

ORDINANCE NO. 16

AN ORDINANCE GRANTING TO NEW COMMUNICATIONS, INC, A NON-EXCLUSIVE PERMIT TO CONSTRUCT, OPERATE, AND MAINTAIN A DISTRIBUTION SYSTEM FOR TELEVISION, RADIO, AND OTHER AUDIO-VISUAL SIGNALS THROUGHOUT THE BOROUGH OF MILL VILLAGE, ERIE COUNTY, PENNSYLVANIA, DETAILING THE TERMS AND CONDITIONS OF THE PERMIT THEREFORE.

Section 1. The Borough of Mill Village, Erie County, Pennsylvania, hereby grants to New Communications, Inc., hereinafter referred to as Grantee, the non-exclusive right and authority to install, maintain, and operate a transmitting and distribution system for television, signal distribution in, over, on and under the streets, right-of-ways, and public highways of Mill Village and to erect poles, with or without cross arms, and to stretch wires and cables on, across, and under all streets; to maintain and use the same for the purpose of constructing and operating a transmitting and distribution system for television.

Section 2. If Grantee causes any damage to streets, right-of-ways, public highways, other surfaces or property of Mill Village Borough, Grantee shall at its own expense and cost and in such a manner approved by Mill Village Borough, replace and restore all such surfaces or property disturbed in as good condition as before said work commenced. Said restoration shall be commenced and completed as soon as possible, but in no event later **that** one month from the initial disturbance or damage, and shall be inspected and approved by Mill Village. Grantee shall provide for the coverage of the **above mentioned** damages in its insurance certificate to the Borough of Mill Village.

Section 3. All poles, cable wires, antennas, conduits or **apparatus** shall be constructed and erected in a workmanlike manner. Mill Village shall not be held liable for any disturbance of any of Grantee's installations resulting from Mill Village Borough snow removal, road maintenance, road alteration or installation operations. Grantee shall at its own expense, move or relocate any of Grantee's installations, at the request of Mill Village Borough whenever or wherever Grantee's installations are found by Mill Village Borough in its sole discretion to interfere with its streets, street grade, ditches, sewer or water installations, or any proposed changes thereof, or extension thereto. This agreement shall not be construed so as to deprive Mill Village Borough of any rights or privileges which it now has, or may hereafter have, to regulate the use and control of its streets.

Section 4. All of the construction of the Grantee, including installation, shall conform to the National Electric Safety Code, the statutes of the State of Pennsylvania, and all other ordinances of Mill Village Borough. Grantee shall provide Mill Village Borough with a map designating the location of all cable television facilities, which map shall be available for public examination.

Section 5. Grantee shall lay all cable, wire and lines both on the public and private properties of Mill Village Borough at its own expense, but Grantee shall have the privilege of charging its customers both a connection fee to bring the service to their properties and a monthly fee for their continued use of the service.

Section 6. Grantee shall obtain prior to commencing construction of any kind, and shall have in full force and effect, and thereafter so maintain the same at all times, a policy of insurance, issued by an insurance company qualified to do business in the Commonwealth of Pennsylvania, said policy to contain liability limits of Five Hundred Thousand Dollars (\$500,000.00) for property damage, One Million Dollars (\$1,000,000.00) for bodily injury. Grantee shall exhibit proof of insurance to Mill Village Borough naming Mill Village Borough as an additional insured. Failure to provide or continue this insurance coverage shall constitute an immediate default.

Section 7. Grantee shall pay to Mill Village Borough an annual fee of Two Hundred and Fifty Dollars (\$250.00) per year payable in January of each year.

Section 8. The Grantee agrees to maintain service which shall be promptly available to subscribers upon telephone request.

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Section 9. Grantee agrees to provide one free CATV basic and free monthly service to the Mill Village Fire Hall if and when cable service becomes available.

Section 10. The rights and privileges of Grantee under the permit herein granted shall continue for a period of ten (10) years from the effective date of this agreement.

