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ORDINANCE NO. 26

AN ORDINANCE OF BUFFALO TOWNSHIP, WASHINGTON COUNTY, PENNSYLVANIA GRANTING A NON-EXCLUSIVE FRANCHISE TO TIMES MIRROR CABLE TELEVISION OF WASHINGTON, INC. TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN A LIMITED AREA OF BUFFALO TOWNSHIP, PENNSYLVANIA, SETTING OUT CONDITIONS ACCOMPANYING THE GRANT OF SAID NON-EXCLUSIVE FRANCHISE, AND PROVIDING FOR TOWNSHIP REGULATION AND USE OF THE CABLE TELEVISION SYSTEM.

WHEREAS, the Times Mirror Cable Television of Washington, Inc., having its principal place of business at 140 Park Avenue, Washington, Pennsylvania 15301, has made an application to Buffalo Township for permission to construct, maintain and operate a cable television system within a limited area of the Township and to attach/install wires, aerial/underground cables and associated appurtenances in connection with said cable television system to existing utility poles and in conduits within the area to be serviced and for traversing and crossing of said wires, cables and associated appurtenances above, upon, through, over, under and across public streets and roadways, and other public rights-of-way, including the public utility easements or rights-of-way, now or hereafter held by the Township, within the area to be serviced; and

WHEREAS, the Township Supervisors have held a full public hearing, with due notice thereof, in which all interested parties were given full opportunity to be heard concerning the application of Times Mirror Cable Television of Washington, Inc.; and

WHEREAS, the Township Supervisors have considered and approved the application of the Times Mirror Cable Television of Washington, Inc. to operate a cable television system within a limited area of the Township in accordance with this Ordinance;

NOW, THEREFORE, it is hereby ORDAINED AND ENACTED by the Supervisors of the Township of Buffalo, Washington County, Pennsylvania, as follows:

SECTION 1. DEFINITIONS

For purposes of this Ordinance, the following definitions shall apply. The word "shall" is always mandatory and not merely directory.

1.1. "Cable Television System" shall mean a system of antennas, cables and other facilities that receives directly or indirectly over the air, amplifies, or otherwise modifies the

signals transmitting programs broadcast by one or more television or radio stations or other programers and distributes such signals by wire or cable to subscribing members of the public who pay for such service.

1.2. "Township" shall mean the Township of Buffalo.

1.3. "Board of Supervisors" shall mean the Board of Supervisors of Buffalo, which is the principal legislative body of the Township, or any future board constituting the legislative body of the Township.

1.4. "Converter" shall mean an interface device which may be furnished to subscribers in order that non-standard television channels carried on the cable television system may be received on a conventional homes television receiver.

1.5. "Federal Communications Commission" or "FCC" shall mean that agency as presently constituted by the Communications Act of 1934, or any successor agency.

1.6. "Franchise" shall mean the non-exclusive rights granted hereunder to construct and operate a cable television system along the public ways within all, or specified, areas in the Township and is not intended to include any license or permit

required for the privilege of transacting and carrying on a business within the Township as may be required by other ordinances and laws of the Township. Where otherwise indicated by the context, it shall mean this Franchise Agreement.

1.7. "Grantee" shall mean Times Mirror Cable Television of Washington, Inc., a Pennsylvania corporation, and its lawful successor, transferee or assignee.

1.8. "Public Way" or "Street" shall mean the surface, the air space above the surface, and the area below the surface or any public street, highway, lane, path, alley, sidewalk, boulevard, drive or other public right-of-way, including the public utility easements or rights-of-way, now or hereafter held by the Township, which shall entitle the Township and the Grantee to the use thereof for the purpose of installing and maintaining the Grantee's cable television system.

1.9. "Customer" or "Subscriber" shall mean any person who contracts to purchase, orally or in writing, the regular customer service or any one or more of such other services as may be provided by the Grantee's cable television system.

1.10. "CATV" shall mean a cable television system.

1.12. "Franchise Areas" shall be specifically limited to that area situate in the Township of Buffalo more specifically described as beginning at the intersection of U. S. Route 40, on the southerly side of Route 40, and dividing Ridge Road (at a point near the structure now existing as Club 40); continuing on the southerly side of U. S. Route 40, West to Township Road 526, commonly known as East Buffalo Church Road; proceeding South along said Township Roads 526 and 622 to a point of entrance onto Christy Acres and including that portion of Township Road 623, commonly known as Haren Drive in Christy Acres, said point being the point of termination.

SECTION 2. GRANT OF AUTHORITY.

