

ORDINANCE NO. 244

**ORDINANCE OF THE TOWNSHIP OF MIDDLE SMITHFIELD, MONROE COUNTY, PENNSYLVANIA, AUTHORIZING THE RENEWAL OF THE AMENDED CABLE FRANCHISE AGREEMENT BETWEEN THE TOWNSHIP AND BLUE RIDGE CABLE TECHNOLOGIES, INC. T/A, D/B/A BLUE RIDGE COMMUNICATIONS FOR AN ADDITIONAL EIGHT (8) YEAR TERM; AMENDING CHAPTER A203 OF THE MIDDLE SMITHFIELD TOWNSHIP CODE OF ORDINANCES, CABLE FRANCHISE AGREEMENT, BY ADDING A NEW SECTION A203-3 RENEWING THE AMENDED CABLE FRANCHISE AGREEMENT AND REMOVING THE FRANCHISE FEE; AND FURTHER AUTHORIZING THE EXECUTION OF A RENEWAL AGREEMENT WITH BLUE RIDGE COMMUNICATIONS CONSISTENT WITH THE PROVISIONS OF THIS ORDINANCE**

**WHEREAS**, Blue Ridge Cable Technologies, Inc. t/a, d/b/a Blue Ridge Communications (“Franchisee”) is a “cable operator” and Middle Smithfield Township (“Township”) is a “local franchising authority” in accordance with Title VI of the Communications Act (see 47 U.S.C. § 522(5), (10)) and the Township is authorized to grant one or more nonexclusive cable franchises to operate a Cable System within the Township pursuant to Title VI of the Communications Act;

**WHEREAS**, the Township granted to the Franchisee a nonexclusive initial cable franchise to install, maintain, extend, and operate a Cable System in the Township for a term of eight (8) years (the “Cable Franchise”) pursuant to Ordinance No. 161 which was adopted on June 12, 2008, and the Township entered into the Cable Franchise Agreement between Middle Smithfield Township and Franchisee on or about June 12, 2008 (“Cable Franchise Agreement”);

**WHEREAS**, the Township thereafter adopted Ordinance No. 161-A on September 30, 2008 and entered into the Amended Cable Franchise Agreement that added the five percent (5%) franchise fee (“Amended Cable Franchise Agreement”);

**WHEREAS**, the Township thereafter adopted Ordinance No. 207 on May 26, 2016 renewing the Amended Cable Franchise Agreement for an additional eight (8) year term;

**WHEREAS**, the Franchisee has operated a Cable System in accordance with the Amended Cable Franchise Agreement;

**WHEREAS**, the Franchisee has requested that the Township renew the Franchisee’s Amended Cable Franchise Agreement in order to continue to provide Cable Service to residents of the Township;

**WHEREAS**, pursuant to and in accordance with applicable federal and state law, the Township undertook a process to determine whether it should renew the Amended Cable Franchise Agreement and the terms for such a renewal;

**WHEREAS**, the Township has examined the past performance of the Franchisee and has identified the Township's future cable-related needs and interests;

**WHEREAS**, following good faith negotiations between the parties, the Township and the Franchisee have agreed on the terms for a renewal of the Amended Cable Franchise Agreement, under which the Franchisee will continue to operate its Cable System in the Township;

**WHEREAS**, the Township has determined that the renewal of the Amended Cable Franchise Agreement and the process for consideration of it complies with all applicable federal, state and local laws and regulations; and

**WHEREAS**, the Township, after affording the public notice, holding a public hearing and affording the public an opportunity for comment, has determined that the public interest would be served by renewing the Franchisee's Amended Cable Franchise Agreement in accordance with the provisions of this Ordinance and as otherwise set forth herein.

**NOW THEREFORE, BE IT ORDAINED AND ENACTED** that the Middle Smithfield Township Board of Supervisors does hereby approve the renewal of the Amended Cable Franchise Agreement as negotiated with the Franchisee in a manner and form consistent with the terms and conditions set forth herein and does hereby authorize the execution of such a renewal of the Amended Cable Franchise Agreement, consistent with the revisions, terms and conditions set forth herein, and it is hereby ordained and enacted by the authority of same to wit:

#### **SECTION 1. AUTHORIZATION OF RENEWAL OF AMENDED CABLE FRANCHISE AGREEMENT**

The Board of Supervisors hereby authorizes the renewal of the Amended Cable Franchise Agreement between the Township and Franchisee executed on or about September 30, 2008 and thereafter renewed on or about May 26, 2016, for an additional eight (8) year term, ending on June 11, 2032, subject to the terms and conditions set forth herein, and in particular subject to the removal of the franchise fee until otherwise determined necessary by the Township. The remaining terms and conditions of the prior authorizing ordinances and the Amended Cable Franchise Agreement, except as otherwise revised herein, shall remain in full force and effect.

