the agreement duly executed by the authorized members of the Board of Supervisors and the applicant granting a franchise to an applicant pursuant to the provisions of this Ordinance.

"Franchise area" shall mean the corporate limits of the Township, including all territory thereafter annexed to the Township.

"Franchisee" or "grantee" shall mean the "person" granted a franchise pursuant to this Ordinance and its lawfully approved successor, transferee or assignee.

"Gross revenues" shall mean any and all compensation or receipts derived from installation, disconnection and reinstallation charges and recurring monthly service charges in connection with the

carriage of broadcast signals and Federal Communications Commission mandated nonbroadcast services within the Township, but shall not include any refunds or credits made to subscribers or any taxes imposed on the services furnished by grantee. It also includes revenues derived from premium programming and from the carriage of broadcast signals and Federal Communications Commission mandated nonbroadcast services and "auxiliary" services, including, but not limited to, leased channels and pay cable. These gross revenues shall not be reduced for any purposes other than provided herein, and shall be the basis for computing the Franchisee fee imposed by this Ordinance. These gross revenues shall not include converter deposits, or refunds to subscribers by the franchisee, or items excluded by the Federal Cable Communications Policy Act of 1984.

"Person" shall mean an individual, firm, corporation, cooperative association, trust, partnership, joint venture, combination or any other legally recognized entity.

"Primary service area" shall mean all portions of the franchise area having an average density of 50 or more dwelling units per mile of trunk or distribution cable within which area the franchisee shall (a) provide service to subscribers at its standard charges for connection and service; and (b) complete construction and offer and be capable of delivering cable television service to subscribers in full accordance with

this Ordinance and the franchise granted hereunder within the timetable specified in the franchise.

"Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway or driveway now or hereafter existing within the Township.

"Subscriber" shall mean any person who receives basic cable service from the franchisee and who does not further distribute such service or services.

"Township" shall mean the Township of Honey Brook.

"User" shall mean a party utilizing a cable system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt in a subscriber capacity.

B. Any words, phrases or terms not defined in this Ordinance shall be given their common and ordinary meaning.

ARTICLE III

EXERCISE OF POWER AND APPLICABILITY OF ORDINANCE

A. Power and Authority. The Board of Supervisors hereby exercises its power and authority to award franchises for the construction of cable systems in the Township of Honey Brook pursuant to the Federal Cable Communications Policy Act of 1984, Pub.L. 98-549, §2, 98 Stat. 2786, and the Second Class Township Code, Act of May 1, 1933, P.L. 103,

Act I, §101, as amended.

B. Applicability. No person shall establish, construct, operate or maintain a cable system in the Township unless a franchise therefor has first been obtained from the Board of Supervisors by applying for a franchise pursuant to the provisions of this Ordinance.

All persons lawfully providing cable service with a franchise who seek renewal thereof shall apply to the Board of Supervisors for renewal pursuant to the provisions of this Ordinance. Any person lawfully providing cable service in the Township without a franchise on January 1, 1984, shall obtain a franchise pursuant to this Ordinance. Any person lawfully providing cable service in the Township without a franchise on January 1, 1984, shall file an application for a franchise pursuant to this Ordinance, within thirty (30) days of the effective date of this Ordinance.

ARTICLE IV

APPLICATION FOR FRANCHISE - PROCEDURES AND FORMS

Every person who desires to apply for the grant of a franchise to construct, operate or maintain a cable system in the Township shall obtain an official application from the Township Secretary. The application shall be in a form specified by the Board of Supervisors. The application shall be filed with the Township Secretary in triplicate and shall be accompanied by an application fee, which fee shall be set

by the Board of Supervisors in an amount reasonably determined to approximate the costs of the processing of the application. The applicant shall also reimburse the Township for all costs and expenses, including, but not limited to, attorney's fees, consulting fees and Township staff time, incurred in evaluating the application.

In the event that the Board grants a franchise to the applicant, the Board shall cause to be executed an agreement. The agreement so adopted by the Board shall be executed by the applicant or the applicant's representative. The agreement granting the franchise shall set forth all of the terms and conditions of the nonexclusive franchise which are in addition to the requirements of this Ordinance.

