

APPENDIX

CHAPTER A183

CABLE TELEVISION

THE CABLE TELEVISION AGREEMENT WAS ASSIGNED BY ORDINANCE NO. 821 TO THE SOUTH HILLS AREA COUNCIL OF GOVERNMENTS (SHACOG) ON SEPTEMBER 7, 1994. SHACOG'S FRANCHISE AUTHORITY BOARD CONSEQUENTLY ENTERED INTO AN AGREEMENT WITH AT&T BROADBAND ON OCTOBER 11, 2001 - EFFECTIVE NOVEMBER 1, 2001.

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[HISTORY: Adopted by the BOROUGH COUNCIL 10-15-69 as Ord. No. 468; amended in its entirety 11-6-85 by Ord. No. 703. Subsequent amendments noted where applicable.]

ARTICLE I ***Authorization***

§ A183.1. Granting of franchise.

The Centre Video Corporation is hereby granted a franchise to construct, operate and maintain a cable television system in the BOROUGH pursuant to the terms and conditions of an agreement, a copy of which is attached hereto, incorporated herein and made a part of this ordinance.¹

§ A183.2. Execution of agreement.

¹ Editor's Note: See Art. II, Agreement, of this Chapter.

The proper officers of the BOROUGH be and they are hereby authorized and directed to execute that agreement attached hereto.

ARTICLE II ***Agreement***

§ A183.3. Title.

This ordinance is an agreement granting a franchise to Centre Video Corporation, its successors and assigns, to construct, operate and maintain a cable television system in the BOROUGH, setting forth conditions accompanying the grant of franchise, and providing for municipal regulation and use of the cable television system.

§ A183.4. Definitions.

A183.4.1. When used in this agreement, unless the context otherwise requires, the following terms and their derivatives shall have the meanings herein given:

ADDRESSABLE - A system or converter placed within such system, which may be activated or deactivated via satellite.

AFFILIATE - An entity which owns or controls, is owned or controlled by or is under common ownership with the grantee.

ANNIVERSARY DATE - A mutually agreed to calendar date which will be inserted in Exhibit No. 1² hereafter and will serve as that date on which future basic rates may be increased according to an annual cycle.

BASIC CABLE - The tier of service regularly provided to all subscribers that includes the retransmission of all must-carry broadcast television signals as defined in Section 76.55 to 76.61 of the Federal Communications Commission Rules [or, in the absence of at least three (3) must-carry signals, any unaltered broadcast television signals] and the public, educational and governmental channels, as required by the franchising authority pursuant to Title VI of the Communications Act.

BASIC SUBSCRIBER REVENUES - All remuneration received directly by the grantee from subscribers in payment for regularly furnished BASIC CABLE television service, but shall not include any taxes on services furnished by the grantee imposed on any subscriber or user by any government, governmental unit, political subdivision, agency or instrumentality, and collected by the grantee.

CABLE COMMUNICATIONS POLICY ACT OF 1984 - That body of federal law which was enacted on October 30, 1984, and having an effective date of December 29, 1984. This legislation will govern the future operation of cable television systems and may at times be referred to as 5.66 (its proper number), Public Law 98-549, H.B.4103 or the Cable Act, as amended from time to time. For future reference, this franchise agreement was approved after the effective date of this Act.

² Editor's Note: Exhibit No. 1 is on file in the BOROUGH office.

CABLE SERVICE - The one-way transmission to subscribers of video programming or other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

CABLE TELEVISION SYSTEM - A system of antennas, cables, wires, lines, towers, waveguides or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals, located in the MUNICIPALITY. Said definition shall not include any such facility that serves or will serve only subscribers in one (1) or more multiple unit DWELLINGS under common ownership, control or management, and does not use municipal rights-of-way.

COUNCIL - The governing body of the MUNICIPALITY in such composition as determined by the rules governing this particular governmental entity.

FRANCHISE - The initial authorization, or renewal thereof, issued by the MUNICIPALITY, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and operation of the cable system for the purpose of offering CABLE SERVICE or other service to subscribers.

FRANCHISE AREA - That area within the CORPORATION limits of the MUNICIPALITY as now or hereafter constituted.

GRANTEE - Centre Video Corporation (a wholly owned subsidiary of Tele-Communications, Inc.-TCI); the grantee of rights under this agreement.

