

Rec. 2/22/93
m.j.

AN ORDINANCE OF THE BOROUGH OF NEW MILFORD DEFINING AND GRANTING BY FRANCHISE, NON-EXCLUSIVE RIGHTS AND PRIVILEGES TO A-R CABLE SERVICES-NY, INC. TO OPERATE CATV FACILITIES THEREIN; ESTABLISHING THE FRANCHISE TERM; DETERMINING STREET/ROAD OCCUPANCY CONDITIONS AND SAFETY REQUIREMENTS; PRESCRIBING SYSTEM CONSTRUCTION, EXTENSION AND OPERATIONAL STANDARDS INCLUDING MAINTENANCE OF A LOCAL OFFICE; ESTABLISHING REQUIREMENTS FOR FILING RATES AND PAYING FRANCHISE FEES WITH NEW MILFORD BOROUGH AND INDEMNIFICATION THEREOF; PRESCRIBING PROCEDURES FOR EVALUATING GRANTEE PERFORMANCE AND FOR THE TRANSFER OR TERMINATION OF FRANCHISE; REQUIRING COMPLIANCE WITH APPLICABLE LAWS, ORDINANCES AND REGULATIONS; AUTHORIZING ACTIONS BY NEW MILFORD BOROUGH FOR VIOLATIONS HEREOF AND PRESCRIBING THE FORM OF NOTICE HEREUNDER; AND PROVIDING FOR ACCEPTANCE HEREOF BY GRANTEE.

WHEREAS, A-R CABLE SERVICES-N Y, INC. herein called "Grantee" is desirous of consummating a formal franchise agreement with New Milford Borough, Susquehanna County, Pennsylvania for the purpose of constructing, operating, and serving residents of New Milford Borough with cable television service.

THEREFORE:

BE IT ORDAINED AND HEREBY RESOLVED BY THE COUNCILMEN OF THE BOROUGH OF NEW MILFORD THAT THE FOLLOWING AGREEMENT IS ACKNOWLEDGED, ACCEPTED AND AGREED TO:

SEE ATTACHED AGREEMENT

AGREEMENT made as of the _____ day of _____
1993, between the BOROUGH OF NEW MILFORD ("Borough") and A-R
CABLE SERVICES-NY, INC. ("A-R"), having its principal
office at One Media Crossways, Woodbury, New York 11797.

WHEREAS, A-R has applied to the Borough for a renewal
of the franchise granting it the right to construct and
operate a broadband Telecommunications system within the
geographical boundaries of the Borough; and

WHEREAS, A-R is providing such service to the Borough
pursuant to a franchise dated November 4, 1982; and

WHEREAS, on _____, 1993, the Borough
held a full public hearing affording due process to consider
the renewal of the franchise to A-R; and

WHEREAS, the technical and financial ability and char-
acter of A-R were considered and approved at such hearing;
and

WHEREAS, this proposed franchise agreement complies
with the standards of the Federal Law; and

WHEREAS, by Resolution of the Borough Council dated
_____, 1993, the Borough granted a non-exclusive
franchise to A-R and authorized the Borough President to
execute such Agreement with A-R upon the terms hereinafter
set forth;

NOW, THEREFORE, in consideration of the mutual condi-
tions and covenants contained herein:

IT IS MUTUALLY AGREED AS FOLLOWS:

Section 1. Definitions

For the purpose of this Agreement, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number; and vice versa. The word "shall" is always mandatory and not merely directory.

(A) "Borough" shall mean the Borough of New Milford, organized and existing under the laws of the Commonwealth of Pennsylvania.

(B) "System" shall mean the broadband telecommunications system constructed heretofore, which, in whole or in part, distributes analog and digital audio, telephone, telegraph, radio, television, and video and/or data transmissions and distributes such signals to subscribing members of the public who pay for such service.

(C) "FCC" is the Federal Communications Commission.

