

## **CHAPTER 12**

### **FRANCHISES**

#### **Part 1**

#### **Cable Television**

- §101. Short Title
- §102. Definitions
- §103. Grant of Authority
- §104. Insurance Coverage
- §105. Service Standards
- §106. Payment to the Municipality
- §107. Term of Franchise
- §108. Assignment
- §109. Acceptance by the Company
- §110. Federal Preemption
- §111. Forfeiture
- §112. Severance

#### **Part 2**

#### **Sewer and Water**

- §201. Preamble
- §202. Municipal Approval
- §203. Adoption
- §204. Transfer of Property and Assets

ORDINANCE NO. 2 of 2015

**WHITE HAVEN BOROUGH, LUZERNE COUNTY, PENNSYLVANIA**

**AN ORDINANCE AMENDING CHAPTER 12, FRANCHISES, PART 1, CABLE TELEVISION, GRANTING A CABLE TELEVISION NON-EXCLUSIVE FRANCHISE TO GANS COMMUNICATIONS, L.P. D/B/A METROCAST COMMUNICATIONS TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN WHITE HAVEN BOROUGH, LUZERNE COUNTY, PENNSYLVANIA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE NON-EXCLUSIVE FRANCHISE, PROVIDING FOR REGULATION AND USE OF SUCH SYSTEM; AND PROVIDING FOR PAYMENTS TO THE BOROUGH FOR THE OPERATION OF SUCH SYSTEMS.**

**BACKGROUND**

**WHEREAS**, the Company is operating a cable television system in the Borough pursuant to Ordinance No. 97-1, which allows the Company to construct and operate the system within the Borough until March 12, 2012;

**WHEREAS**, the Company has filed a timely request for a renewal of such agreement by letter dated April 20, 2009 in conformity with applicable law;

**WHEREAS**, the Borough and the Company wish by this Ordinance to allow the Company to construct and operate a cable television system in the Borough for a 10 year period with an option to renew for an additional term of 10 years upon approval by the Borough under and subject to the terms and conditions set forth in this Ordinance; and

**NOW, THEREFORE**, it is hereby ordained by White Haven Borough Council under the authority granted upon it under applicable law:

**CHAPTER 12**

**FRANCHISES**

**Part 1**

**Cable Television**

**§101. Short Title.** This Ordinance shall be known and may be cited as the White Haven Borough Cable Television Franchise Ordinance.

**§102. Definitions.** For the purpose of this Ordinance, the following terms, phrases, and words shall have the meaning given unless the context clearly indicates otherwise. The singular shall include the plural.

(a) Borough- means White Haven Borough, Luzerne County, Pennsylvania. The word also includes "Borough".

(b) Cable Television Service- the one-way transmission to Subscribers of video programming, or other programming service; and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and, 'other programming service' is information that a cable operator makes available to all subscribers generally. Included within this definition are those retransmitted signals of Federal Communications Commission licensed television broadcast stations.

(c) Community Antenna Television System- means antennas, coaxial cables, amplifiers, drop lines, other conductors, and other equipment or facilities not limited to the foregoing, including any of the same, and any services performed by the use of same furnished by any public utility or other person or entity, whether pursuant to tariffs or any other arrangement, necessary for or incidental to the receiving of television signals or the transmission thereof to customers at the selection of the Company for a consideration, or as a public service. The term is referred to in this Ordinance as the "System".

(d) Company- means Gans Communications, L.P. trading or doing business as MetroCast Communications with an office address of 911 N. Market Street, Berwick, Pennsylvania 18603.

(e) Council- means White Haven Borough Council.

(f) Subscriber or subscriber- means any person who lawfully receives Cable Television Service provided by the Company.

(g) Street or street- includes the entire width between the boundary line of a way publicly maintained when any part is open to the use of the public for purposes of vehicular travel. The term includes any road, lane, court, cul-de-sac, alley, public way, or any other way intended for public vehicular traffic.

(h) Person- includes any person, firm, partnership, association, corporation, company, or organization of any kind. The word also includes "Applicant".

**§103. Grant of Authority.** The Borough hereby grants the right and privilege to the Company to construct, erect, upgrade, operate and maintain in; upon, along, across, above, over and under the Streets and public places now laid out or dedicated, and all extensions or additions thereof, in the Borough, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the Borough of a Community Antenna Television System

for Cable Television Services. Additional approval shall be required from the Borough to provide non-cable related services to the extent inconsistent or pre-empted by State or Federal Law.

(a) Non-Exclusive Grant- The franchise granted to the Company is to be non-exclusive but otherwise in accordance with all the privileges and authorities granted by this Ordinance. The Borough covenants and agrees with the Company that it shall not during the term as set forth in Section 107 below grant to any other Person a franchise, right or privilege to maintain and/or operate a Community Antenna Television System for Cable Television Service within the Borough unless such franchise imposes on any such Person all the same terms, conditions and requirements as imposed upon the Company under this Ordinance.

(b) Use of Existing Utility Facilities- It is hereby granted to the Company, its successors and assigns, subject to ordinances, rules, and regulations of the Borough the right, privilege and authority to lease, rent, or in any other manner obtain the use of the towers, poles, lines, cables and other equipment and facilities from any and all present and future holders of public licenses of franchises within or partially within the Borough, and to use such towers, poles, lines, cables and other equipment and facilities.

