

ORDINANCE NO. 99-01

AN ORDINANCE GRANTING TO ANTIETAM CABLE TELEVISION, INC., ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT TO ERECT, MAINTAIN, AND OPERATE IN, UNDER, OVER, ALONG ACROSS, AND UPON THE STREETS, LANES, AVENUES, SIDEWALKS, ALLEYS, BRIDGES, HIGHWAYS, AND OTHER PUBLIC PLACES IN BOONSBORO, MARYLAND AND SUBSEQUENT ADDITIONS THERETO, FOR THE PURPOSE AND DISTRIBUTION VIA CABLE OF TELEVISION SIGNALS AND OTHER SERVICES TO THE INHABITANTS OF BOONSBORO, MARYLAND

BE IT ENACTED AND ORDAINED by the Mayor and Council of Boonsboro, Maryland as follows:

SECTION I

DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases, and words shall have the meaning given herein. Then not inconsistent with the context, words used in the present tense include the future, words in plural include the singular, and vice versa. The word "shall" is always mandatory:

A. "Town" is the Mayor and Council of Boonsboro, a municipal corporation under the laws of the State of Maryland.

B. "Company" is Antietam Cable Television, Inc. organized and existing under the laws of the State of Indiana, and it is the grantee of rights under this franchise.

C. "Council" is the Mayor and Council of Boonsboro, Maryland, or its designated representative.

D. "Federal Communications Commission" or "FCC" is the present federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

E. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

F. "Gross subscriber revenues" shall include any and all payments to the Company from Boonsboro subscribers for the Company's delivery of television programming.

G. "Regular Subscriber Services" shall include the carriage of any tier of television programming, which include, but are not limited to, advertising, leased channels and pay-cable.

H. "System" consists of poles, wires, cables, antennas and other appliances for the reception, transmissions, and distribution of television impulses and energy to be constructed, installed, maintained, repaired, replaced, operated and possibly removed by the Company for the television/radio reception, transmission and distribution by what is commonly referred to as a cable television system.

I. "Engineer" is the Town's duly appointed Engineer and includes Town's employee or officer qualified to discharge duties and obligations imposed under the provisions of this Ordinance.

SECTION II

Grant of Authority - In consideration of the faithful performance and observance of the conditions and reservations hereinafter specified, there is hereby granted to the Company, its successors and assigns, the right to erect, maintain, and operate a cable television transmission and distribution system in, under, over, along, across, and upon the streets, lanes, avenues, sidewalks, alleys, bridges, and other public places in Boonsboro, Maryland and subsequent additions thereto provided that the Company has obtained permission from the legal owner of the premises prior thereto, evidence of which shall be filed with the Town prior to commencement of any construction for the purpose of transmission and distribution of audio and visual impulses of television energy and other

services including but not limited to cable television, closed circuit television and two-way communications so long as all such services are provided in accordance with the laws and regulations and the ordinances and regulations of the Federal Communications Commission, the State of Maryland and the ordinances and regulations of Boonsboro upon the stipulations and conditions hereinafter contained.

SECTION III

A. Use of Existing Pole Line Facilities - There is hereby granted the further right, privilege, and authority to the Company to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities from any and all holders of public licenses and franchises within the limits of Boonsboro, including the telephone and power company and to use such towers, poles, lines, cables and other equipment and facilities, subject to all existing and future ordinances and regulations of the Town. The poles used for the Company's distribution system shall be those erected and maintained by the telephone and power company, when and where practicable, providing mutually satisfactory rental agreements can be entered into with said companies. Copies of such executed agreements shall be filed with the Town prior to using same and in any event within six months from the date of the agreement as a condition precedent to the exercise of this permission.

B. Non-exclusive Grant - The right and privilege herein granted by the Town for the purposes herein set forth is not exclusive and Town reserves the right to grant a similar right and privilege to any person, firm or corporation at any time during the term of this franchise or any renewal thereof.

C. Company shall at all times during the continuance of the right and privilege herein granted or any renewal thereof, be subject to all lawful exercises of the police power by Town,

and to such legal and reasonable regulations as Town shall hereinafter by Ordinance or resolution enacted.

SECTION IV

CONDITIONS ON STREET OCCUPANCY AND SYSTEM CONSTRUCTION

A. All attachments, installation, construction, maintenance, repair, replacement, operation or removal of the System or parts thereof shall be made subject to the approval of Engineer. In cases where existing poles or other structures, conduits or other facilities owned or leased by public utilities having the right to permit attachment thereto or location therein or thereon of System by Company are not available or are impractical for the purpose, then the proposed means of attachment, construction or conduit shall be submitted to the Engineer by drawings, plans and explanatory documents including agreements, leases or other papers granting the right of attachment, construction or conduit as in the case of original attachments, installations or construction at least twenty (20) days before such proposed attachment, installation or construction and shall be subject to approval in writing by Engineer before commencement of such attachment, installation or construction.

