

ORDINANCE NO. 25 - 95

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO TRIAX CABLEVISION USA, L.P. TO CONSTRUCT, MAINTAIN AND OPERATE A CABLE SYSTEM, AND PROVIDING FOR THE REGULATION OF THE FRANCHISE AND ACTIVITIES UNDERTAKEN THEREUNDER.

WHEREAS, Triax Cablevision USA, L.P. (the "Company") has requested the right and privilege to utilize public rights-of-way to construct, maintain and operate a Cable System.

WHEREAS, the Borough of Mill Village, PA, desires that the Company be granted that non-exclusive right, and has determined that such a right would be beneficial to the public welfare.

WHEREAS, certain regulations in connection with the construction, maintenance and operation of the Cable System.

NOW, THEREFORE, be it enacted by the Borough, and it is hereby enacted and ordained as follows:

Section I Granting of Authority

The Borough grants to the Company, a non-exclusive right, privilege and franchise to construct, maintain, and operate antennas, cables, wires, lines and other facilities, in, under, over, along, across and upon the streets, lanes, avenues, sidewalks, alleys, and any easement or right-of-way now or hereafter held or dedicated for use by the Borough or the general public, for the purpose of constructing, maintaining and operating a Cable System.

The Borough grants to the Company the further right, privilege and authority to lease, rent or obtain, in any lawful manner, the use of towers, poles, lines, cables, underground conduits and other equipment and facilities from any holder of public licenses or franchises within the Borough. The poles used by the Company shall be those erected and maintained by local utility companies when practical, if mutually satisfactory rental agreements can be obtained.

Section II Non-Exclusive Franchise

The right, privilege and franchise granted hereby is not exclusive, and the Borough retains the right to grant to others rights similar to those granted herein, on such terms as the Borough may determine, and as may be permitted by applicable law, with due consideration of the interests of the public and the Company, but in no event on terms which are more favorable to the other operator than the terms hereof.

To induce the Company to construct, own and operate the Cable System, the Borough agrees that it will not, directly or indirectly, construct, own or operate a Cable System, except and only to the extent that the Borough has any express right to acquire this franchise and the Company's Cable System under applicable law; in the absence of any such express right, the Borough shall have no right, directly or indirectly, to construct, own or operate a Cable System.

Section III Definitions

"Cable System" means a community antenna television system designed to receive, transmit, amplify and distribute Television, radio and satellite signals, and electronic communications, and/or designed for such other uses (the "Ancillary Uses") which are compatible therewith, as determined from time-to-time by the Company, including, but not limited to, the transmission of voice and data.

"Basic Subscriber Service" means Television service including, but not limited to, mandatory carriage signals and such other Television service as the Federal Communications Commission ("FCC") may mandate or the Company may include, but excluding Ancillary Uses and optional premium services which are sold separately from basic service.

"Subscriber" means any person who pays the applicable rates to receive Basic Subscriber Service for the Company.

"Television" means transmission of impulses for the creation of picture and sound on a television set, whether by digital or electrical signals or other transmission.

"Gross Revenue" means any and all compensation actually received by the Company (Gross Revenue being based upon receipts, not billings) from the transmission within the Borough of Television signals and FCC mandated non-broadcast services. Gross Revenue does

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not include deposits until such time as the Company legally is entitled to retain the same; installation, disconnection and reinstallation charges; and revenues from auxiliary services, Ancillary Uses, advertising, leased channels, and programming supplied on a per program or per channel charge basis. Gross Revenue shall be net of all refunds or credits made to Subscribers and any taxes imposed upon or with respect to the services furnished by the Company.