(c) Use of Equipment and Facilities- All equipment and facilities of the Company within the Borough may also be used for the reception, transmission and distribution of radio and television signals and audio, visual, or electronic signals or impulses to or from areas outside of the Borough and for any other lawful purpose.

(d) Local Street Excavation or Occupancy Permits; State Highway Department Permits- All rights and privileges granted to the Company by the Borough pursuant to this Ordinance are subject to the provisions of the Borough Code of the Commonwealth of Pennsylvania; and the Borough Street Excavation Ordinance and Street Occupancy Permit Ordinance. Where a state highway is involved, such construction shall be made under the conditions, restrictions, and regulations as may be prescribed in the permit to be obtained from the Department of Transportation of the Commonwealth of Pennsylvania.

(e) Grant of Prescribed Rights. All rights and privileges granted to the Company pursuant to this Ordinance shall be subject to the Company obtaining any and all necessary easements, right of ways, and other grants from any and all property owners who may be affected by the construction, operation and maintenance of the aforesaid conductors and fixtures.

#### **§104. Insurance Coverage.**

(a) The Company shall at all times keep in effect the following types of insurance coverage:

(1) Workmen's Compensation upon its employees employed or performing services within the Borough.

(2) Property damage liability insurance and personal injury liability insurance in the aggregate amount of One Million (\$1,000,000.00) Dollars as to any one occurrence. Both the property damage and personal injury liability insurance policies shall be in the name of the Company and the Borough as their interests may appear.

(b) The Company does hereby agree to indemnify, defend, protect and save harmless the Borough 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 and attorney's fees which may arise out of or be caused by the erection, maintenance, presence, use or removal of the company's equipment or facilities within the Borough or by an act of the Company, its agents or employees, and shall carry insurance in the amount hereinafter set forth to protect the Borough from and against all claims, demands, actions, judgments, costs, expenses, liabilities and damages arising or resulting directly from or by reason of any such loss, injury or damage; *provided, however,* the Company shall not be required to indemnify, defend, protect and save harmless the Borough pursuant to the foregoing to the extent that such claims, demands, actions, judgments, costs, expenses, liabilities or damages arise from the negligence or intentional misconduct of the Borough, its officers, agents or employees.

**§105. Service Standards.** The Company shall operate and maintain the Community Antenna Television System as follows:

(a) All customers shall receive signals of good technical quality so that such signals shall meet or exceed any and all technical performance standards of the FCC and a full range of available cable services. All installations by the Company shall be of a permanent and durable nature and installed in accordance with good engineering practices and comply with existing and future ordinances and regulations of the Borough so as not to interfere in any manner with the rights of the public or individual property owners. The System shall not interfere with the travel and use of streets and public places, nor shall it obstruct or impede traffic. The construction, installation and maintenance of the System shall meet the standards of the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and regulations and the laws, ordinances and construction standards of the Commonwealth of Pennsylvania and the Borough.

(b) The Company shall offer Cable Television Service to as many residential dwellings and businesses in the Borough as economically viable or reasonable in light of costs.

(c) The Company shall install, at its own cost and expense, cables or

other System facilities underground in areas where commercial electric and telephone utility facilities are located underground. The Company shall coordinate with other utilities whenever possible to arrange for the installation at the same time existing utilities in the immediate vicinity are installed underground, or where statutes or ordinances require utilities to be placed underground. Previously installed aerial cable shall be placed underground in concert with other utilities pursuant to the general ordinances of the Borough or applicable law, provided that such underground locations are capable of accommodating the Company's cable and/or other equipment without material technical degradation of the System's signal quality. Placing facilities underground does not preclude the use of ground mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

(d) The Company shall apply for all required permits in accordance with Borough Ordinances relating to street excavation and occupancy, pay all required fees, and adhere to all building and zoning codes currently or hereafter in effect. The Company shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of public or private property. In the event of such interference, and upon reasonable prior written notice, the Borough may require the removal and relocation of the Company's lines, cables and other appurtenances from the property in question at no cost to the Borough.

(e) Whenever the Company or any agent, including any contractor or subcontractor of the Company, takes up or disturbs any pavement, sidewalk or other improvement of any public or private property, the same shall be replaced and the surface restored in as good condition as before the disturbance within ten (10) business days, weather permitting, of the completion of the disturbance. Upon failure of the Company to comply within the time specified and upon written notice, the Borough may cause proper restoration and repairs to be made and the expense of such work shall be paid by the Company upon demand by the Borough.

(f) Whenever the Company or any agent, including any contractor or subcontractor of the Company, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage or injury to property, including structures, improvements and trees in and along the routes authorized by the Borough if required for the proper installation, operation and maintenance of such equipment, cable, or wires. The Company shall promptly repair and restore any private property that is damaged as a result of construction, installation, repair or maintenance of the System within ten (10) business days. The Company shall monitor its operating, construction, repair and maintenance personnel, including contractors and subcontractors, on a regular basis and ensure that such personnel provide cleanup of all work places in a manner consistent with applicable federal and state standards, local laws, and Borough Ordinances.

