

Chapter 13

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Part 1

Peddlers

§13-101. Definition and Interpretation.

As used in this Part:

Transient Retail Business -

(1) Engaging in peddling, soliciting or taking orders, either by sample or otherwise, for any goods, wares or merchandise upon any street, sidewalk or public ground, or from house to house, within the Township of Ferguson.

(2) Selling, soliciting or taking orders for any goods, wares or merchandise, from a fixed location within the Township, on a temporary basis, which shall include, but shall not be limited to, such activities conducted at the time of special occasions or celebrations, for seasonal purposes, or for or in advance of specific yearly holidays.

Person - only a natural person.

Legal Holiday - includes New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas. The singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and the neuter.

(Ord. 100, 4/13/1976, §1)

§13-102. License Required; Fee; Conditions of Issuance.

No person shall engage in any transient retail business within the Township of Ferguson without first having obtained from the Township Manager a license, for which a fee, which shall be for the use of the Township, shall be charged. Said fee is to be set by resolution of the Board of Supervisors. Provided: no license fee shall be charged under this Section:

- A. To farmers selling their own produce.
- B. For the sale of goods, wares and merchandise, donated by the owners thereof, the proceeds whereof are to be applied to any charitable or philanthropic purpose.
- C. To any manufacturer or producer in the sale of bread and bakery products, meat and meat products, or milk and milk products.
- D. To children under the age of 18 years who take orders for and/or deliver newspapers, greeting cards, candy, bakery products and the like, or who represent the Boy Scouts or Girl Scouts or similar organizations.
- E. To the seeking or taking of orders by insurance agents or brokers licensed under the insurance laws of the Commonwealth of Pennsylvania.
- F. To any person who has complied with the provisions of the Solicitation of Funds for Charitable Purposes Act, 10 P.S. §162.1 *et seq.* [Ord. 820]
- G. For taking orders for merchandise, by sample, from dealers or merchants

for individuals or companies who pay a license or business privilege tax at their chief place of business.

But all persons exempted hereby from the payment of the license fee shall be required to register with the Township Manager and obtain a license without fee. Provided further: any person dealing in one or more of the above mentioned exempted categories, and dealing with other goods, wares or merchandise not in such exempted categories. Provided further: the Manager may similarly exempt from payment of the license fee, but not from registering with him, persons working without compensation and selling goods, wares or merchandise for the sole benefit of any nonprofit corporation. Provided further: every license issued under the provisions of this Part shall be issued on an individual basis to persons engaging in such business; every individual shall obtain a separate license, issued to him in his name, and the license fee hereby imposed shall be applicable to every such individual license; except that a representative of a charitable organization may obtain the licenses for the applicants therein.

(*Ord. 100, 4/13/1976, §2; as amended by Ord. 820, 12/8/2003*)

§13-103. Application for License.

Every person desiring a license under this Part shall first make application to the Manager for such license. If such person shall also be required to obtain a license from any State or County officer, he shall, when making such application, exhibit a valid license from such State or County officer. The applicant shall give his name and address; his criminal record, if any; the name and address of the person by whom he is employed; the type of goods, wares and merchandise he wishes to deal with in such transient retail business; the length of time for which such license is to be issued; and the type and license number of the vehicle to be used, if any.

(*Ord. 100, 4/13/1976, §3*)

§13-104. Issuance of License; Information Thereon; Custody and Display or Exhibit Thereof.

Upon receipt of such application and the prescribed fee, the Manager, if he shall find such application in order, shall issue the license required under this Part. Such license shall contain the information required to be given on the application therefor. Every license holder shall carry such license upon his person, if engaged in a transient retail business from house to house or upon any of the streets, sidewalks or public grounds, or shall display such license at the location where he shall engage in such business if doing so at a fixed location. He shall exhibit such license, upon request, to all police officers, Township officials, and citizens or residents of the Township.

(*Ord. 100, 4/13/1976, §4*)

§13-105. Prohibited Acts.

No person engaged in any transient retail business shall:

- A. Sell any product or type of product not mentioned in his license.
- B. Hawk or cry his wares upon any of the streets, sidewalks or public grounds in the Township.

C. When operating from a vehicle, stop or park such vehicle upon any of the streets in the Township for longer than necessary in order to sell therefrom to persons residing in the immediate vicinity.

D. Park any vehicle upon any of the streets in the Township for the purpose of sorting, rearranging or cleaning any of his goods, wares or merchandise or of disposing of any carton, wrapping material or of any stock or wares of foodstuffs which have become unsaleable through handling, age or otherwise.

E. Engage in any business activity prohibited in the Township of Ferguson by general or special law applicable thereto.

F. Engage in any house-to-house activity, except by prior appointment, at any time on a Sunday or legal holiday or at any time before 9:00 A.M. or after 8:00 P.M. on any day of the week other than a Sunday or legal holiday.

(*Ord. 100, 4/13/1976, §5*)

§13-106. Supervision; Records and Reports.

The Township Manger shall supervise the activities of all persons holding licenses under this Part, and he shall keep a record of all license issued hereunder, and shall make a report thereof each month to the Board of Supervisors.

(*Ord. 100, 4/13/1976, §6*)

§13-107. Suspension and Revocation of License; Appeal.

The Manager is hereby authorized to suspend or revoke any license issued under this Part when he deems such suspension to be beneficial to the public health, safety or morals, or for violation of any of the provisions of this Part, or forgiving false information upon any application for a license here under. Appeals from any suspension or revocation may be made to the Board of Supervisors at any time within 10 days after such suspension or revocation. No part of a license fee shall be refunded to any person whose license shall have been suspended or revoked.

(*Ord. 100, 4/13/1976, §7*)

§13-108. Penalty for Violation.

Any person who shall violate any of the provisions of this Part shall, for every such violation, upon conviction thereof in a proceeding commenced before a district justice pursuant to the Pennsylvania Rules of Criminal Procedures, be sentenced to a fine of not less than \$100 nor more than \$1,000 plus costs and, in default of payment of said fine and costs, a term of imprisonment not to exceed 90 days. Provided, each day's violation of any of the provisions of this Part shall constitute a separate offense.

(*Ord. 100, 4/13/1976, §8; as amended by Ord. 820, 12/8/2003*)

Part 2

Cable System Regulatory Ordinance

§13-201. Statement of Intent and Purpose.

1. *Statement of Intent and Purpose.* The grantor intends, by the adoption of this Part, to facilitate the development and operation of cable systems to provide cable service. This development can contribute significantly to meeting the cable-related needs and desires of many individuals, associations, and institutions. Therefore, the following are statements of the grantor's intent when granting or renewing a franchise:

A. Provide for the installation and operation of cable systems with features meeting the current and future cable-related needs and interests of the community considering the costs to subscribers and to any operator of cable systems.

B. To act expeditiously on any requests for a franchise so as to allow the prompt provision of cable service while ensuring that the public interest is met and that residents are not discriminated against based on race, ethnicity, income, or other unfair basis.

C. Encourage the offering of the widest feasible scope and diversity of programming and other services to all grantor residents that are consistent with community needs and interests and as measured against the cost of providing such programming and other services.

D. Encourage implementation of technical advances in cable programming technology, and to make available to residents cable services of all kinds in the grantor.

E. Provide the use of channel capacity for government, educational, and public service access programming consistent with the needs and interests of the community and Federal law.

F. Ensure that rates and charges for basic service programming, equipment, and service are fair, reasonable and consistent with Federal standards.

G. Require that a grantee of a franchise provide customer service consistent with industry standards, this Part and the standards of the FCC.

H. Ensure that the installation and maintenance of cable systems comply with all generally-applicable grantor ordinances and regulations, and do not interfere with the grantor's legitimate use of rights-of-way of its own facilities and property.

I. That the occupation of the grantor's rights-of-way does not endanger the health, safety and welfare of its citizenry, public property or other uses of the rights-of-way.

J. Ensure the widest availability of cable services within grantor on a non-discriminatory basis.

K. Provide for compliance with the emergency alert provisions set forth by the FCC, set forth under 47 C.F.R. Part 11, FCC Rules and Regulations, Emergency Alert System (EAS). To the extent required by Federal and State law, grantee of

a franchise shall assist the grantor in working with the Centre County Office of Emergency Services and the Centre Region Emergency Management Council in the establishment of an emergency response plan.

L. Provide for the payment of franchise fees in accordance with Federal law.

2. *Franchise Fee and Franchising Costs.* Costs incurred by grantor for the granting or renewing of a franchise and for rights-of-way use shall be reimbursed by the collection of franchise fees.

(Ord. 907, 8/18/2008, §1)

§13-202. General Provisions.

1. *Short Title.* This Part shall be known and cited as the “Township of Ferguson Cable System Regulatory Ordinance.” Within this document it shall also be referred to as “this Part” or “the Ordinance.”

2. *Applicability.* The requirements of this Part shall supersede any existing ordinance(s) of grantor inconsistent with this Part and apply to the full extent of the terms herein and shall be limited in scope or application only to the extent as may be required by applicable Federal or State law, including such changes in applicable law as may be hereinafter enacted. No provisions of this Part shall be disregarded pursuant to this subsection except on express application to and determination by the grantor to such effect based on the specific factual circumstances demonstrated. When not in conflict with a franchise agreement, each grantee shall be subject to all the terms and conditions of this Part. Any franchise existing at the time of adoption of this Part shall be subject to it at the time a renewed franchise is granted by the grantor. Nothing in this Part or amendments thereto shall be interpreted to unilaterally deprive any person of any rights or obligations imposed by any binding and existing valid franchise agreement during the term thereof, whether entered into before or after enactment of this Part, and shall impose obligations on any such person additional to those included in such franchise agreement only to the extent permitted by law and to the extent not inconsistent with such franchise agreement; provided that the failure of the grantor to enforce any provision herein or in a franchise agreement or the failure of any person to comply with any provision herein or in a franchise agreement shall not be a waiver of the grantor’s right to enforce such provisions nor shall it in any way constitute evidence or agreement by the grantor that such person has a valid existing franchise agreement. The provisions of this Part shall apply irrespective of whether a grantee is determined to be operating pursuant to a valid franchise agreement.

3. *Participation in CACC Authorized.* The grantor may negotiate franchise language jointly with other local grantors in order to develop a coordinated franchise document with common elements shared among participating municipalities in the Centre Area Cable Consortium (“CACC”).

4. *Preservation of Police Power Authority.* Any rights granted pursuant to this Part and pursuant to any franchise agreement authorized hereunder are subject to the police power authority of the grantor to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Grantees shall be subject to and comply with all valid generally applicable laws enacted by the grantor.

5. *Public Inspection of Records.* Certain information required to be filed with the grantor pursuant to this Part or a franchise is subject to inspection and copying by the

public pursuant to the provisions of Pennsylvania Open Records Law, 65 P.S. §271, as amended (“Sunshine Law”). Notwithstanding anything to the contrary set forth herein, a grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The grantor agrees to treat any information disclosed by a grantee as confidential and only to disclose it to those employees, representatives, and agents of the grantor that have a need to know in order to enforce a franchise and who agree to maintain the confidentiality of all such information. Grantee shall not be required to provide subscriber information in violation of §631 of the Cable Act or any other applicable law. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to a cable system design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by a grantee to be competitively sensitive. In the event that the grantor receives a request under the State’s Sunshine Law, public records or similar law for the disclosure of information the grantee has designated as confidential, trade secret or proprietary, the grantor shall promptly notify grantee of such request and cooperate with grantee in its efforts to protect its rights.

6. *Enforcement.* The grantor shall be entitled to enforce this Part and any franchise agreement through all remedies lawfully available.