(D) "Franchise" shall mean and include any authorization granted hereunder in terms of franchise, right, privilege, and non-exclusive authority to construct, erect, operate, and maintain, in, upon, along, across, above, over, and under the streets, alleys, public ways, public places now laid out or dedicated, and all extensions thereof, and additions thereto in the Borough, a system of poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary to maintain and operate a system in the Borough.

(E) "Gross Revenue" means all receipts paid by residents within the Borough to A-R for cable television services provided by A-R pursuant to this Agreement.

Section 2. Grant of Non-Exclusive Franchise

(A) There is hereby granted by the Borough to A-R the non-exclusive Franchise, right, privilege, authority, easement, and license to construct, erect, suspend, install, renew, maintain, and operate throughout the entire Borough in, upon, along, across, above, over and under the streets, alleys, easements, public ways and public places as now laid out or dedicated, and all extensions thereof, and additions thereto, in the Borough a system of poles, wires, cables, underground conduits, ducts, trenches, conductors, amplifying equipment, manhole fittings and any and all other fixtures, appliances, and appurtenances necessary for the installation, maintenance, and operation in the Borough of a System. This Agreement shall further include the Franchise, right, privilege, easement, and authority to construct, erect, suspend, install, lay, renew, repair, maintain, and operate such poles, wires, cables, underground conduits, manholes, ducts, trenches, fixtures, appliances, and appurtenances for the purpose of distribution to inhabitants both within and beyond the limits of the Borough. Without limiting the generality of the foregoing, this non-exclusive Franchise shall and does hereby include the right, in, over, and upon the streets, sidewalks, alleys, easements (including public utility easements) where such easements have been granted by the Borough, public grounds and places in the Borough for the purpose of installing, erecting, operating, or in any other way acquiring the use of, as by leasing, or licensing all poles, lines, and equipment necessary to operate a System and the right to make connections to subscribers, the right to repair, replace and enlarge and extend said lines, equipment, and connections, and to maintain and use the same for the purpose of transmitting and distributing analog and digital telephone, telegraph, television, radio and/or audio-visual, radio frequency or data signals. The right granted for the purposes herein shall be non-exclusive.

(B) This Franchise is for the corporate limits of the Borough and for any areas henceforth added thereto during the term of this Agreement, which hereinafter shall be known as the Franchise Area.

(C) In the event the Borough wishes to grant a franchise to any other person, such

franchise shall be granted on at least the same terms and conditions, shall contain the identical obligations and burdens, and shall be applied to the same geographic areas, as this Franchise.

Section 3. Effective Date and Term - Removal

(A) This Agreement shall take effect and be in full force from and after the date this Agreement is signed by both parties and said Agreement shall continue in full force and effect for ten (10) years.

(B) upon expiration, termination, or revocation of this Agreement, A-R at its sole cost and expense and upon direction of the Borough, shall remove the cables and appurtenant devices constructed or maintained in connection with the services authorized herein.

Section 4. Compliance with Applicable Law and Exercise of Reasonable Police Powers

(A) The work done in connection with the construction, reconstruction, maintenance, service, or repair of said System shall be subject to and governed by all laws, rules, and regulations of the Borough now in force or that may be hereafter passed and adopted for the government and regulation thereof and not inconsistent herewith. Further, the construction, maintenance, and operation of the System shall be subject to all lawful police powers and regulations by the Borough. The Borough shall have the power at any time to order and require A-R to remove and abate any pole, tower, wire, cable, electronic conductor, or other structure or facility that is dangerous to life or other structure or facility that is dangerous to life or property upon reasonable demonstration thereof and the giving of appropriate written notice, and in the event A-R, after written notice, fails or refuses to act, the Borough shall have the power to remove or abate the same at the expense of A-R, all without compensation or liability for damages to A-R.

(B) This Agreement shall be deemed automatically amended to incorporate all changes in Federal or State franchise standards. All such changes shall be incorporated herein with one (1) year from the adoption of such modification, or at the time of

franchise renewal, whichever shall first occur.