(g) The operating, construction, repair and maintenance personnel of Company, including all contractors and subcontractors, shall be thoroughly trained in the use of all equipment and the safe operation of vehicles. The Company's operating, construction, repair and maintenance personnel shall follow all safety procedures required by all applicable federal, state and Borough Ordinances and regulations. All areas of the System shall be routinely inspected and maintained in accordance with FCC standards so that conditions that could develop into safety hazards for the public and/or operating and maintenance personnel may be corrected before they become a hazard. The Company shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the Borough or any public utility serving the Borough.

(h) Should a public safety emergency occur as a result of, incident to, or connected with operation, construction, repair, or maintenance activities by the Company personnel including all contractors and subcontractors, then such personnel shall immediately contact the applicable public safety emergency dispatcher (e.g. 9-1-1) and take other reasonable actions to respond to the emergency, including notifying the Borough Emergency Management Coordinator and Council as soon as possible once learning of the emergency.

(i) Whenever the Company or any agent, including any contractor or subcontractor of the Company, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the Pennsylvania One Call System prior to any such disturbance. The Company shall adhere to all requirements to the Pennsylvania Underground Utility Line Protection Act.

(j) All structures and all lines, equipment and connections in, over, under and upon Streets and public and private places in the Borough, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair consistent with federal, state and local law.

(k) Upon completion of any construction, the Company shall conduct periodic signal monitoring in accordance with the requirements of the FCC. Such capability shall enable the Company to monitor the signal quality of all channels delivered on the System.

(l) The Company shall at all times keep at its office full and complete maps, plans and records showing the location of all franchise equipment and facilities installed in the streets and public places within the Borough. Upon written request, the Company shall provide to the Borough for its exclusive use and shall maintain at its local office a complete set of Company service area maps of the Borough, on which shall be shown those areas in which its facilities exist and the location of all streets. The maps shall be provided to the Borough in hardcopy and also, if technically feasible and available, in an electronic format. The maps shall also designate where the cable wires and other equipment are aerial and where they are underground.

(m) The Company shall, at no cost to the Borough, protect support, temporarily disconnect, relocate in the same street, or other public place, or remove from any street or any other public place, any of its property as required by the Borough or its designee by reason of traffic conditions, street construction, change or establishment of street grade, site distance visibility, the construction of any public improvement or structure, or any other reason related to public health, safety and welfare. In requiring the Company to protect, support, temporarily disconnect, relocate or remove any portion of its property, the Borough shall treat the Company the same as, and require no more of the Company than, any similarly situated entity.

(n) If, at any time, in case of fire or other disaster in the Borough, it shall be necessary, in the reasonable judgment of Council or its agent, to cut or move any of the wires, cable or equipment of the System, the Borough shall have the right to do so without cost or liability, provided that the Borough shall give the Company advance notice and the ability to relocate wires, cable or other equipment.

(o) The Company, or its agents, including contractors and subcontractors of the Company, shall have the authority to trim trees upon and overhanging the Streets or public places so as to prevent the branches of such trees from coming in contact with the wires, cables, or other equipment of the Company. Any such tree trimming shall only be performed in accordance with accepted pruning standards (e.g. International Society of Arboriculture ("ISA")) and applicable laws and regulations. The Company shall be treated the same as other similarly situated entities with regard to tree trimming. If the Company or its agents, including contractors and subcontractors, wish to cut down and remove any tree or trees as may be necessary for the installation and maintenance of its equipment it shall apply to the Borough for permission, and if permission is granted, comply with applicable laws and regulations.

(p) The Company shall not discriminate between or among any individuals in the availability of Cable Television Service based upon income in accordance with 47 U.S.C. § 541(a)(3) or based upon race or ethnicity. The Company shall establish pricing for Cable Television Service that is non-discriminatory within the same general class of Subscribers which must be applied fairly and uniformly in accordance with federal and state law. Nothing contained herein shall be construed to prohibit the Company from offering (i) discounts to commercial and multiple family dwelling Subscribers billed on a bulk basis; (ii) valid promotional discounts; (iii) reduced rates for Subscribers who have multiple services; or (iv) the offering of discounts to senior citizens so that all customers shall receive signals of good technical quality and a full range of available services.

(q) The Company shall not erect, install, construct, repair, replace or maintain its System in such a fashion as to unduly burden the present or future use of the Streets or public ways. If Borough in its reasonable judgment determines that any

portion of the System is an undue burden, Company at its expense shall modify its System or take such other actions as Borough may determine is in the public interest to remove or alleviate the burden, and Company shall do so within the reasonable time period established by Borough.

(r) The Company shall at its own cost and expense, protect, support, disconnect, relocate or remove from the streets any portion of the System when reasonably required to do so by the Borough due to street or other public excavation, construction, repair, grading or re-grading; traffic conditions; the installation of sewers, drains, water pipes, power or signal lines, track ways or tracks; municipal owned facilities; the vacating, construction or relocation of Streets or any other type of structure; or other improvements by Borough or another public agency or any other type of public improvement which the Borough reasonably deems necessary for the public health, safety or welfare. The Borough may temporarily disconnect, remove or relocate any of Company's facilities which have not been disconnected, removed or relocated within a reasonable period of time after a written request from Borough to Company sent via certified mail, return receipt requested (a "Borough Relocation"). Company shall reimburse Borough its entire expense of a Borough Relocation including a reasonable cost of overhead. Neither the Borough nor any agent, contractor or employee of the Borough shall be liable to Company, its customers or third parties for any damages caused by them to the System due to a Borough relocation, except to the extent caused by the intentional misconduct of the Borough or any agent thereof. In requiring the Company to protect, support, disconnect, relocate or remove from the Streets or public ways any portion of the System, the Borough shall treat Company the same as, and require no more of Company, than any other similarly situated utility. Company shall have the right to seek reimbursement from the Borough, under any applicable insurance or government program for reimbursement.