Section 11. If any section, sentence, clause, or phrase of this agreement shall be held to be invalid or illegal, the invalidity thereof shall not affect the validity of any other section, sentence, clause, or phrase of this agreement.

Section 12. Rate in general. Such rates will be designed to meet all necessary costs of the service, including a fair rate of return on the net valuation of its properties devoted hereto, under efficient and economical management. Grantee agrees that the rates to be charged to its subscribers for basic service excluding optional, shall not be changed during the first three (3) years of actual operations hereunder. Grantee further agrees that it will change its rates for optional services only to the amount of actual added costs incurred by it during the three (3) year period. An initial schedule of rates is attached as Exhibit A.

Section 13. Rates after the first three (3) years of actual operations hereunder may be increased not to exceed the consumer price index for the period. Grantee agrees that it will not raise rates without thirty (30) days prior written notice to Mill Village Borough. If any additional increases are considered necessary by the Grantee, over and above the consumer price index, application for such increase shall be made by Grantee to Mill Village Borough. In the event Mill Village Borough objects to the additional increase in rates, then an arbitration process shall commence under which Mill Village Borough shall name two members, the Grantee shall name two members, and the four members so named shall select a fifth member agreeable to both Grantee and Mill Village Borough. The requested increase in rates shall thereupon be the subject of an arbitration by the five member panel, and its decision binding on both the Borough and the Grantee.

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Section 14. It shall not be mandatory for any citizen of Mill Village Borough to subscribe to the services provided by the Grantee.

Section 15. Grantee shall conduct its operations at all times in accordance with the applicable rules and regulations of the Federal Communications Commission.

Section 16. Construction of the cable facility shall commence within ninety (90) days after all engineering is completed and permits are secured. Failure of Grantee to commence such construction by such time shall enable Mill Village Borough to repeal this agreement and to rescind all right of Grantee. Construction shall be done in a reasonable and orderly manner to provide service to all of the people of Mill Village Borough desiring such service.

Section 17. Grantee requests all the rights to Mill Village Borough right-of-ways. Mill Village Borough does not warrant any rights-of-way. Grantee recognized it may need to obtain private easements for some of the construction.

Section 18. Grantee shall not sell, transfer or assign this franchise nor shall its owners transfer majority ownership of their stock of said Company without the approval of Borough Council, which shall not unreasonably withhold said approval. 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 of said franchise.

Section 19. Forfeiture. The Council may at any time declare a forfeiture of this grant for violation or default by the grantee 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 grantee 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 grantee 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 grantee, 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 grantee 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 of failure to perform any provision hereof due to strikes, lockouts, insurrections, acts of God, or any cause beyond the control of the grantee.

Section 20. Manner of Giving Notices. Whenever, by the terms of this Ordinance, notice is required to be given by the Borough to the grantee, or by the grantee to the Borough, it shall be given in writing by sending the same post paid through the United States Post Office, by Certified Mail – Return Receipt Requested, addressed to the Borough Offices or to the Ephrata Office of the grantee, as the case may be.

Section 21. Borough Held Harmless. The grantee 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 Borough of the efficiency of the grantee or maintenance of the service of the grantee. The Borough assumes no responsibility for the acts or omissions of the grantee other than to require compliance with this Ordinance.

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Enacted and Ordained this 11th day of October, 1984.

Dennis J. Helachanoski
President of Borough Council

ATTEST:
Robert G. Fye
Secretary

Approved this 11th day of October, 1984.

Nick G. Dasourh Pres.

