

ARTICLE 908

Antenna Systems

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CROSS REFERENCE

Poles and wires - See S.U. & P.S. Art. 907
Cable Communications Policy Act of 1984

908.01 SHORT TITLE

This Ordinance shall be known and may be cited as the "City of Bethlehem Cable Television Franchise Ordinance."

908.02 DEFINITIONS

For the purposes 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 include the

future, words in the plural number include the singular number, words in the singular number include the plural number, and words in the masculine gender shall include the feminine gender. The word "shall" is always mandatory and not merely directory.

(a) "Basic Cable Television Service" shall mean that tier of cable television service to which all users must subscribe in order to obtain cable television service and for which a charge is made.

(b) "Cable Television System" or "System" shall mean any facility or group of facilities which, in whole or in part, receives, modifies or originates television, FM radio or other electrical signals for the purpose of transmitting or distributing such signals by wire, cable or other means to subscribing members of the public or to selected customers, as herein contemplated. This definition shall include those systems which do not occupy or cross over or under the public ways and places of the City.

(c) "Franchisee" shall mean any duly approved person, firm, partnership, association, corporation, company or organization of any kind operating under a franchise granted pursuant to Section 908.03 of this Ordinance.

(d) "Optional Cable Television Service" shall mean the furnishing of television programming for which a per channel charge is made in addition to that for Basic Cable Television Service.

908.03 FRANCHISE REQUIRED

From and after the enactment of this Ordinance, no Cable Television System shall be constructed, installed or operated in the City unless such construction, installation or operation shall first have been authorized by Ordinance of the City duly enacted. This Ordinance shall not restrict the number of franchises granted pursuant to this Ordinance.

908.04 GRANT OF AUTHORITY

Any franchise granted under Section 908.03 of this Ordinance shall include the right and privilege to construct, erect, operate and maintain a Cable Television System in, under, over, along, across or upon the public streets, highways, sidewalks, rights-of-way and places within the boundaries

of the City, to the extent permitted by law. The franchise granted shall also be construed as to permit the Franchisee to attach or otherwise affix or install its cables and other equipment to and in the facilities of any public utility even though the same may occupy or cross over or under the public ways and places of City.

908.05 FRANCHISE TERM

Any franchise granted under Section 908.03 of this Ordinance shall be for a period of ten (10) years from the effective date of the grant of the franchise. Nothing contained therein shall be construed to limit the City's ability to adjust the franchise fee on gross revenues as set forth in Section 908.07 herein in accordance with changes in applicable State and Federal statutes.

908.06 ACCEPTANCE OF FRANCHISE

Any franchise granted under Section 908.03 of this Ordinance shall be upon the express condition that the Franchisee shall file with the City Clerk a written acceptance of the same within thirty (30) days after written notice is given to the Franchisee of the grant. The Ordinance granting the franchise, acceptance of the same by the Franchisee, and the execution of a Franchise Agreement between the City and the Franchisee, shall constitute a contract between the City and the Franchisee for all the uses, services and purposes set forth in this Ordinance. Except as may be otherwise provided by State or Federal law, order or regulation, or the Franchise Agreement, the rights and obligations of the City and the Franchisee shall be those specified herein and they shall not be enlarged, diminished or altered by unilateral action of the City during the term of the franchise or renewal thereof. The Franchisee, by its acceptance of the provisions of the Ordinance granting the franchise and its execution of the Franchise Agreement, binds itself to provide the necessary Cable Television System and to establish, operate and maintain the local Cable Television System contemplated in this Ordinance, continuing without substantial interruption except for causes beyond its control until the expiration of the term of the grant. In the event that the Franchisee shall fail to file a written acceptance within the time hereinafter specified, the grant shall be of no effect and void. (Ord. 2013-13. Passed 5/7/13.)

908.07 FRANCHISE PAYMENTS

(a) As compensation for the rights conferred by the grant of a franchise by this Ordinance, including the privilege of engaging in the business of operating a Cable Television System in the City, the Franchisee shall pay annually to the City a fee equal to five percent (5%) of gross revenues derived from the operation of its cable system in the City. "Gross Revenues" shall include all revenue received directly or indirectly by Franchisee or its Affiliated Entities from any source whatsoever arising from, attributable to, or in any way derived from the operation of Franchisee's Cable System in the City to provide Cable Services. "Gross Revenues" shall not include bad debts; interest income; revenue of the Franchisee or any Affiliated Entity from the facilities of a common carrier, which is subject to Title 11 of the Communications Act, as amended; or any taxes on services furnished by Franchisee and imposed directly upon any Subscriber or user by the City, state, federal or other governmental unit. Franchisee shall not deduct or otherwise credit against the franchise fee any tax, fee or assessment of general applicability.