There is hereby granted by the Township to the Grantee, subject to applicable Ordinances and regulations, the right and privilege to engage in the business of operating and providing a CATV system in the Township, and for that purpose to erect, install, construct, repair, replace, improve, reconstruct, maintain and retain in, on, over, under, upon, across and along the franchise area, such poles, wires, cable, conductors, ducts, conduit, pedestals, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system.

SECTION 3. NON-EXCLUSIVE GRANT.

The rights granted hereunder for the purposes herein set forth and to render the contemplated service shall not be exclusive in the Grantee. In the event the Township adopts another ordinance or enters into a franchise, permit, license, authorization or other agreement of any kind with any other person or entity other than the Grantee for the purpose of constructing or operating a cable system or providing CATV service to any part of the Township, which contains terms more favorable to such person or entity in any regard than similar provisions to this Ordinance, then the Ordinance shall be deemed amended as of the effective date of the new ordinance, franchise, permit, license authorization or other agreement, so as to give the Grantee the benefit of any such more favorable terms.

SECTION 4. DURATION AND RENEWAL.

The duration of the Franchise shall be fifteen (15) years from the effective date. Grantee and Township agree that franchise renewal shall be in accordance with applicable State and Federal laws.

SECTION 5. CONDITIONS OF STREET OCCUPANCY.

5.1. Grantee shall utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different or additional poles, conduits, or other facilities whether on public property or on privately owned property, until the written approval of the Township or property owner is obtained, which approval shall not be unreasonably withheld or delayed.

5.2. All transmission lines equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin on any street. Suitable barricades and warning devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Tree trimming shall be conducted only when necessary to ensure safe installation and maintenance of cable lines.

5.3. In the case of disturbance of any street, sidewalk, alley, public way or paved area, the Grantee shall, at its own cost and expense, in the manner approved by the Township Engineer, replace and restore said street, sidewalk, alley, public way or paved areas in as good a condition as existed before the work involving such disturbance was done.

5.4. If, at any time during the period of this franchise, the Township shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, the Grantee, upon reasonable notice by the Township, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

5.5. The Grantee shall, upon the request of any person holding a building-moving permit issued by the Township,

temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than seven (7) days advance notice to arrange for such temporary wire changes.

5.6. The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public ways and places held by the Township, so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee. By mutual agreement of the Township and Grantee, such trimming may be done by the Township or under its supervision and direction, at the expense of the Grantee.

5.7. Nothing in this Agreement shall grant to the Grantee any right of Township-owned property, nor shall the Township be compelled to maintain any of its property any longer than, or in any fashion, that in the Township's judgment its own business or needs may require.

5.8. The Township shall not be required to assume any responsibility for the securing of any rights-of-way or easements, nor shall the Township be responsible for securing any permits or agreements with other persons or utilities.

5.9. Except for individual service drops, the Grantee shall not erect any pole, run any line, make any attachment, nor shall any construction of any kind be commenced, without the prior approval of the Supervisors of Buffalo Township, and the Township shall maintain the right to inspect the construction, operation and maintenance of the system by the Grantee to ensure the proper performance of the terms of this Franchise Agreement. Such inspections will be at the sole cost of the Grantee. Such inspections and costs shall be subject to terms of reasonableness and necessity.

5.10. Whenever all electrical and telephone utility wiring is located underground, either at the time of initial construction or subsequently, at the direction of the Township, the television cable shall also be located underground at the Grantee's expense. If the facilities of either the electric or the telephone utility are aerial, the television facilities may be located underground at the request of the property owner, provided that the reasonable excess cost of such underground installation shall be borne by the property owner making the request. Any such underground facilities referred to herein may include above-ground enclosures, pedestals, vaults, markers and concrete pads and other appurtenant fixtures and equipment necessary or useful for distributing cable television signals in, on, over, under, across and along the subject property.

SECTION 6. SAFETY REQUIREMENTS.

6.1. The Grantee shall at all times employ ordinary care and shall install and maintain in use, commonly accepted methods and devices consistent with current applied technology for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

6.2. All structures and all lines, equipment and connections in, over, under and upon all streets of the franchise area shall be kept and maintained by Grantee, at its expense, in a safe and suitable condition and in good order and repair.

6.3. Grantee shall construct, operate, and maintain the cable television system subject to compliance with the technical standards, rules and regulations, including applicable amendments, of the Federal Communications Commission and all other applicable federal, state or local laws and regulations, including the National Electric Safety Code. The cable television system and all its parts shall be subject to inspection by the Township, provided, however, that electrical tests shall be limited to those required for compliance with the technical standards of the Federal Communications Commission. Charges for any tests referred to in this section shall be chargeable to Grantee. Such testing and charges shall be subject to terms of reasonableness and necessity.

