

OFFICIAL

AVALON BOROUGH

ORDINANCE NO. 1163

AN ORDINANCE AUTHORIZING THE GRANTING OF A FRANCHISE FOR A CABLE TELEVISION SYSTEM WITHIN THE CONFINES OF THE BOROUGH OF AVALON TO CENTER VIDEO CORPORATION; GRANTING THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN THE CABLE TELEVISION SYSTEM; ESTABLISHING SUBSCRIBER RATES, SCOPE OF SERVICES, FEE TO BE PAID BY BOROUGH; AND PROVIDING ADDITIONAL TERMS, THE INITIAL TERM OF THE FRANCHISE AGREEMENT TO BE TEN YEARS WITH OPTION TO EXTEND THE AGREEMENT AND PROVIDING FOR THE REPEAL OF ORDINANCE NO. 1046 OF THE BOROUGH OF AVALON.

WHEREAS, in the opinion of the Borough Council it is desirable to improve the quality and service of the present cable television system within the confines of the Borough; and

WHEREAS, the Borough Council has reviewed its present Ordinance granting Centre Video Corporation the right to present cable television services for the Borough; and

WHEREAS, in the opinion of the Borough Council by entering into a new Franchise Agreement with Centre Video Corporation the quality of the service for the residents of the Borough as well as the maintenance of the system will be improved; and

WHEREAS, in the opinion of the Borough Council the proposed Franchise Agreement with Centre Video Corporation will provide the necessary improvement of the quality of service of cable television for the Borough residents.

THEREFORE, BE IT RESOLVED by the Council of the Borough of
it is hereby resolved by the authority of the same that:

Section 1 - Definitions:

For the purposes of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include singular number, and words in the singular number include the plural number.

1. "Broadcast Signal" means a television or radio signal that is transmitted over the air to a wide geographic audience and is carried by a Cable Television System off-the-air, by microwave or satellite link, or other means.
2. "Cable Subscriber" (including "Subscriber") shall mean any person, whether individual, business entity or institution, who pays either monthly, yearly or special event service charges and, who lawfully receives any of basic cable, pay cable, pay-per-view or other services lawfully provided by the Cable Television System, regardless of whether such person occupies single-family or multiple-unit dwellings, hotels, or motels, or carries on business or other affairs in business establishments or institutional premises.
3. "Cable Television System" (including "System") shall mean an electronic communications system using antennas, coaxial or light-fibre cables, wires, microwave facilities or receivers, transmitters, towers, waveguides, satellite communications devices and other electronic means or devices designed and constructed for the purpose of providing "Cable Service(s)" described as follows:

- A. "Basic Cable Service(s)" means certain local or distant broadcast television or radio signals, locally originated cable programming, satellite-distributed video or aural signals, regardless of source, channel position or tier of service, received by Cable Subscribers who pay only the monthly fee or charge for such Basic Cable Services;
- B. "Pay Cable Service(s)" is programming of any nature which is not available to Cable Subscribers except upon payment of an additional monthly fee or fees, regardless of whether such Service is received by use of a converter device, and regardless of source, channel position or tier of service;
- C. "Pay-Per-View Service(s)" is programming which cannot be received by Cable Subscribers without payment of a specific charge for occasional delivery of special programming events, regardless of whether special reception devices are required;
- D. Any other kind of signals or programming permitted by law or contract, regardless of source or nature, distribution method or method of delivery to Cable Subscribers, or engaging in any other business or activity which employs the System and which is allowed by law.
4. "Chief Administrative Officer" shall mean the Borough Manager, Borough Administrator, or other designation by the Council.
5. "Borough" shall mean the Borough of Avalon, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.
6. "Converter" shall mean an electronic device used in the operation of the System, either sold to Subscribers or placed by the Grantee in dwellings, hotels, motels, business establishments or

institutional premises, which converts electronic signals from one radio frequency to another.

7. "Council" shall mean the present governing body of the Borough or any future board constituting the legislative body of the Borough.
8. "Franchise" shall mean and include the authorization granted hereunder in terms of a franchise, right, privilege, permit, license or otherwise, which evidences the Borough's assent to the Grantee constructing, operating and maintaining a cable television system within all of the Borough. Any such authorization, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within a Borough as required by other Ordinances and laws of this Borough.
9. "Franchise Area" shall mean the entire geographic area within the present boundaries of the area under the jurisdiction of the Council, and shall include any additional areas which are later added by annexation or other legal means for enlarging the such boundaries.
10. "Grantee" shall mean the person, firm or corporation granted a Franchise by the Council under this Ordinance, or the lawful successor, transferee or assignee of said person, firm or corporation.
11. "Gross Receipts" shall mean all cash, credits, property of any kind or nature or other consideration whatsoever in any form paid by anyone and received by the Grantee of the Cable Television System arising from or attributable to providing Basic Cable Service, Pay Cable Services, Pay-Per-View Services and any other kinds of signaling or programming permitted by law or contract regardless of source or nature; distribution method or method of delivery to cable subscribers or engaging in any other business or activity which employs the System and which is allowed by law. This shall

also include but not be limited to connection, disconnection charge, installation fee and converter rental and sales.

