

ORDINANCE NO. 2004-5

TOWN OF MILLERSBURG
CABLE TELEVISION FRANCHISE ORDINANCE

AN ORDINANCE RENEWING THE GRANT OF A CABLE TELEVISION FRANCHISE TO NEW PARIS TELEPHONE'S QUALITY CABLEVISION, INC., ITS SUCCESSORS AND ASSIGNS, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE AND PROVIDING FOR REGULATIONS OF THE CABLE SYSTEM.

THE TOWN COUNCIL FOR THE TOWN OF MILLERSBURG, INDIANA ORDAINS AS FOLLOWS:

SECTION 1
Definition of Terms

1.1 Terms. For the purpose of the Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- (a) "Basic Cable" is the lowest priced tier of service that includes the retransmission of local broadcast television signals.
- (b) "Cable Act" collectively means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992, as amended.
- (c) "Cable Services" shall mean (A) the one-way transmission to Subscribers of (i) video programming, or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (d) "Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Services which include video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves only Subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any Public Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, **except that such facility shall be considered a Cable System** (other than for purposes of section 621(c)) to the extent such facility is used in transmission video programming directly to Subscribers; or (D) any facilities of any electric utility used solely for operating its electric utility system.

- (e) "FCC" means the Federal Communications Commission.
- (f) "Franchisee" means New Paris Telephone's Quality Cablevision, Inc., its successor and assigns.
- (g) "Franchising Authority" means the Board of Trustees of the Town of Millersburg, Indiana.
- (h) "Gross Revenues" means all revenue received by Franchisee from Subscribers for the provision of basic Cable Service in the Town. The term Gross Revenues shall not include franchise fees, advertising revenues, late fees, any fees itemized and passed through as a result of franchise imposed requirements or any taxes or fees on services furnished by Franchisee imposed directly on any Subscriber or user by any municipality, state, or other governmental unit and collected by Franchisee for such governmental unit.
- (i) "Person" means an individual, partnership, association, corporation, **limited liability company, governmental unit, or other entity.**
- (j) "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Franchisee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easement or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Franchisee to the use thereof for the purposes of installing and operating the Franchisee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.
- (k) "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any additions by annexation or other legal means.
- (l) "Subscriber" means a Person who lawfully receives services of the Cable System with the Franchisee's express permission

SECTION 2 Grant of Franchise

2.1 Grant. The Franchising Authority grants to the Franchisee a nonexclusive Franchise authorizing the Franchisee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extension thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Franchise shall be construed to prohibit Franchisee from offering any service over its Cable System that is not prohibited by federal or state law.

2.2 Regulatory Compliance. Franchisee shall comply with any generally applicable statutes, regulations, ordinances, rules, and requirements in effect in Franchising Authority's jurisdiction during the term of this Franchise. Franchisee further acknowledges and agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

SECTION 3 Standards of Service

3.1 Conditions of Street Occupancy. All transmission and distribution structures, poles, lines, and equipment installed or erected by the Franchisee pursuant to the terms hereof shall be located so as to not interfere with the proper use of Public Ways and shall be located so as to cause a minimum of interference with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 Restoration of Public Ways. If during the course of the Franchisee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Franchisee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3.3 Relocation at Request of the Franchising Authority. Upon receipt of reasonable advance notice, not to be less than five business days, the Franchisee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Franchisee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by or on behalf of the Franchising Authority; but, the Franchisee shall in all cases have the right of abandonment of its property. If public funds are available to any person using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall make application for such funds on behalf of the Franchisee; provided the expense of making such application is paid in advance by Franchisee.

3.4 Relocation at Request of Third Party. The Franchisee shall, on the request of any person holding a building moving permit issued by or on behalf of the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Franchisee, making such payment in advance; and (b) the Franchisee is given not less than 10 business days advance written notice to arrange for such temporary wire changes.

3.5 Trimming of Trees and Shrubbery. The Franchisee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with the Franchisee's wires, cables, or other equipment. The Franchisee shall reasonably compensate the Franchising Authority for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the Cable System undertaken by the Franchisee. Such replacement shall satisfy any and all obligations the Franchisee may have to the Franchising Authority pursuant to the terms of this Section.