6.4. Grantee shall endeavor to design, construct, operate, and maintain the system at all times so that signals carried are delivered to customers without material degradation to quality.

6.5. It shall be the policy of the Township to permit the Grantee to make upgrade changes in its system to take advantage of technical enhancements developed which will afford it an opportunity to more effectively, efficiently, or economically serve its customers, provided that said changes conform with applicable Federal law, State law, and FCC rulings and regulations.

SECTION 7. LOCAL OFFICE; COMPLAINTS.

The Grantee shall maintain an office in the Greater Washington Area, which shall be open during all usual business hours, have a listed telephone, and be so operated that complaints regarding cable television operations may be promptly reported to the Grantee, and requests for repairs or adjustments may be received during normal business hours.

SECTION 8. FRANCHISE PAYMENTS.

A franchise payment shall not be paid to the Township.

SECTION 9. INDEMNIFICATION.

9.1. The Grantee agrees and covenants not to sue and to indemnify, defend and hold harmless the Township, its officers, board of supervisors, councils, commissions, agents or employees, from any and all claims by any person or persons whatsoever: (1) on account of injury to, or death of, a person or persons caused or alleged to have been so caused by the Grantee under the franchise herein granted; or (2) for property damage caused or alleged to have been so caused by Grantee under the franchise herein granted.

9.2. Within thirty (30) days following the effective date of the Franchise Agreement, the Grantee shall file with the Township, in the form of a certificate, evidence of insurance or of self-insurance that shall:

9.2.1. Indemnify, defend and hold harmless the Township, its officers, board of supervisors, councils, commissions, agents or employees from any and all claims by any person or persons for personal injury or death caused or alleged to have been so caused, by the Grantee under the franchise herein granted, with a maximum

liability of Five Hundred Thousand Dollars (\$500,000) for personal injury or death of any one person and One Million Dollars (\$1,000,000) for personal injury or death of any two or more persons in any one occurrence; and

9.2.2. Indemnify, defend and hold harmless the Township, its officers, board of supervisors, councils, commissions, agents and employees from and against all claims by any person whatsoever for property damage caused, or alleged to have been so caused, by Grantee under the franchise herein granted, with a maximum liability of Two Hundred Fifty Thousand Dollars (\$250,000) for property damage to the property of any one person and Five Hundred Thousand Dollars (\$500,000) for property damage to the property of two or more persons in any one occurrence.

9.2.3. The Grantee shall carry such insurance or self-insurance as may be necessary to protect it from all claims under any workers' compensation laws that may be in effect and applicable to the Grantee.

SECTION 10. PROCEDURE UPON TERMINATION.

10.1. Whenever Grantee shall willfully fail, refuse or neglect to construct, operate or maintain its cable television system in accordance with the material conditions of

this franchise, the Township will notify the Grantee, in writing, setting forth the nature and facts of such non-compliance which they believe has occurred. If within thirty (30) days following such written notification by the Township, the Grantee has not furnished proof that corrective action has been taken or is being actively and expeditiously pursued, or evidence that the alleged violations did not occur, the Township may place a request for termination of the franchise on the agenda of the next regular Township Board meeting.

After public hearing that affords Grantee an opportunity to be heard and to present relevant evidence on its behalf, if the Township determines that such non-compliance was without just cause, then the Township may adopt an ordinance, that forthwith terminates the franchise. Thereafter the Grantee shall promptly remove from the public way all of its cable television system facilities within ninety (90) days from the date the Grantee receives a written copy of said ordinance, unless there is compliance by the Grantee within such a period as the Township may fix.

10.2. 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 Township, 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 have created and shall leave said streets in as good a condition as that existing prior to the Grantee's removal of its property. The Township may require a bond, approved by its Solicitor, and in an amount which the Township engineer determines to be reasonable and necessary to cover the aforesated work, as a condition of such removal, to guarantee the performance of such work.

SECTION 11. APPROVAL OF TRANSFER.

The Grantee shall not sell or transfer its plant or system to another, other than a person controlling, controlled by, under common control, or otherwise affiliated with the Grantee, nor transfer any rights under this franchise to another, without Township approval which approval shall not be unreasonably withheld or delayed. 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 Township Secretary, an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise and agreeing to perform all conditions thereof. Township approval shall not be unreasonably withheld or delayed and neither this Section nor other Sections of this Ordinance 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.

SECTION 12. VIOLATIONS; THEFT OF SERVICE; PENALTIES.

From and after the effective date of this Ordinance:

12.1. Within the Franchise Area, no person shall intercept or receive or assist in interception or receiving, any service offered on Grantee's cable television system, unless specifically authorized to do so by Grantee or as may otherwise be specifically authorized by law.