(b) Franchise fee payments to the City under this provision shall be computed at the end of each calendar quarter or as otherwise set forth below and shall be due and payable in accordance with the following schedule: on or before May 15 for the first quarter, on or before August 15 for the second quarter, on or before November 15 for the third quarter, and on or before December 1 for the fourth quarter (based on estimated gross revenues). The actual fourth quarter amount due shall be computed at the end of the calendar quarter and reconciled with the fourth quarter payment made, with any adjustments or credits applied to the next payment due. In the event that any franchise fee payment is not made on or before the applicable date, then interest shall be added at the annual rate of six percent (6%) of the amount of franchise fee revenue due to the City. No acceptance of any percent shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim the City may have for additional sums payable under this Agreement.

(c) Each franchise fee payment shall be accompanied by a written report containing an accurate statement of Franchisee's Gross Revenues received for Cable Services for the quarter in connection with the operation of Franchisee's Cable System and a brief statement showing the basis for computation of fees. The statement shall contain a line item for every source

of revenue received and the amount of revenue received from each source. The report shall be verified by an authorized representative of Franchisee.

(d) On an annual basis, upon a minimum of thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Franchisee's records reasonably related to the sources, amounts and computation of gross revenues in accordance with Generally Accepted Accounting Principles. Such records shall be kept or made available to the City at the notice location for Franchisee specified in Section 13.3 below. Provided the documents requested are not unduly burdensome, any reproduction of such records for purposes of inspection shall be performed at Franchisee's expense. If the audit shows that franchise fees have been underpaid then Franchisee shall pay the underpaid amount and monetary fines of five percent (5%) of the underpayment. If franchise fees have been underpaid by five percent (5%) or more, then Franchisee shall also pay the reasonable cost of the audit.

At the time of the annual audit, the Franchisee shall furnish the City with such information as the City shall reasonably require with respect to the Franchisee's services within the City for such period.

(Ord. 2013-13. Passed 5/7/13.)

908.08 INSTALLATION AND EXTENSION OF SYSTEM

The Franchisee shall serve all residents of the City except to the extent that low household density, adverse terrain or other factors render providing service impracticable or technically or economically infeasible. The Franchisee's Cable Television System shall not be required to be installed in, or extend to, areas of the City where potential revenues from subscribers to be served therein would produce a return insufficient to justify economically such installation or extension. If otherwise practicable and technically feasible:

(a) Service shall be provided at normal installation and monthly service rates to an individual customer whose point of connection is located within one hundred fifty foot (150 foot) aerial distance of an in-place distribution cable of the Franchisee. For any installation in excess of a one hundred fifty foot (150 ft) aerial distance or that requires an underground installation, Franchisee shall extend Cable Service at a rate not to exceed

Franchisee's actual cost of installation from its main distribution system.

(b) The Franchisee, at its cost, shall make an extension of its cable system where the number of existing households per linear mile of cable to be passed by the extension equals or exceeds the average number of households passed per linear mile of its existing cable system within the City.

(c) In no event shall the Franchisee be required to make an extension where the number of existing households to be passed per mile is less than 50. The Franchisee shall not be required to install or extend its cable system in areas where it cannot obtain necessary rights-of-way over private property at economically feasible cost, or obtain permission to attach its facilities to public utility poles or conduits.

(d) All installations of wires and/or equipment by Franchisee shall be underground where such facilities of other similarly situated entities are underground.

(Ord. 2013-13. Passed 5/7/13.)

908.09 STANDARDS OF SERVICE

(a) The Franchisee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the System. Upon receipt of a complaint regarding the quality of service, equipment malfunctions, and similar matters, the Franchisee shall promptly investigate such complaints.

(b) Where possible, the Franchisee shall commence an investigation of such complaints within 48 hours of their receipt. Resolution of such service complaints shall be made promptly. The Franchisee shall maintain a toll-free business telephone for the receipt of complaints and requests for repairs or adjustments.