Section IV Conditions of Street/Public Way Occupancy

1. All of the Company's equipment and facilities shall be located, installed and maintained so as to cause minimal interference with the use of streets, and to assure that the functioning and appearance of the property, and the convenience and safety of the public shall not be adversely affected thereby. The Cable System shall be constructed, operated, and maintained in accordance with applicable governmental regulations and good engineering practices.
2. In case of disturbance by the Company of any street, sidewalk or paved area, the Company shall, at its own expense, in a manner reasonably approved by the Borough, restore such area to a condition reasonably similar to the condition existing prior to the disturbance.
3. In case of fire, earthquake, flood or other similar event, the Borough may temporarily remove any of the Cable System, with advance notice being given to the Company as promptly as possible; the Company shall not be entitled to payment for damage caused thereby, unless the Borough acted with gross negligence or willful misconduct.
4. If the Borough alters, changes, or makes any improvements on or about, any street, sidewalk, alley or other public way, the Borough shall give the Company reasonable advance notice, and the Company shall, at its expense, relocate its facilities and equipment, or take such other action as may be reasonably necessary, to accommodate the public improvements.
5. The Company shall temporarily remove, reroute or move its equipment and facilities to accommodate public or private works, construction, movement of buildings, extra large truckloads, etc., but the Company shall be entitled to reasonable notice prior to such event and reasonable costs from any party causing such relocation other than the Borough.
6. Before beginning any construction or installation of equipment or facilities which would materially disrupt the use of public ways, the Company shall provide the Borough with reasonable prior notice of the work to be performed, and the location of and period of time involved in the undertaking. The Borough shall have the right to inspect such work.
7. The Company shall compensate property owners for, or restore, all damages caused by the construction, operation or maintenance of the Cable System. The Company shall be primarily responsible for all such damages even though it may have an agreement with a construction company.
8. Upon request, the Company shall provide a diagram showing the location of the Cable System.

Section V Indemnification and Insurance

1. The Company shall indemnify, protect and hold the Borough harmless from all claims, suits, liability, loss, expense, or damage of every kind and description (including court costs and reasonable attorney's fees), which accrue, are suffered or claimed by reason of or relating to the Company's construction, operation and maintenance of the Cable System.
2. In order for the Borough to be indemnified, defended, and held harmless, it shall provide:
 - (a) Prompt notice to the Company of any claim or proceeding giving rise to such rights; and
 - (b) Full cooperation with respect to the Company's participation in, defense, settlement, resolution or other disposition of, such claim or proceeding.
3. The Company shall, at its expense, maintain insurance as follows: Property damage -- \$100,000.00 per occurrence, \$300,000.00 aggregate; bodily injury -- \$300,00.00 per occurrence, \$500,000.00 aggregate; such insurance shall name the Borough as additional insured and shall require thirty (30) days notice to the Borough of cancellation. The Company also shall carry compensation coverage for all claims under applicable

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workers' compensation laws. On request, the Company shall deliver certificates of insurance for the above coverage.

Section VI Franchise Fee

1. The Company shall pay, within sixty (60) days of the end of each quarter, a franchise fee of five percent (5%) gross.
2. The Company shall submit with each payment a computation of the fee, and shall provide to the Borough additional information as may be requested and required to review and determine this fee obligation.
3. Nothing herein shall waive, limit or otherwise affect the right of the Borough to adopt ordinances, enforce existing ordinances or to collect other fees and taxes permitted by law.

Section VII Expenses and Fees

The Company shall reimburse the Borough for costs, fees and expenses reasonably incurred for the following:

1. Protection, removal or relocation of the Cable System, if the Company has failed to perform its obligation hereunder.
2. Restoring any damage or condition resulting from construction, maintenance or other work performed by the Company.
3. Awarding or renewing this franchise provided that the Borough will give the Company advance notice of any anticipated extraordinary charges.
4. Enforcing this Ordinance.

Section VIII Terms

The initial term of this franchise shall be ten (10) years from the effective date hereof. The Company may renew the initial term of this franchise by giving written notice to the Borough not less than ninety (90) days prior to the expiration hereof. Of the consent of the Borough to such renewal is required by applicable federal or state laws, such consent shall not be withheld unreasonably after public notice and hearing; in deciding whether to consent to a renewal, the Borough shall consider those factors prescribed by applicable law, and (1) whether the Company has complied substantially with the material terms hereof; (2) the extent and quality of the Company's service; (3) whether the Company remains financially, legally and technically qualified; and (4) whether the Company's renewal would reasonably meet the future Television need and interest of the Borough. Any renewal of the initial term shall be an additional five (5) years.

Section IX Condition and Agreement

Within thirty (30) days after signing this agreement, the Company agrees to add three (3) channels. The channels will consist of: CMT (Country Music Television), TNT (Turner Network Television), and Lifetime.