12.2. For purposes of this Section, the term "assist in intercepting or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor (as the case may be) for unauthorized reception of any service offered on Grantee's cable system in violation of Section 12.1 herein.

12.3. If an unauthorized device designed to intercept or receive any of the services offered on Grantee's cable television system is present on the premises or on property occupied and used by a person, it shall be presumed that the person intentionally or knowingly used the device to intercept or receive one or more of said services. If an unauthorized cable connection is present on the premises or on property occupied and used by a person, it shall be presumed that the person intentionally or knowingly used the connection to intercept or receive one or more

of said cable television services. If the equipment of Grantee has been tampered with, changed or modified on the premises or on property occupied and used by a person, it shall be presumed that the person intentionally or knowingly used the equipment in an unauthorized manner to intercept or receive one or more of said services.

12.4. Any person violating or failing to comply with any of the provisions of this Section shall be guilty of a misdemeanor and for each day of violation or failure to comply may be punished by a fine not to exceed \$300.00 or imprisonment, or both.

SECTION 13. COSTS.

The costs of preparation and publication of this Ordinance shall be paid by the Grantee.

SECTION 14. COMPLIANCE WITH STATE AND FEDERAL LAW.

The Grantee shall, at all times, comply with state and federal law, as well as the rules and regulations of any federal administrative agency. If any state or federal law or rule or regulation of any federal administrative agency is in conflict

with the terms and conditions of this franchise, the Township Board of Supervisors shall, as soon as possible following knowledge thereof, amend this franchise in a manner to bring it into compliance with such law, rule or regulation; provided, however, that if existing franchises are not affected by the change in federal or state law, or if said changes are not effective until renewal, then the existing Franchise Agreement need not be changed or amended to comply with the new law.

SECTION 15. FORCE MAJEURE: GRANTEE'S INABILITY TO PERFORM.

In the event Grantee's performance of any of the terms, conditions, obligations or requirements of the Franchise Agreement is prevented or impaired due to any cause beyond its control or otherwise not foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided Grantee has notified the Township in writing within thirty (30) days of its discovery of the occurrence of such an event. Such causes beyond Grantee's control or otherwise not foreseeable shall include, but shall not be limited to, acts of God, civil emergencies, and labor unrest or strikes.

SECTION 16. SEVERABILITY.

If any Section of this Agreement, or any portion thereof, is held invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof.

SECTION 17. VOLUNTARY SUBSCRIPTIONS.

All subscriptions for services under any franchise shall be on a voluntary basis and may be terminated at any time by the customer.

SECTION 18. NOTICES.

Any notices required or permitted under the franchise may be personally delivered or forwarded by regular, certified or registered mail, return receipt requested, to the following:

TO THE TOWNSHIP: Board of Supervisors
 Township of Buffalo
 R. D. # 1
 Claysville, PA 15323.

TO THE GRANTEE: Times Mirror Cable Television
 of Washington, Inc.
 Attention: General Manager
 140 Park Avenue, P. O. Box 251
 Washington, PA 15301

SECTION 19. MISCELLANEOUS.

19.1. Upon termination of service to any customer, the Grantee shall promptly remove all of its facilities and equipment that can be removed without damage to the premises of such customer upon his request.

19.2. The Township hereby expressly reserves the right to:

19.2.1. exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in, or granted to, the Township.

19.2.2. adopt, in addition to the provisions contained herein and in any existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

19.3. The permission granted by this Ordinance is under, and subject to all applicable Federal and State laws and all other ordinances, rules and regulations issued by any agency or authority with appropriate jurisdiction now in force or which may hereafter be passed relative to the use of the streets and

alleys of the said Township, as well as the Franchise Agreement to be executed by authority hereunder and which is incorporated herein by reference.

19.4. The Chairman and the Secretary of the Township are hereby authorized to execute for, and on behalf of, Buffalo Township an agreement with the Grantee, licensing and franchising the Grantee to operate and maintain a wired television system in accordance with said agreement and the provisions of this Ordinance.

19.5 Attached to this Ordinance is a schedule of initial fees Grantee shall charge to subscribers and a listing of the initial television services to be provided to subscribers within the Franchise Area.

SECTION 20. EFFECTIVE DATE.

This Ordinance shall take effect and be in force five (5) days after adoption.

ORDAINED AND ENACTED THIS 5th DAY OF December, 1988.

ATTEST:

BOARD OF SUPERVISORS
OF BUFFALO TOWNSHIP,
WASHINGTON COUNTY, PENNSYLVANIA

Forrest B. Clacker
SECRETARY

Thomas F. Wyzel
CHAIRMAN