

Chapter A189

CABLE TELEVISION FRANCHISE

[HISTORY: Adopted by the Borough Council of the Borough of Chester Heights 5-7-1979 by Ord. No. 84. Amendments noted where applicable.]

§ A189-1. Grant of franchise.

- A. In consideration of the faithful performance and observance of the conditions and reservations hereinafter specified, the nonexclusive right (hereinafter referred to as "franchise") is hereby granted to a franchisee (hereinafter referred to as "company") to construct, own, operate and maintain a community antenna cable television system and to erect, maintain and operate television transmission and distribution facilities, and additions thereto, in, under, over, along, across and upon the streets, lanes, avenues, sidewalks, alleys, bridges and other public places in the Borough of Chester Heights, Delaware County, Pennsylvania and subsequent additions thereto, for the purpose of transmission and distribution of audio and visual impulses and television energy in accordance with the laws and regulations of the United States of America, and the Commonwealth of Pennsylvania, and the ordinances and regulations of the Borough of Chester Heights, now in effect, or hereafter enacted. The duration of the rights, privileges and authorities hereby granted shall be 15 years from the date of acceptance of the ordinance by the company, provided that the company shall have the option of extending this franchise for additional periods of five years unless either the Borough or the company gives to the other not less than one year's written notice of the intent not to so renew this franchise.
- B. One year prior to the expiration of the franchise, the Advisory Council (provided for in § A189-27), after giving public notice, shall proceed to determine whether the company has satisfactorily performed its obligation under the ordinance. A four-month period shall be allowed for determining the company's eligibility for franchise renewal. The Council shall consider the company's annual reports to the Borough, the FCC, and the Commonwealth of Pennsylvania if such are required, and these shall be considered in light of cable television industry performance on a national basis in respect to technical developments and performance, programming, cost of service, and the particular requirements set out in this ordinance. At a public hearing, duly advertised, the Council shall make recommendation to the Borough for renewal of the franchise without change in the contract, renewal with amendment(s) to the contract, or termination of the franchise. In the latter instance, the specific reasons for nonrenewal of the franchise are to be stated.

§ A189-2. Sharing of facilities.

There is hereby granted the further right, privilege and authority to the company to lease, rent, subscribe to service, or in any other manner obtain the use of towers, poles, lines, cable, facilities, services, licenses and franchises within the limits of the Borough of Chester Heights, Pennsylvania, including the Bell Telephone Company of Pennsylvania and the Philadelphia

Electric Company to use such towers, poles, lines, cables and other equipment and facilities, subject to all existing and future ordinances and regulations of the Borough. The poles used for the company's distribution system shall be those erected and maintained by the telephone or electric companies when and where practicable, providing mutually satisfactory rental agreements can be entered into with said companies.

§ A189-3. Rights and privileges.

- A. The company shall have the right and privilege to construct, erect, operate and maintain in, upon, along, above, across, over and under the streets such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to its system, provided individual permits are issued for the location of such poles subject to the approval of the affected homeowner and the Advisory Council in conjunction with the Borough Council and, in addition, to so use, operate and provide similar properties rented or leased from other persons, firms, or corporations, for such purpose.
- B. The company's rights and privileges shall be subordinated to any prior lawful use of occupancy of the streets or other public property and shall not be so used as to interfere with existing improvements or with new improvements this Borough may deem proper to make or as to hinder or obstruct the free use of the streets, alleys, bridges, or other public property. In the event that any equipment or facilities of the company shall interfere with any such improvement existing or intended to be made by the Borough, the company shall, upon notice from the Borough, forthwith relocate said equipment and facilities at company's expense so as to eliminate said interference.
- C. Construction and maintenance of the transmission and distribution system shall be in accordance with the provisions of the National Electrical Safety Code, Sixth Edition, or any amendments or revisions thereof, and in compliance with any applicable rules, regulations or orders now in effect or hereafter issued by any federal or state commission or any other public authority having jurisdiction.
- D. All installations of equipment shall be durable or of a permanent nature and installed in accordance with good engineering practice as outlined by the National Bureau of Standards, American Institute of Electrical Engineers and American Society of Mechanical Engineers. Company shall comply with Borough regulations, ordinances and state and federal laws now existing or hereinafter enacted and so as not to interfere with the right of the public or individual property owner and so as not to unduly interfere with the travel and use of public places by the public during the construction, repair or removal thereof.
- E. In the construction, conduct, maintenance and operation of its business, the company shall comply with all requirements of the Borough of Chester Heights' ordinances, resolutions, local laws, rules, regulations, and specifications heretofore or hereafter enacted or established, including, but not limited to, those concerning street work, street excavation, use and removal and relocation of property within a street.

