

ORDINANCE NO. _____

2003 APR 28 PM 2: 04

AN ORDINANCE GRANTING A FRANCHISE TO ADELPHIA GS CABLE, LLC D/B/A ADELPHIA CABLE COMMUNICATIONS (THE GRANTEE) TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE COUNTY OF BERKELEY, WEST VIRGINIA (THE GRANTOR); SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM:

PREAMBLE

The Grantor does ordain that it is in the public interest to permit the use of public rights-of-way and easements for the construction, maintenance, and operation of a Cable System under the terms of this Franchise, said public purpose being specifically the enhancement of communications within the territorial boundaries of the Grantor.

SECTION 1. STATEMENT OF INTENT AND PURPOSE.

The Grantor intends, by the adoption of this Franchise, to continue the development and operation of a Cable System. This development can contribute significantly to the communications needs and desires of many individuals, associations and institutions.

SECTION 2. SHORT TITLE.

This ordinance shall be known and cited as the "Berkeley Franchise Ordinance." Within this document it shall also be referred to as "this Franchise" or "the Franchise."

SECTION 3. DEFINITIONS.

For the purpose of this Franchise, the following terms, phrases, words, and their derivations shall have the meanings given herein. 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. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

1. "Basic Service Tier" means a service tier which includes the retransmission of local television broadcast signals.
2. "Cable Act" means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996 and any amendments thereto.
3. "Cable Service" means: (i) the one-way transmission to subscribers of video programming or other programming service; and (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
4. "Cable System," or "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 service which includes video programming and which is provided to multiple subscribers within a community as defined in the Cable Act.

5. "FCC" means the Federal Communications Commission, its designee, or any successor thereto.
6. "Gross Revenues" shall mean all revenues from the operation of the System within the franchise area received by Grantee from subscribers from the basic service tier of programming and for any optional tier of programming service (including premium and pay-per-view services), customer equipment and installation charges, disconnection and reconnection charges. Gross revenues shall not include that share of fees remitted to suppliers from programming services, deposits, refunds and credits made to subscribers, bad debt, non-subscriber revenues, revenue from Subscribers designated by Grantee as payment of its franchise fee obligation, or any taxes imposed on the services furnished by Grantee herein which are imposed directly on the Subscriber or user by the local or any governmental unit and collected by Grantee on behalf of that governmental unit.
7. "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.
8. "Signal" means any transmission of radio frequency energy or of optical information.
9. "Street" means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive and any public easement or right-of-way now or hereafter held by the Grantor which shall entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.
10. "Subscriber" means any person or entity who lawfully subscribes to any Cable Service whether or not a fee is paid for such Cable Service.

SECTION 4. GRANT OF AUTHORITY AND GENERAL PROVISIONS.

1. Grant of Franchise. The Grantor hereby grants to Grantee the non-exclusive right to construct, operate and maintain in, on, along, across, above, over and under the streets, alleys, lanes and public places of the Grantor, the poles, wires, cables, underground conduits, manholes and other facilities necessary for the maintenance and operation of a Cable Communications System throughout the entire territorial area of the Grantor to provide Cable Service and other communications and information services.
2. Level Playing Field. The Grantor agrees that any grant of additional franchises or other authorizations including OVS authorizations by the Grantor to any other entity to provide video or other services similar to those provided by Grantee pursuant to this agreement and over which the Grantor has regulatory authority shall require that service be provided for the same territorial area of the Grantor as required by this agreement and shall not be on terms and conditions (including, without limitation, the franchise fee obligations) more favorable or less burdensome to the Grantee of any such additional franchise than those which are set forth herein.

In any renewal of this franchise, the Grantor, should it seek to impose increased obligations upon Grantee, must take into account any additional franchise(s) or authorizations previously granted and find that the proposed increase obligations in the renewal are not more burdensome and/or less favorable than those contained in the additional franchise(s) or authorizations.