Patrick J. Rice
Mayor

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NEW COMMUNICATIONS, INC

SERVICE CALL NUMBER (814) 724-2932

STATIONS

DIAL NUMBER	CALL LETTERS	PROGRAMMING
2	WJET (24)	ABC
3	HBO	PREMIUM
4	WSEE (35)	CBS
5	WQLN (54)	PBS
6	WTBS (ATLANTA)	IND
7	ESPN	SPORTS
8	USA	VARIETY
9	CNN	NEWS
10	EMPTY NOW	
11	WGN (CHICAGO)	IND
12	WICU (12)	NBC
13	CBN	RELIGIOUS

CHARGES

BASIC SERVICE	\$10.00 PER MONTH
PREMIUM SERVICE	10.00 PER MONTH
BASIC INSTALLATION (ONE TV)	25.00
ADDITIONAL OUTLETS	15.00 EACH
PREMIUM SERVICE (INSTALLED WITH BASIC)	NO CHARGE
PREMIUM SERVICE (INSTALLED ALONE*)	10.00 EACH
RE-CONNECTION SERVICE	15.00
RE-LOCATION SERVICE	15.00
DISCONNECTS	NO CHARGE
SERVICE CALLS	NO CHARGE
RE-CONNECT FOR NON-PAYMENT	25.00 EACH

* THE PREMIUM SERVICE CAN ONLY BE INSTALLED IF YOU ALREADY HAVE BASIC SERVICE CONNECTED IN YOUR HOME.

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Consent

The undersigned, hereby consents to the transfer by New Communications, Inc. ("Transferor") to Cable Systems USA, Associates ("Transferee") of the Franchise Agreement dated 10/11/84 between the undersigned and Transferor, and all amendments of modifications thereto (the "Agreement") and further consents to the transfer in trust, mortgage, pledge, hypothecation or grant of a security interest in such Agreement to secure indebtedness or obligations owed or which may be incurred by the Transferee with respect to which a security interest is granted in all or substantially all of the assets of Transferee to its lenders and to the exercise by the secured parties of their rights as a secured party in the Agreement in the event of a default by the Transferee in the performance of its indebtedness or obligations secured thereby; provided, however, that nothing contained herein shall constitute a waiver of any rights of the undersigned to approve of any other transfer or assignment of the Agreement. The undersigned hereby confirms that the Transferor is the party named in the Agreement of the assignee thereof and that the Agreement is in full force and effect. The undersigned further confirms that this Consent has been duly executed and delivered pursuant to, and is authorized by, resolution duly adopted by the Borough of Mill Village Council on August 13, 1987.

The Borough of Mill Village

By: David A. Dearborn
Title: President

Dated: August 13, 1987

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RESOLUTION NO. _____

WHEREAS, the Borough of Mill Village, Erie County, PA granted a cable television franchise to Cable Systems USA Associates or its assigns (“Grantee”) by adoption of an Ordinance dated October 11, 1984 (hereinafter, the “Cable TV Franchise”); and

WHEREAS, control of Grantee of the Cable TV Franchise will be sold, transferred and assigned to Triax USA Associates, L.P., a Colorado limited partnership (“Assignee”) with its office located at 100 Fillmore, Suite 600, Denver, Colorado 80206; and

WHEREAS, the Cable TV Franchise requires that the governing body of the Borough of Mill Village grant its consent to the transfer of the change of control of Grantee or the Cable TV Franchise prior to any such transfer.

NOW< THEREFORE< BE IT ENACTED AND ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF MILL VILLAGE< AS FOLLOWS:

- I. Consent is hereby given to the transfer of control of Grantee or the Cable TV Franchise to the Assignee, effective upon the closing of the transfer of **sais** control to Assignee. The Assignee shall notify the Borough of Mill Village of the closing by delivery of a written notice.
- II. There have been no amendments or modifications to the Cable TV Franchise, except as specifically referred to and provided herein.

Passed this 8th day of June, 1989.

I hereby certify that the foregoing constitutes a true and complete copy of an ordinance duly adopted by the Borough of Mill Village, Pennsylvania, at a Regular Meeting held on April 20, 1989, at which all Council members were present, except Jordan Donachy and Julia Hunter.

I further certify that Edward Falconer moved for adoption of said resolution and the Barbara Scheetz seconded said motion.

RESOLUTION ENACTED JUNE 8, 1989.

David A. Dearborn
David Dearborn, Council President

Mary S. Powell Clerk
Mary S. Powell, Secretary-Treasurer