GROSS SUBSCRIBER REVENUES - The monthly CABLE SERVICE revenues actually received by the GRANTEE from subscribers of the cable system. Included are revenues actually received in payment for HBO, Cinemax, Showtime and Disney programming. Such phrase shall not include Pay-Per-View (PPV) revenues and revenues received from any advertising carried on the cable system, nor shall such phrase include any taxes on CABLE SERVICES which are imposed, directly or indirectly, on any subscriber thereof by any governmental unit or agency, and which are collected by the GRANTEE on behalf of such governmental unit or agency.

MUNICIPALITY - The BOROUGH in its present incorporated form and as it may be changed by annexation. "Municipality" may also mean franchising authority.

PERSON - An individual, partnership, association, joint-stock company, trust CORPORATION or governmental entity.

PROPERTY OF GRANTEE - All property owned, installed or used by the GRANTEE in the conduct of a cable television business in the MUNICIPALITY.

PUBLIC WAY - The surface of and the space above and below any public STREET, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including but not limited to public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures of improvements located thereon now or

hereafter held by the MUNICIPALITY in the service area which shall entitle the MUNICIPALITY and the GRANTEE to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. "Public way" shall also mean any easement now or hereafter held by the MUNICIPALITY within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall entitle the MUNICIPALITY and the GRANTEE to the use thereof for the purposes of installing or transmitting the GRANTEE'S CABLE SERVICE or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to the cable system.

SERVICE TIER - A category of CABLE SERVICE or other services, provided by the GRANTEE and for which a separate charge is made by the GRANTEE.

STATE-OF-THE-ART - The latest in cable television technology which may be practically applied within the MUNICIPALITY.

SUBSCRIBER - A PERSON or user of the cable system who lawfully receives CABLE SERVICE or other service therefrom with the GRANTEE'S expressed permission.

VIDEO PROGRAMMING - Programming provided by or generally considered comparable to programming provided by a television broadcast station.

A183.4.2. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular, and words in the singular number include the plural.

§ A183.5. Grant of authority.

To the extent that the MUNICIPALITY is able to do so, there is hereby granted by the MUNICIPALITY to the GRANTEE the right and privilege to engage in the business of operating and providing a CABLE TELEVISION SYSTEM in the MUNICIPALITY, and for the purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any STREET or STREETS laid out or dedicated and all extensions thereof and additions thereto in the FRANCHISE AREA, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other necessary owned or leased property.

§A183.6. Nonexclusivity of FRANCHISE.

The right to use and occupy said STREETS for the purposes herein set forth shall not be exclusive in the GRANTEE. The MUNICIPALITY shall, however, require a FRANCHISE agreement for any other individual or company engaging in the cable television business within any portion of the MUNICIPALITY. Further, the GRANTEE shall have the right to adjust current rates according to evaluation of those rates effected by another cable television operator. Such adjustments shall be accomplished through notification filed with the municipal MANAGER and shall occur automatically on the date established by the GRANTEE.

§ A183.7. Term of FRANCHISE.

A183.7.1. The FRANCHISE and rights herein granted shall commence sixty

(60) days from the final passage hereof and shall continue in force and effect for ten (10) years after the established effective date. Upon determination that the GRANTEE has generally and satisfactorily abided by and fulfilled the terms and conditions of the agreement as herein written, the FRANCHISE shall be renewed for one (1) subsequent five-year period after a hearing held before the MUNICIPALITY, and which hearing shall establish a record based upon the following factors:

A183.7.1.1. Whether the operator has substantially complied with the material terms of the FRANCHISE and with applicable law.

A183.7.1.2. Whether the quality of the operator's service has been reasonable in light of community needs.

A183.7.1.3. Whether the operator has the financial, legal and technical ability to provide the services, facilities and equipment proposed.

A183.7.1.4. Whether the operator's proposal is reasonable to meet future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

A183.7.2. The MUNICIPALITY and the GRANTEE agree that any proceedings undertaken by the MUNICIPALITY that relate to the renewal of the GRANTEE'S FRANCHISE shall be governed by and comply with the provisions of Section 626 of the Cable Act (as such existed as of the effective date of the Cable Act),³ unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provisions of federal or state law.

A183.7.3. In addition to the procedures set forth in said Section 626(a), the MUNICIPALITY agrees to notify the GRANTEE of its preliminary assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the GRANTEE under the then current FRANCHISE term. The MUNICIPALITY further agrees that such a preliminary assessment shall be provided to the GRANTEE prior to the time that the four-month period referred to in Subsection (c) of Section 626 is considered to begin. Notwithstanding anything to the contrary set forth in this section, the GRANTEE and MUNICIPALITY may agree that at any time during the term of the then current FRANCHISE, while affording the public appropriate notice and opportunity to comment, the MUNICIPALITY and GRANTEE may agree to undertake and finalize negotiations regarding renewal of the then current FRANCHISE, and the MUNICIPALITY may grant a renewal thereof. The GRANTEE and the MUNICIPALITY consider the terms set forth in this section to be consistent with the expressed provisions of Section 626 of the Cable Act. A reproduction of Section 626 of the Cable Act as such existed as of the effective date of the Cable Act is attached hereto as Exhibit No. 6 and incorporated herein by this reference.⁴

§ A183.8. Conditions of STREET occupancy.