7. *Relationship of the Parties.* Under no circumstances shall any franchise agreement authorized by this Part be construed to create any relationship of agency, partnership, joint venture, or employment between the parties.

8. *Indemnification.* As a condition of use of the rights-of-way, every grantee at its sole cost and expense, shall indemnify, protect, defend and hold harmless the grantor, its elected officials, officers, employees, and agents acting in their official capacities, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney’s fees, directly or indirectly, in whole or in part, resulting from the granting of a franchise, property damage or bodily injury (including accidental death) that arise out of grantee’s construction, operation, maintenance or removal of a cable system, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the grantor, its elected officials, officers, employees, agents or contractors. The grantor shall give grantee written notice of its obligation to indemnify and defend the grantor within 10 business days of receipt of a claim or action pursuant to this Section. If the grantor determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the grantor.

(*Ord. 907, 8/18/2008, §2*)

§13-203. Defined Terms.

For purposes of this Part, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Part and any franchise granted by grantor, unless the context clearly indicates that another meaning is intended or unless otherwise more specifically defined in another chapter or code of the grantor. Words used in the present tense include the future tense, words in the single number include the plural number, words in the masculine gender include the feminine, and words in

the plural number include the singular. The words “shall” and “will” are mandatory, and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

Acceptance - filing a written acceptance of a franchise on a form approved by the grantor’s Solicitor with the grantor’s Secretary notifying the grantee of such acceptance.

Access channels - channels as designated in a franchise to be used for public access, educational access, or government access or any combination thereof.

Access facilities -

(1) Channel positions designated in a franchise agreement for public, educational, or governmental access (“PEG”) use.

(2) The facilities and equipment for the use of such access channel positions.

(3) Grantee does not relinquish its ultimate ownership of access facilities when designated for PEG use.

Affiliate - each person, directly or indirectly, controlling, controlled by, or under common control with the grantee; provided that affiliate shall in no event mean any limited partner or shareholder holding an interest of less than 25% of such grantee, or any creditor of such grantee solely by virtue of its status as a creditor and which is not otherwise an affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such grantee.

Applicable law - the Cable Act, all applicable FCC rules, this Part, all generally applicable ordinances, and State statutes and rules and regulations, any amendments thereto, and any of the applicable Federal and/or State laws that are now existing or hereafter adopted or amended.

Applicant - any person that applies for a franchise pursuant to this Part.

Application - the process by which an applicant submits a request and indicates a desire to be granted an initial franchise to utilize the rights-of-way of all, or a part, of grantor jurisdictional area. An application includes all written documentation, statements and representations, in whatever form or forum, made by an applicant to grantor concerning: the construction of a system over, under, on or through the rights-of-way; the area proposed to be served within grantor by an applicant; the portion of the rights-of-way proposed to be used by an applicant; and any other matter pertaining to a proposed system, which is necessary for a determination as to whether or not applicant meets the terms and conditions established by this Part.

Basic service - to the extent required by Federal law, any service tier that includes the lawful retransmission of: (1) all commercial television broadcast signals carried in fulfillment of the requirements of §614 of the Cable Act; (2) qualified local noncommercial educational television broadcast signals carried in fulfillment of the requirements of §615 of the Cable Act; and (3) any public, educational, and governmental access programming if required by a franchise agreement. Basic service as defined herein shall be consistent with the Cable Act and Federal law. A franchise agreement may include a more expanded definition

based upon mutual agreement between grantor and a cable operator.

Cable Act - the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, (codified at 47 U.S.C. §§521-611 (1982 & Supp. V. 1987) as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) as it may, from time to time, be amended.

Cable operator - any person or group of persons (1) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or 2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

Cable programing or video programming - programming provided by or generally considered comparable to programming provided by a television broadcast station.

Cable services - the one-way transmission to subscribers of (1) video programming or other programming service; and (2) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, as such term is defined in the Cable Act.

Cable system or system - a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed or used to provide cable services and which is capable of being provided to multiple subscribers within the grantor, but such term does not include:

- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations.
- (2) A facility that serves subscribers without using any rights-of-way.
- (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§201-226, except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of cable services directly to subscribers.
- (4) Any facility of any electric utility used solely for operating its electric utility system.

Capital costs - costs associated with the purchase of video production assets, products or other resources that will provide service and support for access channels for more than 1 year, but shall not have any meaning inconsistent with generally accepted accounting principles.

Centre Area Cable Consortium or CACC - the combined eight communities, including Benner, College, Ferguson, Halfmoon, Harris and Patton Townships and the Boroughs of Bellefonte and State College.

Channel - a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

Converter - an electronic device that converts signals to a frequency not susceptible to interference within the television receiver of a subscriber and, through the use of an appropriate channel selector, permits a cable subscriber to view all authorized cable subscriber signals delivered at designated converter dial

locations.

Direct incremental costs or external costs - costs in the following categories: (1) State and local taxes and franchise fees applicable to the provision of cable service; (2) incidental costs of complying with franchise requirements, including bond premiums and other security payments, insurance and indemnification costs, penalties and liquidated damages, and the capital costs of providing public, educational, and government access channels as required by the local franchising authority; (3) retransmission consent fees or copyright fees incurred for the carriage broadcast signals; (4) FCC regulatory fees pursuant to 47 U.S.C. §159; headend equipment costs necessary for the carriage of digital broadcast signals; and (5) other programming costs. Notwithstanding, in accordance with the FCC regulations, certain other charges are not incidental and they are to be considered part of the franchise fee assessment subject to the 5% cap: attorney fees, consultant fees, application or processing fees that exceed the reasonable cost of processing such submissions, and complimentary or discounted services provided to grantors.

Drop - the cable or cables or other hardwire technologies that connect the cable system to the subscriber's dwelling or residence to the nearest feasible point on the system in order to receive cable service.

Educational access or government access - the availability of channel positions on the cable system for noncommercial educational or government use by agencies, institutions, organizations, groups and individuals in the community, including the grantor or their designees for the distribution of noncommercial programming not under the grantee's editorial control and consistent with applicable law, including:

(1) Educational access shall mean access where local schools or education institutions, public or private, K-12, technical and community colleges, as well as other accredited institutions of higher learning, as the designated programmers having editorial control over their programming which shall concern their educational functions.

(2) Government access shall mean access where the grantor, County, or other governmental entities, agencies or institutions, or their designees, as designated by the grantor are the primary or designated programmer having editorial control over its programming which shall concern governmental meetings, activities, services, or community affairs.

(3) *EG access or EG access channel* - educational access and government access channels, collectively.

Federal Communications Commission or FCC - the Federal Communications Commission of the United States Government.

Franchise or franchise agreement - the initial authorization or renewal of the rights and obligations extended by the grantor to a person to own, lease, construct, maintain, or operate a cable system in the rights-of-way within the grantor for the purpose of providing cable services. It shall not mean or include: (1) any other permit or authorization required for the privilege of transacting and carrying on a business within the grantor required by the ordinances and laws of the grantor, including the provision of telecommunications services; (2) any generally applicable permit, agreement, or authorization required in connection with construction and operations in the rights-of-way including, without limitation, permits and

agreements for placing devices on poles, conduits, or other structures, whether owned by the grantor or a private entity, or for excavating or performing other such work in or along the rights-of-way. Cable operators shall be responsible for obtaining all generally applicable permits, licenses, or other forms of approval or authorization necessary prior to the commencement of any such construction activity. Notwithstanding, standard service installations, routine maintenance, or repair or replacement of parts on any part of the cable system or its appurtenances (e.g., system passive devices, amplifiers, power supplies, pedestals, or other related equipment) shall not require an operator to obtain prior approval, authorization, permits, or licenses to perform such activities from the grantor.

Franchise fee - any tax, fee, or assessment of any kind imposed by the grantor on a cable operator or its subscribers, or both, solely because of their status and activities as such in accordance with §622(g) of the Cable Act. The term “franchise fee” does not include: (1) any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their cable services but not including a tax, fee, or assessment that is unduly discriminatory against cable operators or subscribers); (2) capital costs that are required by a franchise to be incurred by a grantee for public, educational or governmental (“PEG”) access facilities; (3) requirements or charges incidental to the award or enforcement of a franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or (4) any permit fee or other such fee imposed under any valid ordinance; (5) any fee imposed under Title 17 of the United States Code; or (6) grantor utility pole fees.

Grantee - a person, including a cable operator, who has been granted a franchise to provide cable service by grantor or is required to have a franchise and that person or cable operator’s agents, employees, lawful successors, transferees, or assignees.

Grantor - the Township of Ferguson, Centre County, Pennsylvania.

Gross revenues - any revenue actually received by a grantee, or by any other entity that is a cable service on a grantee’s cable system, including the grantee’s affiliates, from the operation of the grantee’s cable system to provide cable services in accordance with general accounting principals (“GAAP”). By way of illustration and not limitation, this definition would include, without limitation, revenue derived from basic service and other tiers of service, franchise fees paid by subscribers, pay-per-view cable fees, installation and reconnection fees, leased access channel fees; converter rentals; locally-derived revenue from home shopping to the extent conducted through a cable service; all lease access payments from the cable system; locally-derived advertising revenues; revenues from two-way transmissions to the extent these transmissions are considered cable services under Federal law; payments or other consideration received by the grantee for the use of the cable system to provide cable service or other cable service and accounted for as revenue under GAAP. Gross revenues shall include revenue received by any entity other than the grantee where necessary to prevent evasion or avoidance of the obligations under this Code or a franchise to pay the applicable franchise fees. Revenues which are not directly attributable to specific subscribers, including, but not limited to, leased access fees, advertising revenues, and home shopping

commissions, shall be allocated among the franchising jurisdictions served by the grantee's cable system on a per subscriber or other equitable basis measured in a consistent manner from period to period. Gross revenues shall not include (1) to the extent consistent with GAAP, bad debt; provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in gross revenues in the period collected; (2) amounts collected from subscribers for public, educational and governmental access; provided, however, this exclusion does not limit a grantee's ability to pass through franchise related costs to the extent allowed by valid applicable law; (3) any taxes on cable services furnished by grantee which are imposed directly upon any subscriber or user by the State, grantor or other governmental unit and which are collected by grantee on behalf of said governmental unit.

Institutional network or I-net - a communication network which is constructed or operated by grantee and which is generally available only for educational or governmental use. The I-net shall consist of capacity, fibers or both, from both within the primary cable network and/or separately constructed networks that may be dedicated to governmental, educational and other publicly funded users for two-way, broadband communications. The I-net includes all equipment and maintenance of equipment required to make the capacity available, including, but not limited to, fiber and coaxial cable, cable modems, switching, routing, transmitting and receiving necessary for the use of the network as set out in the individual franchise.

Institutional network services or I-net services - the provision of capacity in a cable system made available by a cable operator to governmental and educational buildings as determined by the grantor, pursuant to the specific terms of the applicable franchise, for noncommercial applications including, but not limited to, two-way dedicated voice, video, data and telephony channels connecting and interconnecting user facilities.

Normal business hours - those hours during which most similar businesses in the community are open to serve customers, e.g. Monday through Friday, 9:00 a.m. to 5:00 p.m. In all cases, normal business hours must include some evening hours, at least one night per week, and/or some weekend hours.

Normal operating conditions - those conditions that are within the control of grantee. Those conditions that are not within the control of grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, vandalism, public works projects for which no advanced notice is given, and severe or unusual weather conditions.

Open video system or OVS - any video programming services provided to any person by a grantee certified by the FCC to operate an open video system pursuant to §653 of the Cable Act, as may be amended, regardless of the facilities used.

Person - any corporation, partnership, proprietorship, individual, organization, governmental entity or any natural person.