12. "Property of Grantee" shall mean all real, personal, tangible or intangible property owned, installed or used within the Borough by the Grantee in the conduct of a Cable Television System business under the authority of the Franchise granted pursuant to this Ordinance.
13. "Public Interest" shall mean that standard which shall be applied by the Borough and Council in considering renewal applications, and termination or extension issues; namely whether the Grantee: (i) is and has been in substantial compliance with the material terms of the Franchise and with applicable, valid laws and regulations; and (ii) remains legally, technically and financially qualified to operate the Cable Television System; and (iii) is providing reasonable service to the Franchise Area in light of the economic and technical constraints bearing on the Grantee and reasonable needs of the residents of the Franchise Area. Council may take into consideration any other relevant factors it deems reasonable to coming to the determination of public interest.
14. "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, public drive, drive, circle or other public right-of-way, including public utility easements, dedicated utility strips or rights-of-way, and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Borough in the Franchise Area which shall entitle the Borough and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable Television System. Said work shall also mean any

easement now or hereafter held by the Borough within the Franchise Area for the purpose of public travel, or for utility or public service use, and shall include other easements or rights-of-way as shall be now held or hereafter held by the Borough within the Franchise Area, which shall within their proper use and meaning entitle the Borough and the Grantee to the use thereof for the purposes of installing or transmitting Grantee's Cable Service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments and other property as may be ordinarily necessary and pertinent to the Cable Television System.

15. "Resident" means any person residing in the Franchise Area as defined herein.

16. "State" means the State of Pennsylvania.

Section 2 - Franchise to Install and Operate:

a. There is hereby granted by the Borough to the Grantee the non-exclusive Franchise to engage in the business of operating and providing a Cable Television System in the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and regain in, on, over, under, upon, across and along any Public Way and all extensions thereof and additions thereto in the Franchise Area, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, compliances, attachments, and other property as may be necessary and appurtenant to the Cable Television System; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or similar entity permitted to do business in the Franchise Area. Grantee shall be required to pay no fees or charges, other than the Franchise payment, stated in Section 8 hereof, to any person or entity for the

use of Public Ways within the Franchise Area. No Cable Television System shall be allowed to occupy or use the Public Ways of the Franchise Area or be allowed to operate without a cable television franchise. The Grantee shall at all times during the term of this Franchise be subject to all lawful exercise of the general police power by the Borough.

- b. In the event the Borough enters into a franchise, permit, license, or other agreement of any kind with any other person or entity other than the Grantee for the purpose of providing cable television service to any part of the Franchise Area, which contains terms more favorable to such person or Ordinance shall be deemed amended as of the Effective Date of the other franchise, permit, license or other agreement, so as to give the Grantee the benefit of any such more favorable terms.

Section 3 - Franchise Term:

The Franchise granted by the Council under this Ordinance shall be for the initial term of ten (10) years from the date set forth in Section 20 hereof; provided that the initial term may be extended at the option of Grantee for an additional five (5) years. One year after the effective date of the franchise and annually thereafter, the Borough shall review the performance of the company, the purpose of said review shall be to discuss with the company whether or not it is and has been in substantial compliance with material terms of the franchise at all times during the original term of this agreement and any renewals thereof. The Grantee shall make reasonable efforts to keep abreast of and provide the latest technological advancements in the industry provided the implementation of said system improvements are economically and technologically feasible.

Section 4 - Cable Television Service Obligations:

a. Obligations of Grantee:

1. The system shall be designed for operation twenty-four (24) hours per day and shall endure service interruption only for good cause. Interruption of service shall be for the shortest time possible.
2. The Company shall maintain a local office or business agent within the Northern Area (Borough of Millvale, Borough of Reserve, Townships of Ross, Shaler, or the Town of McCandless or any other municipality considered a part of the Northern area) which shall be open to the general public during all usual business hours and to which subscribers may telephone during regular business hours without incurring added messages or toll charges, so that complaints regarding cable television operation may be promptly reported to the Company. A record shall be kept by the Company listing each and every subscribed complaint received which record shall be available for inspection by the Borough Council or its designated representative upon request, but in no case less than four (4) times annually.
3. The Company shall maintain a report and trouble-shooting force capable of responding to subscribers' complaints and/or requests for cable system repairs within twenty-four (24) hours after the receipt of the complaint and/or request. There shall be no charge to the subscriber for this service, except when the damage is caused by the subscriber's negligence, and the Company shall maintain a record of the

