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CH6 6 .1 - Cable Television Regulations

- a. For the purpose of this ordinance the following terms, phrases, words 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 words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.
1. ACT shall mean the Federal Communication Act of 1934, as amended.
 2. ANNUAL GROSS SERVICE RECEIPTS shall mean the total amount of money received during the applicable calendar fees from the sale of those services on the cable system. Gross basic service tier and its cable programming service tier, currently known as "Expanded Basic" service receipts do not include the receipts from Franchise Fees or other telecommunication services.
 3. CABLE SERVICE shall mean the one-way transmission to subscribers of i) video programming, or ii) other programming service, and subscriber interaction, if any which is required for the selection or use of such video programming or other programming service.
 4. CABLE SYSTEM shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not included (A) a facility that services only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Act, except that such facility shall be considered a cable system (other than for purposes of Section 621(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of the Title VI of the Act; or (E) any facilities of any electric utility used solely for operating its electric utility systems.
 5. COMPANY is any grantee of the rights under this Ordinance and means LongView Cable & Data, LLC or the corporation to be formed by LongView Cable & Data, LLC for the purpose of succeeding to the rights under this Ordinance.
 6. FEDERAL COMMUNICATIONS COMMISSION or FCC shall mean that Federal Agency constituted by the Communication Act of 1934, as amended.

7. FRANCHISE shall mean any authorization granted herein to construct, operate and maintain the Cable System.
 8. PERSON is any person, firm, partnership, association, corporation or organization of any kind.
 9. SHALL is mandatory language and MAY is permissive.
 10. SUBSCRIBER shall mean any person who receives any service delivered by the Cable System.
 11. TOWN shall mean the Town of Lapel located in Madison County, Indiana, the Grantor or Rights under this Regulatory Ordinance.
 12. TOWN BOARD is Common Town Board of the Town of Lapel.
 13. USER OF CABLE SYSTEM shall mean a person who utilized the Cable System to produce or to transmit programs or other communications to Subscribers.
- b. Grant of Authority. In consideration of the faithful performance and observance of the conditions and reservations hereinafter specified, the right is hereby granted by the Town to the Company and its successors and assigns the nonexclusive right to construct, maintain and operate a cable television system including other telecommunication service ("Cable System") in the Town, all in accordance with the laws and regulations of the United States of America, the State of Indiana, and the ordinances and regulations of the Town of Lapel. For this purpose the Town hereby grants to the Company a non-exclusive Franchise, right and privilege to construct, erect, operate, modify and maintain, in, upon, along, across, above, over the under the public highways, streets, alleys, sidewalks, and public rights-of-ways now laid out or dedicated, and all extensions thereof and additions thereto in the Town which are within the area to be served by the Cable System and which have been dedicated for compatible uses, such poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the Town of a Cable System for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs, and various telecommunications and other electronic and information services to the public. The right so granted includes the right to use and occupy the public streets, alleys, and public rights-of ways and all manner of easements which have been dedicated for compatible uses, for the purposes herein set forth.
- c. Pole Use. Where the use of poles owned by public utilities is not practicable or satisfactory, and rental agreements cannot be entered into with said public utilities, the Company shall have the right to erect and maintain its own poles, as such may be necessary for the proper construction and maintenance of the television distribution system; provided, however, that the Company shall obtain prior approval from the Town, which such approval shall not be unreasonably withheld, as to the necessity for and location of any new poles to be erected.
- Nothing in this subsection shall preclude the Company from contracting with the Town or other utility now or hereafter having pole lines in the Town to provide and maintain the transmission system of the Company.
- d. Installation and Maintenance of Attachments. The Company shall, at its own expense, make and maintain its attachments in safe conditions and in good repair, and in a manner suitable to the utility companies and the Town.
- In the maintenance and operation of its Cable System in the streets, alleys and other public places, and in the course of any new construction or additions to its facilities, the Company shall proceed so as to cause the least possible inconvenience to the general public. Any streets, alleys, sidewalks,

or other public places disturbed or damaged in the construction or maintenance of the Cable System shall be promptly repaired to the reasonable satisfaction of the Town by and at the expense of the Company.