(s) Except in emergencies or for restoration of service, no underground installation or other work activities shall be initiated when weather conditions prohibit proper restoration of disturbed areas in a timely manner.

(t) While construction activities are in progress on any portion of streets or public places, the Company shall maintain reasonable barriers, lights at night, and other warnings to the users of the streets or public places.

(u) For all work in the streets or public places which may disturb the normal flow of vehicular or pedestrian traffic, the Company shall employ street closure or partial closure practices, as delineated in the Pennsylvania Department of Transportation Manual or Regulations and the Pennsylvania Vehicle Code in regards to traffic control devices.

(v) The Company shall maintain a regional customer service center that is open during normal business hours. Among other services, the customer service

center shall provide bill payment and equipment pick-up and drop-off services.

(w) The Company shall maintain a competent staff of well-trained employees sufficient to provide adequate and prompt service to its Subscribers. The Company shall require any employee or agent, including any subcontractor, to display a photo identification badge while working in the Borough.

(x) Standard installations will be performed within seven business days after an order has been placed.

(y) Upon scheduling of appointments with the customer for installations, service calls and other activities, the Company shall provide the customer with either a specific time or an appointment window of a maximum of four (4) hours during normal business hours. The Company may schedule service calls and installation activities outside of normal business hours for the express convenience of the customer. The Company shall use due care in the process of installation and shall restore any damaged property to its prior condition.

(z) Except in the case of an emergency or adverse weather conditions, Company may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If, at any time, an installer or technician is running late, an attempt to contact the customer must be made prior to the time of the appointment. If the appointment must be rescheduled, it must be done so at a time that is convenient for the customer.

(aa) The Company shall notify subscribers and the Borough in writing of any changes in rates, programming services or channel positions a minimum of thirty (30) days in advance of such changes, provided such changes are within the control of the Company. The Company shall not be required to provide prior notice to subscribers of any rate changes that are the result of a regulatory fee, franchise fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, the Commonwealth of Pennsylvania or the Borough on the transaction between the Company and the subscriber.

(bb) In accordance with applicable federal and state laws, the Company shall not charge subscribers for any services that they have not affirmatively requested, provided this subsection shall not be construed to limit the Company's right to restructure services or rates as permitted by applicable law.

(cc) The Company shall maintain a file available to the public containing all written notices provided to subscribers pursuant to the requirements contained herein by the Company during the previous twelve (12) months.

(dd) Bills shall be clear, concise and understandable. Bills must be fully itemized, with itemizations including, all applicable service tiers, equipment charges

and any installation or repair charges. Bills shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances. The Company shall provide its telephone number and address on subscriber's bills.

(ee) The Company shall establish clear written procedures for resolving all customer complaints, which shall include at least the following: (i) the Company shall provide the customer with a response to a written complaint within thirty (30) days of its receipt. Such response shall include the results of its inquiry into the subject matter of the complaint, its conclusions based on the inquiry, and its decision in response to the complaint. (ii) If the Borough is contacted directly about a customer complaint, the Borough may attempt to notify the Company promptly and in writing. The Company shall respond to the Borough in writing within ten (10) business days regarding the results of its investigation of the complaint or in the alternative, the need for additional time to investigate and resolve the problem. For purposes of this Section, "resolve" means that the Company shall perform those actions which, in the normal course of business, are necessary to investigate a subscriber's complaint and advise the subscriber of the results of that investigation. (iii) The Company shall maintain records of written customer complaints for inspection by the affected subscriber, which shall contain the date each complaint is received, the name and address of the affected subscriber, a description of the complaint, the date of resolution of the complaint, and a description of the resolution.

(ff) Excluding conditions beyond its control, the Company shall begin working on a service interruption promptly and in no event later than twenty-four (24) hours after the interruption becomes known and shall diligently pursue to completion. Notice of a service interruption of a single subscriber shall give rise to this obligation on behalf of Company. All other service calls not affecting public health, safety or welfare shall occur within a maximum of forty-eight (48) hours after notice to Company or scheduled at the convenience of the customer and shall be diligently pursued to completion.

(gg) Company shall exercise commercially reasonable efforts to limit any service interruption for the purpose of maintaining, repairing, or constructing the System. Except in cases of an emergency, Company shall perform modifications, repairs and upgrades to the System between 12:00 a.m. and 6:00 a.m. which may interrupt service.

(hh) In the event that there is a service interruption to any subscriber for six (6) or more consecutive hours and upon receipt of written or a credible oral request, it shall grant such subscriber a pro rata credit or rebate, on a daily basis, of that portion of the service charge during the next consecutive billing cycle, or, at its option, apply such credit to any outstanding balance that is currently due.

(ii) Company shall make Cable Television Services available to the

maximum practical extent provided by law to persons with disabilities. Company shall adhere to the requirements for closed captioning as set forth by the Telecommunications Act of 1996 and FCC rules (47 C.F.R. §76.606).