§ A189-4. Limitation of franchise.

This franchise authorizes only the installation and operation of a community antenna television

system and does not take the place of any other franchise, license or permit which may be required by law, or ordinance or regulation.

§ A189-5. Facilities to be placed underground.

In all areas of the Borough where cables, wires, or other like facilities of public utilities are placed underground, the company shall place its cables, wires or other like facilities underground.

§ A189-6. Joint use of facilities.

The company shall grant to the Borough, free of expense, joint use of any and all poles owned by it for any proper Borough purpose provided it may be done without interfering with the free use and enjoyment of the company's own facilities.

§ A189-7. Use of facilities during emergency.

In case of any emergency or disaster, the company shall, upon request of the Borough or its civil defense authority, make its facilities and personnel available to the Borough or said authority during the emergency or disaster period without charge.

§ A189-8. Local office.

The company shall maintain an office in Delaware County, within 15 miles of the Borough, which shall be open during all usual business hours, have a listed telephone, and be so operated that complaints and requests for repairs and adjustments and requests for use of facilities by the Borough and its civil defense authority may be received at any time.

§ A189-9. Determination of charges for service.

The Borough Council shall be empowered to determine any and all charges to be made by the company for service to the residents of the Borough of Chester Heights; including, but not limited to, charges to be made for programming, cable connections, and security deposits. The charges shall be made part of the contract executed between the Borough and the company, provided that the approval of any contract shall be made at a public meeting in accordance with the provisions of the Borough Code of the Commonwealth of Pennsylvania.

§ A189-10. Dealing in receivers prohibited.

The company shall not sell, service, install, and/or rent television receivers.

§ A189-11. Service standards and requirements.

The company shall:

- A. Produce a television picture, whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production TV sets in good repair and as good as the state of the art allows.
- B. Transmit signals of adequate strength to produce good pictures and good sound at all

outlets without interfering with other electrical or electronic systems or equipment or with television reception already in existence in the area.

- C. The company must provide same day service response seven days a week for all complaints and requests for adjustments received before 12:00 noon each day. Calls received after 12:00 noon must be responded to within 24 hours. Upon failure to remedy a loss of service attributable to the cable system within 24 hours after a complaint, the company shall credit 1/30 of the regular monthly charge to the subscriber for each 24 hours or fraction thereof, after the initial 24 hours, until service is restored, except to the extent that restoration of service is prevented by strike, injunction or other cause beyond the company's control.
- D. Whenever it is necessary to interrupt service for the purpose of making repairs, adjustments or installation, the company shall do so at such time as will cause the least amount of inconvenience to the subscribers and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice to subscribers. Whenever the company's system shall be out of service for a period of 48 hours, the company shall credit to the subscriber's account 1/30th per diem of his monthly subscription fee. The requirements for maintenance of equipment contained in this provision shall not apply to the subscriber's television receiver.
- E. The company shall keep a log and file a copy thereof at the end of each quarter with the Advisory Council listing by category all complaints and trouble calls received, the number of second or subsequent calls on the same complaint, the remedial action taken, the period of time required to satisfy each reported complaint, and the credit, (if any), to subscribers.
- F. The company shall be required to interconnect its system with any other broadband communications facility operating in a reasonably nearby territory, such interconnection to be made within 60 days of a request by the Borough. For good cause shown, the company may request, and the Borough may grant, reasonable extension of time to comply with this requirement.

§ A189-12. Franchise fee.