- e. Pole Erection and Construction. The Company's transmission and distribution system poles, wires and appurtenances thereon, shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or interfere with new improvements the Town may deem proper to make, or hinder unnecessarily or obstruct the free use of streets, alleys, bridges or other public property. Removal of poles or rearrangement of its facilities to avoid such interference will be at the Company's expense.
- f. The Company's poles, cables, wires and appliances, in each and every location, shall be erected and maintained in accordance with (1) such requirements and specifications as the Town shall from time to time prescribe, for all users of the public rights of way (2) requirements and specifications of the National Electrical Safety Code and the National Board of Fire Underwriters, (3) any amendments or revisions of said code or practices and (4) in compliance with any rules or orders now in effect or that may be hereafter be issued by any regulatory agency or other authority having jurisdiction in the State of Indiana.
- All installation of equipment shall be of a permanent nature and in accordance with good engineering practice. The Company's service drops shall be installed in a neat and workmanlike manner, including the house attachments, so as to maximize the best overall appearance of power, telephone and Cable System drops through the air and attached to the buildings. Cable System service drops are to be installed where practicable from the cable away from a pole so as to preserve climbing space on the pole.
 - In the event a customer discontinues cable service and requests removal of the Company's service drop, such removal shall be accomplished in a neat and workmanlike manner at the Company's expense.
 - The Company shall grant to the Town, at then market rates, joint use of any and all poles owned by it for any proper municipal purpose acceptable with the Company, insofar as such use may be accomplished without interfering with the free use and enjoyment of the Company's own wires and fixtures; and the Town shall hold the Company harmless from any and all actions, causes of actions or damage by replacing of the Town's wires or appurtenances upon poles of the Company. Proper regard shall be given to all existing safety rules governing construction and maintenance in effect at the time of construction. Any such joint use shall be subject to the terms of a mutually agreeable pole attachment license agreement.
- g. Relocation of Facilities. In the event that at any time during the period of the Ordinance, the Town shall elect to alter or change the grade of any streets, alleys or other public ways, the Company, upon reasonable notice by the Town, shall remove, release and relocate its poles, wires, cables, underground conduits, manholes and other fixtures. Notice to the Company shall be consistent with that notice provided by the Town to the local area utilities.
- h. Tree Trimming. The Company shall have the authority and is hereby required to trim trees (located on public property) upon and overhanging streets, alleys, sidewalks and public places of the Town to prevent the branches of such trees from coming in contact with the wires, cables and distribution system components of the Company, all trimming to be done at the sole expense of the Company.

- i. The Company shall exercise special precaution to avoid damage to facilities of the Town and of other supported on said poles; and hereby assumes all responsibility for and agrees to indemnify the Town from and against all loss or damage, or claim therefore, resulting from the attachment to such poles of the Company's facilities and from any and all acts or omissions of the Company in connection therewith. The Company shall make an immediate report to the Town of the occurrence of any loss or damage and hereby agrees to pay the cost incurred in making repairs to such facilities of the Town or others.
- j. The Company shall indemnify, protect and save harmless the Town from and against losses and physical damage to property, and bodily injury or death to persons, including payments made under any workmen's compensation law, which may arise out of or be caused by the erection, maintenance, presence, use or removal of all Cable System equipment of any kind or nature whatsoever within the Town, or by any act of the Company, its agents or employees, or in any way arising out of the granting of this franchise. The Company shall carry insurance to protect itself, the utility companies and the town from and against all claims, demands, actions, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Such insurance policy shall specifically provide that the Town shall be named as Additional insured. The amounts of such insurance against liability due to physical damage to property shall be not less than Fifty Thousand Dollars (\$50,000.00) as to any one claim and not less than Two Hundred Thousand Dollars (\$200,000.00) aggregate in any single policy year; and against liability due to bodily injury or to death of persons, not less than One hundred Thousand Dollars (\$100,000.00) as to any one person, and not less than Three Hundred Thousand Dollars (\$300,000.00) as to all such claims arising from any one accident. The Company shall also carry such insurance as it deems necessary to protect it, and the Town from all claims under any workmen's compensation law in effect that may be applicable to the Company. All insurance required by this ordinance shall be and remain in full force and effect for the entire period of this Ordinance. The policies of insurance, or a certified copy or copies thereof, or a certificate of insurance shall be deposited with and kept on file by the Town Clerk of the Town.
- k. Minimum CATV System Service. Subject to and in accordance with the rules and regulations of the Federal Communications Commission, the Company's cable television system shall have at a minimum the capacity to carry a combination of 150 analog/digital channels. Company agrees to make available on the cable television system the high speed Internet access service and digital video service it may elect to offer during the term hereof, if any.
- l. Customer Service. Excluding conditions beyond the control of the Company, the Company will begin working on "service interruptions" promptly and in no event later than 24 business hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.
- o The "appointment window" alternative for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The Company may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.) Company may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

- o If a Company representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

m. Rates

1. The Company agrees that all rates charged to subscribers to its Cable System Service shall be standard, uniform and reasonable. A copy of the Company's schedule of charges for installation and furnishing of service shall be filed with the Town Clerk not less than thirty (30) days prior to the effective date of such charges.
2. Upon the date of full execution of this Ordinance, a rate freeze will be implemented for a twelve (12) month period.

