

**BERWICK TOWNSHIP**

ORDINANCE NO. 44

AN ORDINANCE OF THE TOWNSHIP OF BERWICK, COUNTY OF ADAMS, COMMONWEALTH OF PENNSYLVANIA, GRANTING TO HANOVER CABLE, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND AUTHORITY TO CONSTRUCT, ACQUIRE, MAINTAIN AND OPERATE A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE TOWNSHIP OF BERWICK; GRANTING TO HANOVER CABLE, T.V., INC. ITS SUCCESSORS AND ASSIGNS THE RIGHT AND AUTHORITY TO SELL COMMUNITY ANTENNA TELEVISION SERVICE TO PERSONS, FIRMS, ORGANIZATIONS AND CORPORATIONS LOCATED WITHIN THE TOWNSHIP OF BERWICK; GRANTING TO HANOVER CABLE, T.V., INC. THE RIGHT AND AUTHORITY TO USE AND OCCUPY THE STREETS, ALLEYS, PUBLIC PLACES AND PUBLIC WAYS IN THE TOWNSHIP OF BERWICK; AND ESTABLISHING THE TERMS AND CONDITIONS OF THE GRANTING OF SUCH RIGHTS.

BE IT ENACTED AND ORDAINED, and it is hereby enacted and ordained, by the Township of Berwick, Adams County, Pennsylvania, as follows:

SECTION 1: Hanover Cable, T.V., Inc. its successors and assigns, hereinafter referred to as "Hanover Cable", is granted the right and authority to build, construct, install, maintain, own, acquire, equip, and operate a community antenna television system (CATV) within the corporate limits of the Township of Berwick, hereinafter referred to as "Municipality". Hanover Cable is granted the right and authority to construct, install, maintain and operate, poles, conduit, wire, cable, lines, amplifiers, connectors and any and all other equipment or apparatus as are reasonably necessary for operating a CATV system in Municipality, and providing CATV service to persons, firms, organization and corporations, living or located within or near Municipality. Hanover Cable is further granted the right and authority to enter upon, use and occupy the bridges, avenues, streets, alleys, lanes, roadways, sidewalks, public grounds and public ways, as they exist now or shall exist in the future, for the above purposes and all other purposes reasonably necessary for the proper operation of such CATV system.

SECTION 2: The right and authority granted to Hanover Cable herein shall be non-exclusive, and the Municipality may grant similar rights and authority for such use to any other person at any time during the period of this franchise.

SECTION 3: The right and authority granted to Hanover Cable herein shall continue for a period of ten (10) years from the effective date of this ordinance and from the execution of the Franchise Agreement by both parties. Hanover Cable shall have the right to renew this franchise for an additional period of ten (10) years under such additional terms and conditions as shall be agreed to by the parties.

SECTION 4: The terms and conditions of this grant of right and authority to Hanover Cable shall be such as provided in a Franchise Agreement entered into by Hanover Cable and Municipality, which Agreement is made a part of this ordinance and incorporated herein by reference.

SECTION 5: Any ordinance or resolution, or part of an ordinance or resolution, in conflict with this ordinance is hereby repealed. Any provision of this ordinance which is now or may be superseded by State or Federal laws or regulations is hereby declared to be null and void. In the event that any of the terms, conditions, sections, paragraphs, sentences or phrases of the Ordinance is finally determined by court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining terms, conditions, sections, paragraphs, sentences or phrases of the Ordinance shall remain in full force and effect to the fullest extent allowable by applicable law.

SECTION 6: This ordinance shall be effective upon its final passage and enactment and upon being signed, approved and attested by the proper officials of Municipality and upon the acceptance of any execution by Municipality and Hanover Cable of the Franchise Agreement.

ENACTED AND ORDAINED THIS 25 day of November 1998.

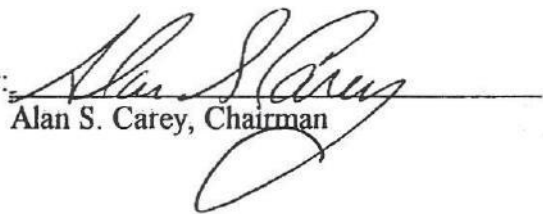
Attest:

TOWNSHIP OF BERWICK



Robert L. Coleman, Secretary

By:



Alan S. Carey, Chairman

## Franchise Agreement

WHEREAS, the Township of Berwick, York County, Commonwealth of Pennsylvania, (hereinafter referred to as "Municipality"), desires to grant to Hanover Cable T.V., Inc., a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania (hereinafter referred to as "Hanover Cable"), a franchise to build, construct, install, maintain, own, acquire, equip, and operate a cable television system, including but not limited to a community antenna television system ("CATV") within the corporate limits of Municipality and to grant to Hanover Cable such additional rights and authority as are reasonably necessary for operating such system.