In making any determination hereunder as to any application for a new franchise, the Board of Supervisors may consider factors, including, but not limited to, the quality of the service proposed, rates to subscribers, income to the Township, experience, character, background, and financial responsibility of any applicant, and its management and owners, technical and performance quality of equipment, willingness and ability to meet construction and physical requirements, to meet all requirements set forth in this Ordinance, and to abide by all purpose and policy conditions, franchise limitations and requirements, and any other considerations deemed pertinent by the Board of Supervisors for safeguarding the interests of the Township and the public.

No provision of this Ordinance shall be deemed or construed so as to require the Board of Supervisors to grant a franchise when, in the opinion of the Board of Supervisors, it is in the public interest to restrict the number of franchisees to one or more.

ARTICLE V

REQUIREMENTS FOR GRANT OF FRANCHISE - DUTIES AND RESPONSIBILITIES OF FRANCHISEE

All applicants and franchisees shall comply with and demonstrate compliance with the following regulations:

A. Duration and Renewal of Franchise

1. Duration. The duration of the rights, privileges and authorizations granted to a franchisee shall not exceed fifteen (15) years from the date of the franchise. The duration of the rights, privileges and authorizations granted in a renewal of a franchise shall not exceed fifteen (15) years from the date such renewal is granted.

2. Renewal.

(a) Any franchisee desiring to renew its franchise shall give written notice of its intention to do so six (6) months prior to the expiration of the then current term of the franchise or renewal. The notice of intention to renew shall be provided to the Township on a form specified by the Board

of Supervisors and shall be accompanied by the fee established for renewal. The fee so established shall approximate the actual costs of the processing of the application for renewal. In determining whether to grant the application for renewal, the Board shall consider the following factors:

(i) Whether the franchisee has substantially complied with the material terms of the existing franchise and with applicable law;

(ii) Whether the quality of the franchisee's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality or material transmitted, or level of cable services or other services provided over the system, has been reasonable in light of community needs;

(iii) Whether the franchisee has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the franchisee's proposal; and

(iv) Whether the franchisee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests and the burden placed

upon all rights-of-way in the Township.

(b) At the completion of a proceeding under this Section, the Township shall grant or deny the proposal for renewal and transmit a copy of such decision to the franchisee. The decision shall state the reasons therefor.

3. Notwithstanding the provisions of this Ordinance governing the Duration and Renewal of Franchises, the franchisee may submit a proposal for the renewal of the franchise pursuant to this Section at any time, and the Township may grant or deny such proposal at any time. The provisions of this Ordinance governing the Duration and Renewal of Franchises shall not apply to a decision to grant or deny a proposal under this Section. The denial of a renewal pursuant to this Section shall not affect action of a renewal proposal that is submitted in accordance with the Renewal provisions of this Ordinance.

B. Franchise Territory. The franchisee shall be permitted to construct a cable system within the franchise area.

C. Service Availability.

1. The franchisee shall provide cable services throughout the primary service area pursuant to the provisions and requirements of this Ordinance as well as the franchise agreement. The franchisee shall keep a current file of all requests for service

received by the franchisee for not less than the three (3) most recent years. This current file shall be continually updated during the entire life of the franchise and be available for public inspection at the office of the franchisee during regular office hours.

2. Whenever the franchisee receives a request for service from more than one dwelling unit having a concentration in the aggregate equal to or greater than one dwelling unit per 150 feet of its trunk cable, it shall extend its system to such subscribers at no cost to said subscribers for system extension, other than the usual connection fees charged to all subscribers.

3. No person shall be refused service arbitrarily. The franchisee shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, natural origin, sex, age or disability. However, under the following unusual circumstances, in order that existing subscribers shall not be unfairly burdened, service may be made available on the basis of a capital contribution in aid of construction, based upon the actual costs of material, labor and easements:

(a) Where there is more than 175 feet of distance from a trunk or distribution cable to connection of service to

subscribers; or

(b) Where the average density is less than 50 dwelling units per mile of trunk or distribution cable outside of the primary service area.