(jj) Company shall respect the rights of privacy of every subscriber and shall not violate such rights through the use of any device or signal associated with the System. Company shall at all times comply with the privacy provisions of Section 631 and 632 of the Communications Act of 1934 Act and all other applicable federal and state privacy laws and regulations. At the same time, all references to privacy in this Section are subject to the provisions of Public Law 107-56 (October 26, 2001), Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, known as the "USA PATRIOT ACT". Company shall be responsible for complying with such privacy policy and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personal subscriber information is handled and protected strictly in accordance with this policy and all applicable laws and regulations.

(kk) Company shall provide upon request and free of charge one service drop and basic Cable Service to the Borough at each of the following locations: (1) White Haven Borough Municipal Building for use by the Road Department, Police Department, Zoning Department, Supervisors and Secretary with an address of 312 Main Street, White Haven, PA 18661; (2) White Haven Fire Company No. 1 with a current address of 307 Buffalo Street, White Haven, PA 18661; (3) White Haven Ambulance Building currently located at 500 Towanda Street, White Haven, PA 18661; and (4) White Haven Area Community Library and Visitors' Center currently located at 99 Towanda Street, PO Box 57, White Haven, PA 18661. Should any of the above addresses change after the adoption of this Ordinance, then so long as the new address is located within the Borough and within 300 aerial feet or 150 underground feet of the Company's System, the Company agrees to provide upon request and free of charge one service drop and basic Cable Service at the new address.

**§106. Payment to Borough/Franchise Fee.** The Company shall pay to the Borough for the privilege of operating its Community Antenna Television System under this franchise an amount equal to Five (5%) Percent of its gross revenue derived within the Borough from Cable Television Service (including revenues from all services furnished within the Borough, for example, basic cable, expanded basic service, premium channels consisting of HBO, Cinemax, The Movie Channel, and Showtime, and Pay TV revenues) ("Fee"). The Company shall make payment of the Fee within sixty (60) days after the end of each calendar year. An annual summary report showing such gross revenue received by the Company shall be filed with the secretary of the Borough and a copy shall be kept in the office of the Company. This report shall be sworn to by either the president, vice president, treasurer, or other financial officer of the Company. The Borough shall have the right to inspect at reasonable times the records of the Company relating thereto to the extent necessary to verify the payments to which it is entitled. The Fee to be paid to and accepted by the Borough is in full payment for the

privilege of using Streets and public places of the Borough for the purpose of carrying out this franchise, except as other fees and charges may be required and made by the laws of the United States of America and the Commonwealth of Pennsylvania, including the right of the Borough to impose fees on future noncable related services. The Borough further reserves the right to regulate cable operator rates consistent with Federal or State Laws should the Federal Communication Commission ("FCC") no longer be involved in rate regulations in the future.

**§107. Franchise Term.** Conditioned upon the compliance with the terms of this Ordinance by the Company, the term of this franchise granted herein shall be for ten (10) years, commencing on the execution of this Ordinance. This Ordinance shall be renewable by the Company upon written notice to the Borough for an additional ten (10) year term with the approval of the Borough.

**§108. Assignment.** The franchise or privilege granted under this Ordinance shall be assignable by the Company with forty-five (45) days prior written notice to Borough Council. Such prior notice shall not be required for the following: (i) the assignment of, or the granting of a security interest in, the Community Antenna Television System for the purpose of securing indebtedness; or (ii) the assignment or transfer of the Community Antenna Television System to an affiliate under common ownership or control with Company. All of the provisions in this Agreement shall bind Company, the Borough and their respective successors and assigns.

**§109. Acceptance by the Company.** By signing below, the Company agrees to the terms of this Ordinance and when signed by the Company and adopted by the Borough, this Ordinance shall constitute a legally binding contract between the Borough and the Company.

**§110. Preemption.** After the effective date of this Ordinance, should any federal or state agency exercise jurisdiction over the subject matter under this Ordinance, then to the extent such jurisdiction shall preempt or preclude the exercise of like jurisdiction by the Borough, the jurisdiction of the Borough shall cease and terminate.

**§111. Forfeiture.** Council may at any time declare a forfeiture of this grant for violation or default by the Company of any of the terms hereof, provided that none of the terms of this grant shall be deemed to be violated so as to permit such forfeiture unless the Company shall first be given written notice by the Borough of such violation or default and of the attempt to declare a forfeiture, and thereafter such violation or default shall continue for a period of more than ninety (90) days without cure or diligent pursuit of such cure having commenced within said ninety (90) days, all of the rights and privileges of the Company under the provisions of this Ordinance shall be forthwith declared forfeited and revoked. If any action shall be instituted or prosecuted directly or indirectly by the Company or by its stockholders or creditors to set aside or have declared void any terms of this grant, the whole of this grant may be thereupon forfeited and annulled at the option of the Council to be expressed by ordinance;

provided, however, that the Company shall not be deemed to be in default of performance of any provision of this grant, nor shall any forfeiture be invoked for any violation of or failure to perform any provision hereof due to strikes, lockouts, insurrections, acts of God or any cause beyond the control of the Company. Individual Subscribers may sue the Company if default as aforesaid occurs. Notwithstanding anything to the contrary, if the Company shall fail to make any payment required hereunder within thirty (30) days after the same is due, any privilege, franchise or permission granted under this Ordinance shall at the Borough's option become null and void, and all rights and privileges of the Company hereunder shall cease and terminate.