³ Editor's Note: A copy of Section 626 of the Cable Act is on file in the BOROUGH offices.

⁴ Editor's Note: Exhibit No. 6 is on file in the BOROUGH offices.

A183.8.1. All transmission and distribution structures, poles, lines and equipment installed or erected by the GRANTEE within the FRANCHISE AREA shall be so located as to cause minimum interference with the proper use of STREETS and with the rights and reasonable convenience of property owners who adjoin any of said STREETS. The CABLE TELEVISION SYSTEM shall be constructed and operated in compliance with applicable governmental construction and electrical codes.

A183.8.2. In case of disturbance of any STREET or paved area, the GRANTEE shall, at its expense and in a manner approved by the MUNICIPALITY, replace and restore such STREET or paved area in as good condition as theretofore.

A183.8.3. The GRANTEE shall, at its expense, protect, support, temporarily disconnect, relocate in the same STREET or public place or remove from the STREET or other public place any property of the GRANTEE when lawfully required by the MUNICIPALITY by reason of traffic conditions, public safety, STREET grade, installation of sewers, drains, gas or water pipes or any other type of structures or improvements by the MUNICIPALITY, but the GRANTEE shall in all cases have the right of abandonment of its property, subject to municipal ordinances.

A183.8.4. Should the MUNICIPALITY seek to alter, improve, redevelop or refurbish any STREET(S) or area presently served by the existing CABLE TELEVISION SYSTEM, the MUNICIPALITY shall notify the GRANTEE of such plans. This notice shall be issued concurrent with notification of public utility companies, and the GRANTEE shall be invited to all preconstruction conferences.

A183.8.5. Should the MUNICIPALITY make application to any public agency or other funding source which provides monetary reimbursement for relocation or replacement of existing transmission pipes, power lines or communications facilities, etc., such application shall include a request made on behalf of the GRANTEE to cover costs of relocation or replacement of the CABLE TELEVISION SYSTEM.

A183.8.6. Should said reimbursement request to fully compensate the GRANTEE be denied, and should the MUNICIPALITY and GRANTEE be unable to agree on an acceptable method and amount of reimbursement, then the GRANTEE shall be released of any obligation to provide CABLE SERVICE to the affected STREET(S) or area.

A183.8.7. As an option, the GRANTEE may arrange to continue to serve the affected STREET(S) or area and achieve appropriate reimbursement by deducting a fixed amount from the FRANCHISE fee paid to the MUNICIPALITY. The fixed amount shall be determined in an itemized statement of charges which shall be submitted to the MUNICIPALITY.

A183.8.8. The GRANTEE shall temporarily raise or lower its wires to permit the moving of buildings, provided that:

A183.8.8.1. The expense of such temporary raising or lowering of wires is paid by said PERSON, including, if required by the GRANTEE, making such payment in advance.

A183.8.8.2. The GRANTEE is given not less than three (3) business days' advance notice to arrange for such temporary wire changes.

A183.8.9. To the extent that the MUNICIPALITY shall have the authority to grant the same, the GRANTEE shall have the authority to trim trees overhanging any STREETS in the FRANCHISE AREA so as to prevent branches from coming in contact with the GRANTEE'S wires and cables, except that, at the option of the MUNICIPALITY, such trimming may be done by it or under its supervision and direction at the GRANTEE'S expense.

A183.8.10. Subject to any applicable state or federal regulations or tariffs, the MUNICIPALITY shall have the right to make additional use, for any public purposes, of any poles or conduits controlled or maintained exclusively by or for the GRANTEE in any STREET, provided that:

A183.8.10.1. Such use by the MUNICIPALITY does not interfere with the use by the GRANTEE.

A183.8.10.2. The MUNICIPALITY holds the GRANTEE harmless against and from all claims, demands, causes of actions, suits, actions, proceedings, damage, costs or liabilities of every kind and nature whatsoever arising out of such use of said poles and conduits.

