

ORDINANCE NO. 4-2004

AN ORDINANCE GRANTING A RENEWAL NON-EXCLUSIVE FRANCHISE TO GANS COMMUNICATIONS, L.P. (THE SUCCESSOR TO GANS MULTIMEDIA PARTNERSHIP), A DELAWARE LIMITED PARTNERSHIP, TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE TOWNSHIP OF SCHUYLKILL, SCHUYLKILL COUNTY, PENNSYLVANIA; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE NON-EXCLUSIVE FRANCHISE, PROVIDING FOR REGULATION AND USE OF SUCH SYSTEM.

WHEREAS, Gans Communications, L.P. ("Company") proposes to continue its operation of a Community Antenna Television System in the Township of Schuylkill ("Municipality"); and

WHEREAS, the Municipality has determined that the Company has the requisite financial, legal and technical capability to fulfill its obligations under the franchise, and that its operation of the cable system is reasonable to meet the Municipality's future cable-related community interests and needs.

NOW, THEREFORE, be it ordained and it is hereby ordained by the Township of Schuylkill under and pursuant to the authority granted to the same by the laws of the Commonwealth of Pennsylvania as follows:

SECTION 1. SHORT TITLE. This Ordinance shall be known and may be cited as the Township of Schuylkill Cable Television Franchise Ordinance.

SECTION 2. 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 shall include the singular number, and words in the singular number shall include the plural number. Terms otherwise defined in this Ordinance shall have the meaning ascribed to them in such other sections of the Ordinance. The word "shall" is always mandatory and not merely directory.

Community Antenna Television System shall mean a 750 MHz fiber and coaxial hybrid plant, including all components and ancillary equipment such as antennas, fiber optic lines, 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.

Cable Service shall mean any broad band telecommunications service that is received and retransmitted or originated at a 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.

Municipality shall mean the Township of Schuylkill, County of Schuylkill and State of Pennsylvania.

Company shall mean Gans Communications, L.P., a Delaware Limited Partnership, grantee of the franchise pursuant to the terms of this Ordinance.

Council shall mean the Board of Supervisors or Council (as the case may be) of the Township of Schuylkill, County of Schuylkill and Commonwealth of Pennsylvania.

Streets shall mean and include all public streets, ways, alleys and parkways owned by the Municipality.

Person and Applicant shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

SECTION 3. 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, public ways 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 the Community Antenna Television System for Cable Services, and to offer and operate a high speed data system via cable modems.

3.1 **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 it 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 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.

3.2 Use of Existing Utility Facilities. It is hereby granted to the Company, its successors and assigns, subject to ordinances, rules, regulations of the 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.

3.3 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 signals and audio, visual, electronic or electric signals or impulses to or from areas outside of the Municipality.

3.4 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.

SECTION 4. 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 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 or indirectly 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, either independently or jointly with the Company, to recover for any claim or damages, the Company, upon notice to and by the Municipality, shall defend the Municipality, its agents and employees against said action, and in the event of a final judgment being obtained against the Municipality, either independently or jointly with said Company, the Company shall pay such judgment and all costs and hold the Municipality harmless therefrom.

SECTION 5. 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 and Municipality that 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 Municipality so as not to interfere in any manner with the rights of the public or individual property owners. The Community Antenna Television 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.

SECTION 6. 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 from video services (Basic, Expanded Basic, Digital and any other video services hereafter provided). The Company shall make payments within 60 days after the end of each calendar quarter. An annual summary report showing such 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 times 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 are in full payment for the privilege of using public thoroughfares of 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 or the Commonwealth of Pennsylvania.

SECTION 7. TERM OF FRANCHISE. The term of this franchise shall be for five (5) years, commencing upon the execution of this Ordinance, provided that that the term shall automatically be extended for an additional three (3) years if either (a) the Company agrees to implement any technical changes or franchise fees on cable modem service that are authorized by the Federal Communications Commission ("FCC") during the initial five (5) years of the term, or (b) the Municipality does not make any requests of the Company to implement such FCC authorized changes (technical or franchise fee on cable modem revenue) before expiration of the initial five (5) year term. This Ordinance shall be renewable by the Company for an additional ~~ten (10)~~ year term with the approval of the Municipality.

Five (5) + (3) years

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SECTION 8. ASSIGNMENT. The franchise granted hereunder shall be assignable by the Company provided that the Company gives the Municipality sixty (60) days prior written notice of its intent to assign the franchise. Written notice shall be sent to the Municipality in care of its Secretary. The Company may assign, mortgage, pledge, or otherwise encumber the Franchise, the Community Antenna Television System, or assets relating thereto, as collateral for a loan or to secure indebtedness.

SECTION 9. ACCEPTANCE BY THE COMPANY. This grant is made on the express condition that the Company, within thirty (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 Community Antenna Television System and to establish, operate and maintain the local Community Antenna Television System contemplated by this Ordinance, continuing without substantial interruption except for causes beyond its control until the expiration of the term of this grant.

SECTION 10. 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.

SECTION 11. FORFEITURE. 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 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 Municipality of such violation or default and of the attempt to declare a forfeiture, and thereafter such violation or default shall continue uncured (or such cure being diligently pursued) for a period of more than 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 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, nor shall any forfeiture be invoked for any violation of or failure to perform any provision hereof due to strikes, lockouts, insurrections, war, civil strife, terrorism, acts of God or any cause beyond the control of the Company.

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 upon twenty (20) days prior written notice become null and void, and all rights and privileges of the Company hereunder shall cease and terminate.

SECTION 12. 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 Municipality hereby declares that it would have adopted the within Ordinance and each article, 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.

ENACTED AND ORDAINED this 2nd day of June, 2003, 2004 in regular session duly assembled.

TOWNSHIP OF SCHUYLKILL

ATTEST:

Mary E. Dubel
MUNICIPAL SECRETARY

BY: Joseph Boran *Chairman*
PRESIDENT
BY: Maureen E. Vank *Sec*
MEMBER *Chairman*
BY: James Thompson *Superior*
MEMBER

WITNESS:

Theresa A. Volosky

GANS COMMUNICATIONS, L.P.

BY: Terrence A. Loran
TITLE: VP