- n. Unauthorized Use of Service. Persons receiving Cable System service may not alter, extend or otherwise tamper with the Company's facilities to serve more equipment than being contracted for.
- o. Police Power. The Company shall at all times during the life of this permit be subject to all lawful exercise of the police power of the Town and to such reasonable regulation as the Town shall hereafter by resolution or ordinance provide.
- p. Service Area. The Grantee of any Franchise hereunder shall offer Cable Service to all potential residential subscribers upon request located within one hundred fifty (150) feet of Company's feeder cable where there exists a minimum density of thirty-five (35) single family homes per mile (excluding homes receiving competitors services(s)). The Company may elect, but has no obligation, to offer Cable Service to areas not meeting the above standard.
- q. Service to Town Buildings and schools. The Company agrees to and shall furnish, without installation charge or monthly service fee, one (1) free expanded basic and high speed Internet connection to the Lapel Town Hall, the Lapel Fire Department and the Lapel Police Department, to any other Town building or buildings designated by the Town Council including the Town's library, and to all public, parochial, elementary, and secondary schools located within the Lapel School District. If the public building is within 300 feet of the Company's cable television system, there shall be no costs of installation to the public building. If the Company's cable television system is in excess of 300 feet from any such designated building, the cost to extend the cable or wire more than 300 feet to the designated building shall be paid by the owner of the designated building if they desire service.
- r. Payment. In consideration of the rights, privileges and permit hereby granted in compensation to the Town for the use of its public places, Company agrees to pay to the Town on later than March 1, for the preceding calendar year, three percent (3%) of the annual gross service receipts from the sale of its basic service tier and its cable programming service tier, currently known as "Expanded Basic" service, of the cable television system.
- o The term "annual gross basic service receipts" shall mean the total amount of money received during the applicable calendar year by the Company from its subscribers as monthly service fees for its basic tier and cable programming service tier, currently known as "Expanded Basic."
 - o The Company shall file with the Town an annual report of all "Expanded Basic" service revenues with the Town at the time of making the annual compensation payment. The Town may at any reasonable time during normal business hours, and upon prior written reasonable notice, have access to the Company's books and records relating to its basic and "Expanded" service receipts in

the Town for Audit purposes. The Town may audit such books and records no more than once annually for the three preceding calendar years.

- o LongView Cable & Data, LLC agrees to pay the Town of Lapel \$1200 per year for tower rent.
- s. Purpose of Payment. The payments provided for this Ordinance to be made to the Town are in payment by the Company to the Town for the use of the streets and alleys, and additional supervision, maintenance, inspection, regulation, burdens and costs to the Town occasioned by reason of the granting of the rights hereunder.
- t. Underground Facilities. The Company at its own expense shall place its facilities underground in those areas of the Town where all of the utilities are underground.
- u. Approval of Construction. Wherever this Ordinance provision is made for approval of the Company's construction of facilities, such approval shall not be unreasonably withheld and shall be given by the person designated by the Town Board.
- v. Complaint Procedures. The Company shall maintain a local, toll-free or collect call telephone access line which will be available to the citizens of the Town 24 hours per day, 7 days per week for the purpose of receiving subscriber complaints expeditiously and normally within 48 hours. The Town Board may appoint a commission or may designate any officer of the Town with the responsibility of monitoring the Company's operations and in cases where reasonable customer complaints are unsatisfied by the Company's response to the complaints, such commission or person shall work cooperatively with the Company to address any customer concerns. Upon written request from the Town Board, Company agrees to have a representative attend the Town Board meet to discuss any relevant cable issues.
- w. Service and System Maintenance. The Company shall, at its own expense, at all times maintain and furnish telephone answering service and system maintenance service to subscribers to insure system operation twenty-four (24) hours a day, seven (7) days a week. The Company, in addition to having its telephone listed in the local telephone directory, shall advise each of its subscribers in writing of such telephone number.
- x. Compliance with State and Federal Law.
 1. The Company shall conform to all laws, rules and regulations of the United States and the State of Indiana in the construction and operation of its Cable System; and all rules and regulations of the Federal Communications Commission relating to cable television franchises, as now enacted or subsequently amended, are incorporated herein by reference. The Company shall take such additional action as is necessary to incorporate formally in the terms of this franchise any modifications required by amendments of applicable federal and state laws, rules and regulations governing the contents of cable television franchises within one (1) year of their adoption.
 2. This Ordinance is in full compliance with the rules and regulations of the FCC relating to cable television franchises as now enacted.
 3. Nothing herein shall be construed to prohibit the Company from requesting a waiver of any state or federal rule or regulation, provided that a copy of such request shall be served upon the Town.
- y. Effective Date. This Ordinance shall take effect and be in force, after its passage by the Town Board of Lapel.
- z. Transfer of Franchise. The franchise and rights granted herein shall be in a privilege to be held in personal trust by the Company (i.e., LongView Cable & Data, LLC or the corporation or limited partnership to be