WHEREAS, Hanover Cable desires to accept a community antenna television system franchise from Municipality, and wishes to provide CATV to persons, firms, organizations and corporations living or located within or near the Municipality.

WHEREAS, Municipality has duly ordained and enacted an ordinance, dated the 10<sup>th</sup> day of *ts*/N, 1998, whereby Municipality has authorized the granting of a nonexclusive franchise to Hanover Cable for the construction, maintenance and operation of a CATV system.

WHEREAS, Municipality has duly ordained and enacted an Ordinance, whereby Municipality has granted to Hanover Cable the right and authority to construct, install, maintain **and** operate a CATV system and to provide CATV service to such persons, firms, organizations and corporations as desire such service, and wherein Municipality has made reference to and incorporated **by** such reference this Franchise Agreement.

AND WHEREAS, Municipality **and Hanover Cable intend this Franchise Agreement to establish the respective rights, authority, responsibilities and duties of each party with regard to the** exercise of such CATV system.

NOW THEREFORE, for and in consideration of One (\$1.00) Dollar in hand paid, receipt of which is hereby acknowledged, Municipality does grant to **Hanover** Cable the

right and authority to construct and operate a CATV system in accordance with the terms and conditions contained herein:

SECTION 1. Nonexclusive Franchise. This franchise insofar as it confers on Hanover Cable the right to build, construct, install, maintain, own, acquire, equip and operate a community antenna television system (CATV), shall be nonexclusive.

SECTION 2. Term of Franchise. The right and authority granted by this franchise shall last for a term of ten (10) years from the effective date of the Ordinance and the execution of this Agreement. Further, it is agreed and understood that this franchise shall automatically renew for five (5) years in addition to the original term, so long as Hanover Cable is found to be in satisfactory compliance with the terms of this agreement. Hanover Cable will proceed with the construction of its CATV system on such schedule and in such geographic location within the Municipality as it determines feasible and nothing contained in this section shall be construed as requiring otherwise so long as Hanover Cable complies with the terms and conditions of this Agreement.

SECTION 3. Right of Revocation. The Municipality shall have the right to rescind or revoke the rights herein granted upon any substantial violation by Hanover Cable of any of **the** obligations and requirements contained herein after written notice by the Municipality to Hanover Cable and continuation of such violation, failure or default.

- (a) Such written notice to Hanover Cable shall specify precisely the manner in which Hanover Cable is in violation, failure or default with respect to the franchise.
- (b) The notice given by the Municipality shall give Hanover Cable a specified, reasonable amount of time within which to correct the violation, failure or default,

but in no event shall the time period be less than sixty (60) days from the date of receipt of the notice to Hanover Cable.

(c) Hanover Cable shall have the right to demand that prior to rescission or revocation of the rights granted herein, Municipality shall hold a public hearing regarding any alleged violation that forms the basis for such rescission or revocation at which Hanover Cable shall have the right to respond to such allegations and to provide Municipality evidence on its own behalf

SECTION 4. Franchise Fee. In consideration of the permission granted it, Hanover Cable agrees to pay over to Municipality Five Percent ( 5% ) percent of its gross subscriber receipts received from the monthly fees charged for services to subscribers, excluding the Municipality franchise fee, within the limits of the Municipality. For purposes of this section, gross subscriber receipts shall not include any taxes on the cable system which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by Hanover Cable on behalf of such governmental unit or agency. Hanover Cable shall have the right to separately designate payments to **the** Municipality on customers' bills as a franchise fee. Payments pursuant to this Section **shall be made by Hanover Cable after the end** of each applicable calendar year of service. Such payments are due and payable on January 30 of each year. Hanover Cable shall keep full, true, accurate, and current account books reflecting revenue collected in the Municipality under this ordinance, which **books** and records shall **be** available for inspection and copying by the Municipality. In addition, Hanover Cable agrees **to prepare an annual report summarizing the** revenue collected in the Municipality during the prior calendar year of service. The above fees shall be paid to the Municipality for the privilege of using the streets and **roads** of the Municipality for the operation of the CATV system **and** for the cost of supervision and regulation by the Municipality.