4. It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to a franchisee are honored. In the event that a franchisee elects to overbuild, rebuild, modify, or sell the system, or the Township gives notice of intent to terminate or fails to renew a franchise, the franchisee shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

In the event of a change of franchisee, or in the event a new operator acquires the system, a franchisee shall cooperate with the Township, new franchisee or operator in maintaining continuity of service to all subscribers. During such period, franchisee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

5. If the Township is required to fulfill this obligation for a franchisee, the franchisee shall reimburse the Township for all reasonable costs or damages incurred as a result of the Township's operation of the system and shall be permitted to

collect revenues from subscribers'.

D. Service Standards and Requirements.

1. The transmission and distribution system shall be installed and maintained so as not to interfere with conventional television and radio reception throughout the Township.

2. The franchisee shall put, keep and maintain all parts of the system in optimum condition throughout the entire franchise, or any renewal thereof. The transmission and distribution system shall be installed and maintained in accordance with good engineering practices and of sufficient height to comply with all present or future Township ordinances, regulations, laws of the Commonwealth or laws of the United States, so as not to interfere in any manner with the right of the public or an individual property owner, nor shall the system interfere with the public right to travel or to use public places.

3. Upon termination of service to any subscriber, a franchisee shall promptly remove all its facilities and equipment from the premises of such subscriber upon subscriber's request.

4. The franchisee shall render efficient service, make repairs promptly and interrupt service only if unavoidably necessary and for the shortest time period possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use.

5. The franchisee shall not allow its cable or other operations to interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents of the Township.

6. A franchisee shall continue, through the term of the franchise, to maintain the technical, operational and maintenance standards and quality of service set forth in this Ordinance as well as the franchise agreement. Should the Township find that a franchisee has failed to maintain these standards and quality of service, and should it specifically enumerate improvements to be made, a franchisee shall make such improvements. Failure to make such improvements within three (3) months after the date on which the required improvements were communicated to the franchisee will constitute a breach of condition for which the remedy of the provisions relating to forfeitures and terminations are applicable.

7. A franchisee that charges a rental or other monthly fee for the use of equipment, upon request, shall make such equipment available for sale to any subscriber for a reasonable fee.

8. The franchisee shall provide one service outlet for the reception of its cable services free of all charge to each school building, public or parochial, and to each municipal building

and to the fire and police departments in the franchise area.

E. Insurance.

1. The franchisee shall indemnify, protect and save harmless the Township from and against losses and physical damages to property and bodily injury or death to persons, including payments made under any workers' compensation law, which may arise out of or be caused by the installation, maintenance, presence, use or removal of the transmission and distribution system within the Township or by any act of the franchisee, its agents or employees.

2. The franchisee shall carry insurance to protect the Township from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. The amount of such insurance against liability due to physical damage to property shall be not less than Two Hundred Fifty Thousand (\$250,000.00) Dollars as to any one accident, and shall be not less than Five Hundred Thousand (\$500,000.00) Dollars aggregate in any single policy year; the amount of such insurance against liability due to bodily injury or to death of persons shall be not less than Two Hundred Fifty Thousand (\$250,000.00) Dollars as to any one person, and shall be not less

than Five Hundred Thousand (\$500,000.00) Dollars as to any one accident. At least yearly, franchisee shall furnish to Township certificates of insurance reflecting that the Township is so insured and that all applicable policies are current and effective. The franchisee shall also carry such insurance as will protect it from all claims under any workers' compensation law in effect that may be applicable to it. In addition, the franchisee shall indemnify the Township and its officials and shall hold them harmless of and from any and all liability with respect to alleged copyright infringements and with respect to the subject matter of any program transmitted by the franchisee.

F. Subscriber Service Rates. The Township hereby reserves the right to regulate the rates charged by any franchisee for service provided by the franchisee's cable system to the extent permitted by federal and state law.

G. Transfers and Assignments.

A franchise shall not be sold, assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without the prior written consent of the Township. The approval of the Township shall not be unreasonably withheld.

The proposed assignee must show technical ability, financial capability, legal qualifications and general character qualifications as determined by the Township and must agree to comply with all provisions of the franchise and such conditions as may be prescribed by the Board of Supervisors expressed by resolution. Township shall be deemed to have denied a proposed transfer or assignment in the event that its consent is not communicated in writing to the franchisee within 120 days following receipt of written notice of the proposed transfer or assignment.