(C) In furtherance of the conduct or other business contemplated by this Agreement, A-R is exempted from local laws, ordinances, regulations, and the like, other than those referring specifically to solicitations by cable system representatives, which the Borough now has or may hereafter have governing the door to door solicitation of customers by salesmen, to the extent listed below:

1. A-R shall be permitted to solicit customers between the hours of 10:00 a.m. and 7:00 p.m.

2. In lieu of the cost of solicitation permits, the franchise fee shall cover said fee.

3. A-R shall be exempt from any provision of the Ordinance limiting the distance from any type of building within which A-R's representatives may solicit. A-R shall provide a list of names and addresses, as well as the other necessary information pertaining to all representatives who will be soliciting within the Borough and each such representative shall have in a possession an employee identification card including a picture issued by A-R. Said Borough shall also be notified by A-R that representative(s) of days that they will be in the Borough.

(D) The Borough shall have the right to adopt in addition to the provision contained in this Agreement and existing applicable Ordinances, such additional regulations as it shall find necessary from time to time in the exercise of its police power; provided, however, that such regulations are not materially in conflict with the provisions of this Agreement.

Section 5. Indemnification, Insurance, Performance Bond

(A) A-R shall indemnify and save the Borough harmless from all losses sustained by the Borough on account of any suit, claim, or demand whatsoever occasioned by or arising out of the construction, erection, maintenance, repair, or operation of the System in the Borough and from any suits, liabilities, obligations for liabilities, obligations for libel, , unfair competition, or obligation of suits of any kind or nature whatsoever by a third person arising out of or incident to the exercise by A-R of the rights herein granted, unless such suit,

claim or demand arises out of the negligent acts or omissions of the Borough. A-R shall provide the Borough with a Certificate of Insurance evidencing carriage of liability insurance covering property damage and public liability from any insurance company or companies qualified to do business in the Commonwealth of Pennsylvania. The amounts of such insurance to be carried for liability due to damage to the property shall be not less than Three Hundred Thousand Dollars (\$300,000.00) as to any one accident and against liability due to injury or death of persons One Million Dollars (\$1,000,000.00) as to any one person and One Million Dollars (\$1,000,000.00) as to any one accident, including umbrella or excess liability coverage. The Borough shall notify A-R within thirty (30) days after the presentation of any claim or demand, either by suit or otherwise, made against the Borough on account of any negligence or other claim or liability as aforesaid on the part of A-R.

(B) A-R shall pay, except as noted herein to the contrary, all expenses incurred by the Borough to defend itself in regard to all damages and penalties mentioned in this Section. These expenses shall include out-of-pocket expenses such as reasonable attorney's fees.

(C) A Certificate of Insurance shall be delivered by A-R to the Borough Secretary.

Section 6. Conditions of Street Occupancy

(A) Any work which requires disturbance of the surface of any street or which will interfere with traffic shall not be undertaken without the prior permission and approval of the manner of doing the work by the appropriate Borough official.

(B) No poles, underground conduits, or other wire holding structures shall be erected by A-R without the prior approval of the appropriate Borough official through established permit procedures to the extent that same now or hereafter may exist, with regard to the location, height, type, and any other pertinent aspect of such wire holding facilities, however, such approval may not unreasonably be withheld. A-R shall have the right to attach its wires to existing poles owned by the Borough or any agency of the Borough without any additional annual rental fees to the Borough provided A-R shall pay in advance for all costs of rearrangement of existing wires neces-

sary to achieve clearances as specified by the National Electrical Safety Code.

(C) All structures, lines, and equipment erected by A-R within the Borough shall be so located as to cause minimum interference with the rights or reasonable convenience of property owners who join any of the said streets, alleys, or other public ways and places. Existing poles, posts, and other such structures of the electric power company or any telephone company or any other public utility which may be available to A-R shall be used to the extent practicable in order to minimize interference with travel. Where both power and telephone utilities are placed underground, A-R's cables shall also be placed underground.