- A. The company shall pay to the Borough 5% of gross annual receipts of the company; or such maximum amount which shall be allowed by the FCC, not to exceed 5%. Gross receipts shall mean any and all compensation and other considerations in any form paid by and due or owing by subscribers to the company or any lessee of the company from the sale of its services and facilities to said subscriber or lessee of the company within the limits of the Borough. The original installation charges, reconnection charges, service charges and charges for inspection, repair or modification of installations shall be included in said sum.
- B. The company shall file with the Borough, within 90 days of the expiration of any fiscal year during which this franchise is in force, financial statements certified by an independent accountant in accordance with statement on Auditing Standards No. 14 as issued by the Auditing Standards Executive Committee of the American Institute of Certified Public Accountants. Such statements shall not contain an adverse or disclaimer of opinion. The auditor's opinion shall contain assurance that the company is in compliance

with the financial terms and provisions of this ordinance. In addition to the normal adherence to audit procedures, the auditor shall perform such work as may be necessary to satisfy himself that gross revenues as defined are properly stated. Also, he shall express an opinion of the monthly reports required by this ordinance.

- C. The company is required to file monthly reports within 15 days of month's end which present earned revenue. On a monthly basis, the company shall pay 90% of the fees to the Borough at the time it files each monthly earned revenue report, earned in accordance with this ordinance; each successive month shall include the previous month's 10%. Any noncompliance with this section shall permit the Secretary of the Borough or the Borough's authorized representative to examine or have examined the books and records of the company to assure compliance with the terms and provisions of this ordinance; such cost to be paid by the company. Noncompliance with this aforementioned procedure will result in a 5% penalty on monies due for that month.
- D. The company shall keep on file with the Borough a current list of its stockholders, bondholders, and the holdings thereof.

§ A189-13. Transferability.

This right is a privilege to be held in personal trust by the original franchisee. It cannot be transferred, leased, assigned, or disposed of as a whole, or in part either by forced sale, merger, consolidation, or otherwise, without prior consent of the Borough expressed by ordinance, and then only under such conditions as may be therein prescribed.

§ A189-14. Termination of service.

Upon termination of service to any subscriber, the company shall promptly remove all its facilities and equipment from the premises of such subscriber, at subscriber's request, with no charge to the subscriber.

§ A189-15. Expiration of franchise term.

At the expiration of the term for which this franchise is granted, or upon its termination and cancellation as provided for herein, the Borough shall have the right to require the company to remove, at its own expense, all portions of the system from all public ways within the Borough.

§ A189-16. Installation of system. [Amended 12-3-1979 by Ord. No. 84A]

Installation of the system shall be commenced within 90 days after the franchisee signs an agreement pursuant to this ordinance. Mapping of the Borough is to be considered commencement of the installation. Significant construction shall be accomplished within one year after FCC authorization, and energized trunk cable shall be extended to at least 20% of the franchise area each subsequent year, with completion of construction to be accomplished within five years of issuance of FCC certification.

§ A189-17. Filing of maps, plans and schedules.

The company will file with the Borough, and publish locally, true and accurate copies of maps

and plans and schedules of all existing and proposed installations, 90 days prior to commencement of construction.

§ A189-18. Borough's right of termination and cancellation.

- A. In addition to all other rights and powers pertaining to the Borough by virtue of this ordinance or otherwise, the Borough reserves the right to terminate and cancel the franchise hereby granted and all rights and privileges of the company hereunder in the event that the company:
 - (1) Violates any provision of this ordinance or any rule, order, or determination of the Borough or Borough Council made pursuant to this ordinance.
 - (2) Becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt.
- B. Such termination and cancellation shall be by ordinance, duly adopted after 30 days notice to the company, and shall in no way affect any of the Borough's rights under this franchise or any provision of law. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact shall be made by the Advisory Council with written reports to the Borough Council.
- C. The company agrees that it does release the Borough and hold it harmless from all claims arising by reason of termination or cancellation of this franchise under the term of this § A189-18.

§ A189-19. When effective.

This ordinance and the rights granted to company shall become effective upon execution of a contract between the Borough of Chester Heights and the franchisee, binding both parties to abide by all conditions of this ordinance.

§ A189-20. Liability, insurance and bond requirements.