Public access - the availability of channel positions on the system for noncommercial public use by grantor for the distribution of noncommercial programming not under the grantee's editorial control and consistent with applicable law. Further, public access shall mean access where organizations,

groups, or individual members of the general public are the designated programmers having editorial control over their programming pursuant to rules which may be promulgated by the grantor.

Public building - any building or part thereof owned or leased or for the greater part occupied by the grantor or other governmental unit for government administrative purposes, but shall not include buildings owned by grantor and leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed.

Renewal - the re-authorization of a franchise granted to an existing cable operator as provided under applicable law and this Part

Reports - any and all non-trade secret documents and information required to be completed and/or kept or filed by a grantee on order of the Federal Communications Commission, State, or franchise. In accordance with valid applicable law and §13-202.4 hereinabove, the grantor shall maintain such information as confidential to the extent that the cable operator identifies specific information as such.

Rights-of-way - the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive or any public easement or rights-of-way now or hereafter held by the grantor which shall, within its proper use and meaning, entitle grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a cable system.

Service interruption - the loss of picture or sound on one or more channels on a cable system.

Standard installation or normal installation - any cable service installation that can be completed using a drop of 125 feet or less.

Subscriber - any person, who or which lawfully elects to subscribe for any purpose to cable service provided by a grantee by means of, or in connection with, the cable system, and whose premises or facilities are physically wired lawfully activated to receive cable service from grantee's cable system, including persons who receive cable service without charge according to the terms of the franchise.

Telecommunications - the transmission of electromagnetic signals between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received regardless of the technology used. This term does not include cable service.

Telecommunications Act - the Telecommunications Act of 1996 codified at Title 47 of the United States Code.

Telecommunications service - the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public. This term does not include cable service, which is instead subject to separate cable service franchising requirements under this Part.

Trained representative - employees of a grantee who have the authority and capability while speaking with a subscriber to, among other things, answer billing questions, adjust bills, and schedule service and installation calls.

(Ord. 907, 8/18/2008, §3)

§13-204. Franchise General Provisions.

1. *Franchise Required.* It shall be unlawful for any person to construct, operate or maintain a cable system or other competing cable services, including OVS, in the grantor without a franchise in the form of a franchise agreement authorizing the same, unless valid applicable Federal or State law prohibits the grantor's enforcement of such a requirement. Such franchise agreement shall comply with all of the specifications of this Part unless otherwise specified by the grantor.

2. *Franchise Not Exclusive.* Any franchise granted by the grantor shall be non-exclusive. The grantor specifically reserves the right to grant, at any time, such additional franchises for a cable system or any component thereof, to any other person including itself, as it deems appropriate, subject to this Part and valid applicable State and Federal Law.

The terms and conditions of any franchise granted or renewed after the effective date of this Part shall be, when taken as a whole, no less burdensome or more beneficial than any other franchise granted or renewed subject to this Part when taking into consideration, where reasonably warranted, the situation that existed at the time in which the earlier terms were adopted; provided, however, that nothing herein shall be construed as requiring the use of identical terms or conditions, or limit the enforceability of conditions that are freely negotiated.

3. *Authority for Use of Rights-of-Way.* For the purpose of constructing, operating, and maintaining a cable system in the grantor, grantee may erect, install, construct, repair, replace, relocate, reconstruct and retain in, on, over, under, upon, across and along the rights-of-way accessible for construction of a cable system within the grantor such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the cable system, subject to the requirements of this Part and all other applicable grantor codes. Nothing in this Part shall be construed to require the grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

4. *Franchise Term.* A franchise shall commence upon acceptance by grantee as defined in §13-215 herein and as may continue for up to 15 years from the date of acceptance, unless renewed, revoked or terminated sooner as herein provided.

5. *Area of Cable Service.* Every franchise shall apply to the area designated by the franchise agreement approved by the grantor.

6. *Application for Grant of Initial Franchise.* In conformance with the Cable Act and FCC rules, an application for an initial franchise for a cable system to provide cable service shall at a minimum be subject to additional information needed by the grantor, to understand the application, including the following:

- A. The applicant's name.
- B. The names of the applicant's officers and directors.
- C. The business address of the applicant.
- D. The name and contact information of a designated contact for the

applicant.

E. A description of a geographic area of the grantor that the applicant proposes to serve.

F. The public access or EG access channel capacity and capital support proposed by the applicant.

G. The term of the agreement proposed by the applicant.

H. Whether the applicant holds an existing authorization to access the public rights-of-way in the grantor franchise.

I. The amount of franchise fee the applicant offers to pay.

J. Information necessary for grantor to evaluate a grantee's legal, technical, and financial qualifications to construct, own, and operate a cable system.

K. Any additional information required by applicable State laws or grantor ordinances.

7. *Consideration of Initial Franchise Application.* Applicants may be evaluated according to the information included in an application as required by subsection .6, and within a maximum time, after 90 days for persons with existing authority to access rights-of-way and 180 days for persons that do not have authority to access rights-of-way. The times start on the date an applicant files an application or other writing including certain minimum information which is set forth in subsection .6 of this Section and deemed complete by the grantor. The grantor and an applicant may agree, in writing, to extend the 90/180-day time period for negotiations. It may then be adopted at the date as permitted by this subsection. If the 90/180-day time elapses without action by the grantor, the applicant is automatically granted an interim franchise based on the application submitted. Thereafter, the grantor and applicant may continue to negotiate the terms of a franchise in an attempt to reach a negotiated franchise. The 90/180-day time may be tolled by the grantor if it has requested and not received information from the applicant.

8. *Grant of Additional Franchise and Competing Service.*

A. Since competing or overlapping franchises may encourage the introduction of better cable services and quality at lower prices, the grantor will at all times attempt to accommodate additional entrants. At the same time it is recognized that the introduction of overlapping cable systems could have a potential adverse impact on the rights-of-way, and on the quality and availability of existing cable services to the public. Accordingly, the grantor shall issue a franchise in an area where another grantee is operating only following a public hearing to consider the potential impact which the grant of an additional franchise may have on the community and the rights-of-way. In considering whether to grant one or more additional franchises, the grantor shall specifically consider, and address in a written report, the following issues:

(1) Whether or not applicant has provided, at a minimum, information with its application as required by subsection .6, and consideration described in subsection .7.

(2) The legal, technical, and financial qualifications of applicant and agreement by a grantee to comply with such requirements of the grantor as may be determined by it to be applicable to a grantee in conformance with

applicable law.

(3) Acceptance of a franchise and the terms therein.

(4) The capacity of the rights-of-way to accommodate one or more additional cable systems and the potential disruption of rights-of-way and private property that may occur if one or more additional franchises are granted.

(5) Such other information as the grantor may deem appropriate to be considered prior to granting any competing or overlapping franchise.

9. *Application for Franchise Renewal.* Renewals will be according to valid applicable law, as amended. A grantor and a grantee, by mutual consent, may enter into renewal negotiations at any time during the franchise term of a franchise agreement. According to applicable law, grantor will review and evaluate the past performance of a grantee, including compliance with an existing franchise. Also, review and determination by grantor of current and future community needs and the technical, financial, and legal capabilities of a grantee to meet the current and future cable service-related needs in a new franchise considering the reasonable cost to do so.

10. *Permits for Non-franchised Entities.* The grantor may issue a license, easement, or other permit to a person other than the grantee to permit that person to traverse any portion of the rights-of-way for purposes other than providing cable service. Such license or easement, absent a grant of a franchise in accordance with this Part, shall not authorize nor permit said person to provide cable service of any type to any home or place of business within the grantor nor render any other service within the grantor except as specifically authorized by grantee.

11. *Franchise Provisions.*

A. All franchises granted pursuant to this Part are subject to this Part, including at least the following provisions:

(1) The continuing authority of grantor to impose such other regulations of general applicability through lawful exercises of the grantor's police powers as may be determined by the grantor to be conducive to the health, safety, and welfare of the public.

(2) The continuing authority of grantor to control and regulate the use of rights-of-way.

(3) The authority of grantor or its designees upon reasonable notice to inspect all construction or installation work performed by a grantee in grantor subject to the provisions of the franchise and this Part, and to make such inspections as it will find necessary during regular business hours to insure compliance with the terms of the franchise, this Part, and applicable law.

(4) The authority of grantor or its designees to inspect the financial records related to franchise Fees, maps, plans, and other like materials of the grantee upon reasonable notice to insure compliance with the terms of the franchise, this Part, and applicable law.

(5) The authority of a grantor, upon the revocation or denial of renewal as provided therein, to require a grantee to remove at grantee's own expense any and all portions of a cable system from the rights-of-way within the grantor; provided, however, grantee shall not be required to remove its cable

system, or to relocate the system, or to sell the system, or any portion thereof as a result of revocation, denial of renewal, or any other action to forbid or disallow grantee from providing cable services if the system is actively being used to provide non-cable services or other services not regulated under the Cable Act.

(6) The authority of a grantor to require a franchise fee.

B. *Federal, State, and Grantor Jurisdiction.*

(1) This Part and any franchise agreement will be construed in a manner consistent with all applicable law.

(2) In the event that the State or Federal government discontinue preemption in any area of cable service over which it currently exercises jurisdiction in such a manner as to expand rather than limit municipal regulatory authority, the grantor and a grantee shall in good faith negotiate applicable change to modify a franchise agreement to comply with the changed law to ensure competitive equity between a grantee and other cable operators, taking into account the conditions under which other cable operators are permitted to provide cable services to subscribers in the grantor.

(3) This Part will apply to all franchises granted or renewed from and after the effective date of this Part.

(4) Grantee will not be relieved of grantee's obligation to comply with any of the provisions of this Part or any franchise agreement granted pursuant to this Part by reason of any failure of the grantor to enforce prompt compliance.

(5) In the event of a change in applicable law affecting this Part, the grantor may amend this Part to comply with such change in applicable law.

C. *Franchise Agreement.*

(1) By acceptance of a franchise, a grantee acknowledges and agrees, unless otherwise provided in the franchise, that this Part in whole and its exhibits are incorporated and made part of a franchise agreement and shall be a binding contract. In addition, the franchise agreement accepted by a grantee is deemed to include the following representations:

(a) Grantee accepts and agrees to all of the provisions of this Part, as to construction, operation, or maintenance of the cable system, which the grantor may include in the franchise agreement subject to applicable law.

(b) Grantee has examined all of the provisions of this Part and agrees that the provisions thereof are valid and binding and enforceable as of the effective date of the franchise agreement.

(c) Grantee recognizes the right of the grantor to adopt such additional regulations of general applicability as it will find necessary in the exercise of the grantor's police power. Any amendment to the grantor code binding on grantee shall be confined to changes which do not materially alter the rights and obligations of grantee granted under a franchise agreement.

(2) The franchise agreement will contain such further conditions or provisions as may be included in the proposal of a grantee and negotiated between the grantor and a grantee. In case of such conflict or ambiguity

between any terms or provisions of a franchise agreement and this Part, the franchise agreement will control.

(Ord. 907, 8/18/2008, §4)

§13-205. Design, Services, and Capabilities.

1. *Cable System Design.* Every grantee shall offer cable service that meets the cable-related needs of the grantor in accordance with applicable law. The franchise shall include a description of the grantee's cable system including the general design and capabilities of the cable system to identify how the cable system will meet the current and future cable needs of the grantor and the schedule for commencement and completion of construction. Every grantee shall have responsibility for the design and maintenance of a cable system including subscriber premises equipment, unless the equipment is owned by the subscriber. Every grantee will provide notices regarding the use and operation of any equipment to be operated by subscribers in accordance with Federal law.

2. *System Description and Maps.* A grantee shall provide the grantor, upon written request, a complete set of cable system location maps of the service area, on which will be shown those areas within the grantor which its cable system exists and the description and location of all rights-of-way within which the cable system has been constructed. These maps shall be provided to the grantor in hard copy and, if available, electronic format. Updated maps shall be delivered to the grantor within 30 days after a request is made.