(D) A-R shall have the right and authority to remove, trim, cut, and keep clear trees and bushes upon and overhanging all streets, alleys, easements, sidewalks, and public places in the Borough so as to keep same clear of its poles, wires, cables, conduits, and fixtures. Before commencing any tree trimming, A-R will inform the Borough official designated by the Borough to monitor A-R's construction activities.

(E) In the case of any disturbance of pavement, sidewalk, driveway, or other surfacing, A-R shall, at its own cost and expense in a manner provided and approved by the Borough official designated by the Borough, replace and restore all paving, sidewalk, driveway, or surfacing so disturbed in as good condition as before said work was commenced.

(F) If at any time during the term of this Agreement, the Borough shall lawfully elect to alter or change any street, alley, easement, or other public way requiring the relocation of the facilities of A-R, then in such event A-R, upon at least forty-five (45) days written notice by the Borough, shall remove, relay, and relocate the same at A-R's expense.

(G) A-R shall, upon the request of any person holding a building moving permit issued by the Borough, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and A-R shall have the authority to require such payment in advance. A-R shall be given not less than seventy-two (72) hours

advance notice to arrange for such temporary wire changes.

Section 7. Operation, Service, and Maintenance of System

(A) A-R shall so maintain and operate the System and render efficient service to subscribers during the term of this Agreement as to insure that all work involved in construction, installation, maintenance, and repair of the System shall be performed in a safe, thorough, and reliable manner. The construction, maintenance, and operation of the System for which this Agreement is granted shall be done in conformance with the National Electrical Code, the National Electrical Safety Code, and the rules and regulation of the FCC and the Commonwealth of Pennsylvania, as the same exist or as the same may be hereafter changed, amended, or adopted. Further, A-R shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the Ordinances of the Borough as may be amended, and in such manner which shall not interfere with any installations of the Borough or any public utility serving the Borough. In the event that any municipal property is damaged or destroyed in the course of operations or construction by A-R, such property shall be promptly repaired or replaced by A-R and restored to serviceable condition.

(B) All structures and all lines, equipment, and connections in over, under, and upon streets, sidewalks, alleys, and public ways and places of the Borough, wherever situated or located, shall at all times be kept and maintained in a safe, suitable substantial condition and in good order and repair.

(C) The signal of any audio or video service carried on the System shall be carried without material degradation in quality within the limits imposed by the technical state of the art, and as set forth by the FCC. The System shall be operated in accordance with the rules and regulations of the FCC and the Federal Law.

(D) A-R shall maintain a payment center reasonably accessible to residents of the Borough with one or more agents or employees at all times and shall have sufficient employees to provide safe, adequate, and proper service for its facilities. Upon notice A-R shall expeditiously investigate and resolve complaints regarding the quality of service, equipment malfunctions and similar matters. A-R's office

which shall be open at least from 9:00 a.m. to 5:00 p.m., Monday through Friday, and A-R shall have a listed local or "800" telephone so operated that complaints must be received twenty-four (24) hours a day. All customer complaints must be handled promptly. A-R shall provide written notice to each subscriber upon installation and at intervals of no more than one year of the procedure for reporting and resolving subscriber complaints.

(E) All complaints against A-R relating to its performance under this Agreement, including but not limited to those concerning quality of service, equipment malfunctions and billing disputes, shall be received at the aforesaid office of A-R by duly authorized employees.

(F) Regarding complaints of equipment or system malfunctions, A-R shall respond to such complaints within twenty-four (24) hours after receipt thereof and correct malfunctions as promptly as possible. A-R shall provide a daily pro-rata credit to any subscriber who is without service for any period in excess of twenty-four (24) hours due to the fault of A-R.

(G) A subscriber's service shall not be terminated because of non-payment of a bill until five (5) days after the subscriber has been given written notice of intent to terminate.