A183.8.10.3. This hold harmless provision shall include but not be limited to reasonable attorneys' fees and costs and, at the GRANTEE'S sole discretion, the MUNICIPALITY may be required either to pay a reasonable rental fee or otherwise reasonably compensate the GRANTEE for use of such poles, conduits or equipment; provided, however, that the GRANTEE agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the service area. Municipal liability in this regard shall not exceed limits which have been or may be hereafter established by any appropriate governmental entity or court of competent jurisdiction.

§ A183.9. Safety requirements.

A183.9.1. The GRANTEE shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. All such work shall be performed in substantial compliance with applicable Federal Communications Commission or other federal, state and local regulations.

A183.9.2. The GRANTEE shall keep all structures and all lines, equipment and connections in, over, under and upon all STREETS of the FRANCHISE AREA in a safe and suitable condition and in good order and repair.

§ A183.10. System construction and extension.

A183.10.1. The GRANTEE is hereby authorized to extend the system within the FRANCHISE AREA to the extent that such extension is or may become technically

and economically feasible; provided, however, that at the time of the execution of this agreement, or within ninety (90) days thereafter, all existing residents of the MUNICIPALITY who request the installation of CABLE SERVICE shall be provided the same regardless of any of the provisions of §§ A183.10.2., A183.10.3. and A183.10.4. hereafter.

A183.10.2. Whenever the GRANTEE shall have received written requests for service from at least fifteen (15) SUBSCRIBERS within four hundred (400) cable meters [one thousand three hundred (1,300) cable feet] of its aerial trunk cable, or from at least twenty-five (25) SUBSCRIBERS within four hundred (400) cable meters [one thousand three hundred (1,300) cable feet] of its underground trunk cable, it shall extend its system to such SUBSCRIBERS solely for the usual connection and service fees for all SUBSCRIBERS, provided that such extension is technically and economically feasible. The four hundred (400) meters shall be measured in extension length of the GRANTEE'S cable required for service located within the PUBLIC WAY or easement and shall not include length of necessary drop cable to the SUBSCRIBER'S home or premises.

A183.10.3. No PERSON in the GRANTEE'S service area shall be arbitrarily refused service, but in recognition of the capital costs involved in unusual circumstances, including, without limitation, instances when the distance from distribution cable to connection of service to SUBSCRIBERS is more than forty-five (45) meters [one hundred fifty (150) cable feet] or when a SUBSCRIBER density exists less than the density as specified hereinabove, service may be made available on the basis of costs of materials, labor and easements, in order to prevent inequitable burdens on cable SUBSCRIBERS in more densely populated areas.

A183.10.4. For all residential structures hereinafter erected which are to be serviced by underground utilities, the developer of the subdivision or DEVELOPMENT may acquire cable television service for this DEVELOPMENT under an agreement negotiated between the GRANTEE herein and such developer. The GRANTEE will, with due diligence and in a businesslike manner, seek to finalize satisfactory cable television service agreements with developers who do future construction within the MUNICIPALITY. However, absent such agreement(s), the GRANTEE shall have no obligation to serve such areas. Circumstances shall be reported to the MUNICIPALITY.

A183.10.5. In addition, the GRANTEE may provide plans and specifications to the developer in accordance with any such agreement between the GRANTEE and the developer, but such plans and specifications, if agreed to by the GRANTEE and the developer, must then be submitted to the MUNICIPALITY who shall have the right to review, and the approval of the MUNICIPALITY of the plans and specifications shall be obtained before installation. Unreasonable delay in municipal approval or untimely municipal approval caused by municipal failure or inability to act shall also free the GRANTEE of any obligation to provide service.

A183.10.6. In those areas of the service area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the GRANTEE likewise shall construct, operate and maintain all of its transmission and distribution facilities underground, provided that such facilities are actually capable of receiving the GRANTEE'S cable and other equipment without technical degradation of the CABLE TELEVISIONS SYSTEM'S signal

quality. In those areas of the service area where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, the GRANTEE shall have the sole discretion to construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this section shall require the GRANTEE to construct, operate and maintain underground any ground-mounted appurtenances, such as SUBSCRIBER taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals or other related equipment. Notwithstanding anything to the contrary contained in this section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this agreement, the GRANTEE shall only be required to construct, operate and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

§ A183.11. Operational standards; force majeure.

A183.11.1. The GRANTEE shall operate and maintain the CABLE TELEVISION SYSTEM in full compliance with the standards set forth by the Federal Communications Commission (FCC).