3. *Bi-annual Technology Review.* It is recognized that technology is rapidly changing and that subsequent to its initial construction, further modifications to incorporate increased channel capacity with compression technology, fiber optics and other unidentified technologies which materially affect the capability of the system to offer new and additional services such as interactive television, video on demand and similar services, will be desirable. No more than once every 2 years, the grantor or its representatives, with the cooperation and assistance of a grantee, may conduct a full compliance review, including possible public hearing, with respect to whether grantee has complied with the material terms of the franchise agreement, so long as it provides grantee with 90 days written notice in advance of the commencement of any such review or public hearing.

4. *Grantor, Installation and General Line Extension Policy.*

A. A grantee providing initial cable service within a grantor shall serve all residential areas as described in the franchise agreement and shall extend cable system and cable service to contiguous areas upon request of the grantor when a density of 30 homes per cable mile is reached. In a renewed franchise, the franchise agreement will provide a description of the grantee's current service area. Grantee will extend cable service to contiguous areas which have 30 homes per cable mile. Nothing herein shall be construed to prevent a grantee from serving areas not covered under this Section upon agreement with developers, property owners, commercial and business establishments, or residents.

B. Subscribers who request installation or maintenance or repairs shall be given an "appointment window" for installations, service calls, and other installation activities at a specific time or, at a maximum, a 4-hour time block

during normal business hours. (The grantee may schedule service calls and other installation activities outside of normal business hours for the convenience of the customer). Persons requesting installation of residential cable service shall be afforded a right of rescission between the time cable service is requested and the time service is actually installed. All standard installations, reconnects, service upgrades or downgrades shall be performed within 7 working days of the date the order was placed by the subscriber unless a line extension is required, in which event cable service shall be extended in accordance with paragraph .D of this subsection. Standard installations are those that are located up to 125 feet from the existing distribution system or the distribution system to be built in compliance with this subsection .4.

C. Only those homes which require drops in excess of 125 feet shall be required to pay for grantee's materials and labor costs, at the rate per foot. All other installations shall be performed at no more than the advertised normal installation rate.

D. Grantee shall extend cable service to any residence(s) upon the written request of one or more residents who shall reside within the requested extension area and who shall agree to subscribe to grantee's cable service where the number of occupied homes, and homes for which certificates of occupancy have been issued, which would be served by the requested extension equals seven homes per $\frac{1}{4}$ cable mile or more with the measurement starting from the closest existing usable point of connection to the system. Unless additional time has been agreed to by the grantor, such extensions shall be completed within 90 days of submittal of a request (weather permitting) where the above density standard is met and all additional utility permits or other right-of-way permits have been obtained. The grantor and grantee may agree to a different time for extension in particular instances.

E. If the number of homes per $\frac{1}{4}$ cable mile is less than seven, the requesting subscriber(s) may obtain service by paying a share of the incremental cost of the extension as follows:

(1) Grantee shall pay a share of costs calculated as the fraction derived from the existing density as calculated above divided by seven homes per $\frac{1}{4}$ mile; requesting subscriber(s) share shall equal the remainder. For example, if the existing density is three homes per $\frac{1}{4}$ mile, grantee shall pay 40% of the extension cost and the requesting subscriber(s) shall pay the remaining 60%.

(2) When grantee receives a request for an extension, the grantee shall, within 30 days, respond in writing with its calculation of the density and such other terms as may be needed to fully inform subscriber(s), including cost sharing and reimbursement procedures. If the density is less than seven homes per $\frac{1}{4}$ mile, grantee shall also provide a firm price good for 90 days reflecting the proportional share which the requesting subscriber(s) must pay on a cost sharing basis to obtain cable service. Within 90 days from payment of the cost share by prospective subscriber(s) and receipt of all necessary utility permits or other right-of-way permits, grantee shall complete the extension of service. A franchise may include a description of the cost sharing policy in place if different than what is described in this Section.

F. Nothing in this subsection .4 shall prohibit the grantor, the grantee, or real estate developers from entering into an agreement whereby entire new housing developments in the grantor shall be pre-wired for efficient future expansion of cable service.

5. *Interconnection.* In accordance with applicable law, including FCC rules, and the purposes of allowing for public access and EG access programming telecasts on cable systems serving subscribers in the grantor and adjoining communities, a grantee will not interfere with additional connections by other cable operators at studio or transmission source for public access and/or EG access programming telecasts in the grantor. Such connections shall be made by direct return line connection or other appropriate methods independent of a grantee's cable system.

6. *Provision of Service.*

A. After cable service has been established by activating trunk and distribution cable for any area, grantee shall make a standard installation to any requesting subscriber within that area 7 days from the date of request.

B. A grantee, upon written request of grantor, shall install and provide basic service as described in a franchise agreement, (excluding pay-per-view television and non-video services) to all public buildings designated by grantor in a franchise at no charge for either the initial normal installation or for monthly service provided at each location. Each of these installations should include one signal drop, one outlet, and one converter (or such other terminal equipment as may be necessary to provide an electronic interface with a television receiver). The public buildings to be provided this complimentary service shall include public buildings currently connected to and receiving complimentary basic service; public buildings as described in a franchise; or any such newly-constructed public buildings.

C. If more than one outlet is required at any public building as described in a franchise, grantee shall install such other outlets at the cost charged to other institutional facilities for installation and ongoing service. The distribution of the cable system inside such buildings shall be the responsibility of the user.

D. If required by grantor under the franchise, grantee will make available, without charge, one free cable modem service outlet to all school buildings and public libraries. The specific locations shall be identified in the franchise agreement. For the purposes of this Section, the term "school" means an educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 *et seq.*, as amended and does not mean "home schools."

7. *Technical Standards.* A cable system of a grantee shall be designed, constructed and operated so as to meet those technical standards promulgated by the Federal Communications Commission relating to cable systems contained in Part 76 of the Federal Communications Commission's rules and regulations relating to cable systems and found in Code of Federal Regulations, Title 47, §§76.601 to 76.617, as amended, or as may, from time to time, be amended. The results of tests required by the Federal Communications Commission must be filed with the grantor within 10 business days of written request.

8. *Special Testing.*

A. At any time after commencement of service to subscribers upon 30 days

written notice, and in the presence of a representative of the grantee, the grantor may require or may retain an independent engineer to perform additional tests, full or partial repeat tests, or tests involving a specific subscriber's drop. Such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests will be limited to the particular matter in controversy.

B. The grantor shall endeavor to so arrange its requests for such special tests during regular business hours so as to minimize hardship or inconvenience to grantee or to the subscriber. The rights and obligations of the grantor and grantee under this Section shall at all times be subject to applicable law and FCC regulation.

(Ord. 907, 8/18/2008, §5)

§13-206. Conditions for Use of Rights-of-Way and Construction.

1. *Construction.* Grantee shall comply with all generally applicable codes and ordinances with respect to construction within rights-of-way, and shall obtain all necessary permits and licenses required by Federal, State and local law, ordinances and rules as required of other like users of the rights-of-way, before commencing construction in grantor rights-of-way. A grantee shall furnish to grantor a written description of its system, including the size, appearance, and location of aboveground facilities, boxes, pedestals, and equipment being installed under their permit. The grantor may review the submittal for compliance with the grantor ordinances and include this as an exhibit in a franchise. This requirement shall not be interpreted or construed in any way to require a grantee to obtain from grantor prior approval, authorization, permits, or licenses to repair above-ground appurtenances, pedestals, and similar equipment or replace with facilities of the same or comparable size, or to perform maintenance or repairs on any part of the system where the right-of-way is not being disturbed.

2. *Compliance with Laws.* As a minimum, and without limitation, grantee shall adhere to the grantor's generally-applicable ordinances relating to rights-of-way construction and use safety standards and all building and zoning codes currently or hereafter in force in the grantor. The construction, installation, and maintenance of the cable system shall be effectuated by grantee in a manner that is consistent with the laws, ordinances and construction standards of the Commonwealth of Pennsylvania, all applicable industry standards, the Occupational Safety and Health Administration, FCC, and the Standards of Good Engineering Practices for Measurement of Cable Systems of the National Cable Television Association to the extent applicable, as well as all other valid generally applicable laws, rules, regulations and ordinances, Federal, State and local, as the same may be modified or amended from time to time, pursuant to the grantor's legitimate exercise of its police powers.

3. *Minimum Interference.* A grantee shall construct and maintain its cable system so as to minimize any adverse impact on public improvements or facilities of others in a rights-of-way and which will not unnecessarily interfere with the usual and customary uses in the rights-of-way.

4. *Erection of Poles Prohibited Without Approval.*

A. A grantee shall not erect, for any reason, any pole on or along any rights-of-way or in an existing aerial utility system without the prior approval of the

grantor or owner of the facilities proposed to be attached to. A grantee shall negotiate with the grantor or, as applicable, any private utility and furnish grantor with a copy of a current pole attachment agreement or agreement for conduit use, or both, before commencement of construction.

B. Above-ground location of cable system and related facilities shall generally be located where reasonable and safe and in a manner that will not adversely affect the grantor or other public or private property.

5. *Reservations of Rights-of-Way.* Nothing herein or in a franchise shall be construed to prevent the grantor from constructing sewers, grading, paving, repairing or altering any rights-of-way, or laying down, repairing or removing water mains or constructing or establishing any other public work. All such work shall be done, insofar as practicable, in such manner as not to obstruct, injure or prevent the free use and operation of poles, wires, conduits, conductors, pipes or appurtenances of grantee. If any such facilities of grantee shall interfere with the construction or repair of any rights-of-way or public improvement, then upon 30 days written notice all such property of the grantee shall be removed or replaced in such manner as shall be directed by the grantor so that the same shall not interfere with the public works of the grantor. Such removal or replacement shall be at the expense of grantee. The grantee shall at all times have the right to abandon its property. However, any such abandonment shall be in accordance with pole attachment agreements, a franchise, and valid applicable State, Federal and local law.

6. *Underground Installation.* In those areas within the grantor where cable system facilities and other utilities are currently placed underground, all cable system facilities shall remain or be placed underground. In areas where telephone and electric utility facilities are above ground at the time of a grantee's installation, grantee may install its cable system facilities above ground, provided that at such time as both electric and telephone utility facilities are placed underground, grantee shall likewise place its cable system facilities underground without cost to the grantor. Nothing contained in this Section shall require grantee to construct, operate and maintain underground any ground-mounted appurtenances.

7. *New Subdivision.* A grantee shall offer cable services to residential development constructed or erected after the date of this Part; provided, the dwelling units meet the density requirement specified herein. The developer or subdivider developing any residential development within the grantor shall give advance written notice to grantee of the beginning of excavation for or construction of off-site improvements in any residential development to enable installation of such conduit, pedestals, substructures and other equipment as may be necessary to provide cable service to the residential units in such a development so as to provide minimal interference with surface improvements. The same density requirements shall apply as defined in this Part. If the developer gives the grantee adequate notice (as defined below), then grantee shall be obligated to install all cable lines underground at the time the subdivision is constructed rather than when the individual lots are actually occupied.

In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the grantee at least 10 days written notice of such construction or development, and of the particular date on which open trenching will be available for the grantee's installation of conduit and/or

cable. The grantee shall provide specifications as needed for trenching.

Cost of trenching and easements required to bring cable service to the development shall be borne by the developer or property owner; provided, however, if the grantee fails to install its conduit and/or cable within 10 working days of the date the trenches are available, as designed in the notice given by the developer or property owner, and the trenches are closed after the 5-day period, the cost of new trenching shall be borne by the grantee.

