

**PICTURE ROCKS BOROUGH  
LYCOMING COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 2002-01**

**AN ORDINANCE OF THE BOROUGH OF PICTURE ROCKS, LYCOMING  
COUNTY, PENNSYLVANIA, REGULATING "PRIVATE COMMUNICATIONS  
SYSTEMS".**

**IT IS HEREBY ENACTED AND ORDAINED** by the Borough Council of the Borough of Picture Rocks, Lycoming County, Pennsylvania ("Borough"), as follows:

**ARTICLE I**

**Section 1-1. Purpose.**

The purpose of this Ordinance is:

(a) To regulate the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of a private communications system in, upon, along, across, above, over, under or in any manner connected with the streets, public ways or public places within the corporate limits of the Borough; and

(b) To provide the Borough with compensation for occupation and use of the Borough's rights-of-way for a private communication system; and

(c) To provide the Borough with compensation for acquisition and maintenance of the Borough rights-of-way when used for commercial purposes; and

(d) To provide the Borough with compensation for the cost of regulation imposed by this ordinance on a private communications system.

**Section 1-2. Definitions.**

For the purposes of this ordinance and any license issued in accordance herewith, the following terms, phrases, words and their derivations shall have the meaning given herein unless otherwise specifically provided in this Ordinance, unless the context clearly indicates otherwise or unless such meaning would be inconsistent with the manifest intent of the Borough.

(a) "Borough" means the Borough of Picture Rocks.

(b) "Cable communications system" means a non-broadcast facility consisting of a set of transmission paths with associated signal generation, reception and control equipment, under common ownership and control, which distributes or is designed to

distribute to subscribers the signals of one or more television broadcast stations and is franchised by the Borough. This definition shall not include facilities or portions of facilities that provide internet access facilities.

(c) "Customer" means a person who for a charge or payment of a fee receives, sends or uses any signal or service provided, collected or distributed by a private communications system licensed by the Borough.

(d) "FCC" means the Federal Communications Commission or its legally appointed successor.

(e) "License" means the privilege granted by the Borough by which the Borough authorizes a person to erect, construct, reconstruct, operate, dismantle, test, use and maintain a private communications system that occupies the streets, public ways or public places within the Borough. Any license issued in accordance herewith shall be a non-exclusive license.

(f) "Licensee" means the person or its legal successor in interest who is issued a license or licenses in accordance with the provisions of this chapter for the erection, construction, reconstruction, operation, maintenance, dismantling, testing, repair and use of a private communications system in the Borough.

(g) "Local Access Transport Area" (LATA) means the geographic area and communications system in which the Borough is located and in which Alltel or its successor is authorized by the Public Utilities Commission of Pennsylvania to provide local exchange access telecommunications services.

(h) "Private Communications System" means any communications equipment or facilities, including facilities that provide internet access, not part of the LATA or part of a cable communications system franchised by the Borough, that in any manner is connected with the streets, public ways or public places within the corporate limits of the Borough, as now or in the future may exist.

(i) "Street" means any area established for vehicular or public access use or the entire width between the boundary lines of every way publicly maintained when any part thereof is open for public purposes. "Street" includes but is not limited to, highway, avenue, road, alley, right-of-way, lane, boulevard, concourse, bridge, tunnel, parks, parkways, waterways, docks, overheads, wharves and piers.

(j) "Total local gross revenues" means all cash, credits, or property of any kind or nature reported as revenue items on licensee's audited income statements arising from or attributable to the sale or exchange of private communications services by the licensee within the Borough or in any way derived from the operation of its private communications system, including, but not limited to, any interconnection between its system in the Borough and any system whatsoever. This sum shall be the basis for

computing the fee imposed pursuant to this ordinance. Such sum shall not include any bad debts, deposits, promotional or vendor discounts or credits nor sales, service, occupation or other excise tax to the extent that such taxes are charged separately from normal service charges and are remitted by the licensee directly to the taxing authority.

## ARTICLE II

### **Section 2-1. License Requirement.**

No person shall construct, operate or continue to operate a private communications system which occupies the streets, public ways and public places within the Borough without having been issued a license or licenses by the Borough.

### **Section 2-2. Term of License.**

(a) Any license issued by the Borough in accordance herewith shall be for a term of one year and shall be a non-exclusive license for the use of the streets, public ways or public places within the Borough as specified in the license for the erection, construction, reconstruction, operation, maintenance, dismantling, testing and use of a private communications system.

(b) Any license issued by the Borough is renewable annually upon establishment by the licensee to the satisfaction of the Borough that the licensee is in compliance with this chapter all applicable Federal, State and Local ordinances and regulations and the space occupied is not needed for a public purpose.

### **Section 2-3. License Locations.**

(a) Any license issued for a private communications system in accordance herewith shall apply only to the location or locations stated on the license or licenses.

(b) Nothing in this chapter shall be construed as a representation, promise or guarantee by the Borough that any permit or other authorization required under any Borough ordinance for the construction or installation of a private communications system shall be issued.