A183.11.2. The MUNICIPALITY may perform technical tests of the CABLE TELEVISION SYSTEM during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the GRANTEE or the CABLE TELEVISION SYSTEM in order to determine whether or not the GRANTEE is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving the GRANTEE reasonable notice thereof, not to be less than two (2) business days, and providing a representative of the GRANTEE an opportunity to be present during such tests. In the event that such testing demonstrates that the GRANTEE has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the GRANTEE. In the event that such testing demonstrates that the GRANTEE has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the MUNICIPALITY. Except in emergency circumstances, the MUNICIPALITY agrees that such testing shall be undertaken no more than two (2) times a year in the aggregate, and that the results thereof shall be made available to the GRANTEE upon the GRANTEE'S request.

§ A183.12. Local office.

The GRANTEE shall maintain a local business office or agent which SUBSCRIBERS may telephone during regular business hours without incurring added message or toll charges and shall maintain a telephone answering service during nonbusiness hours so complaints regarding cable television operations may be promptly reported to the GRANTEE. The TCI/Centre Video office serving the MUNICIPALITY is presently located at 5211 Brownsville Road, Pittsburgh, PA 15236. Business hours are 8:30 a.m. to 5:00 p.m. Monday through Friday and telephone contact may be established by dialing 655-4992.

§ A183.13. Rates.

The GRANTEE shall maintain on file with the municipal MANAGER a schedule setting forth all rates and charges to be made to SUBSCRIBERS for BASIC CABLE television service, including connection and service charges. Notice of changes in rates and charges, other than those enumerated in Exhibit Nos. 1(A), 2 and 3⁵ shall be filed with the municipal MANAGER. The GRANTEE shall submit such notice of rate changes at least sixty (60) days prior to the effective date of the adjusted rates. The MUNICIPALITY shall, at its option, have the opportunity to meet with the GRANTEE to discuss rate adjustments, provided that such meetings occur at least thirty (30) days prior to the effective date of said adjustments. Normal rate adjustments will not occur more frequently than on an annual basis with the ANNIVERSARY DATE relative to the adjustments understood to be the beginning and the end of this annual cycle. Intervening rate adjustments may become necessary, and shall be permitted, if increased operating costs are caused by increases in copyright payments, utility pole or conduit rental, programming charges or FRANCHISE fee. Other intervening rate adjustments may only occur through authorization in law or through the action of an agency of government or court of competent jurisdiction.

§ A183.14. FRANCHISE payments.

The GRANTEE shall pay the MUNICIPALITY, on or before the last dates in March, June, October and December, a FRANCHISE fee equal to three percent (3%) of BASIC SUBSCRIBER REVENUES received for cable television operations in the MUNICIPALITY for the preceding calendar quarter, and no other fee, tax, charge or consideration. Sales tax or other tax levied on a per subscription basis and collected by the GRANTEE shall be deducted from gross BASIC SUBSCRIBER REVENUES in computing any sum due the MUNICIPALITY. The GRANTEE shall provide an annual certified summary report showing these basic annual subscription revenues received during the preceding calendar year. On January 1, 1987, the GRANTEE shall begin to calculate the FRANCHISE fee at five percent (5%) of GROSS SUBSCRIBER REVENUES actually received by the GRANTEE and as defined in § A183.4 of this agreement. Deductions stated earlier in this section shall also apply under this formula of computation. The annual certified summary report shall reflect gross annual SUBSCRIBER revenues for the preceding calendar year and will be provided to the MUNICIPALITY.

§ A183.15. Indemnification of MUNICIPALITY.

A183.15.1. The GRANTEE shall at all times protect and hold the MUNICIPALITY harmless from all claims, actions, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs and reasonable attorneys' fees, which may accrue to or be suffered or claimed by any PERSON or PERSONS arising out of the negligence and alleged contractual dispute of the GRANTEE in the ownership, construction, repair, replacement, maintenance and operations of said CABLE TELEVISION SYSTEM and by reason of any license, copyright, property right or patent of any article or system used in the construction or use of said system, provided that the MUNICIPALITY gives the GRANTEE prompt notice of any such claims, actions and suits, without limitation, in writing. The GRANTEE shall maintain in full force and effect during the life of any FRANCHISE public liability and property damage insurance for an amount of at least three hundred thousand dollars (\$300,000.) single limit liability from the time of commencement of construction of the CABLE TELEVISION SYSTEM.

⁵ Editor's Note: Said exhibits are on file in the BOROUGH offices.