The consent or approval of the Board of Supervisors to any transfer of the franchise shall not constitute a waive or release of the rights of the Township in and to the streets, and any transfer shall by its terms be expressly subordinate to the terms and conditions of a franchise.

In no event shall a transfer of ownership or control be approved without successor in interest becoming a signatory to the franchise agreement.

H. Franchise Fees. A franchisee shall pay to the Township, on or before the 31st day of March of each and every year of the franchise, a franchise fee in an amount not to exceed that which is permitted by law based upon gross revenues received for the franchisee's operations in the Township for the preceding year (the charge for the initial year

shall be prorated from the effective date of the grant of the franchise to the end of the initial year).

I. Grant of Authority.

1. All persons who are granted a franchise by the Board of Supervisors shall have the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the Township, poles, wires, cables, underground conduits, manholes, and other cable conductors and fixtures necessary for the maintenance and operation in the Township of Honey Brook of a cable system to be used for the sale and distribution of cable services to the residents of the Township.

2. Any privilege claimed under any such franchise by the franchisee in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property.

3. Insofar as it is not inconsistent with or otherwise preempted by federal or state regulations, the Board of Supervisors also retains but may grant the right and privilege to successful grantees to provide non-cable communication services.

The Board of Supervisors retains all authority, not otherwise preempted, to regulate non-cable communication services to the extent necessary to assure the delivery of proposed non-cable services, if any, and that they are in compliance with all regulatory provisions of this Article.

4. When and in the event the franchisee uses in his cable system distribution channels furnished to the franchisee by a telephone company pursuant to tariff or contract on file with a regulatory body having jurisdiction, and such franchisee makes no use of the streets independent of such telephone company furnished facilities, such franchisee shall be required to comply with all of the provisions of this Article as a "licensee", and, in such event, whenever the term "franchisee" is used in this Article, it shall be deemed to mean and include "licensee".

5. A franchisee shall not engage in the business of selling, repairing or installing television receivers, radio receivers or accessories for such receivers within the Township during the term of a franchise.

J. Forfeiture and Termination.

1. In addition to all other rights and powers retained by the Township under this Ordinance or otherwise, the Township reserves the right to forfeit and terminate a franchise and all

rights and privileges of a franchisee in the event of a material breach of its terms and conditions. In interpreting this Ordinance, material provisions shall include all labeled as such and all others which, under all the facts and circumstances indicated, are a significant provision of the franchise agreement. A material breach by franchisee shall include, but shall not be limited to, the following:

(a) A violation of any material provision of the franchise or any material rule, order, regulation or determination of the Township made pursuant to the franchise;

(b) An attempt to evade any material provision of the franchise or the practice of any fraud or deceit upon the Township or its subscribers or customers;

(c) Failure to begin or complete system construction, reconstruction or system extension as specified in the Franchise Agreement;

(d) Failure to provide the types of services promised, unless franchisee has successfully pursued whatever recourse is available under Section 625 of the Cable Communications Policy Act of 1984;

(e) Failure to restore service after 96 consecutive hours of interrupted service, except when approval of such

interruption is obtained from the Township; or

(f) Material misrepresentation of fact in the application for or negotiation of the franchise.

2. The foregoing shall not constitute a material breach if the violation occurred without fault of the franchisee or occurred as a result of circumstances beyond its control or if the franchisor acted or refrained from acting pursuant to any law, rule or order of the Federal Communications Commission. Franchisee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its shareholders, directors, officers or employees.

3. The Township may make a written demand that a franchisee comply with any such provision, rules, order, or determination under or pursuant to this Ordinance and franchise agreement. If the violation by the franchisee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the Township may place the issue of termination of a franchise before the Board of Supervisors. The Township shall cause to be served upon franchisee, at least twenty (20) days prior to the date of such Board meeting, a written notice of intent to request such termination.

4. The Board of Supervisors shall hear and consider the issue and shall hear any person interested therein, and shall determine, in its discretion, whether or not any violation by the franchisee has occurred.