Section X Service Standards

1. Technical and Operational Standards. The Company shall:
 - (a) Provide continuous, reliable and good quality Television reception and service.
 - (b) Make repairs promptly. Service interruptions shall be for the shortest time possible, and shall, to the extent practicable, be preceded by notice to Subscribers and occur during periods of minimal viewership.
 - (c) Maintain and test the Cable System in compliance with the technical standards of the FCC.
 - (d) Maintain replacement equipment and supplies, and personnel trained to perform repairs. In the event of major damage to the Cable System, the Company shall

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make reasonable efforts to supply alternative means of providing service to as many Subscribers as possible while making repairs.

2. Subscriber Service Standards:

- (a) The company shall maintain, and notify Subscribers of, a toll-free telephone number to receive complaints. The Company may provide separate telephone numbers for complaints made after normal business hours, but must be capable of handling complaints twenty-four (24) hours a day.
- (b) The Company shall respond to interrupted service not later than twenty-four (24) hours after being notified by a subscriber that service has been interrupted.
- (c) The Company shall maintain records concerning complaints and disrupted services, including the date and nature of the complaint or disruption, the action taken to resolve the same, date of resolution, and reasons for any delay in investigating and resolving the same. The Company shall make these records available to the Borough upon request.
- (d) If there is an interruption, caused directly by failure of the Company's equipment, of any premium channel or not less than four (4) channels of Basic Subscriber Service, for forty-eight (48) consecutive hours or more, as affected Subscriber shall receive, upon request, a pro-rata reduction of charges, if the Subscriber has notified the Company immediately of the interruption and made a claim for credit within ninety (90) days of its occurrence; no credit will be given if the interruption is caused by the Subscriber's equipment or any action taken with respect to the Cable System by someone other than the Company's employees.
- (e) The Company is not responsible for damage to, or the operation, maintenance, service or repair of any Subscriber's television, VCR, Receiver or other equipment.
- (f) Notwithstanding any provision herein, the Company will not be liable for any failure or interruption of service directly or indirectly caused by, or resulting from, any circumstance beyond its control, and any such circumstance, during its existence, also shall toll the Company's obligations to perform hereunder.

3. Services to be Provided. The Company shall:

- (a) Make Basic Subscriber Service available to all Subscribers.
- (b) Provide upon request and without charge, Basic Subscriber Service to each governmental building, fire station, police station, and public school building located in the area served by the Cable System.
- (c) Make available without charge, in case of any emergency or disaster and upon request of the Borough, a facility for transmitting information concerning the emergency or disaster by authorized Borough personnel.

Section XI Report Requirements

The Company shall, upon request, provide copies of reports submitted to the FCC relating to the Cable System. The Borough may, on reasonable notice, inspect at the Company's office and during reasonable hours, the FCC, public and technical files maintained by the Company with respect to the Cable System.

Section XII Assignment or Transfer

This Ordinance shall not be assigned or transferred without the express prior approval of the Borough, which approval shall not be withheld unreasonably. An assignment or a transfer of this Ordinance shall not be deemed to include any: (i) transfer to an entity affiliated with the Company through common control, ownership or otherwise, (ii) transfer of a portion or all of the control of the Company or any of its affiliates, (iii) restructuring or reorganization of the Company or any of its affiliates and (iv) granting of security interests in, liens or encumbrances on, or collateral assignment of, the Cable System or the Company's rights hereunder to secure repayment of indebtedness.

Section XIII Franchise Subject to Police Power

The Company shall be subject to all lawful exercise of police power by the Borough.

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Section XIV Other Permits Required

This franchise does not relieve the Company from compliance with any ordinance or regulation which may require the Company to obtain other permits or licenses, such as building permits and utility pole agreements.

Section XV Modifications of Ordinance

This Ordinance may be amended or modified only as expressly agreed upon by the Borough and the Company.

Section XVI Franchise Violations and Enforcement

1. If the Company violates any material provision of this Ordinance, the Borough:
 - a. Shall comply with subsection 2 hereafter; and
 - b. If the procedures set forth in subsection 2 have not resolved the dispute, the Borough may proceed to compel compliance with the provisions hereof, to collect any sums due hereunder, or to terminate the franchise granted hereby. Except as expressly provided herein, the Company shall not otherwise be liable to the Borough. The Company shall not be liable for any incidental or consequential damages.
2. If the Borough believes that the Company has violated a material provision hereof, it shall notify the Company in writing (the "Violation Notice") of the alleged violations and the proposed remedy which is acceptable to the Borough, and the Company shall have thirty (30) days after its actual receipt of the Violation Notice to cure such violations. If the Company disputes the proposed remedy or the existence of the Violation, or if such default is not cured within such 30 day period, then the matter shall be referred to a public hearing to be held after public notice and written notice to the Company at least ten (10) days in advance. At the hearing, the Borough shall list the alleged violations and proposed remedies set forth in the Violation Notice, and shall give the company and all other interested parties an opportunity to be heard with respect thereto.