**§112. Severance.** If any section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, or word in this Ordinance is for any reason declared to be illegal, unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect or impair the validity of the Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word or remaining portion of the Ordinance. Council does hereby declare that it would have adopted the Ordinance and each section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase and word thereof, irrespective of the fact that any one or more of the sections, subsections, provisions, regulations, limitations, restrictions, sentences, clauses, phrases or words may be declared illegal, unconstitutional or invalid.

**§113. Notices.** Notices under this Ordinance shall be in writing and given by certified mail return receipt requested, or overnight courier, to the Borough at 312 Main Street White Haven, PA 18661; and to the Company at 911 Market Street, Berwick, PA 18603, with a copy to: General Counsel, Harron Communications, L.P., 70 East Lancaster Avenue, Frazer, PA 19355.

**§114. Equal Opportunity Employer.** Company shall comply with all applicable federal and state laws and regulations regarding equal opportunity employment.

**§115. Captions.** The captions are intended solely to assist the reader and meant only for reference to the sections and provisions of this Ordinance. Such captions shall not affect the meaning or interpretation of this Ordinance.

**§116. Governing Law.** This Ordinance shall be governed and construed by and in accordance with the laws of the Commonwealth of Pennsylvania. If suit is brought by the Company or the Borough, the parties agree that trial of such action shall be vested exclusively in the state courts of Pennsylvania, County of Luzerne, or in the United States District Court for the Middle District of Pennsylvania.

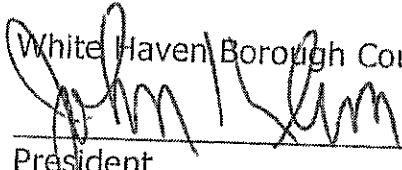
**§117. Entire Agreement.** This Ordinance once adopted by the Borough and approved by the Company shall constitute a legally binding agreement. This Ordinance contains the entire agreement between the parties, supersedes all prior agreements, or proposals except as specifically incorporated herein, and cannot be

changed without a subsequent ordinance amended by the Borough and approved by Company.

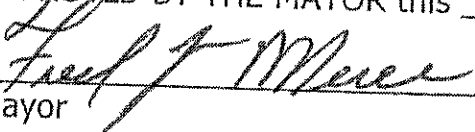
**§118. Effective Date.** This Ordinance shall be effective immediately following its adoption and approval by Company. This Ordinance is adopted by White Haven Borough Council this 23 day of February, 2015.

Attest:

  
Manager

White Haven Borough Council:  
By:   
President

APPROVED BY THE MAYOR this 23 day of February, 2015.

  
Mayor

APPROVED BY THE COMPANY this 1st day of JUNE, 2015.

Gans Communications, L.P. d/b/a  
MetroCast Communications

By: 

Name: DANNY L JOBE

Title: VICE PRESIDENT OF SYSTEM OPERATIONS

## CHAPTER 12

### FRANCHISES

#### Part 1

#### Cable Television

**§101. Short Title.** This Ordinance shall be known and may be cited as the White Haven Borough Cable Television Franchise Ordinance. (Ord. No. 97-1, 13/3/1997, Sec. 1)

**§102. Definitions.** 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 shall include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(a) Community Antenna Television System – means antenna, coaxial cables, amplifiers, drop lines, other conductors, and other equipment or facilities not limited to the foregoing, including any of the same, and any services performed by the use of same furnished by any public utility or other person or entity, whether pursuant to tariffs or any other arrangement, necessary for or incidental to the receiving of television signals or the transmission thereof to customers at the selection of the company for a consideration, or as a public service.

(b) Cable Service – means any broad band telecommunications service that is receive and retransmitted or originated at the primary control center and distributed to a point of reception at the premises of the cable subscriber. Included within this definition are those retransmitted signals of Federal Communications Commission licensed television broadcast stations.

(c) Company – means Gans Multimedia Partnership/Pocono CATV, Inc., a Pennsylvania corporation, grantee of a franchise pursuant to the terms of this Ordinance.

(Ord. No. 97-1, 13/3/1997, Sec. 2)

**§103. Grant of Authority.** The municipality hereby grants the right and privilege to the Company to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the municipality, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the municipality of a community antenna television system for cable television services.

(a) Non-Exclusive Grant – The franchise granted to the Company is to be non-exclusive but otherwise in accordance with all the privileges and authorities granted by the agreement in this Ordinance. The municipality covenants and agrees with the

company that shall not during the term as set forth in Section 7 below grant to any other person, firm or entity a franchise, right or privilege to maintain and/or operate a community antenna television system for cable television service within the municipality unless such franchise imposes on any such person, firm or entity all the same terms, conditions and requirements as imposed upon the company under the terms of this ordinance.

(b) Use of Existing Utility Facilities – It is hereby granted to the Company, its successors and assigns, subject to ordinances, rules, regulations of municipality; the right, privilege and authority to lease, rent, or in any other manner obtain the use of the towers, poles, lines, cables and other equipment and facilities from any and all present and future holders of public licenses of franchises within or partially within the municipality, and to use such towers, poles, lines, cables and other equipment and facilities.