3. Acceptance; Effective Date; Franchise Term. The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Ordinance. The Franchise shall continue in full force and effect for a period of ten (10) years from such effective date. This Franchise will be automatically extended for an additional term of five (5) years unless either party notifies the other in writing of its desire to terminate this Agreement at least one year before the commencement of the five year extension.
4. Area Covered. This Franchise is granted for the entire territorial limits of the Grantor ("Franchise Area"). Grantee upon request will make service available to all residences within the territorial limits of the Grantor and any annexed territory in the event that 1) such existing or annexed territory has a density of at least thirty (30) homes per linear strand mile of cable as measured from existing cable system plant (excluding homes subscribing to direct satellite); 2) any such residence requesting service can be provided with service by a standard installation which will be no more than one hundred fifty (150) feet from the existing distribution system ("Standard Installation") and 3) such existing or annexed territory is not being served by a cable television system operator other than Grantee or its affiliates, an open video system or a satellite master antenna television system.

SECTION 5. CABLE COMMUNICATIONS SYSTEM.

1. System Maintenance or Upgrade. Grantee agrees to comply with the terms set forth in this Franchise governing construction and technical requirements for maintenance of the Cable System, in addition to any other requirements specified by this franchise and any applicable law which is generally applicable to all entities involved in construction in the Grantor's rights of way.
2. Technical Standards. The System shall be designed, constructed and operated so as to meet those technical standards promulgated by the Federal Communications Commission relating to Cable Systems contained in subpart K of part 76 of the FCC's rules and regulations as may, from time to time, be amended.
3. Emergency Alert System. Grantee will comply with the FCC's Emergency Alert System requirements throughout the Term of this Franchise.

SECTION 6. CONSTRUCTION PROVISIONS.

1. Construction Standards.
 1. All installation of electronic equipment shall be durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code as amended.
 2. Antennas and their supporting structures (tower) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the

Federal Aviation Administration and all other generally applicable state or local laws, codes and regulations.

3. Grantee's plant and equipment, including, but not limited to, the antenna site, headend and distribution system shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices.
4. Grantee shall employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.
2. Construction Codes and Permits. Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any street, or public property or public easement within the community. Grantee shall strictly adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the system in the community, provided such codes apply to all other similarly situated entities.
3. Repair of Streets and Property. Any and all streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the system shall be repaired by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's construction.
4. Use of Existing Poles. Grantee shall not erect, for any reason, any pole on or along any street in an existing aerial utility system without the advance written approval of the Grantor, which approval shall not be unreasonably withheld. Grantee shall exercise its best efforts to negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction.
5. Undergrounding of Cable. Cable plant shall be installed underground at Grantee's expense where all existing telephone and electrical utilities are already underground. Grantee shall place cable underground in newly platted areas in concert with both the telephone and electrical utilities, to the extent Grantee is notified of such placement. In the event that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric or other utilities.
6. Reservation of Street Rights.
 1. Nothing in this Franchise shall be construed to prevent the Grantor from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
 2. All such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of Grantee.

3. If any such property of Grantee shall interfere with the construction or relocation, maintenance or repair of any street or public improvement, whether it be construction, repair, maintenance, removal or relocation of a sewer, public sidewalk, or water main, street or any other public improvement, thirty (30) days notice shall be given to Grantee by the Grantor and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by Grantee so that the same shall not interfere with the said public work of the Grantor, and such removal or replacement shall be at the expense of Grantee herein. Should, however, any utility company or other entity be reimbursed for relocation of its facilities as part of the same work that requires Grantee to remove its facilities, Grantee shall be reimbursed upon the same terms and conditions as such utilities or other entities.

7. Reasonable Care. Nothing contained in this Franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

8. Trimming of Trees. Grantee shall have the authority to trim trees upon and hanging over streets, alleys, sidewalks, and public places of the Grantor so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee; provided, however, all trimming shall be done at the expense of Grantee.

9. Movement of Facilities. In the event it is necessary temporarily to move or remove any of Grantee's wires, cables, poles, or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets of the Grantor, upon two (2) weeks notice by the Grantor to Grantee, Grantee shall move, at the expense of the person requesting the temporary removal, such of his facilities as may be required to facilitate such movements. Grantee reserves its right to request that such expenses be paid in advance. Any service disruption provisions of this Franchise shall not apply in the event that the removal of Grantee's wires, cables, poles or other facilities results in temporary service disruptions.