3.6 Safety Requirements. Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.

3.7 Aerial and Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Franchisee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, the Franchisee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities or any part thereof, aerially or underground. Nothing contained in this Section shall require the Franchisee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this Section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Franchise, the Franchisee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice in advance of the time that such are placed underground.

3.8 Required Extensions of Service. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, whenever the Franchisee shall receive a request for service from a potential Subscriber and at least 10 residences exist within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for Cable System extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System.

3.9 Service to Public Buildings. The Franchisee shall, upon request, provide without charge, a reasonable number of outlets of expanded Basic Cable to those Franchising Authority offices, fire station(s), police station(s), and public school building(s) that are passed by its Cable System. The outlets shall not be used to sell services in or throughout such buildings, nor shall such outlets be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any use of Franchisee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. Users of such outlets shall hold the Franchisee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. The Franchisee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds or unless the **appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 300 cable feet.**

3.10 Emergency Use. The Franchisee shall maintain an Emergency Alert System in compliance with applicable FCC regulations.

SECTION 4 **Regulation by the Franchising Authority**

4.1 Franchise Fee

- (a) Franchisee shall pay to the Franchising Authority an annual franchise fee in an amount equal to 3% of Gross Revenues. Franchisee shall pay the franchise fee to Town on or before March 31 of the following year. Franchisee shall submit with each payment a report showing in reasonable detail Franchisee's calculations of the fee.
- (b) **The period of limitation for recovery of any franchise fee payable** hereunder shall be five years from the date on which payment by the Franchisee is due. Unless the Franchising Authority initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, within five years from and after such payment due date, such recovery shall be barred and the Franchising Authority shall be stopped from asserting any claims whatsoever against the Franchisee relating to any such alleged deficiencies.

4.2 Rates and Charges. The Franchising Authority may regulate rates for the provision of Cable Services and equipment only as expressly permitted by applicable law.

4.3 Transfer of Franchise. The Franchisee's right, title, and interest in the Franchise may be sold, transferred, assigned, or otherwise encumbered, without the prior consent of the Franchising Authority; provided, however, that the successor, transferee, or assignee of the Franchisee shall provide notice of its intent to accept the Franchise and to comply with the terms and provisions of this Ordinance within thirty (30) days after the date of the completed transfer.

SECTION 5 **Compliance and Monitoring**

5.1 Technical Standards. The Franchisee shall be responsible for insuring that the Cable System is designed, installed and operated in a manner that fully complies with applicable FCC regulations as revised or amended from time to time. The Franchising Authority shall have, upon request, access to tests and records required under such regulations.

5.2 Books and Records. The Franchisee agrees that the Franchising Authority upon reasonable notice to the Franchisee may review such of its books and records at the Franchisee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary ensure compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Franchisee pursuant to the rules and regulations of the FCC. The Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Franchisee in accordance with the Indiana Access to Public Records Law (IC § 5-8-14-1 et seq.) as amended. The Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

SECTION 6 **Insurance and Indemnification**

6.1 Liability and indemnification. The Company, by its acceptance of this Franchise, expressly agrees that it will indemnify, hold harmless and defend the Town, its officers, boards and employees against any and all claims, demands, and lawsuits against the Town arising out of the Company's activities and business or in any way related to the Franchise or Company's obligations or duties under the Franchise, such indemnification to include all damages (including, but not limited to, liability for property damage, bodily injury, accidental death, or contractual damages), costs, and attorney fees. The Town shall notify the Company's representative within fifteen (15) days after the presentation of any claim or demand to the Town, either by suit or otherwise, made against the Town. If the Town determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Town.

6.2 Insurance Requirements. The Franchisee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury and property damage. The Franchisee shall provide a Certificate of Insurance designating the Franchising Authority as an additional insured. Such insurance shall be noncancellable except upon 30 days prior written notice to the Franchising Authority.