(H) A-R shall, along with its cable routes, provide one aerial connection for basic service to each public and private school, police, and fire station, and public library, located within the Borough, upon request without charge. A-R shall, along its cable routes, also provide a connection without charge to designated Borough buildings upon request by the Borough in writing. As used herein, the term "School" shall mean those education institutions within the Borough chartered by the Pennsylvania State Board of Regents pursuant to the New York education Law; and the term "Library" shall mean a library established for free public purposes by official action of a municipality, district, or the legislature, where the whole interest belongs to the public, provided, however, that the term shall not include a professional, technical, or public school library.

Section B. System Description

(A) A-R shall install and maintain its wires,

cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Code of the National Board of Fire Underwriters, and in accordance with sound engineering practices, and the same shall at all times be kept and maintained in a safe, suitable, and substantial condition, and in good order and repair. All materials used shall be of good and durable quality.

(B) All work involved in the construction, installation, maintenance, and the repair of the System shall be performed in a safe, thorough, and reliable manner.

(C) All technical specifications and the operation of the System shall at all times conform to the specifications established by the FCC.

(D) A-R shall: (a) Use facilities capable of distributing color television signals; (b) Produce a picture of good quality that is undistorted, free from ghost images and accompanied by proper sound on typical TV receivers in good repair, all as good as the state of the art from time to time allows; (c) Transmit signals of adequate strength to produce good pictures and sound at all outlets without cross-modulation in the cables and without interfering with other electrical or electronic systems; (d) Limit failure to a minimum by locating and correcting malfunctions promptly, but in no event more than forty-eight (48) hours after notice, excepting situations of force majeure; and (e) Render efficient service, making repairs promptly, and interrupt service only for good cause and for the briefest possible period preceded if possible by notice and to occur, if possible, during periods of minimum system use.

Section 9. Rates

(A) Subscription to the services herein authorized shall be wholly voluntary and optional to the residents of the Borough.

(B) The rates as of the date of this Agreement for services available for subscription are annexed hereto at Exhibit B.

(C) Pursuant to the provisions of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984 and the Cable Consumer Protection and Competition Act of 1992 rates

and charges for cable television services shall be subject to the approval of the Borough to the extent consistent with applicable law.

(D) A-R shall not make or grant preference or advantage to any person, nor subject any person to prejudice or disadvantage with the same classifications of service as to rates, charges, services, facilities, rules, regulations, or in any other respect; provided, however, this shall not be to prohibit the establishment of a graduated scale of charges and rate classifications for residential and commercial services to which any customer coming within such classification shall be entitled, nor shall it preclude reduced rates to senior citizens.

Section 10. A-R's Rules

A-R shall have the authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable A-R to exercise its rights and perform its obligations under this Franchise and to ensure an uninterrupted service to each and all of the subscribers to its System.

Section 11. Payment to the Borough of Franchise Fees

In consideration for granting this Franchise, A-R shall pay the Borough Quarterly on or before the 30th day following the end of each quarter a fee of three percent (3%) of the Gross Receipts.

Section 12. Right to Inspect Books - Regulatory Officer

(A) A-R hereby grants the Borough the right to inspect all its books, records, maps, plans, financial statements and other similar material of A-R, insofar as they relate to the terms and conditions of this Agreement and the performance of the obligations hereunder, upon reasonable notice to A-R and during normal business hours.

(B) The Borough Council shall designate the Borough President as the official who shall be responsible for the administration of the Franchise.

Section 13. Termination

(A) In addition to all other rights reserved to the Borough under this Agreement, or by law, and not in substitution thereof, the Borough reserves the right to terminate this Agreement, in the sole discretion of the Borough in the event that A-R shall be in default of or fail to comply with any material term, condition, requirement, or limitation contained in this Franchise.