A183.15.2. All such insurance may contain reasonable deductible provisions not to exceed one thousand dollars (\$1,000.) for any type of coverage. The MUNICIPALITY may require that any and all investigation of claims made by any PERSON against the MUNICIPALITY arising out of any use or misuse of privileges granted to the GRANTEE hereunder shall be made by or at the expense of the GRANTEE or its insurer. The GRANTEE may bring its obligations to carry any insurance required hereby within the coverage of any so-called blanket policy or policies of insurance now or hereafter carried, by appropriate amendment, endorsement or otherwise; provided, however, that the interest of the MUNICIPALITY shall be as fully protected thereby as if the GRANTEE had obtained individual policies of insurance.

A183.15.3. Any insurance company providing coverage under the provisions of this section must be licensed and registered with the Pennsylvania Insurance Commission. In addition, the GRANTEE shall carry workmen's compensation coverage for its employees and provide evidence of the coverage to the MUNICIPALITY.

A183.15.4. Except as expressly provided herein, the GRANTEE shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the FRANCHISE or continuing its existence. The MUNICIPALITY acknowledges that the legal, financial and technical qualifications of the GRANTEE are sufficient to afford compliance with the terms of the FRANCHISE and the enforcement thereof. The GRANTEE and MUNICIPALITY recognize that the costs associated with 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 MUNICIPALITY agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefor. The MUNICIPALITY agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than ten thousand dollars (\$10,000.) conditioned upon the substantial performance of the material terms, covenants and conditions of the FRANCHISE. Initially, no bond or other surety will be required. In the event that one is required in the future, the MUNICIPALITY agrees to give the GRANTEE at least sixty (60) days' prior notice thereof stating the exact reason for the requirement. Such reasons must demonstrate a change in the GRANTEE'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.

§ A183.16. Evaluation of GRANTEE performance.

A procedure for scheduled, formal evaluation of GRANTEE performance, compliance and future direction is established in the following manner:

A183.16.1. A mandatory evaluation session shall be convened on the third ANNIVERSARY DATE of this agreement. To accommodate scheduling conflicts, this meeting may be held fifteen (15) days prior or fifteen (15) days following the actual ANNIVERSARY DATE. The municipal MANAGER shall arrange this session. Subsequent, formal evaluation sessions may be convened on or about the sixth and ninth ANNIVERSARY DATES. These sessions shall be at the request of COUNCIL and shall be scheduled by the municipal MANAGER. Representatives of the GRANTEE will be available for these sessions and for informal sessions which might be necessary from time to time.

A183.16.2. Any formal inquiry, proceeding, investigation or other action to be taken or proposed to be taken by the MUNICIPALITY in regard to the operations of the GRANTEE'S CABLE TELEVISION SYSTEM shall be taken only after thirty (30) days' written notice to the GRANTEE of such action, and the GRANTEE has been given an opportunity to respond in writing and at any hearing which may be specified by the MUNICIPALITY.

A183.16.3. The notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response and the PERSON or PERSONS in authority to whom such responses should be addressed and such other procedures as may be specified by the MUNICIPALITY. If a hearing is to be held, the notice shall give the date, time and the place of such hearing, whether public participation will be allowed, and the procedures by which such participation may be obtained. The GRANTEE shall be a necessary party to any hearing conducted in regard to its operations.

§ A183.17. Termination.

A183.17.1. The MUNICIPALITY shall have the right to terminate this agreement in the event of the failure of the GRANTEE to perform any of the provisions of this agreement, or in the event of any breach of the covenants and conditions contained herein. In considering termination for just cause, as initiated by the MUNICIPALITY, the following provisions shall apply:

A183.17.1.1. Notice of violation. In the event that the MUNICIPALITY believes that the GRANTEE has not complied with the terms of the agreement, it shall notify the GRANTEE of the exact nature of the alleged noncompliance.

A183.17.1.2. GRANTEE'S right to cure or respond. The GRANTEE shall have thirty (30) days from receipt of the notice described in this section to respond to the MUNICIPALITY contesting the assertion of noncompliance or to cure such default or, in the event that, by the nature of default, such default cannot be cured within the thirty-day period, initiate reasonable steps to remedy such default and notify the MUNICIPALITY of the steps being taken and the projected date that they will be completed.

A183.17.1.3. Public hearing. In the event that the GRANTEE fails to respond to notice, or in the event that the alleged default is not remedied within sixty (60) days after the GRANTEE is notified of the alleged default, the MUNICIPALITY shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of the MUNICIPALITY which is scheduled at a time which is no less than five (5) business days therefrom. The MUNICIPALITY shall notify the GRANTEE of the date, time and place of such meeting and provide the GRANTEE with an opportunity to be heard.

A183.17.1.4. Enforcement.