### **Section 2-4. Technical Standards.**

All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance and dismantling of a private communications system provided for herein shall be in accordance with all applicable FCC and other Federal, State and Local laws and regulations, including but not limited to the most recent editions of the National Electrical Code and the National Electricity Safety Code.

## **Section 2-5. Bonds.**

(a) All persons submitting a request for a license to construct a private communications system shall file with their request bonds solely for the protection of the Borough with a surety company or trust company or companies as surety or sureties in an amount determined by the borough to protect the Borough from any and all damages or costs suffered or incurred by the Borough as a result thereof, including, but not limited to, attorney's fees and costs of any action or proceeding, and including the full amount of compensation, indemnification, cost of removal or abandonment of any property or other costs, up to the full principal amount of each bond. The amount of the bond shall be set by resolution of Council, however, the bond shall be a minimum of ten (10%) percent of the estimated cost to construct the private communications system. This condition shall be a continuing obligation during the term of any license issued in accordance herewith and thereafter until the licensee shall have satisfied in full any and all obligations to the Borough which may arise out of or pertain to the license for a private communications system.

(b) None of the provisions of this section or any bond accepted by the Borough pursuant hereto, nor any damages recovered by the Borough thereunder, shall be construed to excuse the faithful performance by or limit the liability of the licensee under this Ordinance or any license issued in accordance herewith or for damages either to the full amount of such bond or otherwise.

## **Section 2-6. Compensation for License.**

It shall be a term and condition of any license issued in accordance herewith that as a part of the consideration supporting the issuance of such license and the Borough's permission thereby to occupy and use the streets of the Borough, that the licensee shall pay each year to the Borough the following compensation and license fee.

(a) Any private communications system which serves no customers other than itself shall pay compensation and license fees in the amount of \$1.00 per linear foot for each diameter inch or less of underground conduit or wire or each .250 diameter inch or less of aerial wire per annum. In no event shall the fee be less than \$250.00 per annum.

(b) Any private communication system that serves customers within the Borough shall pay annually a percent of the annual total local gross revenues from such customers to be calculated on the basis of all revenues derived from transmissions that bypass the LATA. The percent of the annual gross revenues which shall be paid by the private communications system shall be set by resolution of Council. Revenues derived from transmissions that enter a private communications system through the LATA shall not be part of the total local gross revenues for purposes of calculating compensation and license fees.

## **Section 2-7. Payment and Audit of Compensation and License Fees.**

(a) The annual compensation and license fee provided for in Section 2-6(a) shall be payable annually on or before February 1 of each calendar year.

(b) The annual compensation and license fee provided for in Section 2-6(b) shall be assessed quarterly for the preceding quarter, as of March 31, June 30, September 30 and December 31 of each year.

(1) Each quarterly payment shall be payable and reportable no less than thirty (30) days after the relevant assessment date.

(2) Each payment shall be accompanied by a report from the licensee in a form approved by the Borough showing the basis for the computation and such other relevant data as may be required by the Borough.

(3) Each of such reports shall contain a notarized verification by the chief financial officer of the licensee and such reports shall be verified annually, if requested by the Borough, within ninety (90) days of the close of business of the last day of the calendar year, by a certified public accountant at the expense of the licensee.

(4) Failure to comply strictly with this section shall be deemed to be a violation of this chapter and shall subject the licensee to all penalties and remedies, both legal and equitable which are available to the Borough.

(c) The acceptance of any payment required hereunder by the Borough shall not be construed as an acknowledgment that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the Borough may have for additional sums due and payable.

(1) All fee payments shall be subject to audit by the Borough Treasurer and assessment or refund if the payment is found to be in error.

(2) In the event that such audit results in an assessment by and an additional payment to the Borough, such additional payment shall be subject to interest at the rate of six percent (6%) per year, which shall be due and payable immediately.

(d) Nothing in this ordinance shall be construed to limit the liability of the licensee for all applicable Federal, State and Local taxes.

## **Section 2-8. Use of Streets and Pole Attachments.**

(a) Before commencing construction of its private communications systems in,

above, over, under, across, through or in any way connected with the streets, public ways or public places of the Borough, the licensee shall first obtain the written approval of the Borough.

(b) Upon obtaining such written approval, the licensee shall give the Borough written notice within a reasonable time of proposed construction, but in no event shall such notice be given less than ten (10) days before such commencement.

(c) Any person who submits a request for a license in accordance herewith shall include therein proposed agreements for the use of existing utility poles and conduits, if applicable, with the owner(s) of such facilities to be used or affected by the construction of the proposed private communications system, which agreements shall become effective on the date of the execution of the license issued in accordance herewith in the event that such person is issued a license.

(d) It shall be unlawful for the licensee or any other person to open or otherwise disturb the surface of any street, sidewalk, driveway, public way or other public place for any purpose whatsoever without obtaining approval to do so after proceeding in the manner prescribed in subsections (a) and (b) hereof. Violation of this section shall subject the licensee to all penalties and remedies prescribed herein and to all other remedies, legal or equitable, which are available to the Borough.