SECTION 5. Rates. The rates to be charged by Hanover Cable or any subsidiary affiliate or assignee thereof to each unit ("unit" shall include, but not be limited to, any apartment, house, or other dwelling occupied by a single family, or a room division, or department of a structure occupied separately by a person or persons, by a family, or as an office, store or other place of business) will be furnished for information purposes to Municipality by Hanover Cable prior to commencement of service.

Hanover Cable agrees that the rates charged to all subscribers for cable service shall be fair and reasonable. Cable services available may include:

- (a) Basic service which shall include the major commercial networks and other offerings;
- (b) A selection of movie channels; and
- (c) An additional channel package, including some satellite programming.

SECTION 6. Indemnity. Hanover Cable shall indemnify, hold harmless and defend Municipality at all times during the term of this franchise from and against all claims for injury to or death of any person or any damage to any property caused by Hanover Cable, its officers, agents or employees which may arise in the construction, erection, operation or maintenance of its property, or arising out of the exercise of any right or privilege granted under the franchise.

SECTION 7. Insurance. At all times during the term of the franchise, Hanover Cable will, at its own expense, maintain in force, a certificate of insurance as proof of general comprehensive liability insurance with an insurance company approved by the Pennsylvania Insurance Commissioner, the policy or policies to be in form satisfactory to the Solicitor of Municipality. Said policy or policies shall be for the purpose of indemnifying, defending, and saving harmless Municipality from and against liability for

loss or damages for bodily injury, death or property damage, occasioned by the activities of Hanover Cable under the franchise. Minimum liability limits under the policy or policies are to be Five Hundred Thousand (\$500,000.00) Dollars for personal injury or death of any one person, and One Million (\$1,000,000.00) Dollars for personal injury or death of two or more persons in any occurrence, and One Hundred Thousand (\$100,000.00) Dollars for damage to property resulting from any one occurrence. Hanover Cable agrees that it will provide written notice to the Municipality of a change in the terms of coverage of said insurance policies.

SECTION 8. Pole Use. Except when absolutely necessary to serve a subscriber and not simply because it shall be more convenient, economical or profitable for Hanover Cable to so operate, Hanover Cable shall not erect or authorize or permit others to erect any poles or other facilities within the streets of Municipality for the conduct of its CATV system, but shall use the existing poles and other equipment of the Municipality or utilities with facilities in the Municipality. To that end, Hanover Cable shall enter into agreements with utility companies with facilities within the Municipality for the joint use of their poles and equipment and shall enter into agreements with said utilities concerning the installation, maintenance, replacing or repairing of the poles, lines and equipment required by Hanover Cable on or along streets, alleys, public places and public ways.

SECTION 9. Additional Facilities. In the event it is absolutely necessary, pursuant to Section 8, to erect new poles or facilities, Municipality, to the extent it is able to do so, grants Hanover Cable a right-of-way for the erection and maintenance of utility poles, and suspension of lines, or burial or maintenance of underground ducts and cable with all the appurtenances thereto, over, along and under the highways, alleys, streets, public grounds and public places of Municipality as may be necessary for the construction of a CATV system. Such erection, suspension, burial or maintenance shall be subject to

such reasonable regulations as Municipality may provide by ordinance. Such erection, suspension, burial, or maintenance shall not result in any unreasonable interference with the public's or the Municipality's proper use of any such highway, alley, street, public ground or public place, nor shall Hanover Cable's use thereof interfere with the rights and necessary convenience of the public or the Municipality.

SECTION 10. Construction. Nothing contained herein shall require Hanover Cable to provide CATV service to all residents of the Municipality who wish to subscribe to such service. However, during the term of this franchise, Hanover Cable shall, to the extent it is economically feasible, make every effort to extend service to residents of the municipality who wish to subscribe to such service. It is the common goal of Hanover Cable and Municipality to make CATV service available to all residents who wish such service as soon as it becomes commercially and economically feasible.