(B) A-R shall not be deemed nor declared to be in default under any of the conditions, provisions, requirement, or limitations of this Franchise in any case in which the performance of such condition, provision, requirement, or limitation is prevented by reason of strikes, injunctions, or other causes beyond the control of A-R, provided that A-R shall not have instigated such strike, or shall not have been responsible for suits or injunctions or other causes of delay.

(C) A-R shall not be declared in default of any provision contained herein unless A-R shall have been notified by the Borough, in writing, of the condition or act for which a violation is alleged. A-R shall have a period of thirty (30) days in which to remedy or take reasonable steps to remedy such condition or act. Thereafter, a default shall be declared only by Resolution of the Borough Council after publication of public notice and the giving of notice to A-R and the granting to A-R of an opportunity to be heard at a public hearing.

(D) Upon termination of the period of this Franchise or of any renewal thereof by passage of time or otherwise, A-R shall remove its supporting structures, poles, transmission and distribution systems and other appurtenances from the streets, ways, lands, alleys, parkways, bridges, highways, and other public places, in, over, under, or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such termination, the Borough may deem any property not removed as having been abandoned.

Section 14. Abandonment of Service

A-R is expressly prohibited from abandoning and service undertaken under this Agreement or any portion thereof without the written consent of the

Borough. In the event A-R makes a showing of financial loss without any reasonable expectation of terminating such losses, such written consent shall not be unreasonably withheld.

Section 15. Assignment

(A) There shall be no assignment of (i) this agreement, or (ii) any of the rights, privileges, and immunities contained herein, without the prior approval of the Borough. Borough hereby agrees that it will not unreasonably withhold such approval. The Borough agrees to promptly review any request for an assignment. The Borough shall have sixty (6) days to review and act on A-R's application. If the Borough has not acted within such time, Borough approval shall be deemed to have been given.

(B) Notwithstanding subsection (A) hereinabove, A-R may transfer the Franchise or any of the rights, privileges, and immunities contained herein to Cablevision Systems Corporation, its successors or assigns without the prior approval of the Borough.

(C) A-R shall have the right to pledge this agreement as security for its financing arrangements.

Section 16. Construction

This agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania and shall be subject to all present or future Pennsylvania State laws.

Section 17. Equal Employment Opportunity

A-R shall not refuse to hire or employ nor discharge or bar from employment nor discriminate against any person in compensation or in terms, conditions, and privileges, of employment because of age, race, creed, color, national origin, or sex.

Section 18. Notice

Any inquiry, proceeding, investigation, or other action to be taken or proposed to be taken by the Borough in regard to the operations of the System shall be taken only after thirty (30) days public notice of such action or proposed action is served

directly on A-R: and A-R and all interested parties and citizens have been given an opportunity to respond in writing and/or at a hearing as may be specified by the Borough.

Section 19. Severability

In the event that any provision of this Agreement should be held invalid by a court or regulatory agency of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

Section 20. Cancellation of the Franchise

The Borough shall have the right to cancel agreement for any of the following reasons:

(A) For failure to pay to the Borough the franchise fee for a period in excess of one (1) year from its due date.

(B) For knowingly submitting false records or reports to the Borough.

(C) For the perjured sworn testimony with respect to this Franchise of any company officer.

In the event of any cancellation for any of the above reasons, the bond specified in Section 5, (D) may be forfeited at the direction of the Borough.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement as of the date first above written.

BOROUGH OF NEW MILFORD

BY: _____
President

Attest:

Secretary

A-R CABLE SERVICES-NY, INC.

BY: _____

This Ordinance shall repeal any inconsistent Ordinances.

This Ordinance shall become effective five (5) days after enacted by the
Borough Council of New Milford Borough.

ORDAINED AND ENACTED this ____ day of _____, 1993.

BOROUGH COUNCIL OF NEW MILFORD BOROUGH

ATTESTED BY:

SECRETARY

APPROVED this ____ day of _____, 1993.

MAYOR