A183.17.1.4.1. Subject to applicable federal and state law, in the event that the MUNICIPALITY, after such meeting, determines that the

GRANTEE is in default of any provision of the agreement, the MUNICIPALITY may:

A183.17.1.4.1.1. Foreclose on all or any part of any security provided under this agreement, if any, including, without limitation, any bonds or other surety; provided, however, that the foreclosure shall only be in such a manner and in such amount as the MUNICIPALITY reasonably determines is necessary to remedy the default;

A183.17.1.4.1.2. Commence an action at law for monetary damages or seek other equitable relief;

A183.17.1.4.1.3. In the case of a substantial default of a material provision of the agreement, declare the FRANCHISE agreement to be revoked; or

A183.17.1.4.1.4. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

A183.17.1.4.2. The GRANTEE shall not be relieved of any of its obligations to comply promptly with any provision of the agreement by reason of any failure of the MUNICIPALITY to enforce prompt compliance.

A183.17.1.5. Acts of God. The GRANTEE shall not be held in default or noncompliance with the provisions of the 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 its ability to control.

A183.17.2. Upon expiration of the FRANCHISE, if the GRANTEE shall not have acquired an extension/renewal thereof and accepted the same, it may have and it is hereby granted the right to enter upon the STREETS or other property of the MUNICIPALITY for the purposes of removing therefrom any or all of its property or otherwise. In so removing said property, the GRANTEE shall refill, at its expense, any excavation that it shall make and shall leave said STREETS in as good condition as that prevailing prior to the GRANTEE'S removal of its property.

A183.17.3. To conclude GRANTEE involvement with the MUNICIPALITY, the GRANTEE shall compute and pay to the MUNICIPALITY any and all sums due. This final payment shall be accomplished within sixty (60) days of termination.

§ A183.18. Transfer.

A183.18.1. The GRANTEE shall not sell or transfer its plant or system to another, other than an AFFILIATE, nor transfer any rights under this agreement to another without COUNCIL approval. No sale or transfer of the GRANTEE'S assets used in the performance of this FRANCHISE shall be effective until the vendee,

assignee or lessee has filed in the office of the municipal manager an instrument duly executed reciting the fact of such sale, assignment of lease, accepting the terms of the FRANCHISE and agreeing to perform all the conditions thereof. Such COUNCIL approval shall not be unreasonably withheld and neither this section nor other sections of this agreement shall preclude the mortgaging, hypothecating or assigning of rights in the system, or the pledge of stock by the GRANTEE for the purpose of financing.

A183.18.2. If a renewal of the GRANTEE'S FRANCHISE is denied and the MUNICIPALITY either acquires ownership of the CABLE TELEVISION SYSTEM or by its actions effects a transfer of ownership of the CABLE TELEVISION SYSTEM to another party, any such acquisition or transfer shall be at a fair market value, determined on the basis of the CABLE TELEVISION SYSTEM valued as a going concern, but with no value allocated to FRANCHISE itself. If the GRANTEE'S FRANCHISE is revoked for cause and the MUNICIPALITY acquires ownership of the CABLE TELEVISION SYSTEM or by its actions effects a transfer of ownership of the CABLE TELEVISION SYSTEM to another PERSON, any such acquisition or transfer shall be at an equitable price. The GRANTEE and MUNICIPALITY agree that in the case of a revocation, at the GRANTEE'S request, which shall be made in its sole discretion, the GRANTEE shall be given a reasonable opportunity to effectuate a transfer of its CABLE TELEVISION SYSTEM to a qualified third party at fair market value, determined on the basis of the CABLE TELEVISION SYSTEM valued as an ongoing concern. The MUNICIPALITY further agrees that during such a period of time, it shall authorize the GRANTEE to continue to operate pursuant to the terms of its prior FRANCHISE; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, the GRANTEE is unsuccessful in procuring a qualified transferee or assignee of its CABLE TELEVISION SYSTEM, which is reasonably acceptable to the MUNICIPALITY, the GRANTEE and MUNICIPALITY may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that the GRANTEE'S continued operation of its CABLE TELEVISION SYSTEM during the six-month period shall not be deemed to be a waiver nor an extinguishment of any rights of either the MUNICIPALITY or the GRANTEE. Notwithstanding anything to the contrary set forth in this section, neither the MUNICIPALITY nor the GRANTEE shall be required to violate federal or state law.

§ A183.19. Miscellaneous provisions.

A183.19.1. When not otherwise prescribed herein, all matters herein required to be filed with the MUNICIPALITY shall be filed with the municipal manager.

