

ORDINANCE NO. 459

An Ordinance relating to and regulating cable television systems in the Borough of Mansfield, Tioga County, Pennsylvania,

WHEAREAS, Blue Ridge Cable Technologies, Inc., currently provides Cable Television Service pursuant to a franchise granted by Ordinance No. 385 as amended by Resolution.

WHEREAS, said franchise expires on March 31, 2012 and Blue Ridge requests to continue to provide Cable Television Service within the Borough.

WHEREAS, the Council has fully considered the legal character, financial and technical qualifications of Blue Ridge Cable Technologies, Inc. as well as its construction arrangements, in a full public proceeding after due notice to the public, and it has been determined that a formal franchise should be granted to Blue Ridge Cable Technologies, Inc.

BE IT ORDAINED AND ENACTED by the Council of the Borough of Mansfield in council assembled, and it is hereby ordained and enacted by authority of the same.

SECTION 1. (TITLE) This ordinance shall be known and may be cited as the MANSFIELD BOROUGH CABLE TELEVISION FRANCHISE ORDINANCE.

SECTION 2. (DEFINITIONS)

a. "Cable System" (CATV) shall mean an arrangement or combination of apparatus designed to receive, transmit, amplify and distribute television, radio, satellite signals and electronic communications and for a consideration are delivered to subscribers.

b. "Borough" is the Borough of Mansfield, Tioga County, Pennsylvania,

c. "Company" is Blue Ridge Cable Technologies, Inc., the grantee of rights under this franchise.

d. "Council" is the governing body of the Borough of Mansfield, Tioga County, Pennsylvania,

e. "Streets" shall mean and include all public streets, ways, alleys and parkways owned by or under the jurisdiction of the Borough of Mansfield,

f. "Person" and "applicant" shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

SECTION 3. (NON-EXCLUSIVE FRANCHISE)

There is hereby granted by the Borough to the Company a non-exclusive franchise to construct a Cable television system (CATV) as may be prescribed or permitted by the Federal Communications Commission and to use poles, wires, conduits and appurtenances under, along, across or upon any or all public streets, ways, alleys or parkways, as the same now or may hereafter exist with the Borough of Mansfield and within the boundaries of the said Borough of Mansfield as the same may hereafter be extended for transmitting and distributing electricity and electrical impulses and signals for communication purposes, namely to produce reproduction of sights and sound in combination to the residents of the Borough of Mansfield, upon the terms and conditions and subject to the limitations herein set forth.

SECTION 4. (TERRITORY)

Upon the annexation of any territory to the Borough, the portion of any said utility that may be located or operated within said territory, upon the streets, alleys or public ways thereof, shall thereafter be subject to all the terms of this franchise as though it were an extension made there under.

SECTION 5. (COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES)

The Company shall, at all times during the life of this franchise, be subject

to all lawful exercise of the police power by the Borough, and to such reasonable regulations as the Borough shall hereafter by resolution or ordinance provide.

SECTION 6. (LIABILITY OF COMPANY)

Company shall indemnify and save the Borough and its agents and employees harmless from all and any claims for personal injuries or property damages, and any other claims and costs, including attorneys' fees, expenses of investigation and litigation of claims and suits thereon which may arise from the installation and/or operation of Company's television antenna system or any equipment of the Company, In case suit shall be filed against the Borough, either independently or jointly with said Company, to recover for any said claim or damages, said Company, upon notice to it by said Borough, shall defend said Borough, its agents and employees, against said action, and in the event of a final judgment being obtained against said Borough, either independently or jointly with said Company, the said Company will pay said judgment and all costs and hold the Borough harmless therefrom. For this purpose Company shall carry and at all times maintain or file with the Secretary of the Borough of Mansfield and at all times keep in force, a liability policy or policies in the name of Company and the Borough as their respective interests may appear, insuring Company and the Borough against any and all liability arising from the installation and/or operation of said system, which policy or policies shall be approved by the Solicitor of the Borough, Such liability policy or policies shall be in the sum of the following: Products/Completed Operations Limit of One Million Dollars (\$1,000,000), Personal and Advertising Limit of One Million Dollars (\$1,000,000) and Each Occurrence Limit of One Million Dollars (\$1,000,000). Such policy or policies of insurance shall be issued by a company licensed to do business in the Commonwealth of Pennsylvania, The Company shall also carry workers' compensation coverage for all of its

employees, subject to, and in the amount required by the state statutory limits, and shall submit to the Secretary of the Borough a certificate of insurance showing the workers' compensation coverage in effect.