SECTION 7. SERVICE PROVISIONS.

1. Programming Decisions. Grantee will provide broad categories of programming services in accordance with the Cable Act. With respect to any and all Public, Educational or Governmental channels given to the County, Grantee shall not exercise editorial control over the programming thereon, except to the extent required by federal law and Grantee shall make no claim to ownership of or responsibility for, any programming broadcast over such channels.

2. Cable Service Connections to Schools and Grantor Facilities. Grantee, upon written request of the Grantor, will provide and maintain one connection for Basic Service Tier to each elementary and secondary public school, library, and Grantor administration facility, within the geographical limits of the Grantor which is located within one hundred fifty (150) feet of Grantee's distribution plant. Grantee will bring its connection to a specified exterior demarcation point mutually agreed upon by Grantee and such institution.

3. Cable Modem Connections. In the event that Grantee is providing internet access throughout the County, Grantee, upon request of the County, will provide use of one cable modem and maintain one connection for internet access to one computer terminal in each public school and library within the County limits and within 150 feet of the cable system's distribution plant. Grantee will not be required to bear any expense in excess of the cost of the standard installation of a 150-foot service drop. Any additional costs will be borne by the requesting school or library on a time and materials basis. All such public schools and libraries receiving the service will enter into Grantee's standard installation agreement. The County agrees that such institutions shall not internally network Grantee's connection to other computer terminals, but in the event that such schools or libraries wish to create an internal network, the institutions will contact Grantee for a proposal to provide such networking.
4. Educational Channel. Grantee agrees to continue to provide on the Cable System, throughout the term of this Agreement, the County's Educational Channel (Channel 19), for the purpose of broadcasting non-commercial educational programming. Grantee agrees to provide technical advice and assistance, from time to time, on programming issues, however, Grantee shall not be required to purchase additional equipment or hire additional staff to fulfill such obligation.
5. Second Educational Channel. After the Cable System has been upgraded to at least 750 MHz, Grantee agrees to provide to the Community and Technical College of Shepherd, within 120 days of a written request therefore, a second Educational Channel, for the purpose of broadcasting non-commercial educational programming. Further, after the Cable System has been upgraded, Grantee shall construct an origination point (including distribution equipment consisting of a laser, transmitter and receiver) for distribution of programming of said Educational Channel from the main campus to all subscribers on the Cable System, including to the Blue Ridge Technical Center. Grantee agrees to provide technical advice and assistance, from time to time, on programming issues, however, Grantee shall not be required to purchase additional equipment or hire additional staff to fulfill such obligation. Grantee agrees that the aforesaid shall be provided at no cost to the Grantor.
6. Government Channel. After the Cable System has been upgraded to at least 750 MHz, Grantee agrees to provide to the County, within 120 days of a written request therefore, a Government Channel for the purpose of broadcasting non-commercial governmental programming. Grantee agrees to provide technical advice and assistance, from time to time, on programming issues, however, Grantee shall not be required to purchase additional equipment or hire additional staff to fulfill such obligation. Grantee agrees that the aforesaid shall be provided at no cost to the Grantor.
7. Public Access Channel. After the Cable System has been upgraded to at least 750 MHz, and after the Grantor has established rules and regulations under which public access programming will be permitted, Grantee agrees to provide to the County, within 120 days of a written request therefore, a Public Access Channel for the purpose of broadcasting non-commercial public programming. Grantee agrees to provide technical advice and assistance, from time to time, on programming issues, however, Grantee shall not be required to purchase additional equipment or hire additional staff to fulfill such obligation. Grantee agrees that the aforesaid shall be provided at no cost to the Grantor.

8. Public Service Announcements. Upon request, Grantee agrees to assist in the production and broadcast on the Cable System, a maximum of six (6) Public Service Announcements (PSAs), per year. Grantee agrees to distribute the PSAs on the maximum number of channels as is technically and economically feasible. Grantor acknowledges that such assistance will be done with Grantees existing production staff and capabilities and Grantee shall not be required to hire additional staff or purchase additional equipment for the purpose of fulfilling the requirements of this provision.
9. Grantee agrees to continue to provide the Local Origination Channel (Channel 10) in its current channel position so long as it is technologically and economically feasible to do so. Grantee agrees that it will not change the location of said channel without providing three months advance notice to the Grantor.