A183.19.2. The GRANTEE shall assume the cost of publication of this FRANCHISE ordinance when such publication is required by law. A bill for publication costs shall be presented to the GRANTEE by the municipal manager.

A183.19.3. The GRANTEE shall provide without charge one (1) outlet of BASIC CABLE television service to each governmental office building, fire station, police station and public school building that is passed by its cable. The distribution of the cable facility inside such buildings and the extent thereof shall be at the option, duty and expense of the building owner.

A183.19.4. In the case of any emergency or disaster, the GRANTEE shall, upon requests of the MUNICIPALITY, make available its facilities to the MUNICIPALITY

for emergency use during the emergency or disaster period. The previous hold harmless provisions, set forth in Section A183.8.10. shall also apply to Sections A183.19.3. and A183.19.4. of this section.

A183.19.5. The GRANTEE agrees that the MUNICIPALITY may review such of its books and records, during normal business hours and on a nondisruptive basis, as are reasonably necessary to monitor compliance with the terms hereof. Such records shall include but shall not be limited to any public records required to be kept by the GRANTEE pursuant to the rules and regulations of the Federal Communications Commission. Notwithstanding anything to the contrary set forth herein, the GRANTEE shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The MUNICIPALITY agrees to treat any information disclosed by the GRANTEE to it on a confidential basis, and only to disclose it to employees, representatives and agents thereof that have a need to know or in order to enforce the provisions hereof.

A183.19.6. The GRANTEE will provide one (1) channel for PEG access. The GRANTEE will provide equipment to play back tapes of PEG programming. The PEG programs provided to the GRANTEE for showing on the PEG access channel will be cablecast without charge. The GRANTEE will attempt to accommodate requests for specific time of showing; however, the GRANTEE is not obligated to do so.

§ A183.20. Compliance with applicable laws.

The GRANTEE shall at all times during the life of this FRANCHISE be subject to all lawful exercise of the police power by the MUNICIPALITY. The MUNICIPALITY reserves the right to adopt from time to time in addition to the provisions herein contained such ordinances as may be necessary to the exercise of police power. Such regulation shall be reasonable and not in derogation to the rights herein granted, nor in conflict with the laws of the state or other local or federal laws or regulations.

§ A183.21. Unlawful acts.

From and after the effective date of this FRANCHISE, it shall be unlawful for any PERSON to construct, install or maintain within any public STREET in the MUNICIPALITY, or within any other public property of the MUNICIPALITY or within any privately owned area within the MUNICIPALITY which has not yet become a public STREET but is designated or delineated as a proposed public STREET on any tentative subdivision map approved by the MUNICIPALITY, any equipment or facilities for distributing any television signals or radio signals through a CABLE TELEVISION SYSTEM, unless a FRANCHISE authorizing such use of such STREET or property or area has first been obtained, and unless such FRANCHISE is in full force and effect.

§ A183.22. Line severing.

If at any time the GRANTEE'S cable and/or equipment is disturbed, damaged or severed, the cost of repair shall be paid by the party responsible for damage. The GRANTEE may charge the responsible party for the time and materials expended for repair of said damage.

§ A183.23. Preemption.

If the Federal Communications Commission or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the FRANCHISE, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the MUNICIPALITY, the jurisdiction of the MUNICIPALITY shall cease and no longer exist.

§ A183.24. Action by MUNICIPALITY.

In any action by the MUNICIPALITY or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

§ A183.25. Notice.

Unless expressly otherwise agreed between the parties, every notice or response to be served upon the MUNICIPALITY or GRANTEE 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.

§ A183.26. Severability.

If any part of this ordinance is for any reason held invalid by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The validity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the GRANTEE. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

§ A183.27. Other agreements.

All letters of understanding required or necessitated by previous sections of this agreement and subsequent, mutually agreed to, supplemental documents shall be incorporated into and become an integral part of this agreement. Mutually accepted written material titled "Addendum" or "Exhibit" are appropriate for inclusion under the intent of this section.⁶

§ A183.28. Written acceptance.

The GRANTEE shall file a written acceptance of the FRANCHISE granted pursuant hereto with the municipal manager or other appropriate official or agency of the MUNICIPALITY within sixty (60) days after the passage and final adoption of this agreement. The MUNICIPALITY shall notify the GRANTEE of the date that the agreement is finally passed and adopted, as well as the date by which a written acceptance is required to be filed. Subject to the filing of the written acceptance by the GRANTEE, the effective date of this agreement shall be the 60th day after its passage and final adoption.

⁶ Editor's Note: Said addendums and exhibits are on file in the BOROUGH offices.