5. If the Board of Supervisors shall determine a violation by a franchisee was the fault of franchisee and within its control, the Board may, by resolution, declare that the franchise of the franchisee shall be forfeited and terminated unless there is compliance within such period as the Board of Supervisors may fix, such period not to be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

6. The issue of forfeiture and termination shall automatically be placed upon the Board's agenda at the expiration of the time set by it for compliance. The Board then may terminate a franchise forthwith upon finding that franchisee has failed to achieve compliance or may further extend the period, in its discretion.

K. Liquidated Damages. By acceptance of the franchise granted by the Township, a franchisee understands and shall agree that failure to comply with any time and performance requirements as stipulated in this Ordinance and the franchise agreement will result in damage to the

Township, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; the franchise agreement shall include provisions for liquidated damages to be paid by the franchisee and chargeable against the Performance Bond as follows:

1. For failure to complete system construction or reconstruction in accordance with the Construction Timetable unless the Board specifically approves the delay by motion or resolution due to the occurrence of conditions beyond franchisee's control, a franchisee shall pay Five Hundred (\$500.00) Dollars per day for each day, or part thereof, the deficiency continues.

2. For failure to provide, upon written request, data, documents, reports, information or to cooperate with Township during an application process or cable system review, a franchisee shall pay Fifty (\$50.00) Dollars per day, or part thereof, each violation occurs or continues.

3. For failure to test, analyze and report on the performance of the system following a written request pursuant to this Ordinance, a franchisee shall pay to the Township One Hundred (\$100.00) Dollars per day for each day, or part thereof, that such noncompliance continues.

4. For failure to provide in a continuing manner the types of services proposed in the accepted application, unless the

Board specifically approves franchisee a delay or change, or the franchisee has obtained modification of its obligation under Section 625 of the Cable Communications Policy Act of 1984, franchisee shall pay to the Township Five Hundred (\$500.00) Dollars per day for each day, or part thereof, that each noncompliance continues.

5. For any other action or nonaction by the franchisee, as agreed upon between the Township and the franchisee, and set forth in the franchise agreement. Nothing in this Section shall preclude further liquidated damages as agreed upon by the parties in the franchise agreement.

6. If the Township Secretary concludes that a franchisee is liable for liquidated damages pursuant to the Liquidated Damages Provision of this Ordinance, he shall issue to franchisee by certified mail notice of intention to assess liquidated damages. The notice shall set forth the basis for the assessment, and shall inform the franchisee that liquidated damages will be assessed from the date of the notice unless the assessment notice is appealed for hearing before the Board of Supervisors and the Board rules (1) that the violation has been corrected, or (2) that an extension of time or other relief should be granted. A franchisee desiring a hearing before the

Board of Supervisors shall send a written notice of appeal by certified mail to the Township Secretary within ten (10) days of the date on which the Township sent the notice of intention to assess liquidated damages. The hearing on the franchisee's appeal shall be within thirty (30) days of the date on which the notice of appeal was sent. Unless the Board of Supervisors indicates to the contrary, said liquidated damages shall be assessed beginning with the date on which the Township sent the notice of the intention to assess liquidated damages and continuing thereafter until such time as the violation ceases, as determined by the Township Secretary.

ARTICLE VI

VIOLATIONS

A. It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable system within this Township for the purpose of enabling himself or others to receive any cable service, without payment to the owner of said system.

B. It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables,

wires or equipment used for distribution of cable services.

ARTICLE VII

GENERAL PROVISIONS

A. Township's Reservation of Rights. The Township hereby reserves the right to impose further duties and obligations upon any franchisee when and if permitted by federal or state law.

B. Severability. If any section, clause or sentence 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 of this Ordinance. It is hereby declared as the intent of the Township that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

C. Effective Date. This Ordinance shall take effect five (5) days after its adoption by the Board of Supervisors of Honey Brook Township, Chester County, Pennsylvania.

DULY ORDAINED AND ENACTED this *3rd* day of *November*, 1988, by the Board of Supervisors of Honey Brook Township.

HONEY BROOK TOWNSHIP BOARD OF SUPERVISORS

ATTEST:

Ruby M. Kutzman
Secretary

John A. Lusk

Richard Deek

Raymond Mean