- A. The company shall pay, and by its acceptance of this franchise the company specifically agrees that it will pay, all damages and penalties which the Borough may legally be required to pay as a result of granting this franchise. These damages or penalties shall include but shall not be limited to damages arising out of copyright infringements and all other damages arising out of the installation, operation or maintenance of the system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this ordinance.
- B. The company shall pay, and by its acceptance of this franchise specifically agrees that it will pay, all expenses incurred by the Borough in defending itself with regard to all damages and penalties mentioned in Subsection A above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the Borough Solicitor or his assistants or any employees of the Borough.
- C. The company shall maintain, and by its acceptance of this franchise specifically agrees that it will maintain throughout the terms of this franchise, liability insurance insuring the

Borough and the company with regard to all damages mentioned in Subsection A above, in the minimum amounts of:

- (1) Three hundred thousand dollars for bodily injury or death to any one person, within the limit, however, of \$500,000 for bodily injury or death resulting from any one accident.
 - (2) One hundred thousand dollars for property damage resulting from any one accident.
 - (3) One hundred thousand dollars for infringement of copyrights.
 - (4) One hundred thousand dollars for all other types of liability.
- D. The company shall maintain, and by its acceptance of this franchise specifically agrees that it will maintain throughout the term of this franchise, a faithful performance bond running to the Borough in the penal sum of \$50,000 conditioned that the company shall well and truly observe, fulfill, and perform each term and condition of this ordinance, and that in case of any breach of condition of the bond, the amount thereof shall be recoverable from the principal and surety thereof by the Borough for all damages resulting from the failure of the company to well and faithfully observe and perform any provision of this ordinance.
- E. The insurance policy and bond obtained by the company in compliance with this section, must be approved by the Borough Council, and such insurance policy and bond, along with written evidence of payment of required premiums, shall be filed and maintained with the Borough Secretary during the term of this ordinance.
- F. All expenses of the above noted insurance and bond shall be paid by the company.

§ A189-21. Channels, equipment and facilities to be provided by franchisee.

The company agrees and shall:

- A. Provide each public, private and parochial school, fire stations, public libraries and Borough buildings and such public auditoriums and institutions as are requested by the Borough, with a single drop and service without charge. Additional drops and service will be charged to the facility by the company at cost to the company of time and material only.
- B. Comply with the present and future rules and regulations of the Federal Communications Commission in connection with and relating to the operation of its system and shall make available a service offering, at a rate approved by the Borough Council pursuant to § A189-9 hereof, as follows:
 - (1) Public access channel. The company shall maintain at least one specially designated, noncommercial public access channel available on a first-come, nondiscriminatory basis.
 - (2) Education access channel. The company shall maintain at least one specially designated channel for use by local educational authorities.
 - (3) Local government access channel. The company shall maintain at least one specially designated channel for local government use.

- (4) Leased access channel. The company shall maintain at least one specially designated channel for leased access use. In addition, other portions of its nonbroadcast bandwidth, including unused portions of the specially designated channels, shall be available for leased uses. On at least one of the leased channels, priority shall be given to part-time users.
- C. Channel capacity. The company shall construct a system with a minimum channel capacity of 30 television channels and with the technical capability of transceiver nonvoice communications. At such time as transceiver nonvoice communication becomes operable, no monitoring of any terminal connected to the system shall take place without specific written authorization by the user of the terminal in question on each occasion. In no event shall monitoring of any kind take place without a clearly visible light and clearly audible sound signal. The light shall be visible and the sound audible at a distance of at least 30 feet from the terminal at the time of monitoring.
- D. The company shall carry, on its system, the signals of all stations significantly viewed in Delaware County, Pennsylvania, these to include all local network and education VHF stations and local UHF stations, and, in addition, no less than two distant commercial stations.
- E. Program origination. The franchisee shall conduct program origination cable casting in addition to any automated services.
- F. The company shall provide both portable and stationary equipment to be used by access cable casters with the aid of a technical and production staff to be provided by the company. Included should be equipment that can store programs for later showing. In addition, a centrally located studio must be made available to all access users on a first-come, first-served basis. A full schedule of rates for use of equipment, studio, and technical and production staff must be provided, including rates for portable facilities, if they differ. Rates may give preference to noncommercial users.