SECTION 7. (PAYMENT TO THE BOROUGH)

On May 1, 2012, Company shall pay a franchise fee of \$3,600. Beginning January 1, 2013 and until December 31, 2017, the Company shall annually pay a franchise fee to the Borough, said fee to be 3 per cent of the gross annual receipts of the Company arising within the Borough from cable television services; said fee being for the regulation and privilege of using the streets and alleys of the Borough for the operation of its system. Beginning January 1, 2018 through December 31, 2022, the franchise fee shall be 4 per cent of the gross annual receipts of the Company arising within the Borough from cable television services. Beginning January 1, 2023 through March 31, 2027, the franchise fee shall be 5 per cent of the gross annual receipts of the Company arising within the Borough from cable television services.

Additionally, Company shall provide high speed cable modem internet service to the Borough at the current Borough Hall location as long as Company provides cable modem service during the term.

Franchise fee payments to the Borough under this provision shall be computed at the end of each calendar quarter and shall be due and payable within sixty (60) days after the end of each calendar quarter. Acceptance of payment shall be construed an accord and satisfaction payment in full and release of any claim of further payment no sooner than 3 years after payment.

The franchise fee shall be passed through to the subscribers as permitted by Law.

SECTION 8. (SERVICE STANDARDS)

The Company shall during the continuance of this franchise provide facilities and service sufficient to meet the needs of the subscribers, and shall maintain its facilities and service up to date and in keeping with technical progress. The system shall be installed and maintained in accordance with good engineering practices, and Federal Communications Commission regulations. All construction must be done in a good and workmanlike manner free of obvious defects which may be a hazard to life and limb, and in conformance with the standards as set forth in the National Electric Safety Code,

a. Notice of Interruption for Repairs. Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the Company shall do so at such time as shall cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its customers.

b. Continuous Service. Company service shall be daily during the regular telecast operating hours of the stations whose TV broadcasts are being transmitted,

c. Non-discrimination of Service. The Company shall serve any person residing in or owning property in the Borough desiring service who shall pay the charges set forth in Company policy including monthly rates and excess construction charges.

d. Interference. The Company shall at all times operate the community system so as not to adversely affect or interfere with existing radio and television reception and shall prevent radiation from Company's cables to antennas located in Borough.

e. The Company shall immediately investigate and resolve all service complaints and equipment malfunctions.

SECTION 9. (TRANSFER OF FRANCHISE)

The sole stockholder of the Company is presently Pencor Services, Inc. The Company shall not sell, transfer, or assign this franchise nor shall its owners transfer majority ownership of their stock of said Company, unless to one of its wholly owned subsidiaries, without the approval of the Council which said approval will not be unreasonably withheld. Provided, further that no sale or transfer shall be effective until the vendee, assignee or lessee has filed with the Borough Secretary, an instrument accepting the terms of the franchise and agreeing to perform all the conditions thereof.

SECTION 10. (CONDITIONS ON STREET OCCUPANCY)

a. Use. All transmission and distribution structures, lines and equipment erected by the Company within the Borough shall be located with the approval of the Council and shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin the streets, alleys or other public ways and places. The Company shall furnish the Borough with a map showing the pole line system in sufficient detail to assure the Borough of being currently advised as to the location of the cables of the system. It shall be the responsibility of the Company to keep the Borough advised of any and all changes and additions and removals in the system, except for the individual subscriber's connection wires.

b. Restoration. In case of any disturbance of pavement, sidewalk, driveway, or other surfacing the Company shall, at its own cost and expense and in a manner approved by the Council, replace and restore all paving, sidewalk, driveway or surface of any

street or alley disturbed, in as good condition as before said work was commenced and shall maintain the restoration in improved condition for one year.

c. Relocation. In the event that at any time during this franchise the Borough shall lawfully elect to alter or change the location or grade of any street, alley or other public way or if in the opinion of the Council a pole or pole line interferes with the necessary convenience of the Borough or a property owner, then, upon reasonable notice by the Borough the Company shall remove, relay and relocate its poles, wires and cables or other television fixtures at its own expense.

d. Placement of Fixtures. It is to be the general policy of the Borough and it is understood by Company that where distribution lines are to be installed along any public street the same shall preferably be attached to existing utility poles rather than to additional poles placed by Company, and that where poles are to be placed in alleys, the same shall be located whenever possible on the same side of the alley as existing utility poles. It is understood and agreed that this restriction and limitation shall extend to any and all streets within the limits of the Borough, even though some of said streets may be part of the state highway system, special exception or exceptions may be granted to Company by the Council upon written application to it by Company, but said exceptions shall be for good cause shown and in the sole discretion of the Council.