- disposition of all complaints and/or requests for repairs which record shall be available for inspection by the Borough Council or its designated representatives upon reasonable notice, but in no case less than four (4) times annually.
4. In the event that its service to subscribers is interrupted forty-eight (48) or more consecutive hours, except through Acts of God, circumstances beyond the control of the Company or in circumstances for which prior written approval has to be obtained from the Borough permitting such interruption, the Company shall grant affected subscribers a pro-rate credit or rebate for the full duration of the interruption.
 5. In the event a subscriber should have a complaint unresolved within forty-eight (48) hours, the subscriber shall file his complaint with the Borough Secretary and if requested by the Borough shall meet with a representative of the Borough and a representative of the Company within twenty-four (24) hours to fully discuss and and resolve such matters. The Company and the Borough shall take reasonable steps to resolve the complaint
 6. The Grantee shall at all times maintain a telephone system of adequate size so that any subscriber may contact the Grantee within a reasonable period of time.

7. The Cable Television System shall be operated and maintained by Grantee at all times in substantial compliance with all applicable filing, reporting or technical requirements of the Federal Communications Commission or other government agencies regulating cable television generally.
8. The Grantee shall make available to any Cable Subscriber so requesting a parental guidance or lockout device which shall permit the Subscriber, at his or her option, to eliminate Cable Service reception. The Grantee shall advise all Cable Subscribers regarding the availability of this device, and a charge for any such device may be imposed.

b. Obligations of Borough:

1. It being in the public interest for the Grantee to maintain a good relationship with the residents of the Borough, the Borough shall assist and cooperate with the Grantee in maintaining such a relationship.
2. If it becomes legally or practically infeasible for Grantee to use certain Public Ways, particularly public utility easements, easements across private property, or dedicated utility strips, then the Borough shall cooperate with Grantee in obtaining the necessary authority to cross, use or otherwise employ rights of way in installing and maintaining its System.

Section 5 - Conditions of Street Occupancy:

- a. All transmission and distribution structures, poles, lines, and equipment installed or erected by the Grantee within the Borough shall be located as to cause a minimum of interference with the proper use of Public Ways or Streets and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.
- b. In case of disturbance of any public way or street, Grantee shall, at its expense restore such public way or street to as good a condition of the public way or street existing immediately prior to Grantee's work. Said work shall be in compliance with the Borough's Ordinances.
- c. Upon its receipt of reasonable advance notice, the Grantee shall, at its own expense, protect, support, temporarily disconnect, re-locate in the same street or other public place, or remove from the street or other public place, any property of the Grantee when lawfully required by Borough 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 the Borough; but, the Grantee shall in all cases have the right of abandonment of its property, provided, however that if Grantee shall abandon its property, it shall only be done in such a manner so as not to affect the services provided by the Cable Television System to its subscribers.

- d. The Grantee shall, on 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, provided: (i) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (ii) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.
- e. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its cable plant in the Franchise Area so as to prevent branches from coming in contact with the Grantee's wires and cables or other equipment. After completion of construction of the System, Grantee may trim trees or natural growth overhanging the cable plant. The Grantee shall compensate the Borough or property owner, or shall replace at its own cost and expense, for all trees or shrubs damaged as a result of any construction of the System undertaken by Grantee.
- f. Subject to any applicable state or federal regulations or tariffs, the Borough shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any street; provided that (i) such use by the Borough does not interfere with a current or future use by the Grantee; and (ii) the Borough holds the Grantee harmless against and from all claims, demands, costs or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits; and (iii) the Borough either pays a rental

fee or otherwise compensates Grantee for the use of such poles and conduits.

Section 6 - Safety Requirements:

- a. Construction, installation and maintenance of cable communications system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. All such work shall be performed in accordance with applicable safety code or technical requirements, including but not limited to BOCCA Code, National Electrical Safety Code (National Bureau of Standards); National Electrical Code (National Bureau of Fire underwriters); Bell System Code of Pole Line Construction; and applicable FCC or other federal, state and local regulations.
- b. In any event, the system shall not endanger or interfere with the safety of persons or property in the Franchise Area. In particular, Grantee shall substantially comply with all local, state or federal law or regulations which govern cable plant signal leakage or interference with communications media. Any antenna structure used in the Cable Television System shall comply with all construction, marking, and lighting of antenna structure requirements of the United States Department of Transportation. All working facilities, conditions, and procedures used during construction, installation and maintenance of the Cable Television System shall comply with the standards of the Occupational Safety and Health Administration.

Section 7 - Aerial and Underground Construction and Extention
of Service:

- a. In those areas of the Borough where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, or hereafter are placed underground, the Grantee likewise shall construct, operate and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the system's signal quality. In those areas where the transmission of distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, Grantee shall have the sole discretion to construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Provided, however, that the election to install the transmission and distribution facility aerially or underground shall be in compliance with any existing Federal, State, Local Law or Ordinance. Nothing contained in this Section 7 (a) shall require Grantee 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.
- b. The Grantee is hereby authorized to extend the system within the Service Area when, where and to the extent that such extension is technically and economically feasible.