§ A189-22. Installation of signal distribution facilities.

The company shall install signal distribution facilities to all residents of the Borough subject to all provisions of this ordinance.

§ A189-23. Permit required for specialized service.

The company must obtain a permit from the Borough to provide, to segments of subscribers, any specialized service that will not be available to all subscribers. All requests shall demonstrate that the service is not contrary to the public interest and will not affect the company's ability to deliver service to other users and subscribers.

§ A189-24. Programming regulations.

- A. The Borough shall not prohibit or limit any program, or any class or type of program or otherwise control the communications or signals transmitted by the company or impose discriminatory or preferential fees in any manner that would tend to encourage or discourage programming of any particular nature, directly or indirectly, and shall not

promulgate any regulation that would interfere with the right of free speech by means of cable television.

- B. The company shall not prohibit or limit any programs or class or type of program presented over a leased channel made available for public access or educational purposes.

§ A189-25. Continuation of service upon expiration, cancellation or transfer of franchise.

In the event of expiration, cancellation or authorized transfer of the franchise, the company is required to continue to operate the system until an orderly change of operation is effectuated, but in the capacity of a trustee for its successor in interest, and subject to an accounting for net earnings or losses during this interim period.

§ A189-26. Violations and penalties.

For violation of material provisions of this ordinance, penalties may be chargeable as follows:

- A. For failure to complete construction and installation of the system as provided in § A189-16, unless the delay is approved in advance by the Borough, the franchise term shall be reduced one year for each three months' delay.
- B. For failure to commence operation in accordance with any provision in this ordinance, the Borough shall have the right in lieu of termination of the franchise, to impose penalties.

§ A189-27. Advisory council.

- A. There is hereby established an Advisory Council on Cable Television to be appointed by the Borough. The Council shall be composed of seven members who shall reflect the diverse community interests of the Borough and who shall serve for terms of three years. Initial terms shall be one, two and three years, determined by lot as follows:
 - (1) Two members shall serve for one year;
 - (2) Two members shall serve for two years; and
 - (3) Three members shall serve for three years.
- B. Any vacancy shall be filled by the Borough by appointment for the remainder of the term. No employee or person with ownership interest in a cable television franchise granted pursuant to this ordinance shall be eligible for membership on this Council. The Chairperson of the Council shall be elected by the members of the Council for a term of one year. Any action of the Council shall require concurrence of four members of the Council. An appropriation shall be made by the Borough for funding of this Council, said money to come from fees paid to the Borough by the company as specified in this ordinance. The Council shall have the following functions:
 - (1) Advise the Borough on applications for franchises, and on franchise renewal.
 - (2) Advise the Borough on matters which might be grounds for revocation of the franchise or imposition of penalty on the company in accordance with this ordinance.
 - (3) Resolve disagreements among franchises or between the company and subscribers or

public or private users of the system. Decisions of the Council in such cases are appealable to the Borough.

- (4) Advise the Borough in respect to rates, to policy relating to the services provided to subscribers and to the operation and use of public channels, and to the availability of channel time for lease for pay-cable programs, business users or informational programming.
- (5) Cooperate with other systems and supervise interconnections of systems.
- (6) Audit all company records as required by this ordinance and, at the Council's discretion, require preparation and filing of information additional to that required herein.
- (7) Make an annual report to the Borough, including an account of franchise fees received and distributed, the total number of hours of utilization of public channels, and hourly subtotals for various programming categories, and a review of any plans submitted during the year by the company for development of new services.
- (8) Conduct an evaluation of the system at least every three years, in consultation with the company, utilizing technical consultants if necessary, which shall be paid for from fees received by the Borough from the company, and pursuant thereto, make recommendation to the Borough for amendments to this ordinance.

§ A189-28. Amendments; repealer.

- A. To the extent that the Federal Communications Commission shall terminate controls in any area pertinent to this ordinance, this ordinance shall immediately be amended, if considered desirable to do so by the Borough Council.
- B. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holdings shall not affect the validity of the remaining portions hereof.