SECTION 8. CONSUMER PROTECTION AND RIGHTS OF INDIVIDUALS.

1. Subscriber Complaint Practices.
 1. Grantee shall maintain an office which shall be open during normal business hours and shall maintain a publicly listed toll-free telephone number. Grantee shall maintain adequate telephone lines and personnel to respond in a timely manner to schedule service calls and answer Subscriber complaints or inquiries. Grantee shall follow all applicable federal and state regulations in responding to complaints by customers. A complaint as used in this Franchise will mean notice by a Subscriber of a billing dispute or problem with picture quality which is not resolved during or subsequent to the initial telephone or service call.
 2. Grantee shall render efficient cable service, make repairs promptly and interrupt service only for good cause and for the shortest time possible.
2. Parental Control Option. Grantee shall provide parental control devices, at reasonable cost, to Subscribers who wish to be able to prevent certain Cable Services from entering the Subscriber's home.
3. Rights of Individuals Protected.
 - i. Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers on the basis of race, color, religion, national origin, sex, or age. Grantee shall comply at all times with all other applicable federal and state laws relating to nondiscrimination.
 - ii. Subscriber Privacy. Grantee shall comply with all privacy provisions of the Cable Act, as amended.

SECTION 9. FRANCHISE FEE.

1. Grantee shall pay to the Grantor a franchise fee equal to five percent (5 %) of the Grantee's Gross Revenues, as herein defined.

2. Payments due the Grantor under this provision shall be computed annually and shall be due and payable annually.

SECTION 10. INSURANCE.

Grantee will maintain in full force and effect for the Term of the Franchise, at Grantee's expense, a comprehensive liability insurance policy with the Grantor as an additional insured, written by a company authorized to do business in the State in which the cable system is located, or will provide self-insurance reasonably satisfactory to the Grantor protecting the Grantor against liability for loss, personal injury and property damage occasioned by the operation of the Cable System by Grantee. Such insurance will be maintained in an amount not less than \$500,000.00. Grantee will also maintain Worker's Compensation coverage throughout the term of this franchise as required by law. Evidence in the form of a certificate of insurance or such self-insurance will be provided to the Grantor upon request.

SECTION 11. INDEMNIFICATION.

1. Grantee will indemnify the Grantor and will pay all damages and penalties which the Grantor may legally be required to pay which result from any negligence by Grantee in the operation of the Cable Communications System throughout the territorial area of the Grantor. The Grantor shall give Grantee timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. In the event any such claim arises, the Grantor shall tender the defense thereof to Grantee and Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If Grantor determines in good faith that its interests cannot be represented by Grantee, Grantee shall be excused from any obligation to represent Grantor.
2. Grantee will not be required to indemnify the Grantor for the negligent acts of the Grantor or its officials, boards, commissions, agents or employees. Further, the Grantor will indemnify and hold Grantee harmless from any claims or causes of action arising from any negligent acts by the Grantor, its officials, boards, commissions, agents or employees.

SECTION 12. VIOLATIONS AND REVOCATION.

1. Franchise Violations. Whenever the Grantor believes that Grantee has allegedly violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have thirty (30) days subsequent to receipt of the notice in which to either correct the violation or, if the violation cannot be corrected within the thirty (30) day period, to have commenced and be diligently pursuing corrective action. Grantee may, within ten (10) business days of receipt of notice, notify the Grantor that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to the Grantor shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time.

- (1). The Grantor shall hear Grantee's dispute at a regularly or specially scheduled meeting. Grantee shall have the right to subpoena and cross-examine witnesses. The Grantor shall determine if Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Grantee may petition for reconsideration.
- (2). If after hearing the dispute the claim is upheld by the Grantor, Grantee shall have thirty (30) business days from such a determination to remedy the violation or failure.