8. *Property Damage and Repair.*

A. Grantee shall endeavor to minimize the occurrence of damage to improvements in the rights-of-way and all public and private property. If damage occurs, grantee shall promptly notify the property owner within 7 days in writing. Whenever the grantee disturbs or damages any rights-of-way, other public property or any private property, the grantee shall promptly restore the property to a condition reasonably comparable to that existing immediately prior to the disturbance. In addition, if grantee is restoring rights-of-way, it shall do so in accordance with all applicable requirements. If restoration is not satisfactorily performed by the grantee within a reasonable time, the grantor may, after prior written notice to the grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the costs of those repairs from grantee. Within 30 days of receipt of an itemized proof of payment of those costs, including the cost of labor, materials and equipment, the grantee shall pay the grantor.

B. Upon completion of work which caused any disturbance or damage to private property, grantee shall promptly commence restoration and will use its best efforts to commence the restoration within 72 hours of written notice from grantor, weather permitting and considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with any customer service standards required by a franchise.

C. When grantee excavates the surface of any rights-of-way, grantee shall be responsible for restoration of such excavation in accordance with all grantor general ordinances, rules, regulations and standards. Throughout the term of its franchise, grantee's cable system and related facilities, including above-ground pedestals, vaults, boxes, generators, power supplies or structures of any kind, shall be maintained in proper order and repair.

D. Upon completion of restoration in any area, grantee will notify the grantor.

E. If grantee enters private property for the purposes of construction where there is no dedicated public easement, grantee shall first secure the private property owner's consent.

9. *Permit Requirements.*

A. Subject to the generally applicable ordinances of grantor, a franchise and this Part establishes the general rules and scope of authority for grantee to construct and maintain and operate its cable system within the rights-of-way of the grantor. Grantee shall designate a responsible contact person including a telephone number available 7 days a week, 24 hours a day, with whom representatives of the grantor can communicate with on all matters relating to cable system installation,

construction, operation, and maintenance.

B. Prior to any excavation within the rights-of-way, a grantee shall obtain a permit, pay all applicable fees, and perform such work in accordance with applicable provisions of a franchise, and/or other applicable ordinances or regulations with respect to excavation work. Notwithstanding the above, no permit shall be required for cable service drops for individual subscribers, servicing of pedestals, or other routine maintenance of the cable system that does not result in surface disturbance of the public right of way as outlined in subsection .1.

C. A grantee must be current with all requirements of this Part and all franchise requirements, including payment of required fees and charges and insurance before a permit is issued by grantor.

10. *Cable System Drawings.* Grantee shall keep and maintain accurate records and as-built drawings of its cable system constructed, reconstructed, or relocated within the grantor's rights-of-way in accordance with §13-205.2 of this Part grantee shall cooperate promptly and fully with the grantor and take all reasonable measures necessary to provide accurate and complete information regarding the nature and location of its cable system located within the rights-of-way when requested by the grantor to facilitate public improvements. Such location maps and information shall be at the sole expense of grantee without expense to a grantor, its employees, agents, or authorized contractors.

11. *Grantee Responsible for Costs.* All earth, materials, sidewalks, pavings, crossings, utilities, public improvements, or improvements of any kind disturbed or removed by a grantee in its activities under its franchise shall be fully repaired or replaced promptly by a grantee and as required elsewhere in this Part and the franchise agreement and as may be required in accordance with applicable grantor's streets and sidewalks design standards and State law. Any such repair or replacement shall be at grantee's sole expense and to the reasonable satisfaction of the grantor or owner thereof.

12. *Procedure for Enforcement and Administration Relating to Construction.* The grantor has the responsibility to manage and control use of the rights-of-way or utility easements within the grantor's jurisdictional boundaries. In accordance with applicable law, including ordinances of general application, the grantor has the authority to administer and enforce rights-of-way construction standards for grantee's cable system on a non-discriminatory basis, including the authority to collect permit fees, review plans, and enforce the provisions of a franchise, and, may utilize the assistance of qualified independent third parties.

A. Upon reasonable notice, the grantor has the right to inspect all construction or installation work performed subject to the provisions of this Part and applicable franchises of the grantor; and to make such tests as they it shall find necessary to ensure compliance with the terms of a franchise and applicable requirements of the grantor; provided, however, a representative of grantee is present for all such testing, which shall occur during normal business hours (generally between the hours of 9:00 a.m. and 5:00 p.m.).

B. Nothing in this Part or a franchise granted pursuant to it gives permission to use the poles, conduit or other facilities of the grantor or others. A separate agreement for such use or connection shall be the responsibility of grantee.

13. *Work Performed by Others.*

A. A grantee shall make available, upon request, to the grantor the names and addresses of any person, contractor, subcontractor, agent, representative or entity other than the grantee, which performs services pursuant to a franchise; provided, however, that all provisions of this Part and a franchise remain the responsibility of a grantee.

B. All provisions of a franchise shall apply to any of a grantee's subcontractors or others performing any work or services pursuant to the provisions of a franchise.

(Ord. 907, 8/18/2008, §6)

§13-207. Service Provisions.

1. *Parental Control Device.* Upon request by any subscriber, grantee shall make available at grantee's actual cost a parental control or lockout device compatible with the subscriber's equipment that will enable the subscriber to block access to any or all channels in accordance with §§640 and 641 of the Cable Act.

2. *Leased Access Channels.* Leased access channels shall be provided in accordance with §612 of the Cable Act. A leased access channel need not be activated or otherwise made available for any particular user until such time as an agreement with respect to charges for said channel has been reached between grantee and said user. Grantee shall charge no more for said channel use than that amount allowed under Federal or State law.

3. *Emergency Use and Safety Alert.* The grantee shall comply with all emergency or disaster notification requirements in accordance with and at the time required by the provisions of the then applicable valid law, including FCC Regulations (47 C.F.R. Part 11, FCC Rules and Regulations, Emergency Alert System (EAS)) and provisions relating to the grantor's Emergency Operations Plan (35 Pa. C.S. §§7101–7707) and the Pennsylvania Amber Alert System (35 P.S. § 7025.1 *et seq.*).

4. *Institutional Network.*

A. A grantee shall—if required in the franchise agreement—construct, activate, and thereafter maintain an institutional network capable of transmitting two-way voice, data and video signals. A specific plan shall be made part of a franchise agreement.

B. The institutional network shall be designed and constructed so as to interconnect public buildings including educational institutions, grantor facilities, libraries, police and fire departments and other institutions as designated by grantor.

5. *Access Channels.*

A. If required in the franchise agreement, the grantee shall make bandwidth on its cable system available for up to two downstream channels for noncommercial access programming use. Channel capacity for public access shall be provided if required in a franchise and approved unanimously by the CACC. Additional PEG channel capacity shall be made available when, over a period of 6 consecutive months, 60% of the prime time (7:00 p.m. to 11:00 p.m. each evening) on the existing access channel(s) on average are fully occupied with locally-produced

access channel programming. Such additional channel availability will be provided within 180 days of the grantor's certification of such use and written request for additional channel(s). Grantee shall offer to each of its subscribers who receive all or any part of the cable services offered on the system, reception of the access channels. No charges shall be made for channel time or playback of prerecorded programming. Management of the access channels programming shall be the responsibility of the grantor, and not the responsibility of the grantee.

B. It shall be the grantee's sole responsibility to provide the cable, wire, lines and/or other necessary signal distribution equipment such that live or playbacks of access channel programming can be received from the selected production location and be distributed via the cable system to subscribers in the grantor. These cables, wires, lines and other signal distribution equipment shall be collectively known as the "return line."

C. Access channels may also be used by grantee, when such channel or channels are not being used by grantor for access programming and provided that such channel usage is subject to grantor approval and displacement by grantor upon 180 days prior written notice to the grantee if there is demand to use the access channel.

D. The grantee shall be responsible for the technical maintenance and, signal quality of such channels. Signal quality on such channels shall be commensurate with those which apply to the grantee's regular commercial channels and the grantee shall, upon request, provide copies of FCC signal quality proofs of performance with respect to those channels.

6. *Access Channel Funding, Facilities, and Equipment.*

A. The grantee shall provide financial support permissible under applicable law as an equipment replacement and facilities capital grant payable by grantee to grantor to support the cost of facilities and equipment for development of programming for playback on access channels in the amount and payable in a manner described in a franchise, and may be itemized and passed through to the subscribers. The grantor shall own and maintain all equipment purchased with equipment funding.

B. The grantee will provide access channel support as specifically agreed to in the franchise agreement; and to periodically inspect and maintain the return line to ensure that the technical quality of the retransmitted access programming signal meets FCC regulations. The grantee will not engage in any editorial control of the content of programming on an access channel on the cable system, except as otherwise required or permitted by law. The grantor shall be solely responsible for the use of the access channels and shall indemnify and hold harmless the grantee from any and all claims, demands, actions and damages (including attorney's fees) arising from the use or operation of the access channels.

C. Use of a channel position for public, educational, and/or governmental ("PEG") access shall be provided on the most basic tier of service offered by grantee in accordance with the Cable Act, and a franchise agreement.

D. Grantee shall insure that all access channels meet the technical standards of the FCC; provided, however, grantee shall not be responsible for defects, flaws or other impairments in the access channel programming delivered to grantee and

shall only be responsible for maintenance for facilities and equipment under its control applicable to the playback of programming on access channels of a grantee's system.

E. If grantee makes changes to its cable system that necessitate modifications to access channel(s) signal transmission facilities and equipment (including but not limited to the upstream paths), grantee shall provide reasonable advance notice of such changes to the grantor and shall provide, at grantee's expense, any additional or modified headend facilities necessary to implement such modifications within a reasonable period of time prior to the date that the system changes are to be made.

F. Upon request by the grantor, the access channels shall be made available in digital formats comparable to commercial offerings at the time grantee converts 60% of its system to digital transmission.

(Ord. 907, 8/18/2008, §7)

§13-208. Operation and Reporting Provisions.

1. *Open Books and Records.* The grantor shall have the right to inspect, upon 30 days written notice, at any time during normal business hours at the system office all books, records, maps, plans, financial statements that directly relate to the franchise, cable service complaint logs ("trouble calls" that have generated a work order and/or necessitated a response originating from the grantor received during the prior 12-month period), performance test results, and other like materials of grantee that relate directly to the terms and conditions of the franchise. Said books and records shall be made available for inspection at the local business office of grantee. Upon proper request by a grantee and pursuant to §13-202.5 herein, information obtained during such an inspection shall be treated as confidential, making it available only to those persons who must have access to perform their duties on behalf of the grantor, including but not limited to financial personnel, Solicitor's office, and members of the governing body, if it is proprietary in nature or within the definitions of closed records contained within the Pennsylvania Open Meetings Act, §610.010, *et seq.*, as amended from time to time. To the extent any Federal requirement for privacy applies to the information to be submitted said law shall control.

2. *Communications with Regulatory Agencies.* Copies of all petitions, applications, communications and reports submitted by a grantee or on behalf of or relating to grantee to the FCC or any other Federal or State regulatory commission or agency having jurisdiction in respect to any matters affecting the system authorized pursuant to this franchise shall also be submitted to the grantor upon written request. Copies of responses from the regulatory agencies to grantee shall likewise be furnished to the grantor within 30 days of receipt of the response.

3. *Annual Report.* Upon written request, grantee shall provide to the grantor within 30 days of such request:

A. A current financial statement for the immediately preceding fiscal year including an income statement, statement of operating expenses in detail, a cash flow statement and a balance sheet prepared in accordance with generally accepted accounting principles and certified by a financial officer of grantee. Submission of the most recent U.S. Securities and Exchange Commission Annual Report Form 10-

K prepared by grantee shall be deemed as a satisfactory compliance of this Section.