- c. Whenever the Grantee shall have received written requests, with any requested monetary deposits for Cable Service from at least fifteen (15) subscribers within 400 cable meters (1300 cable feet) of the same aerial trunk cable, or from at least twenty-five (25) subscribers within 400 cable meters (1300 cable feet) of the same underground trunk cable, it shall extend its System to such Subscribers solely for the usual connection and service fees for all Subscribers, provided that such extension is technically and economically feasible. The 400 meters shall be measured in extension length of Grantee's cable required for service located within the Public Way or easement and shall not include the length of the necessary drop to the Subscriber's home or premises. Notwithstanding the above, the Grantee shall not be required to provide service to a Subscriber where a drop line from the feeder cable to the Subscriber's house or premises exceeds 45.75 cable meters (150 cable feet), until it is technically and economically feasible to do so.
- d. No person in the Grantee's service area shall be arbitrarily refused service; but in recognition of the capital costs involved in unusual circumstances, including, without limitation, instances when subscriber density is less than provided for in sub-paragraph (c) above, Cable Service may be made available in such lower density areas on the basis of the payment in advance of costs of materials, labor and obtaining easements by the parties requesting Cable Service in order to prevent

Cable Subscribers in more densely populated areas from subsidizing service to low density area Subscribers.

1. For all residential structures hereinafter erected which are to be served by underground utilities, the developer of the subdivision or development may acquire Cable Service for such development under the following conditions: (i) The entire cost of such undergrounding, from the boundary of the new subdivision or, in the case of an individual structure which is not a part of an existing subdivision, from the lot line, to each building, shall be borne by the developer, subdivider or owner of the property, including the reimbursement to the Grantee of its share of all trenching costs, materials and labor; and (ii) Developer, at its expense, shall perform any trenching or backfilling necessary in preparation for the provision of Cable Service, including furnishing of any imported backfill material required, and will furnish and install for the Grantee any necessary distribution conduit and substructures, including pedestals, required in preparation for the provision of Cable Service and in accordance with the Grantee's plans and specifications.
2. Grantee shall not be obligated to provide Cable Service to such new development unless such developer or owner agrees to bear the costs. However, Grantee shall have the right to provide Cable Service to all newly developed areas of the Borough at its own expense, regardless of

whether a developer or owner cooperates with Grantee or pays Grantee for the expenses of installing cable on their property.

3. Grantee shall provide plans and specifications to a developer, and shall inspect the facilities installed hereunder, and certify to the Borough prior to final approval of the subdivision or development that the facilities installed in a development were properly installed. Facilities installed hereunder shall be owned, operated and maintained by Grantee.

Section 8 - Construction Schedule and Target Dates:

- a. Within sixty (60) days after acceptance of the Franchise, the Grantee shall proceed with due diligence to apply for all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, micro-wave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of cable television systems, or associated micro-wave transmission facilities.
- b. After obtaining all necessary permits, licenses and authorizations, including FCC approval, rights of access and clearance to use all necessary poles, conduits and satellite dishes, Grantee shall commence construction of the Cable Television System.

- c. Construction shall be completed within one (1) year of the effective date of this Ordinance with fire up initiated within that time period.
- d. The Grantee may request an extension of time to complete the construction of the Cable Television System for events beyond the control of Grantee including, but not limited to, acts of God, strikes of material suppliers, construction contract delays which are beyond the control of the Grantee, or similar events. A request for extension shall be made within 20 days after the Grantee has actual or constructive notice of such event. The Borough shall not unreasonably withhold its consent to such request to extension.

Section 9 - Franchise Payments:

- a. In consideration of the granting and exercise of this Franchise to use the Public Ways and Streets, as herein defined, for the operation of a Cable Television System, and to help defray some of the costs of regulating the System, Grantee shall pay to the Borough, during the Term of the Franchise, a percentage equal to three (3%) percent of its Gross Receipts. (Provided that if the Borough has reasonable justification to seek a waiver from the FCC of the 3% limitation set by that Agency, and, with the support of Grantee, the FCC does grant such a waiver, then Grantee shall pay to the Borough a percentage up to the maximum of 5% of Gross Receipts, as allowed by the FCC.)

- b. Franchise payments shall be made to the Borough quarterly with payment to be made within thirty (30) days after the expiration of any quarter or portion thereof during which this Franchise is in force. After notice to Grantee delivered pursuant to Section 18 hereof, that a payment is late, the Borough shall be entitled to impose on Grantee, a penalty in the amount of \$100.00 per day for each day in excess of the thirty (30) day period in which the Grantee fails, refuses or neglects to pay any undisputed portion or percentage due and owing.
- c. The Grantee shall provide an Annual Summary Report to the Borough of the gross receipts received during the applicable year. This report shall be submitted to the Borough within ninety (90) days of the final quarterly payment in any applicable year. The Borough reserves the right if it disagrees with any such annual summary, to request an audit of the Grantee's books and records as it pertains to the Borough's account.