The time for Grantee to correct any alleged violation shall be extended by the Grantor if the necessary action to correct the alleged violation is of such a nature or character to require more than thirty (30) days within which to perform provided Grantee commences the corrective action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation. Notwithstanding the above provisions, Grantee does not waive any of its rights under federal law.

2. Franchise Revocation. In addition to all other rights which the Grantor has pursuant to law or equity, the Grantor reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto in accordance with the following procedures and applicable state and federal law, in the event that:
 1. Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt and Grantee's creditors or Trustee in Bankruptcy do not agree to fulfill and be bound by all requirements of this Franchise; or
 2. Grantee violates a material provision of this Franchise after being notified of such violation and being given time to cure or refute the alleged violation in accordance with Section 12(1).
 3. Grantee violates any of the terms or conditions of Section 24D-1-10, Code of West Virginia.
3. Revocation Procedures. In the event that the Grantor determines as set forth above that Grantee has violated any material provision of the Franchise, the Grantor may make a written demand on Grantee that it remedy such violation and that continued violation may be cause for revocation. If the violation, breach, failure, refusal, or neglect is not remedied within thirty (30) days following such demand or such other period as is reasonable, the Grantor shall determine whether or not such violation, breach, failure, refusal or neglect by Grantee is due to acts of God or other causes which result from circumstances beyond Grantee's control. Such determination shall not unreasonably be withheld.
 1. A public hearing shall be held and Grantee shall be provided with an opportunity to be heard upon fourteen (14) days written notice to Grantee of the time and the place of the hearing. The causes for pending revocation and the reasons alleged to constitute such cause shall be recited in the notice. Said notice shall affirmatively recite the causes that need to be shown by the Grantor to support a revocation.

2. If notice is given and, at Grantee's option, after a full public proceeding is held, the Grantor determines there is a violation, breach, failure, refusal or neglect by Grantee which is not an event of force majeure, the Grantor shall direct Grantee to correct or remedy the same within such reasonable additional time, in such manner and upon such reasonable terms and conditions as Grantor may direct.
3. If after a public hearing it is determined that Grantee's performance of any of the terms, conditions, obligations, or requirements of Franchise was prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided Grantee has notified Grantor in writing within thirty (30) days of its discovery of the occurrence of such an event. Such causes beyond Grantee's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil emergencies and labor strikes.
4. If, after notice is given and, at Grantee's option, a full public proceeding is held, the Grantor determines there was a violation, breach, failure, refusal or neglect, which is not an event of force majeure, then the Grantor may declare, by resolution, the Franchise revoked and canceled and of no further force and effect unless there is compliance within such period as Grantor may fix, such period not to be less than thirty (30) days.
5. If the Grantor, after notice is given and, at Grantee's option, a full public proceeding is held and appeal is exhausted, declares the Franchise breached, the parties may pursue their remedies pursuant to Franchise or any other remedy, legal or equitable. Grantee may continue to operate the system until all legal appeals procedures have been exhausted.
6. Notwithstanding the above provisions, Grantee does not waive any of its rights under federal law or regulation.

SECTION 13. FORECLOSURE, RECEIVERSHIP AND ABANDONMENT.

1. Foreclosure. Upon the foreclosure or other judicial sale of the system, Grantee shall notify the Grantor of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place.
2. Receivership. The Grantor shall have the right to cancel this Franchise subject to any applicable provisions of state law, including the Bankruptcy Act, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:
 1. Within one hundred and twenty (120) days after his election or appointment, such receiver or trustee shall have complied with all the material provisions of this Franchise and remedied all defaults thereunder; and,
 2. Such receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in

the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

SECTION 14. REMOVAL, TRANSFER AND PURCHASE.

1. **Removal After Revocation.**

1. Upon revocation of the Franchise, as provided for herein, the Grantee shall proceed to remove, at Grantee's expense, all or any portion of the System from all streets and public property within the territorial boundaries of the Grantor. In so removing the System, Grantee shall be responsible for any repairs or damages caused by its removal and shall maintain insurance during the term of removal.
2. If Grantee has failed to commence removal of the system, or such part thereof as was designated within thirty (30) days after written notice of the Grantor's demand for removal is given, or if Grantee has failed to complete such removal within one (1) year after written notice of the Grantor's demand for removal is given, the Grantee may abandon such System to the Grantor.