B. A description of all tiers or levels of service being offered together with a description of any changes made in any service during the reporting year.

C. A current copy of the subscriber service information required in this Part.

D. A trouble call report or compilation summarizing the complaints received during the reported year by category, number for each category and a discussion of any unresolved complaints.

E. A certification of the gross revenues derived from the grantor area, for the preceding year by the financial representative of the company or alternatively, an independent certified public accountant.

F. A description of how pay-per-view, on-demand, and other programming is made available to basic service only subscribers.

G. A description of services, including modifications, upgrades, or increases in channel capacity.

In any request for information pursuant to this Section, the grantor shall specifically identify the information to be provided by grantee to the grantor.

4. *Additional Reports.* Grantee shall prepare and furnish to the grantor, at the times and in the form prescribed, such additional reports, which are deemed by the parties as reasonably necessary for the administration and enforcement of this Part and a franchise.

5. *Maps.* Grantee shall maintain on file with the grantor at all times a current map or set of maps, either via paper or electronic format, drawn to scale showing the location of the system and all equipment installed or in place in rights-of-way and other public places. The maps shall be updated and made available in accordance with §13-205.2, herein above.

6. *Audit.* The grantor and their agents and representatives shall have the authority, during normal business hours, to arrange for and conduct an inspection of the books and records of grantee related to the payment of the franchise fee. Grantee shall first be given 30 days written notice of the audit request, the description of and purpose for the inspection and description, to the best of the grantor's ability. To the extent such books, records or documents contain confidential information as defined in subsection .1 of this Section, such confidential information may not be disclosed, as described in subsection .1.

7. *Periodic Evaluation, Review and Modification.* The field of cable service and technology is a relatively new and rapidly changing one which may see many regulatory, technical, financial, marketing and legal changes during the term of a franchise agreement. Therefore, in order to provide for a maximum degree of flexibility in a franchise, and to help achieve a continued advanced and modern cable system, the following evaluation provisions will apply:

A. The grantor may require, at its sole discretion upon 45 days written notice, evaluation sessions at any time during the term of a franchise; provided, however, there shall not be more than one evaluation session during any 3 calendar years.

B. Topics which may be discussed at any evaluation session include, but are not limited to grantee's ability to comply with the legal, financial, and technical requirements of the franchise; and meet the cable-related needs of the community,

and any other cable-related topics the grantor or a grantee deem relevant.

C. During an evaluation session, a grantee shall fully cooperate with the grantor and shall provide without cost such information and documents as the grantor may request to perform the evaluation. To the extent such information or documents contain confidential information as defined in subsection .1 of this Section such confidential information may not be disclosed.

D. If at any time during its evaluation, the grantor determines that a historical record of evidence exists of cable system performance which fails to meet the requirements of this Part, the grantor may require a grantee to perform tests and analysis directed toward such suspected inadequacies at a grantee's expense. A grantee shall fully cooperate with the grantor in performing such testing and any report prepared by a grantee shall include at least:

- (1) A description of the problem in the cable system performance which precipitated the special tests.
- (2) The cable system component tested.
- (3) The equipment used and procedures employed in testing.
- (4) The method, if any, by which the cable system performance problem was resolved.

(5) If, after receiving a grantee's report, the grantor determines that reasonable evidence still exists of inadequate cable system performance, the grantor may enlist an independent engineer to perform tests and analysis directed toward such suspected failures to meet the requirements of this franchise. A grantee shall be a witness to and cooperate and permit said testing.

E. As a result of a periodic review and evaluation session, the grantor or a grantee may determine that a change in the terms of the franchise should be required to meet the cable-related needs of the community, as determined by the grantor's governing body, that the cable system or franchise requirements should be updated, changed, revised, or that additional cable service should be provided and that to provide same would be technically and economically feasible. If the change is consistent with the terms of this Part or the franchise, the needs of the grantor, and is technically and economically feasible as determined following an evaluation of a grantee's financial condition, length of term remaining on the franchise, economic waste, if any, that would occur should the terms be changed, and rate of return on the investment within the community, the parties will in good faith, review the terms of the proposed change and any amendment to this Part or a franchise. Based on this review, and upon adoption of such a change or new requirement through a mutually agreed upon and acceptable amendment, the change will become effective.

(Ord. 907, 8/18/2008, §8)

§13-209. Consumer Protection Provisions.

1. *Approval of Changes.* The grantor reserves the right to regulate rates for basic service and any other services offered over the cable system, to the extent provided by Federal or State law. In accordance with the Cable Act, grantee shall maintain on file

with the grantor at all times a current schedule of all rates and charges.

2. *Subscriber Complaint Practices.* At all times, a grantee shall meet the requirements of the Federal Communications Commission regulations on consumer complaints and protection. However, at a minimum and in accordance with 47 C.F.R. §76.309, as amended, a grantee shall comply with the following:

A. A grantee shall maintain a conveniently-located local office within the CACC service area which shall be open during normal business hours. This office shall accept payments, handle adjustments to subscriber bills, respond to installation, repair, and/or maintenance requests and other service calls. A grantee shall have a toll-free telephone number available at all times (an access line which will be available to its subscribers 24 hours-a-day, 7 days-a-week). Trained company representatives shall be available to respond to customer telephone inquiries during normal business hours. Except in situations beyond its control, the grantee must begin working on a service interruption or other service problems no later than 24 hours after being notified of the problem. If the problem cannot be resolved within 24 hours, the customer shall be entitled upon request to a credit for 1 day's service for each day of the outage. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made, and the customer will receive a busy signal less than 3% of the time. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90% of the time under normal operating conditions, measured on a quarterly basis. A grantee shall not be required to acquire equipment or perform surveys to measure compliance with these standards unless an historical record of complaints indicates a clear failure to comply. After normal business hours, the access line may be answered by a service or an automated response system.

B. A grantee may impose a charge reasonably related to a grantee's actual cost incurred for a downgrade of service, except that no such charge may be imposed when:

(1) A subscriber requests total disconnection from the cable system.

(2) A subscriber requests the downgrade within a 30-day period following any rate increase relative to the service in question.

C. A grantee shall render efficient service, make repairs promptly and interrupt cable service only for good cause and for the shortest time possible. Such interruptions shall occur during periods of minimum use of the cable system.

D. A grantee shall maintain adequate telephone lines and personnel to respond in a timely manner to schedule service calls and answer subscriber complaints or inquiries as required by this subsection .2.

E. Subscriber requests for repairs of service interruptions shall be responded to by a trained customer service representative on the next business day. A grantee shall use best efforts to begin working on service interruptions promptly and in no event later than 24 hours after the interruption becomes known. A grantee shall begin actions to correct other service problems the next business day after notification of the service problem.

F. Subscriber requests for maintenance or repairs received on Saturdays or Sundays shall be responded to by a customer service representative on the next

business day. A grantee shall use its best efforts to begin working on service interruptions promptly and in no event later than 24 hours after the interruption becomes known. Grantee shall begin actions to correct other service problems the next business day after notification of the service problem.

G. Service calls for maintenance or repair shall be performed in accordance with the standards established by the FCC.

H. A grantee shall maintain an "appointment window" alternative for installations, service calls and other installation activities that will be either a specific time or, at maximum, a 4-hour time block during normal business hours. A grantee shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a customer service representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer shall be contacted. The appointment shall be rescheduled, as necessary, at a time which is convenient for the customer.

3. *Installation.* A grantee shall make service available to all grantor residents based on the terms and conditions outlined in §13-205 of this Part.

4. *Subscriber Information.*

A. A grantee shall provide to all new subscribers and, at least once a year, to existing subscribers, and upon request of a subscriber, written subscriber service information which shall include, but not be limited to, the following:

(1) Products and services offered by grantee.

(2) Prices and options for programming services, including programming carried on the system such that the programming information corresponds to channel positioning.

(3) Channel positions and programming carried on the cable system.

(4) Installation policy and service maintenance and termination procedures.

(5) Billing and complaint procedures including grantee's address, telephone number and office hours.

(6) Instructions on how to use the cable service and any converters.

B. A grantee shall notify subscribers and the grantor no less than 30 days in advance of any changes in rates, programming services, or channel positions, provided such change is within the control of the grantee. Grantee shall not be required to provide prior notice to subscribers of any rate change that is the result of a regulatory fee, franchise fee or any other fee, tax, assessment or charge of any kind imposed by any Federal agency, the Commonwealth of Pennsylvania or the grantor on the transaction between the grantee and the subscriber.

5. *Subscriber Billing Practices.*

A. As mentioned herein above, grantee shall notify each of its existing subscribers at least once a year, all new subscribers, and upon request of a subscriber, of its billing practices in accordance with FCC rules. Bills shall be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic service and premium tier service charges, if

applicable, equipment charges and any installation or repair charges. Bills shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances. Grantee shall not assess late fees for non-payment of a current bill until at least 30 days have elapsed since the mailing of the bill by grantee.

B. As mentioned herein above, subscribers shall be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and/or in writing. Notice must be given to subscribers a minimum of 30 days in advance of such changes if the change is within the grantee's control.

C. The subscriber bill shall contain the following information presented in plain language and format:

(1) Name and address of grantee.

(2) The period of time over which each chargeable service is billed including prorated periods as a result of the establishment and termination of service.

(3) A fully itemized list of charges levied for programming services, equipment provided, and other services or items offered, and a report of all activity during the billing period, including optional charges, rebates and credits.

(4) The amount of the bill for the current billing period, separate from any balance.

(5) A grantee's telephone number and a statement that the subscriber may call this number with any questions about the bill.

(6) The date on which payment is due from the subscriber.

D. The account of a subscriber shall not be considered delinquent until at least 30 days have elapsed from the due date of the bill, which shall be a date certain. The following provisions shall apply to the imposition of late charges on subscribers:

(1) A grantee shall not impose a late charge on a subscriber unless a subscriber is delinquent, and grantee has given the subscriber written notice of the delinquency.

(2) A late charge of reasonable amount may be imposed monthly.

(3) No late charge may be assessed on the amount of a bill in dispute if found in favor of the subscriber.

(4) Any charge for returned checks shall be reasonably related to the costs incurred by a grantee in processing such checks.

E. In case of a billing dispute, a grantee shall respond to a written complaint from a subscriber within 30 days. Refund checks shall be issued promptly, but no later than either the customer's next billing cycle following resolution of the request or 30 days, whichever is earlier, or the return of the equipment supplied by the cable operator if service is terminated. Credits for service shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

6. *Mobility-Limited Subscribers.* Unless otherwise agreed in a franchise agreement, upon the request of mobility-limited subscribers, a grantee shall make a good faith effort to arrange for delivery, pickup or exchange or replacement of converters or other equipment at the subscriber's address or by the use of a satisfactory equivalent means such as provision of a pre-paid postage mailer.

7. *Dispute Resolution.*

A. Every grantee shall establish procedures for receiving, acting upon, and resolving customer complaints, and crediting customer accounts, without intervention by the grantor.

B. The grantee's complaint procedure shall be filed with the grantor prior to its acceptance of a new or renewed franchise.

C. The grantee's investigation of a subscriber complaint shall be concluded in no more than 30 days after receiving a written complaint, at which time the grantee shall notify the subscriber of the results of its investigation and its proposed action or credit.

D. In the event of a billing dispute, grantee shall notify the subscriber in full accordance with FCC customer service regulations regarding billing and complaint procedures and provide the address and telephone number of grantor's cable office.

8. *Scrambling of Cable Channels.* In accordance with §§640 and 641 of the Cable Act, grantee shall fully scramble or block the audio and video programming of a channel upon request by a cable service subscriber without charge.