908.10 PROGRAMMING

The Franchise shall have the right to add, alter, change or delete particular programming and services provided on its Cable Television

System in response to changes in public demand, program and service availability, technical developments and costs.

908.11 FRANCHISEE RULES AND REGULATIONS

The Franchisee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Franchisee to exercise its rights and perform its obligations under its franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of Federal and State laws.

908.12 REGULATORY ACTION

The performance by the Franchisee hereunder is subject to limitations, restrictions, or requirements now existing or which may henceforth be imposed by law, rule, or order of the Federal Communications Commission or other government board, commission or authority. The Franchisee shall not be deemed in default of any of the requirements of this Ordinance to the extent it acts in compliance with, or refrains from doing anything prohibited by such law, rule or order.

908.13 CONDITION OF STREET OCCUPANCY

(a) All transmission and distribution structures, lines, and equipment erected by the Franchisee within the City shall be so located as to cause minimum feasible interference with the proper use of streets, alleys and other public ways, roads and places, and to cause minimum feasible interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways, roads and places. The Franchisee shall obtain any required permits prior to construction.

(b) In case of any disturbance of pavement, sidewalk, driveway or other surfacing by the Franchisee, the Franchisee shall, at its expense and in a manner approved by the City, replace and restore the same in as good condition as before said work was commenced.

908.14 COMPLIANCE WITH STANDARDS

The Franchisee's construction and maintenance of its transmission and distribution system shall be in accordance with applicable City, State and Federal ordinances, laws or regulations now in effect, or later enacted regulating or affecting the Franchisee's installation or operation. At such time as a franchise is granted under this Ordinance, City shall advise the Franchisee of any and all City ordinances, laws, or regulations in effect which City determines affects the construction and maintenance of a transmission and distribution system. City shall also notify a Franchisee of any proposed ordinance, law or regulation which is intended to affect, alter, amend or extend such ordinances, laws or regulations. Nothing herein shall be deemed a waiver of Franchisee's right to challenge the reasonableness and/or validity of the enactment and/or enforcement of any such City, State, or Federal law or regulation.

908.15 FRANCHISEE LIABILITY - INDEMNIFICATION

The Franchisee shall save the City harmless from all loss sustained on account of any suit, judgment, execution, claim or demand whatsoever, resulting solely from the conduct of the Franchisee in the construction, operation or maintenance of its System in the City. The City shall notify the Franchisee within twenty-one (21) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any damages or losses as aforesaid resulting from such conduct of the Franchisee. Within thirty (30) days from the enactment date of any Ordinance granting a franchise, the Franchisee shall furnish satisfactory evidence in writing that it has in force public liability insurance of not less than \$1,000,000 per occurrence and \$1,000,000 aggregate limit for bodily injury and property damage (including death) issued by an insurance company or insurance companies authorized to do business in this Commonwealth.

908.16 SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance, is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction or by any State or Federal Regulatory Agency having jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of

the remaining portions of this Ordinance.

908.17 PENALTY

Any Franchisee that willfully fails to attempt to remedy a violation of any provision of this Ordinance within ten (10) days of its receipt of written notice thereof, or any other person, firm, partnership, association, corporation, company, or organization of any kind who knowingly or unknowingly violates any provision of this Article, shall be charged with a summary offense and shall, upon conviction, be subject to the following penalties:

- (a) First violation - A fine of \$200.00, or thirty days imprisonment, or both;
- (b) Second violation - A fine of \$500.00, or sixty days imprisonment, or both;
- (c) Third and each subsequent violation - A fine of \$1,000.00, or ninety days imprisonment, or both. (Ord. 3225-Passed 12/6/88)

908.18 REVOCATION OF FRANCHISE

Any franchise granted under this Ordinance may be revoked after notice and a full public hearing and a subsequent resolution of City Council, provided however, that City Council shall determine, by clear and convincing evidence, that any Franchisee is in serious breach of the Franchisee's obligations under this Ordinance. Franchisee shall have the right to appeal any decision of City Council rendered pursuant to such petition to the Court of Common Pleas of Northampton County, Pennsylvania, or to such higher appellate court as Franchisee deems proper.

908.19 EFFECTIVE DATE

This Ordinance shall be effective for the calendar year beginning January 1, 1989. (Ord. 3225. Passed 12/6/88.)