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ORDINANCE NO. ~~83~~

AN ORDINANCE GRANTING TO LACKAWAXEN LONG DISTANCE, INC. AND AFFILIATED COMPANIES, A NON-EXCLUSIVE FRANCHISE TO ERECT, INSTALL, MAINTAIN AND OPERATE A TELECOMMUNICATIONS SYSTEM IN LACKAWAXEN TOWNSHIP, PIKE COUNTY, PA AND IMPOSING CONDITIONS AND REGULATIONS PERTAINING THERETO.

An Ordinance relating to regulating community television antenna systems in the Township of Lackawaxen, Pike County, Pennsylvania.

WHEREAS, the Supervisors have fully considered the legal character financial and technical qualifications of Lackawaxen Long Distance Inc., as well as its existing lines and equipment, and it has been determined that a formal franchise should be granted to Lackawaxen Long Distance, Inc. and or its affiliated companies (hereinafter "Company").

BE IT ORDAINED AND ENACTED by the Supervisors of the Township of Lackawaxen 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 Lackawaxen Township Community Antenna Television Franchise Ordinance.

SECTION 2. (DEFINITIONS)

- a. "Telecommunications System" – a system of wire lines, optical fiber, cables, underground conduit and other facilities to transmit and provide cable TV, data transmission and telephone services within the Franchise Area to subscribers for a fee.
- b. "Township" is the Township of Lackawaxen, Pike County, Pennsylvania.
- a. "Company" is Lackawaxen Long Distance, Inc., its subsidiaries or affiliated companies, the grantee of rights under this franchise.
- d. "Supervisors" is the governing body of the Township of Lackawaxen, Pike County, Pennsylvania.
- e. "Streets" shall mean and include all public streets, ways, alleys and parkways owned by or under the jurisdiction of the Township of Lackawaxen.
- 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 Township to the Company a non-exclusive franchise to construct, maintain and operate a telecommunications system 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 within the bounds of the area lying within the Township of Lackawaxen. This Franchise is non-exclusive and will not explicitly or implicitly preclude the issuance of other Franchises to operate other Telecommunication Systems within the Township, or affect the Township's right to use of Township Streets by other persons to operate other Telecommunication Systems or Cable TV Systems or for other purposes as it deems appropriate. It is acknowledged that a Franchise for Cable TV and other telecommunication services has been granted to Blue Ridge Cable Technologies, Inc.

SECTION 4. (TERRITORY)

Upon the annexation of any territory to the Township 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 terms of said Franchise as though it were an extension made thereunder.

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 Township, and to such reasonable regulation as the Township shall hereafter by resolution or ordinance provide.

SECTION 6. (LIABILITY OF COMPANY)

Company shall indemnify and save the Township and its agents and the employees harmless from all and any claims for personal injuries or property damages, and any other claims and costs, including attorney's 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 Township, either independently or jointly with said Company to recover for any said claim or damages, said Company, upon notice to it by said Township, shall defend said Township, its agents and employees, against said action and in the event of a final judgment being obtained against Township, either independently or jointly with said Company the said Company will pay said judgment and all costs and hold the Township harmless therefrom. For this purpose Company shall carry and at all times maintain or file with the Secretary of the Township of Lackawaxen and at all times keep in force, a public liability policy or policies in the name of Company and the Township as their respective interests may appear, insuring Company and the Township 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 Township. Such liability policy or policies shall be in the sum of One Million and no/100 (\$1,000,000.00) Dollars for damage to property in any one accident, and not less than Two Million and no/100 (\$2,000,000.00) Dollars

for injury or death to any one person and not less than the sum of Four Million and no/100 (\$4,000,000.00) Dollars for death or injury to all persons affected by any one accident. Such policies or insurance shall be issued by a company licensed to do business in the Commonwealth of Pennsylvania. The Company shall also carry workmen's compensation coverage for all of its employees subject to such coverage and shall submit to the Secretary of the Township a certification of insurance showing that workmen's compensation coverage is in effect.

SECTION 7. (FRANCHISE FEE)

The Company shall annually pay a Franchise Fee to the Township during the life of this Franchise, said franchise fee to be two (2%) percent of the gross annual receipts of the Company arising from all subscriber and service charges made within the Township; said fee being for the privilege of using the streets and alleys of the Township for the operation of its system. The franchise fee shall be due and payable on the first day of April of each and every year hereafter.

SECTION 8 (TELECOMMUNICATION SERVICES TO TOWNSHIP) Company agrees to provide all telecommunication services to Township building, if the Company has a line that passes by the Township property, if requested by Township. This service shall be supplied to the Township without installation charges or monthly service charges.

SECTION 9. (SERVICE STANDARDS)

The Company shall during the continuance of this franchise provide facilities and service sufficient to meet the needs of the public welfare, 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 any spurious electromagnetic radiation must fall within the limits specified by the Federal Communications Commission. 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 Codes

- 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 times 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 continuous daily, 24 hours per day, 365 days per year.
- c. Non-discrimination of Service. The Company shall serve any person residing in or owning property in the Township desiring service who shall pay the charges hereafter enumerated and within three months after requesting the same subsequent to October 1, 1972, if request meets conditions under Section 20 (Construction) and FCC requirements under March 16, 1972, rules or as amended June 26, 1972.