Section 10 - Bonds: Indemnifications: Insurance:

- a. Performance Bond to Borough. Upon being granted a franchise, and after the filing of the acceptance required under this Ordinance, the Grantee shall file with the Borough Clerk, and shall maintain in full force and effect, during the term hereof, a corporate surety bond or other adequate surety agreement in the amount of Fifteen Thousand (\$15,000.00) Dollars. The bond or agreement shall be so conditioned that in the event that Grantee shall fail to substantially comply with any one or more of the material provisions of this Ordinance

or of such Franchise, then there shall be recoverable jointly and severally from the principal and surety any damages or loss, or costs suffered or incurred by the Borough as a result thereof, including attorney's fees and costs of any action or proceeding, and including the full amount of any compensation, indemnification, cost of removal or abandonment of any property or other costs which may be in default, up to the full principal amount of such bond. Said condition shall be a continuing obligation during the entire term of such Franchise and thereafter until Grantee shall have satisfied in full any and all obligations to the Borough which arise out of or pertain to said franchise.

b. Hold Harmless: The Grantee shall at all times protect and hold harmless the Borough from all claims, actions, suits, liability, loss expense or damages of every kind and description, including investigation costs, court costs, and attorney fees, which may accrue to be suffered or claimed by any person or persons arising out of the negligence of the Grantee in the ownership, construction, repair, replacement, maintenance and operation of said cable television system and by reason of any license, copyright, property right or patent of any article or system used in construction of use in said system. Borough shall give the Company prompt notice of any such claims, actions, and suits without limitation, in writing.

c. Insurance Required: Upon being granted a franchise, and after the filing of the acceptance required under this Ordinance hereof, the Grantee shall file with the Borough Clerk, and shall thereafter maintain in full force and effect Comprehensive

Liability Insurance in the amount of \$1,000,000 for bodily injuries (including accidental death) to any person and subject to the same limit for each person in an amount not less than \$500,000 resulting from any one occurrence.

Section 11 - Restrictions on Transfer of Franchise Rights:

The Franchise granted herein shall not be sold, assigned or transferred, in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, other than to a person or entity controlling, controlled by or under common control with the Grantee, without prior consent of the Borough Council either expressed by resolution, or by informal consent procedures. The consent of the Borough Council shall not be unreasonably withheld; provided, however, that the prospective assignee or transferee must agree in writing to comply with all the provisions of this Ordinance; and provided, further, that no consent shall be required for a transfer in trust, by mortgage, or by other hypothecation, in whole or in part, or to assign rights in the Cable Television system to secure indebtedness.

Section 12 - Rates and Charges:

1. Rates and Charges for Basic Service shall be those listed on Exhibit A, which is attached hereto and incorporated herein by this reference. Except as indicated in Paragraph 2, the Grantee

shall not increase such rates without the prior approval of the Franchising Authority, such approval to not be unreasonably withheld.

2. The Grantee may, at its discretion and without consent of the Franchising Authority, increase rates relating to the provision of Basic Service by an amount not to exceed five (5) percent per year.

3. Notwithstanding anything to the contrary contained herein, in the event that Grantee's Cable System is deemed not to be subject to "effective competition" pursuant to the rules and regulations prescribed by the FCC in accordance with Section 623 (b) 1 of the Cable Act, the Franchising Authority may regulate rates for the provision of Basic Service to the extent and during such times as required by such rules and regulations.

Section 13 - Extension: Renewal: Termination:

a. Extension: The Grantee has the option to extend the Franchise for an additional five (5) years beyond the initial ten (10) year term if Grantee so requests. Within 180 days of the expiration date of the initial term, Grantee shall, at its option notify the Borough Clerk in writing that Grantee wishes to petition for a five year extension. The Borough shall then set a date for a Council meeting which the Borough Clerk shall

advertise in a newspaper of general circulation at least once in the ten (10) days prior to the meeting. At said meeting, the Council shall hear the petition of Grantee, and any comments from Residents of the Borough on the issues raised by the Public Interest Standard contained in Section 1 (13) hereof. If the Council finds that the Public Interest Standards will be met by a five year extension of the initial term, the Council shall grant Grantee's petition. If the Council denies the petition, it shall give its reasons in writing within 30 days after the meeting, and shall provide Grantee with a copy of the decision within 2 business days of its publication.

b. Renewal of Franchise: Prior to the expiration of the initial term of the franchise granted hereunder or any extension thereof, the Borough Council may consider an application by Grantee for renewal of the Franchise for an additional 15 year term, if, in the opinion of the Council, such renewal would serve the Public Interest. The procedure to consider such a renewal shall be as follows:

1. Prior to the expiration of the initial term of the Franchise or any extension, Grantee shall petition the Council in writing for renewal of the Franchise.
2. Within 30 days after receipt by the Council of Grantee's petition for renewal, the Council shall hold a meeting to consider the renewal petition, and the Borough Clerk shall publish notice of said meeting, its time, place subject matter and parties entitled to be heard at the meeting, in a newspaper of

general circulation at least once in the ten days immediately prior to the public meeting.