B. The Company's transmission and distribution system, poles, wires, and appurtenances shall be located, erected, and maintained so as not to endanger or interfere with the lives of persons or to interfere with new improvements this Town may deem proper to make, or to unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, or other public property removal of poles to avoid such interference will be at the Company's expense.

C. Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and

such applicable ordinances and regulations of Boonsboro, Maryland, affecting electrical installations, which may be presently in effect.

D. All installations of equipment shall be permanent of nature, durable, and installed in accordance with good engineering practices and of sufficient height to comply with all existing Town regulations, ordinances, and State laws and so as not to interfere in any manner with the right of the public or individual property owner, and such installations shall not interfere with the travel and use of public places by the public when installed during construction repair or removal thereof, nor shall they obstruct or impede traffic.

E. In the maintenance and operation of its cable television transmission and distribution system in the streets, alleys, and other public places in the course of any new construction or addition to its facilities, the Company shall proceed so as to cause the least possible inconvenience to the general public. Any opening or obstruction in the streets or other public places made by the Company in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences, or boardings, the bounds of which, during periods of dusk and darkness, shall be clearly designated by red warning lights. Any excavation or taking up of pavement, curbing, or sidewalk shall be done only with the approval of the Town and shall be repaired by the Company.

F. In the event the Town shall relocate a street, raise or lower a bridge, or make any other changes requiring the removal of utility installations, the Company at its sole expense shall remove or relocate its installations at said locations as instructed by the Town, no later than thirty (30) days from receiving the Town's instructions.

G. In case of any disturbance by the grantee of pavement, sidewalk, driveway or other surfacing, the grantee shall, at its own cost and expense and in a manner approved by the Town,

replace and restore all paving, sidewalk, driveway and other surface so disturbed in as good condition as before said work was commenced. Repairs, replacements or restoration shall be completed within ten (10) days.

H. Company shall on the request of any person, firm or corporation holding a moving permit issued by the Town or other governmental regulatory agency having jurisdiction of the matter by which permit building or buildings, large pieces of equipment or structural materials or the like are to be moved from place to place, temporarily raise or lower its System necessary for so doing to permit the moving of such buildings, equipment, structural materials and the like. The expense of such temporary raising or lowering of System or any part thereof shall be paid by the person, firm or corporation requesting the same. Company shall be given 72 hours advance notice to arrange for such temporary changes.

I. Town shall have the right to inspect all work of attachment, installation, construction, maintenance, repair, replacement, operation or removal of System or any part thereof to insure Company's compliance with this Ordinance or any other Town Ordinance or governmental regulations applicable thereto.

SECTION V

INDEMNIFICATION AND LIABILITY

Indemnification and Liability - The Company shall indemnify, protect and save harmless the Town from and against losses and physical damage to property, and bodily injury or death to persons, including payments made under any Worker's Compensation law and further including attorney fees incurred by the Town in defending itself from such claims, etc. which may arise out of or be caused by the erection, maintenance, presence, use or removal of the System within the Town or by any act of the Company, its agents or employees. The Company shall carry insurance, to protect the parties hereto from and against all claims, demands, actions, judgments, cost, expenses, and liabilities which may arise or result, directly or indirectly from or by reason of such loss, injury or damage. The amounts of such insurance against liability due to physical damages to property shall not be less than \$1,000,000.00 as to any one accident and not less than \$1,000,000.00 aggregate in any single policy year, and against liability due to bodily injury or to death of person not less than \$1,000,000.00 as to any one person and no less than \$1,000,000.00 as to any one accident. The Company shall also carry such insurance required by Maryland State law to protect it from all claims under the Workmen's Compensation Laws in effect that may be applicable to the Company. All insurance required by this Ordinance shall be and remain in full force and effect for the entire life of this Ordinance and shall name the Town as co-insured. Said policy or policies of insurance or a certified copy or copies thereof shall be deposited with and kept on file by the Town Clerk. Each policy shall contain a provision that no change or cancellation of the said policy may be made without first giving thirty (30) days written notice in advance to the Town. In addition, the Company shall indemnify the Town and its officials and shall hold them and each of 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 Company.

SECTION VI

PROVISION OF SERVICE

A. The Company shall install a 750 MHz CATV system carrying, so long as it is technically and economically practical to do so, the number of television broadcast signals required by the current regulations of the Federal Communications Commission and any other regulatory agency.