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 Township.

e. The Company shall immediately investigate and resolve all service complaints and equipment malfunctions. The Company shall maintain a local business office for these purposes in Lackawaxen, PA.

SECTION 10. (TRANSFER OF FRANCHISE)

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 Supervisors 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 Township Secretary, an instrument accepting the terms of the franchise and agreeing to perform all the conditions thereof

SECTION 11. (CONDITIONS ON STREET OCCUPANCY)

a. Use. All transmission and distribution structures, lines and equipment erected by the Company within the Township shall be located with the approval of the Supervisors 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 Township with a map showing the pole line system in sufficient detail to assure the township 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 Township advised of any and all changes, 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 Supervisors, 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 Township 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 Supervisors a pole or pole line interferes with the necessary convenience of the Township or a property owner, then, upon reasonable notice by the Township 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 Township 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 Township, 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 Supervisors upon written application to it by Company but said exceptions shall be for good cause shown and in the sole discretion of the Supervisors.

Before Company sets poles or constructs any structure on Township property it shall file with the Township 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 Supervisors 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 Supervisors of the Township are uncertain as to the exact location of the limits of the right of way of any street or alley, then in its discretion it may require the same to be surveyed by a surveyor selected by it, 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 Township 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 Supervisors 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 Township prior to starting any installation of wires or other facilities on the Township streets under this Franchise.

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

h. **Removal of Wires, Poles and Installation from Township Streets.** The Company shall remove or cause to be removed from the streets, alleys and public ways of the Township of Lackawaxen and from all public property all of the wires, poles and installation 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 and assigns, for any reason whatsoever, or the forfeiture of this Franchise under the provisions of Section 15 herein. In order to insure the performance of this provision, and the provisions, terms and conditions of this Ordinance, the Company shall post an adequate performance bond and continue the same in effect during the term of this Franchise, said bond to

be in the amount of Twenty-Five Thousand and no/100 (\$25,000.00) Dollars in favor of the Township and with surety or sureties thereon to be approved by the Township, the bond to be approved as to form by the Township Solicitor.

SECTION 12. (REPORTS REQUIRED)

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

- a. Keep and render its books and records in a manner that will permit the drawing off of a detailed financial statement therefrom clearly disclosing the amount of subscriber and service fees received by the Company in arriving at the determination of the gross receipts of such fees as heretofore set forth.
- b. Within sixty (60) days after the close of its annual fiscal year, the Company shall file with the Township a verified statement of the income received from subscriber and service fees in the Township 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 Supervisors.

SECTION 13. (INSPECTION OF BOOKS)

The Supervisors, 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 fees received.

SECTION 14. (TERM OF FRANCHISE)

The franchise and rights granted herein shall take effect upon the effective date of this Ordinance and shall continue in force and effect for a period of ten (10) years thereafter.

SECTION 15 (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 Township and upon Company's filing of acceptance shall be paid at that time.

SECTION 16. (FORFEITURE)

The Supervisors 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 Township 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 or 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 Supervisors, 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 any 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 17. (MANNER OF GIVING NOTICES)

Whenever, by the terms of this Ordinance, notice is required to be given by the Township 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 Township, it shall do so by leaving or delivering a paper writing thereof at the Office of the Secretary of the Township during ordinary business hours.

SECTION 18. (TOWNSHIP HELD HARMLESS)

The Company will hold the Township harmless from the alleged violation of any utility franchise previously granted by the Township. 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 Township assumes no responsibility for the acts or omissions of the Company other than to require compliance with this Ordinance.

SECTION 19. (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 20. (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 Township 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 Township and the Company for all the 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 television antenna system and to establish, operate and maintain the local television antenna system contemplated in this Ordinance, continuing without substantial interruption except for causes beyond its control until the expiration of the term of this grant. In the event that said Company fails to file said written acceptance within the time herein before specified, this grant, together with any rights or liabilities arising out of the proposal heretofore made for the furnishing of an adequate television antenna system for the benefit of inhabitants of said Township, and the acceptance of such proposal by the Township, shall be of no effect and void.

SECTION 21. (CONSTRUCTION)

Telecommunications service under this franchise shall be provided to all portions of the Township, excluding those areas with a population density of less than 30 homes per mile.

SECTION 22. All ordinances or parts of ordinances not in accord with this Ordinance are hereby repealed insofar as they conflict herewith.

ORDAINED AND ENACTED this 16th day of December 2009.

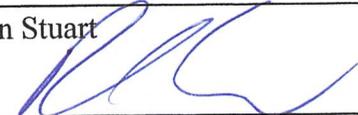
BOARD OF SUPERVISORS
LACKAWAXEN TOWNSHIP, PIKE COUNTY, PA

Attest:

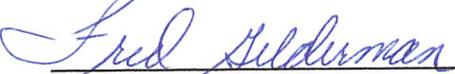


Secretary

Brian Stuart



Richard Krochta



Fred Gelderman