Before Company sets poles or constructs any structure on Borough property it shall file with the Borough detailed specifications showing the exact location, height and dimensions of the poles or structures to be erected. The poles or structures shall not be erected thereafter until such specifications shall be approved in writing by the Council and the Pennsylvania Department of Transportation has issued a license when and if required. All

wires, cables and other overhead equipment shall be at such minimum heights as are or may be required of telephone or power lines by the Public Utility Commission of Pennsylvania or the Pennsylvania Department of Transportation.

Where the Council of the Borough are uncertain as to the exact location of the limits of the right-of-way of any street or alley, then in their discretion they may require the same to be surveyed by a surveyor selected by them, the cost of said survey to be paid by Company.

e. Tree Trimming. The Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the Borough so as to prevent the branches of such trees from coming in contact with wires and cables of the Company, all trimming to be done under the supervision and direction of the Council and at the expense of the Company.

f. Use of poles and fixtures. The Company agrees that it will furnish a copy of any contract entered into with any utility for the use of their poles by the Company and setting forth the terms, conditions and duration of said contract. The Company agrees that the copy of the aforementioned contract will be filed with the Secretary of the Borough prior to starting any installation of wires and other facilities on the Borough streets under this franchise.

g. Removal of Wires and Installation from Premises of Subscriber. The Company shall, on request of any subscriber, promptly remove all wires and installations from the premises of such subscriber.

h. Removal of Wires, Poles and Installations from Borough Streets. The Company shall remove or cause to be removed from the streets, alleys and public ways of the Borough of Mansfield and from all public property all of the wires, poles and installations of any

kind or nature whatsoever which have been installed under the authority of this franchise upon the termination of this franchise, the cessation of operation under this franchise by the Company, its successors or assigns, for any reason whatsoever, or the forfeiture of this franchise under the provisions herein,

SECTION 11. (REPORTS REQUIRED)

For the purpose of administering this Ordinance, the Company shall:

a. Keep and render its books and records in a manner which will permit the drawing off of a detailed financial statement therefrom clearly disclosing the amount of rentals received by the Company in arriving at the determination of the gross receipts rental as heretofore set forth.

b. Within sixty (60) days after the close of its annual fiscal year, the Company shall file with the Borough a verified statement of the income received from rentals in the Borough for the preceding fiscal year. The fiscal year of the Company shall be December 31st and shall not be changed without the approval of the Council,

SECTION 12. (INSPECTION OF BOOKS)

The Council, their Treasurer, Solicitor, auditors or accountant shall have the right at reasonable times to inspect the books and records of the Company for the purpose of verifying the statement of revenues received.

SECTION 13. (TERM OF FRANCHISE)

The franchise rights granted herein shall take effect upon the effective date of this Ordinance and shall continue in force and effect for a period of fifteen (15) years thereafter. At the option of the Company and with approval of the Council, the franchise may be extended for additional terms, each often (10) years. Any modifications of the Rules of the

Federal Communications Commission shall be incorporated into this Franchise Ordinance,

SECTION 14, (PUBLICATION COSTS)

The Company shall assume the cost of publication of this Ordinance as such publication is required by law. A bill for publication costs shall be presented to the Company by the Secretary of the Borough and upon Company's filing of acceptance shall be paid at that time.

SECTION 15, (FORFEITURE)

The Council may at any time declare a forfeiture of this grant for violation or default by the Company of any of the terms thereof, provided that none of the terms of this grant shall be deemed to be violated so as to permit such forfeiture unless the Company shall first be given notice by the Borough of such violation or default and of the attempt to declare a forfeiture and thereafter if such violation or default shall continue for a period of more than ninety (90) days all the rights and privileges of said company under the provisions of this Ordinance may be forthwith declared forfeited and revoked. If any action shall be instituted and prosecuted directly or indirectly by the Company, or by its stockholders, or creditors, to set aside or have declared void any terms of this grant, the whole of this grant may be thereupon forfeited and annulled at the option of the Council, to be expressed by Ordinance. Provided, however, the Company shall not be deemed to be in default for performance of any provision of this grant, nor shall forfeiture be invoked for any violation or failure to perform any provision hereof due to strikes, lockouts, insurrections, acts of God, or any cause beyond the control of the Company,

SECTION 16. (MANNER OF GIVING NOTICES)

Whenever, by the terms of this Ordinance, notice is required to be given by the Borough to the Company, it may be given by delivering to an officer of Company a paper

writing thereof during the ordinary business hours at the principal office of the Company. Whenever the Company is required to give notice to the Borough it shall do so by leaving or delivering a paper writing thereof at the office of the Secretary of the Borough during ordinary business hours.