(c) Use of Equipment and Facilities – All equipment and facilities of the company within the municipality may also be used for the reception, transmission and distribution of radio and television signal and audio, visual, electronic or electric signals or impulses to or from areas outside of the municipality.

(d) State Highway Department Permits – All rights and privileges granted to the company by the municipality pursuant to this Ordinance are subject to the provisions of the Second Class Borough Code of the Commonwealth of Pennsylvania. Where a state highway is involved, such construction shall be made under the conditions, restrictions and regulations as may be prescribed in the permit to be obtained from the Department of Transportation of the Commonwealth of Pennsylvania.

(e) Grant of Prescribed Rights – All rights and privileges granted to the company pursuant to this Ordinance further shall be subject to the company obtaining any and all necessary easements, right of ways and other grants from any and all property owners who may be affected by the construction, operation and maintenance of the aforesaid conductors and fixtures.

(Ord. No. 97-1, 13/3/1997, Sec. 3)

#### **§104. Insurance Coverage.**

(a) The company shall at all times keep in effect the following types of insurance coverage:

(1) Workmen's Compensation upon its employees employed or performing services within the municipality.

(2) Property damage liability insurance and personal injury liability insurance in the aggregate amount of One Million (1,000,000.00) dollars as to any one (1) occurrence. Both the property damage and personal injury liability

insurance policies shall be in the name of the company and the municipality as their interests may appear.

(b) The company does hereby agree to indemnify, defend, protect and save harmless the municipality 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 and attorney's fees which may arise out of or be caused by the erection, maintenance, presence, use or removal of the company's equipment or facilities within the municipality or by an act of the company, its agents or employees, and shall carry insurance in the amount hereinafter set forth to protect the municipality from and against all claims, demands, actions, judgments, costs, expenses, liabilities and damages arising or resulting directly from or by reason of any such loss, injury or damage. The company shall also indemnify and save harmless the municipality from any and all claims in law or in equity and shall pay all legal expenses incurred by the municipality in defending any claim that the municipality acted illegally in granting the franchise and adopting this Ordinance. In case legal actions shall be filed against the municipality, wither independently or jointly with the company, to recover for any claim or damages, said company, upon notice to and by said municipality, shall defend the said municipality, shall defend the said municipality, its agents and employees against said action, and in the event of a final judgment being obtained against the said municipality, either independently or jointly with said company, the said company shall pay said judgment and all costs and hold the municipality harmless therefrom.

(Ord. No. 97-1, 13/3/1997, Sec. 4)

**§105. Service Standards.** The company shall operate and maintain the community antenna television system so that all customers shall receive signals of good technical quality and a full range of available services. Any complaints as to the quality of the signals or service shall be promptly and satisfactorily investigated by the company, and adjustments required to correct situations disclosed by such investigations shall be made forthwith. It is hereby agreed by and between the company an municipality, that all installations by the company shall be of a permanent and durable nature and installed in accordance with food engineering practices and comply with existing and future ordinances and regulations of the municipality so as not to interfere in any manner with the rights of the public or individual property owners. The system shall not interfere with the travel and use of public places or facilities by the public, nor shall it obstruct or impede traffic.

(a) The company shall at all times keep at its office full and complete maps, plans and records showing the location of all franchise equipment and facilities installed in the streets, alleys and other public places within the corporate limits of the municipality. The company shall make available a telephone number to the customers so that emergency interruptions to the service may be reported.

(Ord. No. 97-1, 13/3/1997, Sec. 5)

**§106. Payment to the Municipality.** The company shall pay to the municipality for the privilege of operating its community antenna television system under this franchise the sum of five (5%) Percent of its gross revenues derived within the municipality (including revenues from all services furnished within the municipality, for example, basic cable, expanded service, premium channels consisting of HBO, Cinemax, The Movie Channel, and Showtime, and Pay TV revenues. The company shall make payments within 60 days after the end of each calendar year. Payment to being 30 days after the execution of this document. An annual summary report showing such gross revenues received by the company shall be filed with the secretary of the municipality and a copy shall be kept in the office of the company. This report shall be sworn to by either the president, vice-president, treasurer, or other finance officer of the company. The municipality shall have the right to inspect at reasonable time the records of the company relating thereto to the extent necessary to verify the payments to which it is entitled. The said sums of money to be paid to and accepted by the municipality for the purpose of carrying out this franchise, except as other fees and charges may be required and made by laws of the United States of America and the Commonwealth of Pennsylvania. (Ord. No. 97-1, 13/3/1997, Sec. 6)

**§107. Term of Franchise.** The term of this franchise shall be for fifteen (15) years, said term having commenced upon the adoption of this Ordinance. This Ordinance shall be renewable for an additional like term with the approval of the Borough. (Ord. No. 97-1, 13/3/1997, Sec. 7)

**§108. Assignment.** The franchise of privilege granted hereunder shall be fully and freely assignable, but no assignment to any person, firm or corporation shall be effective unless the company gives Council sixty (60) days prior written notice of its intent to assign the franchise. Written notice shall be sent to the Council c/o Secretary to Council. (Ord. No. 97-1, 13/3/1997, Sec. 8)