B. The Company shall provide one (1) outlet of complementary basic CATV service to all schools in Boonsboro which are passed by the cable. The cost of installation shall be borne by the school(s) requesting service.

SECTION VII

COMPLAINT PROCEDURES

A. Company shall maintain a regional business office in the area or shall maintain a toll-free telephone line to handle the receipt complaints.

B. Company shall investigate and resolve all subscriber complaints regarding the quality of service, equipment malfunctions and similar matters expeditiously and in accordance with the following procedure:

1. Company shall have qualified personnel available during normal working hours to investigate and resolve subscriber complaints.

2. Upon notification of service complaint, Company shall dispatch a qualified employee to investigate the complaint and adjust, repair or replace Company equipment as necessary to resolve the complaints. Company shall not be responsible for malfunctions of any

television receivers owned or operated by subscriber.

3. All complaints shall be investigated and resolved normally within twenty four (24) hours after initial notification to Company. Extenuating circumstances excepted.

4. At the Town's request, Company shall maintain a service log in which an entry shall be made of each complaint, the date of notification thereof, the nature of the complaint and the means by which it was resolved. This log shall made available to the Town for inspection upon request.

5. Notice shall be given to subscribers of complaint procedure when they initially subscribe.

SECTION VIII

The Company agrees to comply with all rules and regulations promulgated by the Federal Communications Commission with respect to the operation of cable television systems.

SECTION IX

Franchise Fee - The Company shall pay to the Town as a franchise fee, a sum equal to three percent (3%) of the Company's gross subscriber revenues per year to accordance with the definition of "gross subscriber revenues" contained herein at Section I, Paragraph F. Said payments shall be made annually within thirty (30) days after the end of the Company fiscal year.

SECTION X

The franchise shall take effect and be in full force from and after the final passage hereof, subject to acceptance by the Company as herein provided, and the same shall continue in full force and effect for the term of fifteen (15) years beginning with the date of such acceptance.

Company shall have the option to request renewal of this franchise for an additional period not to exceed 15 years. Should Company desire to exercise this option, it shall so notify the Town, in writing, not less than six (6) months prior to expiration of this franchise. The Town may consider the performance of Company under this franchise and any other factors deemed relevant in determining whether to renew this franchise. If this franchise is renewed by the Town, all of the terms and provisions contained herein shall be controlling during the renewal period except to the extent that said terms and provisions are modified by the Town or unless this franchise is superseded by a new franchise. This renewal provision does not preclude any franchise renewal rights the Company has under federal law.

SECTION XI

Surrender Right - The grantee may surrender this franchise at any time upon filing with the Town Clerk of the town of written notice of its intention to do so at least six (6) months before the surrender date. On the surrender date specified in this notice, all of the rights and privileges and all of the obligations, duties and liabilities of the grantee, other than those liabilities then pending or liabilities that may arise as a result of the operation of the system prior to surrender date, in connection with this franchise shall terminate.

Town's Right to Terminate Franchise - Should Company violate any of the material terms, conditions and provisions of this Ordinance for a period of ninety (90) days after written notice

thereof by Town to Company, then, in that event, Company shall be deemed to have forfeited the franchise herein granted.

~~Removal of Equipment at Termination - Company shall within ninety (90) days after~~
written notice from Town to Company remove all of its equipment, structures, facilities, apparatus and appurtenances and restore any disturbed areas to their original condition.

SECTION XII

Transfers - All of the rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successors of the Town and the successors and assigns of the grantee, and the same shall not be assigned or transferred without prior written notification to the Mayor and Council.

SECTION XIII

Separability - If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any federal or state court or administrative agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION XIV

Acceptance by Grantee - This ordinance when accepted by the grantee shall be and become a valid and binding contract between the Town and grantee, provided that this ordinance shall be void unless the grantee shall, within ninety (90) days after the final passage of this ordinance, file with the Town Clerk of the Town a written acceptance of this ordinance and the franchise herein granted, agreeing that it will comply with all of the provisions and conditions hereof and that it will

refrain from doing all of the things prohibited by the ordinance.

ENACTED AND ORDAINED this 7TH day of SEPTEMBER 1999.

TOWN OF BOONSBORO

By: [Signature]
Title: Mayor

Accepted by Company, Antietam Cable Television, Inc., this 16th day of September, 1999.

ANTIETAM CABLE TELEVISION, INC.

By: [Signature]
V. Gene Hager
Title: President

Introduced: 09/07/99

Adopted: 09/07/99

Effective: 09/27/99

Term of Lease: Fifteen (15) Years

Date of Expiration: September 27, 2014