Within a reasonable time after the hearing, the Borough shall determine whether the Company has violated the Ordinance, and shall issue written findings and conclusions with respect thereto, and the Company shall have a reasonable opportunity of not less than thirty (30) days after the issuance of said findings and conclusions to remedy the matter. Any such determination shall be subject to judicial review and a de novo hearing before any court of competent jurisdiction, and/or to judicial review under any applicable state or federal law.

3. Prevention or delay of any performance due to unforeseen circumstances, acts of God, or other circumstances beyond the reasonable control of the Company, shall not be deemed a violation by the Company of this franchise.
4. It is the intent of the Borough and the Company to avoid a forfeiture of this franchise; thus, the Company shall not be in default hereunder if it has delivered a reasonably or functionally equivalent service to that expressly required hereunder. Moreover, if the Borough shall propose any remedy under Section XV, the Company shall be deemed to have satisfied such proposed remedy if it provides a reasonably or functionally equivalent service to that proposed.

Section XVII Severability

The provisions hereof are severable, and if any provision hereof is held to be unconstitutional, invalid or illegal, such decision shall not affect the validity of any other provision hereof. It is declared as legislative intent that this Ordinance would have been enacted had such unconstitutional, invalid or illegal provision not been included herein, and that the court or agency making such determination should reform such provision to the minimum extent necessary to make such provision valid, legal and constitutional.

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**Section XVIII
Effective Date**

This Ordinance shall become effective on January 19, 1995.

ORDAINED AND ENACTED AS AN ORDINANCE OF THE Borough OF Mill Village, Erie County THIS 19 DAY OF January, 1995.

Date: January 19, 1995

Linda L. Falconer President
President

Joseph Sam
Mayor

Witness: Mary S. Powell
Secretary Treasurer

By: David D. Carnahan
Mill Village Borough

Date: 1-30-95

TRIAX CABLEVISION USA L.P.

Witness: Linda A. Neff

By: Triax USA Associates, L.P.
Its General Partner

By: Triax Cable General Partner II, L.P.
Its General Partner

By: Triax USA Associates, Inc.
Its General Partner

By: James Vaughn
James Vaughn
Vice-President of Operations

**MEMORANDUM OR AGREEMENT,
FRANCHISE, RIGHT-OF-WAY, USE AND LEASE**

THIS INDENTURE, made this 19th day of January, 1995, by and between:

THE BOROUGH OF MILL VILLAGE, a municipal corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, hereinafter referred to as the "Borough,"

- and -

COAXIAL CABLE TELEVISION CORPORATION, a Pennsylvania corporation, hereinafter referred to a "Coaxial."

WITNESSETH:

That the Borough, for and in consideration of the rents and covenants hereinafter mentioned and reserved and, on the part of Coaxial, to be fully kept and performed, does hereby lease, let and grant to Coaxial a non-exclusive franchise to use all rights-of-way and public places which the Borough has and possesses in the Borough of Mill Village and as more fully appears hereinafter, and for the purposes hereinafter set forth and only for the purpose or purposes hereinafter set forth:

To have and to hold and use the aforesaid right-of-way and public places for a period of fifteen (15) years for the date set forth above, and as more fully set forth hereinafter, from the date of the signing of this Agreement by the parties hereto, subject, however, to Coaxial exercising its option to renew pursuant to the provisions and terms of then-applicable law.

This Agreement is entered into pursuant to the authority granted and authorized by the Borough of Mill Village Ordinance No. 24 of 95 (hereinafter referred to as the "Ordinance").

If there is a conflict, ambiguity, discrepancy or a variation between this Agreement and the Ordinance, that provision or provisions which is (are) contained in the Ordinance shall be deemed to be operative and controlling.

In consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. That a non-exclusive franchise, right-of-way, lease and privilege is hereby granted to Coaxial, to engage in the business of operating and providing a community cable television system throughout the entire Borough of Mill Village and for that purpose, the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in the Borough of Mill Village, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the Borough of Mill Village of a cable television and radio signals or other lawful services by Coaxial to subscribers for a fee subject to the terms and conditions and provisions contained in this Agreement and the Ordinance.
2. Coaxial shall procure when reasonably possible and economically feasible any and all easements, rights-of-way, covenants, grants, certificates of approval and permits which may be required from any private persons or corporations or other entities, from any federal, state, municipal or other governmental authority and from the utility companies presently operating in the Borough of Mill Village for or in connection with the placing, maintaining or using of the of the attachments and the television cable herein referred to for the granting of this right-of-way, use or lease.
3. Coaxial shall provide one outlet to each municipally owned building, fire station, police station, and public or private school that is passed by its cable. Said outlet shall be conventional viewing outlets of the types supplied to subscribers and shall be supplied without installation charges or monthly service charge, provided, however, that a months fee or service charge shall be due and payable with respect to any and all programming other than the basic tier provided to all subscribers. If more than one outlet is requested at any of the said locations, Coaxial shall install same at its normal service charge. In no event, however, shall this provision be used to supply outlet for individual use, such as but not limited to, college dormitory rooms.
4. Coaxial shall pay to the Borough during the term of this Agreement, a maximum fee of five percent (5%) of Coaxial's annual gross revenues within the Borough in accordance with the Ordinance. Said fee shall be due and payable on a quarterly basis; that is, March 31, June 30, October 31, and December 31 of each and every year hereafter. Neither this charge nor any other charge presently enacted or to be enacted in the future shall operate to discharge Coaxial from payment of any tax under the Local Tax Enabling Act.

**MEMORANDUM OR AGREEMENT,
FRANCHISE, RIGHT-OF-WAY, USE AND LEASE**

Coaxial's obligation to the Borough for payment of the five percent (5%) fee shall commence immediately.

5. This Agreement or permission hereby granted shall continue for a term consistent with the terms, conditions, and provisions of the Ordinance.
6. The permission and use hereby granted in a non-exclusive permission and use and the Borough may grant similar use and/or permission to other persons, firms or corporations. Should litigation or threats thereof ensue as a result of this Agreement, the Borough and its Council reserve the absolute right to determine how far and to what extent the Borough will participate and carry forward any litigation, and reserves the right to terminate its participation in any such litigation at any point without any right of recourse from any person, firm, corporation or other entity, including, but not limited to, Coaxial.
7. The permission and use hereby granted and the conditions hereof shall be binding on the successors and assigns of Coaxial.
8. Should the regulations of the activity herein envisioned and commonly called "Cable T.V.": be assumed in part or in full by any agency of government, the Lessee's or Grantee's obligation to pay the franchise fee herein discussed shall still continue and be in full force and effect provided Coaxial has the lawful obligation, ability and authority to do so and the Borough of Mill Village has the obligation, ability and authority to collect said fee.
9. No person, firm, corporation or other entity shall be required to subscribe to the services by Coaxial.
10. It is agreed between the parties hereto that should Coaxial or the Borough, at any time, fail to perform under this Agreement or Ordinance, the Borough or Coaxial shall have the right to initiate such proceedings and have such remedied provided in the Ordinance or in law or equity.
11. All rights, privileges, duties, obligations and the liabilities of the parties hereto as set forth in the Ordinance, are incorporated herein by reference and made a part hereof.
12. Coaxial shall permit no unlawful business to be carried on upon said premises, nor permit anything to be done contrary to the conditions of the policies of insurance on said premises whereby the hazard might be increased or the insurance invalidated.
13. Coaxial hereby agrees to comply with and abide by all provisions, terms and conditions of the Ordinance.
14. Throughout the term of this Agreement, Coaxial shall have all of the rights and privileges of a Grantee and cable operator or Franchisee as provided in the Ordinance, a true and correct copy of which is attached hereto, made a part hereof, and marked Exhibit "A".
15. This Agreement is entered into by the duly authorized representatives of the Borough of Mill Village, Erie County, Pennsylvania, pursuant to Resolution of Borough Council duly enacted on the 19th day of January, 1995.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

ATTEST:

BOROUGH OF MILL VILLAGE

By: Mary S. Powell
Secretary Treasurer

By: Linda L. Falconer President
President

Joseph Sam
Mayor

ATTEST:

COAXIAL CABLE TELEVISION
CORPORATION

By: Edward M. Mead
Edward Mead, Secretary

By: Michael Mead
Michael Mead, President