(e) The licensee shall restore any street or sidewalk it has disturbed and shall, at its own cost and expense, restore and replace any other property disturbed, damaged or in any way injured by or on account of its activities to as good as condition such property was in immediately prior to the disturbance, damage or injury or pay the fair market value of such property to its owner.

(f) The licensee shall, at its own cost and expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from such street or other public place, any of its property when required to do so by the Borough because of street or other public excavation, construction, repair, regrading, or grading; traffic conditions; installation of sewers, drains, water pipes, Borough owned power or signal lines, tracks; vacation or relocation of streets or any other type of structure or improvement of a public agency, or any other type of improvement necessary for the public health, safety or welfare.

(g) Nothing in this ordinance or any license issued in accordance herewith, shall be construed as authorizing the licensee to erect and maintain new poles in areas serviced by existing poles. The licensee shall obtain written approval from the Borough and any other appropriate State or Federal agencies before erecting any new poles or underground conduits where none exist.

(h) The licensee shall maintain all wires, conduits, cables, and other real and personal property and facilities in good condition, order and repair.



(i) The licensee shall keep accurate, complete and current maps and records of its system and facilities which occupy the streets, public ways and public places within the Borough and shall furnish as soon as they are available two (2) complete copies of such maps and records to the Borough.

(j) The licensee shall comply with all rules and regulations issued by the Borough governing the construction and installation of private communication systems. In addition:

(1) All aerial cables and wires shall be installed parallel with existing telephone and electric utility wires; and

(2) Multiple aerial configurations shall be in parallel arrangement and bundled, in accordance with engineering and safety considerations; and

(3) All underground installations shall be in the appropriate size and type conduit or other enclosures approved by the Borough; and

(4) All installations shall be underground in those areas of the Borough where both telephone and electric utilities' facilities are underground at the time of the installation of the licensee's private communications system.

In areas where both telephone and electric utilities' facilities are above ground at the time of the installation of the licensee's private communications system, the licensee may install its system above ground on existing utility poles only, upon the condition that at such time as those facilities are placed underground by the telephone and electric utility companies, the licensee shall likewise place its facilities underground at its sole cost and expense.

(5) The licensee upon reasonable notice by the Borough shall temporarily or permanently remove, adjust, raise or lower its facilities within the right-of-way when the Borough determines that such action is needed for public use of the right-of-way including but not limited to the passage of non-standard vehicles.

(6) The licensee shall obtain the written permission of the owner, including the Borough, of any tree or other vegetation before it trims or prunes the same.

### **ARTICLE III**

#### **Section 3-1. No Liability or Warranty.**

This Ordinance shall not be construed to create or hold the Borough responsible

or liable for any damage to persons or property by reason of any inspection or re-inspection authorized herein or failure to inspect or reinspect, nor shall the issuance of any license nor the approval or disapproval of any installation authorized herein constitute any representation, guarantee or warranty of any kind by, nor create any liability upon, the Borough or any official, agent or employee thereof.

**Section 3-2. Indemnity and Insurance.**

(a) The Borough shall not at any time be liable for any injury or damage occurring to any person or property from any cause whatsoever, including damages from the Borough's negligent omissions, if any, arising from the use, operation or condition of the licensee's private communications system.

(b) The licensee shall indemnify, save and hold harmless and defend the Borough from all liens; charges; claims, including but not limited to, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name or service mark; demands; suits; actions; fines; penalties; losses; costs, including but not limited to, reasonable legal fees and court costs; judgments; injuries; liabilities or damages, in law or equity, of any and every kind and nature whatsoever, including damages caused by or arising out of any act or omission, whether or not said act or omission was negligent, of the Borough, its officers, servants, agents, employees or contractors, or otherwise, arising out of or in any way connected with the installation, operation, maintenance or condition of the licensee's private communications system.

(c) The Borough shall set the type and coverage of insurance required.

**Section 3-3. Penalties.**

Any person who violates any provision of this ordinance shall, upon summary conviction thereof, be sentenced to pay a fine of not more than six-hundred (\$600.00) dollars, and costs of prosecution and in lieu of payment thereof be sentenced to a term of imprisonment not to exceed thirty (30) days. Each day that a violation of this ordinance continues shall constitute a separate offense.

**ARTICLE IV**

**MISCELLANEOUS**

**Section 4-1. Transfers and Assignments.**

The licensee shall not transfer or assign its interest in any license issued in accordance herewith without the prior written authorization of the Borough. For purposes of this section, a merger or consolidation shall be deemed a transfer or assignment.



**Section 4-2. Effective Date.**

This ordinance shall be effective immediately.

**DULY ENACTED AND ORDAINED** this 4th day of February, 2002,  
by the Borough Council of the Borough of Picture Rocks, Lycoming County,  
Pennsylvania, in lawful session duly assembled.

ATTEST:

BOROUGH OF PICTURE ROCKS

By: William N. Dorman  
William Dorman, Secretary

By: Eugene R. Otterbein, Sr.  
Eugene R. Otterbein, Sr., Council President

APPROVED this 4th day February, 2002.

BY: David Bender  
David Bender, Mayor