3. At the meeting, the Council shall hear representatives of the Cable Television System and interested Residents of the Franchise Area on any issues raised pursuant to the Public Interest Standard set forth in Section 1 (13) hereof.
 4. The Council shall make its decision on the Grantee's petition for renewal, and shall publish a written determination stating the reasons for renewal or non-renewal all within thirty (30) days after the meeting is held. Grantee shall be provided with a copy of the written determination within 2 business days after it is published.
 5. If the Council finds that renewal would serve the Public Interest, the Grantee shall be entitled to a renewal of the Franchise and the Council shall enter into negotiations with Grantee for amendments to the expired Franchise or for a new franchise. If the Council finds that non-renewal serves the Public Interest, then the procedures set forth in Paragraph 13 (d) of this Section shall apply.
- c. Termination: The Borough may terminate this Franchise in the event of the willful failure, refusal or neglect by Grantee to substantially comply with any material requirement or limitation contained in this Ordinance. The Borough shall comply with the following procedures:
1. The Borough Council shall, with advise of legal counsel, make a written determination that after reasonable investigation it appears

that Grantee has willfully failed, refused or neglected to substantially comply with the material provisions of this Ordinance. Further, a dispute between the Borough and Grantee over policies, practices or procedures which are not clearly stated in or based on the language of the Ordinance shall not be deemed a sufficient basis for a determination of apparent violation.

2. If the Council finds good cause to make its determination on the standards set forth above, then it shall give written notice to Grantee stating clearly its factual and legal basis for such determination. Grantee shall then have a period of thirty (30) days after its receipt of such notice in which to comply with the provision. If the apparent violation is not remedied within the thirty day period, the Borough Council may order the matter of apparent violation to be brought up for discussion at a regularly scheduled meeting. Grantee shall be served with notice at least thirty (30) days prior to the meeting as to the topic, time, place and procedure for the meeting, and the same shall be publicized by the Borough Clerk at least once in the ten (10) days before such meeting in a newspaper of general circulation in the Franchise Area.
3. At the meeting, the Council shall permit representatives of Grantee to be heard, together with any Residents of the Franchise Area who have requested to be heard on the topic of the apparent violation. Based on the facts and arguments of Grantee, any relevant factual presentations

of residents, and the Council's own investigation, the Council shall make a decision whether the apparent violation was in fact a willful failure, refusal or neglect to substantially comply with a material provision of the Ordinance. Such decision shall be in writing stating clearly the factual and legal basis for the decision, shall be rendered and made public within 30 days of the meeting, and Grantee shall be provided a copy thereof within two (2) business days after the decision is published.

4. If the Council shall determine that such willful failure, refusal or neglect by the Grantee was not in the public interest and was without just cause, then the Council may, by resolution, declare that the Franchise of such Grantee shall be terminated and bond forfeited unless the Grantee shall comply with the Ordinance provision within such period as the Council may fix.

d. Procedure in Event of Termination, Non-Renewal or Denial of Extension:

1. If Grantee disagrees with a Council determination as to termination, renewal or extension, and chooses not to comply with the material provision at issue, or does comply under protest, then Grantee may pursue any and all equitable or legal means of judicial review. If Grantee seeks judicial relief in the form of judicial stay, injunction or other temporary restraint of the effectiveness of the Council's decisions.

2. Pending a final disposition of Grantee's judicial review, Grantee shall have the right to continue the business of providing Cable Service to its Subscribers, may receive revenue and profits from such business, and shall in all ways be considered by the Borough as having a claim of right to continue as the Grantee, provided that Grantee shall continue to comply with the material provisions of the Ordinance which are not in dispute. (Compliance by Grantee with material provisions in dispute shall not be construed as an admission of liability).
3. In the event, Grantee is ultimately unsuccessful in pursuit of its judicial remedies, or if Grantee is permitted to and does not comply with any final determination, then Grantee shall commence, immediately after a judicial mandate shall be issued and entered on the records of a Court, to solicit buyers for the Cable Television System, and shall use best efforts to sell the System. In the event Grantee is unable to find, after its best efforts, a bona fide buyer who will pay a fair market price for the System, then Grantee shall have the right to shut down and remove any and all of the equipment, property or other facilities making up the Cable Television System in the Franchise Area, all to be accomplished within one hundred eighty (180) days after a final order is issued by a court, or by the Council in the event Grantee chooses not to seek judicial review of the Council's final determination. Grantee may continue to operate the System within such 180 days period, and until it is shut down

and all of the equipment, property or facilities of the Cable Television System: but in so doing, Grantee relinquishes all right to compensation by the Borough or any third party using or taking over such System after Grantee has abandoned it.