SECTION 11. Underground Facilities in New Development. During the term of this Franchise Agreement, and any renewal thereof, Municipality shall, upon the request from Hanover Cable, supply to Hanover Cable relevant information regarding the approval by the governing body of Municipality of any subdivision or land development plan in which underground utilities are to be installed. Hanover Cable shall have the option, at its sole discretion, of installing underground cable facilities in conjunction with the installation of all other utilities, in said subdivision or development. Nothing contained in this section shall be construed as requiring cable facility installation by Hanover Cable, except where required by the property owner or where applicable laws or regulations require.

SECTION 12. Tree Trimming. Hanover Cable shall have the authority to trim trees on and overhanging the streets, alleys, public places and public ways of Municipality, at its own expense, so as to prevent the branches of such trees from coming into contact



**with the wires, cables or other facilities of Hanover Cable. Hanover Cable shall be responsible for the removal from public and private property of debris from such trimming. In addition, Hanover Cable agrees to provide reasonable written notice to home owners and Municipality of any tree trimming. Hanover Cable further agrees that it will not remove any tree without the property owner's prior consent and that Hanover Cable will use its best efforts to work with the property owner with regard to any tree trimming operations.**

**SECTION 13. Pavement and Street Construction. In the event that Hanover Cable shall disturb any pavement, street, surface, sidewalks, driveways, or other surface in the natural topography, Hanover Cable shall, at its sole expense, restore and replace such places or things so disturbed in as good condition as existed prior to the commencement of such work. Hanover Cable will notify the Township Roadmaster prior to any pavement or street construction.**

**SECTION 14. Alteration of Street Grade. If at any time during the period of this franchise, Municipality shall alter or change the grade of any street, alley or other way or place, Hanover Cable shall, upon fifteen (15) days notice from Municipality, remove, relay and relocate its cable facilities at Hanover Cable's expense.**

**SECTION 15. Raising/Lowering of Facilities. Hanover Cable shall, upon request of the Municipality, temporarily raise, lower or remove its lines in order to facilitate the moving of buildings or machinery or in other like circumstances. The cost of such raising, lowering or removal shall be borne by the requesting party and collected by Hanover Cable.**

SECTION 16. Operations and Maintenance. Hanover Cable shall render efficient and prompt service, make repairs promptly and interrupt service only for good cause and for the shortest possible time. Failures of the system shall be limited with Hanover Cable locating and correcting malfunctions promptly, but in no event longer than 24 hours after notice, (excluding major weather-related or other disaster conditions that make impossible such 24 hour limitation). Any planned interruptions, where possible, shall be preceded by notice to subscribers and shall occur during periods of minimum use of the cable system. Hanover Cable shall maintain its facilities and service in keeping with technical progress. Installation and maintenance shall be in accordance with good engineering practices.

SECTION 17. Noninterference with Nonsubscribers. Hanover Cable shall provide facilities and service to meet the needs of its subscribers, and shall operate and maintain its cable system so as not to interfere with those residents and inhabitants of the Municipality who may not be subscribers.

SECTION 18. Emergency Use of the Cable System. Hanover Cable agrees to provide an emergency system consistent with FCC regulations.

SECTION 19. Subscriber-owned Antennas. Hanover Cable shall not, as a condition of serving any subscriber, request or require that any subscriber remove any television antenna from the subscriber's premises. In the event that any subscriber wants to maintain access to self-owned antenna service, as well as subscribe to Hanover Cable services, such equipment and/or apparatus as is required to facilitate this option shall be the subscriber's sole and personal responsibility.

SECTION 20. Franchise Not Assignable. Hanover Cable shall not have the right to assign this franchise, except upon prior written approval by ordinance of Municipality which approval shall not be unreasonably withheld.

SECTION 21. Superseding or Preempting Acts. Whenever any law of the commonwealth of Pennsylvania or of the Federal Government or any regulation of any agency of the Commonwealth or Federal Government shall be in conflict with and supersede any provision of this franchise, then for so long as such Federal or State law or regulation shall be in force and effect, such franchise provisions shall be suspended and be of no force or effect, and Hanover Cable shall not be required to comply with such franchise provisions.

Hanover Cable shall notify Municipality of the existence and effective date of any such Federal or State law or regulation which shall supersede any provision of this franchise as soon as that shall come to the knowledge of Hanover Cable.

The Franchise Agreement shall be amended accordingly by the parties in writing whenever a Federal or State law or regulation makes any provisions of this Franchise Agreement obsolete or unlawful.