#### **SECTION 2. EXECUTION OF RENEWAL AGREEMENT**

The Chair or Vice Chair of the Board of Supervisors is hereby authorized to execute and deliver, on behalf of the Township, a Renewal Agreement with Franchisee in accordance with the provisions and conditions set forth herein, and in particular subject to the removal of the franchise fee until otherwise determined necessary by the Township. The Renewal Agreement shall include a provision for the eight (8) year extension as well as a provision for the removal of the franchise fee and the Township's ability to reimplement and/or reestablish the franchise fee as and when deemed necessary by the Township. The Renewal Agreement shall specifically state that the franchise fee shall be reduced to zero effective July 1, 2024 and Franchisee shall no longer pass through a franchise fee to its customers after July 1, 2024 unless and until the Township

deems it necessary to reimplement and/or reestablish the franchise fee, which shall be within the discretion of the Township. The remaining terms and conditions of the Amended Cable Franchise Agreement shall remain in full force and effect.

### **SECTION 3. AMENDMENT TO THE CODE OF ORDINANCES**

Chapter A203 of the Middle Smithfield Township Code of Ordinances, Cable Franchise Agreement, is hereby amended by the addition of the following new Section A203-3 to read as follows:

#### **§A203-3      Authorization of Renewal, 2024**

The Board of Supervisors authorizes the renewal of the Amended Cable Franchise Agreement between the Township and Franchisee, executed on or about September 30, 2008 and thereafter renewed on or about May 26, 2016, for an additional eight (8) year term, ending on June 11, 2032, subject to the terms and conditions set forth herein, and in particular subject to the removal of the franchise fee until otherwise determined necessary by the Township. The franchise fee shall be reduced to zero effective July 1, 2024 and Franchisee shall no longer pass through a franchise fee to its customers after July 1, 2024 unless and until the Township deems it necessary to reimplement and/or reestablish the franchise fee. The decision to reimplement and/or reestablish the franchise fee shall be within the discretion of the Township. The remaining terms and conditions of the Amended Cable Franchise Agreement shall remain in full force and effect.

### **SECTION 4. REPEALER**

All ordinances or parts of ordinances inconsistent with the instant Ordinance are hereby repealed, but only insofar as the same are inconsistent herewith.

### **SECTION 5. SEVERABILITY**

The provisions of this Ordinance shall be severable, and if any of the provisions hereof shall be found to be invalid or unenforceable, the remaining provisions of this Ordinance shall remain in effect.

### **SECTION 6. EFFECTIVE DATE.**

This Ordinance shall take effect five (5) days after the date of its enactment.

**ENACTED AND ORDAINED** this 8 day of August, 2024.

Board of Supervisors of Middle Smithfield Township

By: Annette Atkinson  
Annette Atkinson, Chair

By: Mark Oney  
Mark Oney, Vice-Chair

By: Michael J. Dwyer  
Michael J. Dwyer, Supervisor

ATTEST: Michael J. Dwyer  
Township Secretary [TOWNSHIP SEAL]

**2024 RENEWAL OF AMENDED CABLE FRANCHISE AGREEMENT BETWEEN  
MIDDLE SMITHFIELD TOWNSHIP AND BLUE RIDGE COMMUNICATIONS**

This 2024 Renewal of the Amended Cable Franchise Agreement (“2024 Renewal”), dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024, is made by and between Bue Ridge Cable Technologies, Inc. t/a, d/b/a Blue Ridge Communications (“Blue Ridge”) and Middle Smithfield Township (“Township”).