Section 14 - Miscellaneous Provisions:

- a. When not otherwise prescribed herein, all matters herein required to be filed with the Borough shall be filed with the Borough Secretary.
- b.
 1. The Grantee shall provide without charge one (1) outlet of Basic Cable Service to each governmental office building, fire station, police station, and public school building that is passed by its Cable Television System. The outlets of Basic Cable Service shall not be used to distribute or sell Cable Services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets.
 2. Notwithstanding the above, the Grantee 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 45.75 cable meters (150 cable feet), until it is technically and economically feasible to do so. In the event that additional outlets of basic Cable Television services are provided to such buildings, the building owner shall pay the

usual installation and service fees associated therewith.

- c. In the case of any emergency or disaster, the Grantee shall, upon request of the Borough, make available its facilities for the Borough to provide emergency information and instructions by means of an alphanumeric crawl for emergency use during the emergency or disaster period. The Borough shall hold the Grantee, its agents, employees, officers, and assigns hereunder harmless from any claims arising out of the emergency use of its facilities by the Borough.
- d. Grantee shall be prohibited from directly or indirectly initiating or using any form, procedure or device for procuring information or data from Subscriber's premises by use of the System without prior written authorization from each Subscriber so affected. Authorization shall mean written approval from the Subscriber of the specific use or purpose for which the information is sought. Said authorization shall not have been obtained from the Subscriber as a condition of service. Further, it shall be unlawful for the Grantee, without such authorization, to activate or utilize any transmission past from the Subscriber's premises, in a manner which invades Subscriber's right of privacy, or for which Grantee has no authorization. However, Grantee shall have the right to utilize any transmission path to verify the technical integrity and quality of performance of the Cable Television System. The provisions of this Section 14 (d) shall not apply to the collection of information solely for billing purposes or to monitor whether there is unauthorized reception of the broadcast signal.

- e. If the Federal Communications Commission, or any other Federal or State body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of this Ordinance, then to the extent such jurisdiction shall preempt or preclude the exercise of like jurisdiction by the Borough, jurisdiction of the Borough shall cease and no longer exist.
- f. No person, firm or corporation within the Franchise Area of the Grantee, and where trunk lines are in place, pursuant to Section 7 hereof, shall be refused Cable Service; provided, however, that the Grantee shall not be required to provide service to any subscriber who does not pay the applicable connection fee or service charge.
- g. If at any time the Grantee's Cable Television System or other equipment is disturbed, damaged, or severed by a third party, the cost of repair shall be paid by the party responsible for said damage. The Grantee may charge the responsible party for the cost of labor and materials expended by the Grantee to repair said damage or replace damaged cable plant.
- h. Educational institutions within the Borough of Avalon shall be permitted use of an Educational Access Channel. Educational institutions shall mean those institutions including public schools, private and parochial schools located therein with a dissemination of Educational programming.

Section 15 - Equal opportunity Employment and Affirmative Action Plan:

The Grantee shall substantially comply with all valid and applicable requirements of Federal or State government regarding equal employment policy and practice.

Section 16 - Violations:

- a. From and after the effective date of this Ordinance, it shall be unlawful for any person to construct, install or maintain within within any public Way in the Borough, or within any other

public property of the Borough, or within any privately-owned area within the Borough which has not yet become a Public Way but is designated or delineated as a proposed Public Way on any tentative subdivision map approved by the Borough, any equipment or facilities for distributing any television signals or radio signals through a cable television system, unless a franchise authorizing such use of such Public Way or property or area has first been obtained pursuant to the provisions of this Ordinance, and unless such franchise is in full force and effect.

- b. It shall be a violation of this agreement for any person, firm or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the franchised Cable Television System within this Borough for the purpose of enabling such person, firm or corporation or third parties to receive or use any Cable Services without payment to the Grantee.
- c. It shall be a violation of this agreement for any person without the consent of the Grantee, to willfully tamper with, remove or injure any property, equipment or part of the Cable Television System or any means for receiving Cable Services.

Section 17 - Severability:

If any section, subsection, sentence, clause or phrase of this Ordinance is held illegal, invalid or unconstitutional by the decision of any court or regulatory tribunal of competent jurisdiction,

such decision shall not affect the validity of the remaining portions hereof. The Council hereby declares that it would have passed this Ordinance and each section, sub-section, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional. The validity of any portion of this Ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Grantee of the Franchise granted hereunder.