9. *Programming.*

A. *Programming Decisions.* All programming decisions shall be at the sole discretion of grantee; provided, however, that the grantor shall be notified of any changes in rates, channel positions or programming service as required by FCC customer service regulations.

(Ord. 907, 8/18/2008, §9)

§13-210. General Financial and Insurance Provisions.

1. *Payment to Grantor.*

A. As compensation for any franchise granted pursuant to this Part, a grantee for a cable system located in the rights-of-way, unless negotiated in a franchise agreement, shall have the following obligations:

(1) *Application Fee for Initial Franchise.* In addition to all other fees, permits or charges required by the grantor, an applicant for an initial franchise shall pay to grantor at the time of application, or amendment to its application, \$1,000 as a deposit on the application fee. An applicant will be assessed an additional application fee at the end of the review process should the grantor's actual costs of reviewing the application exceed the deposit. This fee will be equal to 100% of grantor's costs (including administration overhead, legal, consulting, etc.) for administering the application and granting a franchise. Any unused portion of the deposit shall be returned to the applicant.

(2) *Franchise Fees.* Any grantee subject to the terms of this Part and a franchise agreement shall, in addition to any other fees, permits, or charges by grantor, commence making payment of franchise fees on the effective date of

a cable services franchise agreement or if such grantee is already providing cable services over the cable system, on the date of the passage of this Part. Commencing on the specified date, a grantee subject to the terms of this Part, shall pay to grantor an amount equal to 5% of its gross revenues for the provision of cable services as defined in this Part and generally in the form as illustrated in Exhibit A, attached and made part of this Part by reference.

B. Payments due the grantor under this provision shall be computed at the end of each calendar year quarter. Payments shall be due and payable for each quarter not later than 45 days from the last day of the 3-month period. Specifically, payments shall be due and payable on or before May 15 (for the first quarter), August 15 (for the second quarter), November 15 (for the third quarter), and February 15 for the fourth quarter). Each payment shall be accompanied by a brief report showing the basis for the computation and such other relevant facts related to the payment of the franchise fee as may be required by the grantor. At request of grantor, and if agreed to by grantee, payments will be made electronically.

C. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the grantor may have for further or additional sums payable under the provisions of this franchise. All amounts paid shall be subject to audit and re-computation by the grantor.

D. In the event any payment is not made on the due date, interest on the amount due shall accrue from such date at the annual rate of 6%.

E. If a grantee offers bundled, tied, or combined cable services (which are subject to the franchise fee) with non-cable services (which are not subject to the franchise fee) to individual subscribers, the combined revenues from such bundled services shall be allocated consistent with the rates or prices advertised by the grantee through its marketing materials or on its published rate card.

If the grantee does not advertise or publish separate prices for the combined services, the percentage that the price for the combined services is discounted from the regular retail rates of the individual services shall be pro-rated across all the services in the bundled package.

As an example, a grantee may offer a “bundle” of video, data, and voice services for a flat fee of \$75 where the retail rate for the services purchased on an individual basis would equal \$100. The grantee would apply a 25% discount to the revenue derived from each service. Thus, if the retail rate for the cable service in the bundle were \$50, grantee would recognize cable service revenue in the amount of \$37.50 and pay a franchise fee on that revenue.

In no event shall grantee be permitted to evade or reduce applicable franchise fee payments required to be made to grantor due to discounted bundled services.

2. *Application of Franchise Fees and Other Fees and Charges.*

A. Grantee acknowledges and agrees that the franchise fees payable by grantee to grantor shall not be deemed to be in the nature of a tax, and shall be in addition to any and all taxes of general applicability and other generally applicable fees and charges which grantee may be required to pay to grantor and/or to any other governmental authority, all of which shall be separate and distinct

obligations of grantee.

B. Grantee shall not deduct all or any part of the franchise fees or other payments or in-kind contributions to be made by grantee to grantor pursuant to this Part and/or a franchise from the franchise fees paid thereunder unless specifically agreed to in a franchise agreement.

3. *Performance Bond.*

A. Except as may be described in a franchise, at the time a franchise is accepted, a grantee shall furnish and file with the grantor a performance bond. The performance bond shall run to the grantor in the sum of as then determined in the franchise agreement. The performance bond shall be conditioned upon the faithful performance of grantee of all terms and conditions of this Part and a franchise. The rights reserved to the grantor with respect to the performance bond or other security are in addition to all other rights the grantor may have under a franchise or any other applicable law. The company providing such performance bond must be licensed to do business in the Commonwealth of Pennsylvania.

B. The rights reserved by the grantor with respect to the performance bond are in addition to all other rights the grantor may have under a franchise or other applicable law.

C. The performance bond shall be subject to the approval of the grantor.

4. *Security Fund.*

A. Except as otherwise described in a franchise, at the time a franchise is accepted, and, in lieu of a performance bond as required herein above, a grantee shall deposit into a bank account, established by the grantor, and maintain on deposit through the term of this franchise, the sum of \$10,000, unless otherwise provided in a franchise agreement, as a common security fund for the faithful performance by it of all the provisions of this Part, the franchise and compliance with all orders, permits and directions of the grantor and the payment by a grantee of any claim, liens, costs, expenses and taxes due the grantor which arise by reason of the construction, operation or maintenance of the cable system. Interest on this deposit shall be paid to grantee by the bank on an annual basis.

B. Provision shall be made to permit the grantor to withdraw funds from the security fund. Grantee shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund as security for any purpose. The grantor reserves the right to increase the required amount of the security fund to match changes in the consumer price index for all items and all urban consumers.

C. If a grantee fails to pay to the grantor any amounts due and unpaid to grantor; or fails to pay to the grantor any liquidated damages, costs or expenses which the grantor shall be compelled to pay by reason of any act or default of a grantee in connection with this Part and a franchise, the grantor may then withdraw such funds from the security fund. Payments are not franchise fees as required in subsection .1, or as otherwise described in a franchise agreement.

5. *Procedure for Imposition of Penalties.*

A. If the grantor is able to demonstrate that grantee violated any provision of this Part or franchise agreement, it shall promptly notify grantee in writing of

the nature of such violation and the section of this Part or franchise agreement that it believes has been violated. If the grantor does not notify grantee of any violation of this Part or franchise agreement, it shall not operate as a waiver of any rights of the grantor hereunder or pursuant to applicable law.

B. Grantee shall have 45 days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Part or franchise agreement. If the nature of the violation is such that, in the grantor's reasonable judgment, it cannot be fully cured within 45 days due to circumstances outside of grantee's control, the period of time in which grantee must cure the violation may be extended by the grantor in writing for such additional time necessary to complete the cure, provided that grantee shall have promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the grantor.

C. If the violation has not been cured within the time allowed under subsection .5.B of this Section, then grantee shall be liable for liquidated damages in accordance with subsection .6 of this Section.

6. *Liquidated Damages and Opportunity to Cure.*

A. Because grantee's failure to comply with provisions of this Part or franchise agreement may result in harm to the grantor and because it will be difficult to measure the extent of such harm, the grantor may assess liquidated damages against grantee in the following amounts provided grantee has had an opportunity to cure in accordance with subsection .5.B of this Section. Such damages shall not be a substitute for specific performance by grantee, but shall be in addition to such performance.

B. The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the grantor. Liquidated damages may not be assessed for a time period exceeding 120 days, after which the grantor may initiate an action in law or equity in a court of competent jurisdiction.

C. The grantor may assess liquidated damages against grantee in the following amounts provided grantee has had an opportunity to cure in accordance with subsection .5.B of this Section:

- (1) For failure to provide and maintain cable service as required, \$200 per day for each day the violation continues.
- (2) For failure to obtain and maintain permits as required, \$200 per day for each day the violation continues.
- (3) For failure to give notices required in this Part or franchise to grantor as required, \$200 per day for each day the violation continues.
- (4) For failure to comply with any customer service provisions as required, \$200 per day for each day the violation continues.
- (5) For failure to submit reports in a timely fashion as required, \$150 per day for each day the violation continues.
- (6) For failure to comply with any material provision of the franchise, \$150 per day for each day the violation continues.

7. *Liability Insurance.*

A. A grantee shall maintain, throughout the term of a franchise agreement and as may be further described therein, liability insurance with a company licensed to do business in the Commonwealth of Pennsylvania with a rating by A.M. Best of not less than "A-minus VII," insuring grantee and the grantor with regard to all damages mentioned in paragraph .A of subsection .6 of this Section, in the minimum amounts of:

(1) One million dollars for bodily injury or death to any one person.

(2) One million dollars for bodily injury or death resulting from any one accident.

(3) Two million dollars for all other types of liability in umbrella form.

B. At the time of acceptance of a franchise, and upon request, grantee shall furnish to the grantor a certificate evidencing that a satisfactory insurance policy has been obtained. Said certificate shall be approved by the grantor and such insurance policy shall require that the grantor be notified 30 days prior to any expiration or cancellation.

C. All insurance policies maintained pursuant to this subsection shall contain the following or similar endorsement:

"Should any of the policies described herein be canceled before the expiration date thereof, the insurer affording coverage will endeavor to mail thirty days written notice to the certificate holder named herein, but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer affording coverage, its agents, or representatives, or the insurer of this certificate."

D. A grantee will replace such insurance to conform to this Part by promptly filing evidence of proof of insurance with grantor before termination of any existing insurance.

8. *Grantor's Right to Revoke.* In addition to all other rights which the grantor has pursuant to law or equity, the grantor reserves the right to initiate revocation proceedings, and all rights and privileges pertaining thereto, in the event that:

A. It is demonstrated that grantee substantially and materially violated any material provision of this franchise or State, Federal or local law applicable to grantee's operation of a cable system within grantor.

B. It is demonstrated that grantee repeatedly violates, after notice and opportunity to cure, any of the material provisions of the franchise or provision of valid applicable State, Federal or local law and refuses to cure it.

C. A grantee is found to have practiced any fraud or deceit upon the grantor or subscriber.

D. A grantee is found to have knowingly misrepresented a material fact in the application for, negotiation of, renegotiation of, or renewal of the franchise.

9. *Revocation Procedures.* In the event that the grantor determines that a grantee has violated any material event as set forth in subsection .8 of this Section, or any generally applicable material Federal, State or local law, the grantor may make a written demand on a grantee that it remedy such violation and that continued violation

may be cause for revocation. If the violation, breach, failure, refusal, or neglect is not remedied to the satisfaction of the grantor within 45 days following such demand, the grantor shall determine whether or not such violation, breach, failure, refusal or neglect by grantee is due to acts of God or other causes which result from circumstances beyond grantee's control.

A. The grantor may schedule a public hearing and grantee shall be provided with an opportunity to be heard. This opportunity shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Pennsylvania. The causes for pending revocation and the reasons alleged to constitute such cause shall be recited in a notice to a grantee prior to the public hearing. Said notice shall affirmatively recite the causes that need to be shown by the grantor to support a revocation. All notice requirements shall be met by providing grantee at least 45 days prior written notice (via certified mail - return receipt requested) of any public hearing concerning the proposed revocation of a franchise.

B. If notice is given and after a public hearing is held, the grantor determines there is a violation, breach, failure, refusal or neglect by a grantee, the grantor shall state in writing the grounds for its decision and give notice to a grantee to correct or remedy the same within such reasonable additional time, in such manner and upon such reasonable terms and conditions as grantor may direct.

C. If after a public hearing or hearing by a hearing officer, designated by grantor, it is determined that a grantee's performance of any of the terms, conditions, obligations, or requirements of franchise was prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided grantee has notified grantor in writing within 30 days of its receipt of notice of the breach of said cause. Such causes beyond a grantee's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil emergencies and labor strikes.