**§109. Acceptance by the Company.** This grant is made on the express condition that the company, within (30) days after this Ordinance takes effect and becomes operative, shall file with the secretary of the municipality a written acceptance of the same, and when this Ordinance shall have been accepted by the company, such Ordinance and acceptance shall constitute a contract between the municipality and company for all the uses, services, and purposes set forth in this Ordinance, and the company by its acceptance of the provisions of this Ordinance, binds itself to provide the necessary television antenna system and to establish, operate and maintain the local television antenna system contemplated by this Ordinance, continuing without substantial interruption except for causes beyond its control until the expiration of the term of this grant. In the event that the said company fails to file said written acceptance within the term hereinbefore specified, this grant together with any rights or liabilities arising out of the proposal heretofore made for the furnishing of an adequate television antenna system for the benefit of inhabitants of said municipality, and the acceptance of such proposal by the municipality shall be, at the option of the councils, of no course and effect. (Ord. No. 97-1, 13/3/1997, Sec. 9)

**§110. Federal Preemption.** Should any federal or state agency hereafter exercise jurisdiction over the subject matter of this franchise Ordinance, then to the extent such jurisdiction shall preempt or preclude the exercise of like jurisdiction by the municipality, the jurisdiction of the municipality shall cease and terminate. (Ord. No. 97-1, 13/3/1997, Sec. 10)

**§111. Forfeiture.** The councils of the municipality may at any time declare a forfeiture of this grant for violation or default by the company of any of the terms hereof, provided that non of the terms of this grant shall be deemed to be violated so as to permit such forfeiture unless the company shall first be given notice by the municipality of such violation or default and of the attempt to declare forfeiture, and thereafter such violation or default shall continue for a period of more than ninety (90) days, all of the rights and privileges of said company under the provisions of the Ordinance shall be forthwith declared forfeited and revoked. If any action shall be instituted or prosecuted directly or indirectly by the company or by its stockholders or creditors to set aside or have declared void any terms of this grant, the whole of the stockholders or creditors to set aside or have declared void any terms of this grant, the whole of this grant may be thereupon forfeited and annulled at the option of the councils of the municipality to be expressed by ordinance; provided, however that the company shall not be deemed to be in default of performance of any provision of this grant, not shall nay forfeiture be invoked for any violation of or failure to perform any provision hereof due to strikes, lockouts, insurrections, acts of God or any cause beyond the control of the company. Individual subscribers may sue the company if default as aforesaid occurs.

Notwithstanding anything to the contrary, if the company shall fail to make any payment required hereunder within thirty (30) days after the same is due, any privilege, franchise or permission granted under this Ordinance shall at the municipality's option become null and void, and all rights and privileges of the company hereunder shall cease and terminate.

(Ord. No. 97-1, 13/3/1997, Sec. 11)

**§112. Severance.** If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, or word in this Ordinance is for any reason declared to be illegal, unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect or impair the validity of the Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word or remaining portion of the within Ordinance. The councils of the Borough of White Haven, Luzerne County, Pennsylvania, hereby declare that it would have adopted the within Ordinance and each article, section, clause, phrase and word thereof, irrespective of the fact that any one or more of the sections, subsections, provisions, regulations, limitations, restrictions, sentences, clauses, phrases or words may be declared illegal, unconstitutional or invalid. (Ord. No. 97-1, 13/3/1997, Sec. 12)

**Part 2**  
**Sewer and Water**

**§201. Preamble.**

WHEREAS, the Borough of White Haven organized the White Haven Authority under the Municipal Authorities Act of 1945 on September 5, 1950;

WHEREAS, the White Haven Municipal Authority has been continuously in existence since that time performing the functions and duties for which it was established;

WHEREAS, the White Haven Municipal Authority has passed Resolution No. 2 of 2002, wherein it authorized and executed a Certificate requesting White Haven Borough Council to allow it to be terminated in accordance with 53 P.S. §317; and

NOW THEREFORE, be it enacted and ordained by White Haven Borough Council and it is hereby enacted and ordained by the authority of the same that:

**§202. Municipal Approval.** White Haven Borough Council does hereby APPROVE the Certificate of Termination of the White Haven Municipal Authority dated November 26, 2002, wherein the White Haven Municipal Authority by Resolution No. 2 of 2002 requests the termination of its existence pursuant to 53 Pa. C.S.A. §5619 effective upon the adoption of this ordinance and the proper Filing with the Secretary of the Commonwealth and the Luzerne County Recorder of Deeds Office. (Ord. No 5-2002, Sec. 1)

**§203. Adoption.** The Borough of White Haven is adopting this ordinance approving the Certificate requesting termination of the White Haven Municipal Authority based upon the representations of the Authority that it has paid and discharged all of its debt. (Ord. No 5-2002, Sec. 2)

**§204. Transfer of Property and Assets.** Upon the adoption of this Ordinance, the White Haven Borough Municipal Authority shall transfer all of its property and assets to the Borough of White Haven, who shall hereby be authorized to acquire title to the property and assets held or owned by the White Haven Municipal Authority. (Ord. No 5-2002, Sec. 3)

Editorial Note: White Haven Borough Municipal Authority was terminated by Resolution on 11/26/2002 and its assets transferred to White Haven Borough. However, prior to termination, the Authority sold its water and sewer facilities to Aqua Pennsylvania, Inc., which is the current sewer and water provider for White Haven Borough.