SECTION 22. Severability. If any section, sentence, clause or phrase of this franchise is for any reason held illegal, invalid or unconstitutional, such invalidity shall not affect the validity of the ordinance passed by Municipality, or any of the remaining portions of this agreement.

SECTION 23. Disposition of Property at Termination of Franchise. If, upon completion of the ten (10) year term or any subsequent renewal of this franchise, the Municipality shall terminate or cease to renew this franchise, it is understood and agreed by the Municipality that the terms of the franchise awarded to the successful bidder shall

include the option, on the part of said successful bidder, to purchase at fair market value the cable transmission facilities of Hanover Cable located in, and for serving the residents of, the Municipality, on terms and conditions that may be negotiated and agreed upon by and between Hanover Cable and said successful bidder. Hanover Cable shall have exclusive right to determine whether to sell such facilities or to remove them from within the Municipality within one hundred twenty (120) days from the date of the franchise with the successful bidder. Such option to sell or remove by Hanover Cable and obligation to purchase by the said successful bidder shall not be deemed applicable to nor inclusive of property and facilities which Hanover Cable owns and operates within the Municipality for purposes of providing cable telecommunication services to others in the vicinity of but outside the incorporated limits of Municipality.

SECTION 24. System Perimeter/Extension. Hanover Cable shall supply to the Municipality a map showing the extent and/or perimeter of installation of its system, and shall also file an extension policy beyond the perimeters shown, if such shall be deemed necessary by the Municipality.

SECTION 25. Signal Transmission. Signal transmission shall be of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with regular broadcast or receiving signals of television, radio, or other signals, or other electrical or electronic systems or equipment.

SECTION 26. Technical Standards. Hanover Cable's construction and maintenance of the transmission and distribution system, including house connections, shall be in accordance with the provisions of the National Electrical Safety Code prepared by the National Bureau of Standards, the National Electrical Code of the National Board

of Fire Underwriters and such applicable ordinance and regulations of the Municipality and affecting Hanover Cable's installation or operation.

SECTION 27. Business Office. Hanover Cable shall maintain a business and/or service office located in the vicinity of Hanover, Pennsylvania, or closer to Municipality. The hours of such office shall be open during reasonable and usual business hours, shall have a listed telephone or telephones, and be so operated that complaints, requests for repairs or adjustments, and conduct of normal business can be received by Hanover Cable at any time. Hanover Cable will provide an after hours emergency telephone number. In the event that Hanover Cable does not have a business office within local exchange vicinity of Municipality residents, it will provide for Service and other calls to be made at no charge to resident-subscribers.

SECTION 28. Nondeliverance of Service. Hanover Cable agrees that should service to any individual subscriber be cut off for any reason other than nonpayment of bills, for a period of longer than one (1) day from date customer contacts Hanover Cable to inform Hanover Cable that customer does not have service, said subscriber shall not be charged for the lack of service, said voiding of charges to be calculated on a prorata daily basis.


SECTION 29. Additional Ordinances and Regulations. The municipality reserves the right to enact, ordain or enforce such additional ordinances, rules and regulations as made from time to time deemed necessary to protect the interests, safety and welfare of the public in relation to the subject matter of this franchise; provided, however, that such ordinances, rules and regulations shall not be inconsistent with the provisions of this ordinance or with applicable law or regulations.

SECTION 30. Effective Date. This Franchise Agreement shall take effect upon the enactment and approval of the ordinance granting Hanover Cable the right and authority provided for herein, and upon the execution of this Franchise Agreement by Municipality and Hanover Cable. Such execution by Hanover Cable and Municipality shall constitute acceptance of the terms and conditions of this franchise as provided for by ordinance and agreement.

SECTION 31. Public Hearings. As a condition of this franchise right, public hearings may be required annually to obtain citizen comments regarding service rendered to Berwick Township and to obtain Hanover Cable's plans to change service in the upcoming year.

SECTION 32. Cable Communications and Policy Act of 1984. It is the intention of Municipality and Hanover Cable that the terms and provisions of this Franchise Agreement be in conformance with the Cable Communications and Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and this Agreement shall be construed in conformity with that Act.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 30 day of August 1991.

WITNESS:  


BERWICK TOWNSHIP  
By: 

WITNESSES:  
a., c1. /u447/

HANOVER CABLE T.V., IN C.  
By: 