

**LEBOEUF TOWNSHIP
ERIE COUNTY, PENNSYLVANIA**

ORDINANCE NO. 1 OF 2017

AN ORDINANCE

ADOPTING AND GRANTING A NON-EXCLUSIVE FRANCHISE TO ARMSTRONG UTILITIES, INC., GRANTING THE RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN LEBOEUF TOWNSHIP, AUTHORIZING THE EXECUTION OF A CABLE FRANCHISE AGREEMENT WITH ARMSTRONG UTILITIES, INC, SETTING FORTH THE TERM OF THE FRANCHISE, PROVIDING FOR REPEALER, SEVERABILITY, AND EFFECTIVE DATE.

WHEREAS, pursuant to the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, and any amendments thereto, the regulations of the Federal Communications Commission and the Second Class Township Code, 53 P.S. §66532, LeBoeuf Township (the "Township") is authorized to grant or renew franchises to construct, operate and maintain a Cable System utilizing public rights-of-way and properties within the Township's jurisdiction; and

WHEREAS, Armstrong Utilities, Inc. ("Armstrong") has approached the Township regarding entering into a Cable Franchise Agreement (the "Agreement") to govern the maintenance, construction, and operation of its Cable System, over, under, and along the Township rights-of-way for use by the Township's residents; and

WHEREAS, the Township has determined that Grantee has the financial, legal, and technical ability to provide Cable Service to subscribers living in the Township; and

WHEREAS, the Township has determined that the public interest would be served by entering into the Agreement with Armstrong to provide Cable Service to subscribers living in the Township; and

WHEREAS, Armstrong and the Township have negotiated the Agreement, attached and incorporated hereto as Exhibit A.

NOW THEREFORE, BE IT ORDAINED that the LeBoeuf Township Board of Supervisors of LeBoeuf Township, Erie, County, Pennsylvania does hereby approve the following:

Section 1. Title

- A. This Ordinance shall be known and may be cited as the “LeBoeuf Township Cable Franchise Ordinance.”

Section 2. Recitals

- A. The recitations set forth above are incorporated herein as if more fully set forth.

Section 3. Definitions

- A. Where not defined in this or another Township ordinance or applicable Pennsylvania or Federal statute, terms shall be given their ordinary, customary and common meaning.

- B. The following words, when used in this Ordinance, shall have the meanings ascribed to them in this section:

- 1) Cable System - a facility within the Franchise Authority consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service and which is provided to multiple subscribers within a community. The term does not include (i) a facility that only retransmits the signals of one or more television broadcast stations; (ii) a facility that serves subscribers without using any public right-of-way; (iii) a facility of a common carrier which is subject to the provisions of 47 USC Ch. 5, Subch. IL unless the facility is used in the transmission of video programming directly to subscribers (but not if the facility is used solely to provide interactive on-demand services); (iv) an open video system that complies with 47 USC §573; or (v) any facilities of any electric utility used solely for operating its electric utility system (47 USC §522(7)).
- 2) Cable Service - the one-way or two-way transmission to or from subscribers of video programming or other programming services, and subscriber interaction, if any, which is required for the selection or use of video programming or other programming service. (47 USC §522(6)).
- 3) Franchise - an initial authorization, or renewal thereof, issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system. (47 USC §522(9)).

Section 4. Franchise Authority

- A. As set forth in the Telecommunications Act of 1996, 47 U.S.C. §541, the Township has the legal authority to award one or more cable Franchises within its

jurisdiction, except that it may not grant an exclusive Franchise and may not unreasonably refuse to award an additional competitive franchise.

Section 5. Agreement and Award of Franchise to Armstrong

- A. The Township hereby awards a non-exclusive Franchise to Armstrong, such that Armstrong is hereby authorized to install, operate, and maintain a Cable System and Cable Service within the Township.
- B. The Board of Supervisors for the Township is hereby authorized to execute the Agreement with Armstrong, attached and incorporated as Exhibit A, which shall explicitly govern the provision of a Cable System and Cable Service within the Township.

Section 6. Term and Renewal

- A. The Franchise will begin on May 24, 2017 and continue for a period of ten (10) years until May 24, 2027.

Section 7. Repealer

- A. All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed.

Section 8. Severability

- A. If any sentence, clause, section or amendment of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or amendments of this Ordinance. It is hereby declared as the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clauses, section, or amendment thereof not been included herein.

Section 9. Effective Date

- A. This Ordinance shall become effective on May 29, 2017, five days after being enacted by the Board of Supervisors of the Township.

DULY ORDAINED AND ENACTED this 24th day of May, 2017, by the Board of Supervisors of LeBoeuf Township, Erie County, Pennsylvania, in lawful session duly assembled.

ATTEST:

Catherine Wise
Township Secretary

James H Glover
James Glover

Robert Rohrer

Michael Porter
Michael Porter

SECRETARY CERTIFICATE

I certify that the above is a true copy of the LeBoeuf Township, Erie County, Pennsylvania, Ordinance No. 1 of 2017 adopted by the LeBoeuf Township Board of Supervisors on May 24, 2017 and advertised in the Erie Times-News on May 17 2017.

Catherine Wise
Township Secretary

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