formed by LongView Cable & Data, LLC to succeed to the franchise and rights granted herein) and shall not be assigned, transferred, sold or disposed of, without the prior consent of the Town Board expressed by resolution. Such consent shall not be unreasonably withheld provided that the proposed assignee agrees to comply with all the provisions of this Ordinance and is able to provide proof of financial responsibility and other qualifications satisfactory to the Town Board consistent with the rules of the FCC governing transfers. No consent by the Board shall be required for a transfer in trust, mortgage or other instrument of hypothecation to secure an indebtedness of the Company, or to an assignment by the Company of this Franchise and Company's rights hereunder to any entity controlling, controlled by or under common control with the Company, or to any successor owner of the Cable System. The consent of the Town Board to any sale or other transfer shall not constitute a waiver or release of any of the rights of the Town under this Ordinance.

- aa. Term of Franchise. The Franchise granted the Company herein, shall terminate fifteen (15) years from its effective date. The Company shall have the right to be a party to any proceedings in which its rights, privileges, or interests would be affected and shall be fully entitled to such due process rights as may be available under applicable laws, ordinances, rules or regulations.
- ab. Final Termination of the Franchise. Upon final termination of the franchise, the Company shall remove its cables, wires and equipment from all poles of the Town and all space reserved for the Town's use on poles belonging to others. If not so removed, the Town shall have the right to remove or have its contractor remove them at the risk, cost and expense of the Company and without any liability therefore.
- ac. Any violation by the Company, its vendee, lessee or successor, of the material provisions of this Franchise shall be cause for the forfeiture of this Franchise and all rights thereunder, provided that the Town shall first notify the Company in writing of the condition or act on which the violation is charged and the Company shall have thirty (30) days within which to remedy such condition or act; and provided further, that should it be impossible to correct the said violation within thirty (30) days, then the Company shall have a reasonable time to make said corrections. LongView Cable & Data, LLC agrees to notify the Town of Lapel in writing if a violation cannot be rectified within 30 days will advise the town in writing when the violation will be corrected. Failure to pay all monies due from the Company to the Town hereunder after thirty (30) days' written notice by the Town to the Company shall be grounds for revocation of Franchise.
- ad. General Terms. Failure to enforce or insist upon compliance with any of the terms or conditions of this Ordinance shall not constitute a waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.
 - o If any section, sentence, clause or phrase of this Ordinance is for any reason held illegal, invalid or unconstitutional, such validity shall not affect the validity of the Ordinance and any portions in conflict are hereby repealed.
- ae. Notices under this Ordinance except as otherwise indicated shall be addressed to the Company by addressing the same to:

LongView Cable & Data, LLC with a copy to: LongView Communications, LLC

Attn: Marc Cohen

5937 West 71st Street

12007 Sunrise Valley Drive

Indianapolis, IN 46278

Suite 375

Attn: Dennis Zeigler

Reston, VA 20191

and for the Town to:

Town Clerk, Lapel

Lapel Town Hall

P.O. Box 999

Lapel, Indiana 46051

('82 Code, Ord. No. 9-1982, passed 12/22/82)

(Amended by Ord. No. 2-1987, 6/22/1987) Sale of Franchise to Belisle Communications, Inc., a Delaware Corporation)(Ordinance No. 1-1998, passed 7/16/98) Phoenix Concept Cablevision of Indiana, L.L.C. (Ord. No. 5-04, passed 7/1/2004) LongView Cable & Data, LLC.

Ord 3-1-2004 – May 6 Indiana Code [35-43-5-6](#)

Further Information

'82 Code, Ord. No. 9-1982

Indiana Code [35-43-5-6](#)

Date Passed: 12/22/1982

Date Amended: 7/1/2004