SECTION 7

Enforcement and Termination of Franchise

7.1 Notice of Violation. In the event that the Franchising Authority believes that the Franchisee has not complied with the terms of the Franchise, it shall notify the Franchisee in writing of the alleged noncompliance.

7.2 Enforcement. In the event that the Franchisee fails to cure the alleged noncompliance to the satisfaction of the Franchising Authority within thirty (30) days from receipt of the notice of noncompliance, the Franchising Authority may terminate the Franchise.

7.4 Termination or Amendment by Franchising Authority. Franchising Authority may terminate or amend this Ordinance by a separate ordinance duly adopted in accordance with the applicable requirements of state law; provided, however, that any amendment or termination of this Ordinance shall not be effective for at least thirty-six (36) months after the amendment or termination is adopted. Prior to the amendment or termination becoming effective, Franchisee may seek to negotiate a Franchise Agreement with the Franchising Authority separate and independent from this Ordinance in accordance with the applicable requirements of state and federal law.

7.5 Franchise Term. The Franchise granted the Company pursuant to this Ordinance shall terminate five (5) years from the date of this Ordinance subject to renewal for periods of reasonable duration on such terms and conditions as may be lawfully specified by the Town Council of the Town of Millersburg. The Franchise shall also terminate in the event of non-compliance with any provision of this Franchise by the Company, which non-compliance continues for an unreasonable time after written demand for corrective action is received by the Company from the Town. The Company's application for Franchise renewal shall be granted provided: (1) Company shows that its cable television ("CATV") service during the preceding Franchise period ~~has reflected a good—faith effort to serve the needs and interests of its service area,~~ and (2) Company has not demonstrated a callous disregard of the law and all pertinent regulations.

SECTION 8 **Miscellaneous Provisions**

8.1 Actions of Parties. In any action by the Franchising Authority or the Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.2 Force Majeure. Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were cause by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or **snow storm**, hurricane, tornado or other catastrophic act of nature, labor disputes, **governmental**, administrative or judicial order or regulation or other event that is reasonably beyond the Franchisee's ability to anticipate and control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which Franchisee's cable and/or equipment is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

8.3 Nondiscrimination. Franchisee and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of the Franchise, with respect to his or her hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of his or her race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of the Franchise.

8.4 Notice. Every notice or response required by this Ordinance to be served upon the Franchising Authority or the Franchisee shall be in writing, and shall be deemed to have been duly given to the required party when hand delivered or five business days after having been posted in a properly sealed and correctly addressed envelope sent by certified or registered mail, postage prepaid.

The notices or responses shall be addressed as follows:

To Franchise Authority:

Attn: Town Clerk/Treasurer
Town of Millersburg
Post Office Box 278
Millersburg, Indiana 46543

copy: Attorney for the Town of Millersburg
Yoder, Ainlay, Ulmer & Buckingham
Post Office Box 575
Goshen, IN 46527

To Franchisee:

Attn: General Manager
Quality Cablevision
19079 Market Street
PO Box 7
New Paris, IN 46553

The Franchising Authority and the Franchisee may designate such other address or addresses from time to time by giving notice to the other.

8.5 Descriptive Headings. The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

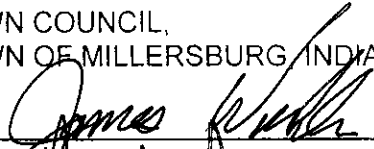
8.6 Severability. If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having any jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise, or any renewal or renewals thereof.

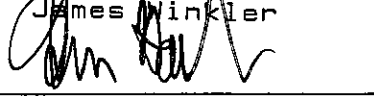
8.7 Effective Date. This Ordinance shall be effective as of its date of adoption and shall supercede any existing Franchise Agreement for cable services between Franchising Authority and Franchisee.

SIGNATURE PAGE FOLLOWS.

ORDAINED AND ADOPTED this 9 day of June, 2004.

TOWN COUNCIL,
TOWN OF MILLERSBURG, INDIANA

By 
James Winkler

By 
Dean Hawkins

By 
Abe Beachy

ATTEST:

Wanda R Chapp