SECTION 17. (BOROUGH HELD HARMLESS)

The Company will hold the Borough harmless from the alleged violation of any utility franchise previously granted by the Borough. The granting of a franchise under this Ordinance shall not be construed as any undertaking or guarantee of the efficiency of the Company or maintenance of the service of Company. The Borough assumes no responsibility for the acts or omissions of the Company other than to require compliance with this Ordinance.

SECTION 18. (SEVERABILITY)

Should any section or part of any section of this Ordinance, for any reason, be declared void or invalid, the remainder of said Ordinance shall not be affected thereby.

SECTION 19. (ACCEPTANCE OF FRANCHISE)

This grant is made upon the express condition that the Company within thirty (30) days after this Ordinance takes effect and becomes operative, shall file with the Secretary of the Borough a written acceptance of the same, and when this Ordinance shall have been accepted by the Company, such ordinance and acceptance shall constitute a contract between the Borough and the Company for all uses, services and purposes set forth in this Ordinance and the Company by its acceptance of the provisions of this Ordinance binds itself to provide the necessary cable television system and to establish, operate and maintain the cable television system contemplated in this Ordinance, continuing without substantial interruption

except for causes beyond its control until the expiration of the term of this grant.

SECTION 20. (CONSTRUCTION)

CATV service under this franchise shall be to all portions of the Borough, excluding those areas with less than twenty (20) subscribers per mile. For the purpose of this section, a subscriber is a credit worthy adult individual who has evidenced an intent to subscribing to Cable Television service by signing a contract for service,

SECTION 21. (LEVEL PLAYING FIELD)

In the event that Mansfield Borough grants one (1) or more franchise(s) or similar authorization(s), for the construction, operation and maintenance of any communication facility which shall offer services substantially equivalent to services offered by Company, it shall not make the grant on more favorable or less burdensome terms. If the Company finds that the agreement granting other franchise(s) contain provisions imposing lesser obligations on the additional franchise thereof than are imposed by the provisions of this Agreement, the Company may petition Mansfield Borough for a modification of this Agreement. The Company shall be entitled, with respect to said lesser obligations to such modification(s) of this agreement as may be determined to be necessary to insure fair and equal treatment by this agreement and said other agreements. In the event that a non-franchised multi-channel video programmer/distributor provides service to residents of the Mansfield Borough, the Company shall have a right to request Franchise Agreement amendments that relieve the Company of regulatory burdens that create a competitive disadvantage to the Company. In requesting amendments, the Company shall file a petition seeking to amend the franchise. Such petition shall: (i) indicate the presence of a non-franchised competitor(s); (ii) identify the basis for Company's belief that certain provisions of the Franchise Agreement place Company at a competitive disadvantage; (iii)

identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. Mansfield Borough shall not unreasonably withhold granting the Company's petition and so amending the Franchise Agreement.

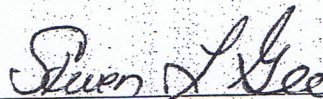
SECTION 22 (OWNERSHIP AND USE OF CATV SYSTEM)

Company shall have the unrestricted right and availability to utilize the Cable System for telecommunication purposes other than cable television service, including but not limited to data, voice and message transmission so long as said uses do not unduly interfere with the cable television service being provided to Subscribers.

Enacted into an Ordinance and adopted by the Council of the Borough of Mansfield, Tioga County, Pennsylvania, effective this 11th day of April, 2012.

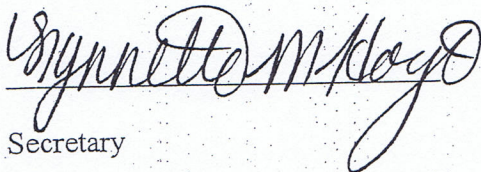
MANSFIELD BOROUGH COUNCIL

By:



President of Council

ATTEST:


Secretary