Section 18 - Notices:

All notices required herein shall be in writing and shall be deemed to have been duly given to the required party three (3) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a post office or branch thereof regularly maintained by the U. S. Postal Service. The notices shall be addressed as follows:

If to Borough:

Borough Secretary
Borough of Avalon
640 California Avenue
Pittsburgh, PA 15202

If to Grantee:

Tele-Communications, Inc.
192 Ohio River Boulevard
Ambridge, PA 15003
Attn: Mr. Jay Knafel

With a copy to:
Legal Department
Tele-Communications, Inc.
Call Box 22595
Wellshire Station
Denver, CO 80222

Parties may designate other addresses from time to time by giving due notice to each other.

Section 19 - Applicability to Current Franchise:

a. The provisions of Ordinance No. 1046 granting Centre Video Corporation the right to construct, maintain and operate facilities within the Borough for the reception, transmission, and distribution of television as well as Ordinance No. 1099 ^{+ 1119} amending Ordinance No. 1046 are hereby repealed and are replaced by this Ordinance. Said repeal to take effect as of the effective date of this Ordinance.

b. Any Ordinance or part of an Ordinance conflicting with the provisions of this Ordinance be and the same is hereby repealed to the extent that such Ordinance or provision thereof is in conflict with this Ordinance.

Section 20 - Acceptance of the Franchise: Effective Date:

a. Grantee shall file its written notice of acceptance of this Franchise with the Borough Secretary within thirty (30) days after the passage of this Ordinance.

b. In the event Grantee does not file written notice of acceptance of this Franchise with the Borough Secretary within the thirty (30) days after the date of passage, this Ordinance shall become null and void as if it were repealed by law.

ORDAINED AND ENACTED INTO LAW this 8th day of August 1985 by Council of the Borough of Avalon.

ATTEST:

BOROUGH OF AVALON

1
Paul C. Carlson
Secretary

By: Elizabeth J. Markelov
President

EXAMINED AND APPROVED this 18th day of August, 1985.

Joseph S. Elm
MAYOR OF AVALON

The Cable System for the Borough to be serviced from the Ross head end with 54 channel capability and 25 channel availability. The following services or their equivalent will be offered.

INITIAL SERVICES

<u>Call Letters</u>	<u>Broadcast Channel</u>	<u>Origination</u>	<u>Network</u>
KDKA	2	Pittsburgh, PA	CBS
WTAE	4	Pittsburgh, PA	ABC
WTRF	7	Wheeling, WV	CBS
WTOV	9	Steubenville, OH	NBC
WPXI	11	Pittsburgh, PA	NBC
WQED	13	Pittsburgh, PA	EDU
*WQEX	16	Pittsburgh, PA	EDU
WPTT	22	Pittsburgh, PA	IND
WPCB	40	Pittsburgh, PA	CHR. BRD.
WPGH	53	Pittsburgh, PA	IND
WOR	9	New York, NY	IND
WTBS	17	Atlanta, GA	IND
WJAC	6	Johnstown, PA	NBC

* A Metro Data will be time-shared with Channel 16. This will provide local meeting information and other items of community interest.

In addition to the above listed channels, the Grantee will provide as part of its basic cable package six (6) channels of Satellite Services.

Due to the continuing change of Satellite Services available, The Grantee cannot guarantee specific programming. Some of the programs presently available are Cable News Network, Time/Weather Channel, Music TV, USA Network, ESPN and C-Span.

The Grantee reserves the right to make changes in its Satellite Programming if it is unable to negotiate a contract with the program suppliers or if a program supplier goes out of business.

RATES

The rates referred to in Section XII of the Agreement shall be as follows:

* Connection Fees:

First outlet	\$15.00
Each Additional outlet	15.00
Relocation of an outlet	15.00
Reconnection of an outlet	15.00

* Monthly Service Charges:

Residential Subscribers

Basic CATV Service	\$ 7.00
First Outlet	(Until New Services Available)
Basic CATV Service	\$ 8.00
First Outlet	(With converter and installation of converter, no charge when new services available.)
Each Additional Outlet	\$ 1.75

Company will provide one (1) converter for all cable subscribers for \$8.00 basic rate. Converter will be maintained by the Company at no charge, except when the damage is caused by subscriber's negligence.

Commercial Subscribers

Basic CATV Service

First Outlet \$ 9.00

Each Additional Outlet 2.00

The Grantee reserves the right to negotiate separate rates with the owners of motels, hotels, rooming houses, apartment houses, trailer courts, hospitals and rest homes. Converters will be made available as to provide the extended service.

In addition, the Grantee may make available to its subscribers one or more of the following Pay TV services: Home Box Office, Showtime, Disney Channel and Cinemax. Since these are optional services, the Grantee reserves the right to establish the monthly rates for these services. A discount will be offered on the pay channels depending on the number of Pay Services a resident subscribes to.

*For information purposes only:

The grantee shall notify the borrower thirty (30) days prior to any change in these rates and charges.