2. **Franchise Binding.** This Franchise shall be binding on successors, assigns, and transferees.

SECTION 15. MISCELLANEOUS PROVISIONS.

1. **Compliance with Laws.** Grantee and the Grantor shall conform to all state and federal laws and rules regarding cable television as they become effective, unless otherwise stated. Grantee shall also conform during the entire term of the Franchise with all generally applicable ordinances, resolutions, rules and regulations heretofore or hereafter adopted pursuant to the Grantor's lawful police powers that do not materially impair or abrogate any of the Grantee's contractual rights under this Franchise and that are not preempted by state or federal law.
2. **Compliance with Federal, State and Local Laws.** If any term, condition or provision of this Franchise or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and the Grantor.
3. **Administration of Franchise.** This Franchise is a contract and except as to those changes which are the result of the Grantor's exercise of its police power in management of its rights of way and its generally applicable regulation of commerce, neither party may take any unilateral action which materially changes the explicit mutual promises in this contract. Any changes to the Franchise must be made in writing, signed by Grantee and Grantor.

4. **Franchise Requirement.** In accordance with applicable law, from and after the acceptance of the Franchise, the Grantor shall not allow and it shall be unlawful for any person to construct, install or maintain within any street within the territorial boundaries of the Grantor, or within any other public property of the Grantor, or within any privately owned area within the territorial limits of the Grantor which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the Grantor, or the Grantor's official map or the Grantor's major thoroughfare plan, any equipment or facilities for distributing any television signals or radio signals through a system, unless a Franchise authorizing such use of such street or property or areas has first been obtained.
5. **Reservation of Rights.** Acceptance of the terms and conditions of this franchise will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly, by Grantee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. The Grantor hereby acknowledges that Grantee reserves all of its rights under applicable Federal and State Constitution laws and regulations.
6. **Force Majeure.** With respect to any provision of this Franchise Ordinance, the violation or noncompliance with which could result in the imposition of a financial penalty, forfeiture or other sanction upon Grantee, such violation or noncompliance will be excused where such violation or noncompliance is the result of an Act of God, war, civil disturbance, strike or other labor unrest, or any event beyond Grantee's reasonable control or not reasonably foreseeable.
7. **Captions.** The paragraph captions and headings in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Franchise.
8. **Calculation of Time.** Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.
9. **Written Notice.** All notices, reports or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to the person designated below, or when five (5) days have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to Grantor: Berkeley County Commission
126 West King Street
Martinsburg, WV 25401

If to Grantee: Adelpia Communications Corporation
Attn: Legal Department
One North Main Street

Coudersport, PA 16915

With a copy to: Adelpia GS Cable, LLC
Area Manager
400 Westfield Road
Charlottesville, VA 22901

Such addresses and phone numbers may be changed by either party upon notice to the other party given as provided in this section.

10. Entire Agreement. This Franchise contains the entire understanding between the parties with respect to the subject matter hereof and supersedes all other prior understandings and agreements oral or written. This agreement may not be modified except in writing signed by both parties.

SECTION 15. PUBLICATION.

This Franchise shall be signed by the President and attested by the County Clerk. The Franchise shall be published in accordance with the requirements of Grantor and state law and shall take effect upon acceptance by Grantee as set forth in Section 4 thereof.

SECTION 16. ACCEPTANCE.

Grantor by virtue of the signatures on said Ordinance and Grantee by virtue of the signatures set forth below, agree to be legally bound by all provisions and conditions set forth in this ordinance, together forming a mutually binding contractual agreement which cannot be amended without a writing executed by both parties.

Passed and adopted this 1 day of May, 2003

ATTEST:

By: [Signature]
Clerk, County of Berkeley

By: [Signature]
[Grantor Official's Name]

Its: County Clerk
Date: 5/1/03

Accepted by Adelphia GS Cable, LLC
d/b/a Adelphia Cable Communications

By: [Signature]
Its: Sr. Vice President
Date: 5/19/03