**WHEREAS**, Blue Ridge is a “cable operator” and the Township is a “local franchising authority” in accordance with Title VI of the Communications Act (see 47 U.S.C. § 522(5), (10)) and the Township is authorized to grant one or more nonexclusive cable franchises to operate a Cable System within the Township pursuant to Title VI of the Communications Act;

**WHEREAS**, the Township granted to Blue Ridge a nonexclusive initial cable franchise to install, maintain, extend, and operate a Cable System in the Township for a term of eight (8) years (the “Cable Franchise”) pursuant to Ordinance No. 161 which was adopted on June 12, 2008, and the Township entered into the Cable Franchise Agreement between Middle Smithfield Township and Blue Ridge on or about June 12, 2008 (“Cable Franchise Agreement”);

**WHEREAS**, the Township thereafter adopted Ordinance No. 161-A on September 30, 2008 and entered into the Amended Cable Franchise Agreement that added the five percent (5%) franchise fee (“Amended Cable Franchise Agreement”);

**WHEREAS**, the Township thereafter adopted Ordinance No. 207 on May 26, 2016 renewing the Amended Cable Franchise Agreement for an additional eight (8) year term;

**WHEREAS**, Blue Ridge has operated a Cable System in accordance with the Amended Cable Franchise Agreement;

**WHEREAS**, Blue Ridge has requested that the Township renew Blue Ridge’s Amended Cable Franchise Agreement in order to continue to provide Cable Service to residents of the Township;

**WHEREAS**, pursuant to and in accordance with applicable federal and state law, the Township undertook a process to determine whether it should renew the Amended Cable Franchise Agreement and the terms for such a renewal;

**WHEREAS**, the Township has examined the past performance of Blue Ridge and has identified the Township’s future cable-related needs and interests; and,

**WHEREAS**, following good faith negotiations between the parties, the Township and Blue Ridge have agreed on the terms for a renewal of the Amended Cable Franchise Agreement, under which Blue Ridge will continue to operate its Cable System in the Township;

**NOW, THEREFORE**, intending to be legally bound, the parties hereto do hereby promise, covenant and agree as follows:

1. The above-referenced Amended Cable Franchise Agreement shall be extended for an additional eight (8) year term, beginning on June 11, 2024 and expiring on June 11, 2032, subject to the revisions and provisions set forth herein. This 2024 Renewal shall be retroactive and considered to be in effect as of June 11, 2024.
2. The parties hereto agree to amend Section 2.1 of the Amended Cable Franchise Agreement, Franchise Fees, by reducing the franchise fee referenced in Section 2.1 of the Amended Cable Franchise Agreement to 0% until otherwise deemed necessary by the Township. In particular, Section 2.1 of the Amended Cable Franchise Agreement shall be amended to read as follows:

## 2.1 FRANCHISE FEES

- (a) Blue Ridge shall pay to the Township an amount equal to zero percent (0%) of the Gross Revenues derived from the operation of its Cable System in the Township until otherwise deemed necessary by the Township. The term "Gross Revenues" is defined in Section 14 "Definitions" below. Blue Ridge shall not deduct or otherwise credit against the franchise fee any tax, fee or assessment of general applicability. The Township may amend the franchise fee upon sixty (60) days written notice to Blue Ridge provided that the franchise fee may not exceed the maximum percentage permitted by law. Blue Ridge may pass franchise fees through to the Subscribers pursuant to applicable law and regulations in the event the Township establishes a franchise fee.
- (b) It is specifically acknowledged and agreed to by the parties that the Township may amend this Section of the Amended Cable Franchise Agreement at any time by requiring Blue Ridge to pay a franchise fee up to an amount permitted by law. The Township may increase the franchise fee to be paid by Blue Ridge at any time with sixty (60) days written notice, and such decision shall be within the sole discretion of the Township, subject to the limitations provided by law. It is further specifically acknowledged and agreed to by the parties that Blue Ridge shall not charge and/or pass on any franchise fee to its customers during the time there is no franchise fee required by the controlling Amended Cable Franchise Agreement.

3. As set forth above, the franchise fee presently assessed at 5% of gross revenues shall be reduced to zero retroactively to be effective July 1, 2024 and Blue Ridge shall no longer pass through a franchise fee to its customers after July 1, 2024, unless the Township establishes a franchise fee at some time in the future. Blue Ridge specifically agrees to provide a credit to those customers that were charged a franchise fee in July and/or August 2024 in the amount of the franchise fee charged.
4. Except as explicitly set forth in this 2024 Renewal, all the other provisions, terms and conditions of the above-referenced Amended Cable Franchise Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereby cause this 2024 Renewal to be executed the day and year first above written.

BLUE RIDGE/FRANCHISEE:

BUE RIDGE CABLE TECHNOLOGIES, INC.  
T/A, D/B/A BLUE RIDGE  
COMMUNICATIONS

Attest: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

TOWNSHIP:

Attest: Michael G. Clewell

MIDDLE SMITHFIELD TOWNSHIP  
BOARD OF SUPERVISORS

By: Annette Atkinson

Name:

Title:

Annette Atkinson  
Chairperson