D. If, after notice is given and opportunity to cure, at a grantee's option, a public hearing is held, the grantor determines there was a violation, breach, failure, refusal or neglect, then the grantor may declare, by formal resolution, a franchise revoked and cancelled and of no further force and effect unless there is compliance within such period as grantor may fix, such period not to be less than 30 days provided no opportunity for compliance need be granted for fraud or misrepresentation.

E. The issue of revocation shall automatically be placed upon the agenda of the grantor's governing body at the expiration of the time set by it for compliance. The grantor then may terminate a franchise forthwith upon finding that a grantee has failed to achieve compliance or may further extend the period, in its discretion.

F. If the grantor, after notice is given and, at a grantee's option, a full public proceeding is held and appeal is exhausted, declares a franchise breached, the parties may pursue their remedies pursuant to a franchise or any other remedy, legal or equitable.

(Ord. 907, 8/18/2008, §10)

§13-211. Foreclosure and Abandonment.

1. *Foreclosure.* Upon the foreclosure or other judicial sale of the system, grantee shall notify the grantor of such fact and such notification shall be treated as a notification that a change in control of grantee has taken place, and the provisions of this franchise governing the consent to transfer or change in ownership shall apply without regard to how such transfer or change in ownership occurred.

2. *Abandonment.* Grantee may not abandon any portion of the cable system thereof without having first given 3 months written notice to the grantor. Grantee may not abandon any portion of the cable system without compensating the grantor for damages resulting from the abandonment.

(Ord. 907, 8/18/2008, §11)

§13-212. Removal, Transfer and Purchase.

1. *Removal after Revocation or Denial of Renewal.*

A. Upon denial of renewal of a franchise, or upon its revocation, as provided for, the grantor shall have the right to require a grantee to remove within 2 years, at a grantee's expense, all or any portion of the cable system from all rights-of-way and public property within the grantor. In so removing the cable system, a grantee shall refill and compact at its own expense, any excavation that shall be made and shall leave all rights-of-way, public property and private property in as good a condition as that prevailing prior to grantee's removal of the cable system, and without affecting, altering or disturbing in any way electric, telephone or utility, cables wires or attachments. The grantor, or its delegation, shall have the right to inspect and approve the condition of such rights-of-way and public property after removal. Under no circumstance including, without limitation, revocation, or denial of renewal of a franchise or any other action to forbid or disallow grantee from providing cable services, shall grantee or its assignees be required to sell any right, title, interest, use or control of any portion of grantee's facilities including, without limitation, the cable system and any capacity used for cable service or otherwise, to the grantor or any third party. Grantee shall not be required to remove or to relocate the plant that facilitates Internet access, digital voice, or other such services not governed by Title VI of the Communications Act of 1934, as amended, or any portion thereof as a result of revocation, denial of renewal or any other action to forbid or disallow grantee from providing cable services.

B. Except as otherwise provided in paragraph .A of this Section, if a grantee has failed to complete such removal within the time given under subsection .1.A of this Section, after written notice of the grantor's demand for removal is given, the grantor shall have the right to exercise one of the following options:

(1) Declare all right, title and interest to the cable system to be in the grantor or its delegator with all rights of ownership including, but not limited to, the right to operate the cable system or transfer the cable system to another for operation by it.

(2) Declare the cable system abandoned and cause the cable system, or such part thereof as the grantor shall designate, to be removed at no cost to the grantor. The cost of said removal shall be recoverable from the security fund, indemnity and/or penalty section provided for in a franchise, or from a grantee

directly.

2. *Sale or Transfer of Franchise.*

A. A franchise shall not be sold, assigned or transferred (including through inheritance), either in whole or in part, used as collateral for any loan or loans, or leased or sublet in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without full compliance with the procedure set forth in this Section.

B. Neither grantee nor its parent nor any affiliated entity shall transfer, assign or otherwise encumber, through its own action or by operation of law, its right, title or interest in the cable system or in a franchise agreement without the prior written consent of the grantor. Neither grantee nor its parent nor any affiliated entity shall sell, convey, transfer, exchange or release more than 50% of its equitable ownership in the cable system without the prior written consent of the grantor. No such consent shall be required for (1) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of grantee in the franchise or in the cable system in order to secure indebtedness; or (2) a transfer to an entity owned and/or controlled by grantee.

(1) The parties to the sale or transfer shall make a written request to the grantor for its approval of a sale or transfer. The written request shall not be deemed complete until all information required by the grantor in accordance with applicable FCC regulations is provided to the grantor. Upon receipt of a complete written request with all application information - including the legal, financial and technical qualifications of the transferee, the grantor shall have 120 days to grant or deny such approval. Within 30 days of the request, in accordance with FCC rules and regulations, notify the grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party.

(2) The grantor shall reply in writing within 30 days of the request and shall exercise its determination that a public hearing is necessary.

(3) If a public hearing is deemed necessary pursuant to subparagraph (2) above, such hearing shall be commenced within 30 days of such determination and notice of any such hearing shall be given 14 days prior to the hearing by publishing notice thereof. The notice shall contain the date, time and place of the public hearing and shall briefly state the substance of the action to be considered by the grantor.

(4) Within 30 days after the closing of the public hearing, the grantor shall approve or deny in writing the sale or transfer request. If the grantor has not taken final action on the grantee's request for consent within 120 days after receiving such request, consent shall be deemed granted.

(5) Any consent by the grantor for any transfer described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding agreement stating that it shall be bound by all the terms and conditions contained in the franchise.

3. *Purchase by Grantor upon Denial of Renewal or Revocation.*

A. Upon lawful denial of renewal or revocation of franchise, the grantor may,

in lawful manner and upon the payment of fair market value, mutually determined grantor and grantee, lawfully obtain, purchase, condemn, acquire, take over and hold the cable system.

B. Upon the revocation of a franchise, the grantor may in lawful manner and upon the payment of an equitable price lawfully obtain, purchase, and condemn, in accordance with such proceedings governed by Federal and/or State law, take over and hold the cable system.

(Ord. 907, 8/18/2008, §12)

§13-213. Rights of Individuals Protected.

1. *Unfair Discriminatory Practices Prohibited.* In the performance of a franchise, a grantee shall not discriminate unfairly against any person on the ground of or because of race, creed, color, national origin or ancestry, gender, religion or political opinion or affiliation, income of residents in any area of the grantor, or age. A grantee shall comply at all times with all other valid applicable Federal, State and local laws, and all Federal and State executive and administrative orders relating to non-discrimination.

2. Subscriber Privacy.

A. Absent a court order or requirement of Federal or State law, no signal of a channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber; provided, however, that grantee may conduct system-wide or individually addressed “sweeps” solely for the purpose of verifying system integrity, checking for illegal taps, controlling return-path transmission, billing for pay services or monitoring channel usage in a manner not inconsistent with the Federal law. Grantee shall not record or retain any information transmitted between a subscriber and any third party, except as required for lawful business purposes. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed 1 year which shall be renewed at the option of the subscriber. No penalty shall be invoked for a subscriber’s failure to provide or renew such authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of cable communications activity planned for the purpose of monitoring individual viewing patterns or practices.

B. No information or data obtained by monitoring transmission of a signal from a subscriber terminal, or any other means including, but not limited to, lists of the names and addresses of such subscribers or any lists that identify the viewing habits of subscribers shall be sold or otherwise made available to any party other than to a grantee and its employees for internal business use, and also to the subscriber subject of that information, unless a grantee has received specific written authorization from the subscriber to make such data available.

C. Compliance with the Cable Act, §631, shall be deemed compliance with this subsection .2 of this Section.

(Ord. 907, 8/18/2008, §13)

§13-214. Miscellaneous Provisions.

1. *Compliance with Laws.* A grantee and the grantor shall act reasonably and in good faith, deal fairly, and cooperate with each other to enable performance of all obligations under this Part and achievements of the expected benefits. A grantee shall conform to all grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of a franchise agreement which conform with generally applicable grantor ordinances.

2. *Continuity of Service Mandatory.* Upon revocation or lawful denial of renewal of a franchise agreement, the grantor may require a grantee to continue to operate the cable system for an extended period of time not to exceed 6 months. A grantee shall, as trustee for its successor in interest, continue to operate the cable system under the terms and conditions of a franchise agreement. In the event a grantee does not so operate the cable system, the grantor may take such steps as it, in its sole discretion, deems necessary to assure continued service to subscribers.

3. *Work Performed by Others.*

A. All provisions of this franchise shall remain the responsibility of a grantee, and a grantee shall be responsible for and hold the grantor harmless for any claims or liability arising out of work performed by persons other than a grantee in accordance with §13-202.8 of this Part. The grantee shall further provide all emergency contact information (name, address, phone number, etc.) for grantee employee responsible for said entity.

B. All provisions of this Part and a franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of a franchise.

4. *Compliance with Federal, State and Local Laws.*

A. *Conflict of Law.* If any Federal, State or local law or regulation requires or permits a grantee or the grantor to perform any service or act or shall prohibit a grantee or the grantor from performing any service or act which may be in conflict with the terms of a franchise, then as soon as possible following knowledge thereof, grantor and a grantee may by mutual agreement and in accordance with such change in law, modify a franchise agreement.

B. *Severability.* If any term, condition or provision of this Part or a franchise or the application thereof to any person or circumstance shall, to any extent, be rendered invalid or unenforceable as in conflict with any law, rule or regulation of a superior governmental body, the remainder hereof and the application of such term, condition or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Part and a franchise and all the terms, provisions and conditions thereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on a grantee and the grantor.

C. In the event that any court or other authority of competent jurisdiction declares any Section, provision or clause of this Part and a franchise to be unlawful, invalid or unenforceable, or is pre-empted by Federal or State laws or regulations,

such Section, provision or clause shall be deemed to be severable from the remaining portions of this agreement and shall not affect the legality, validity or enforceability of the remaining portions of this agreement.

5. *Non-enforcement by Grantor.* A grantee shall not be relieved of its obligation to comply with any of the provisions of this Part or a franchise by reason of any failure of the grantor to enforce prompt compliance.

6. *Administration of a Franchise.*

A. The grantor or its designee shall have continuing regulatory jurisdiction and supervision over the cable system and a grantee's operation under a franchise.

B. A grantee shall construct, operate and maintain the cable system subject to the supervision of all the authorities of the grantor who have jurisdiction in such matters and in strict compliance with all applicable laws, ordinances, departmental rules and regulations affecting the cable system.

C. Upon reasonable written notice and in accordance with the applicable provisions contained in §13-205.8 of this Part and a franchise, a cable system and all parts thereof shall be subject to the right of periodic inspection by the grantor provided that such inspection shall not interfere with the operation of the cable system and such inspections take place during normal business hours with a representative of the grantee present.

7. *Miscellaneous Violations.*

A. Except as otherwise permitted by applicable law, from and after the acceptance of the franchise, it shall be unlawful for any person to establish, operate or to carry on the business of distributing to any persons in the grantor any video signals or audio signals by means of a cable system using rights-of-way unless a franchise therefore has first been obtained pursuant to the provisions of this Part, and unless such franchise is in full force and effect.

B. Unless permitted by law, from and after the acceptance of a franchise, it shall be unlawful for any person to construct, install or maintain within any rights-of-way in the grantor, or within any other public property of the grantor, or within any privately owned area within the grantor which has not yet become a rights-of-way but is designated or delineated as a proposed rights-of-way on any tentative subdivision map approved by the grantor, or the grantor's official map or the grantor's major thoroughfare plan, any cable system, unless a franchise authorizing such use of such rights-of-way or property or areas has first been obtained.

8. *Emergency Use.* The grantee shall comply with the emergency alert provisions set forth by the FCC, set forth under 47 C.F.R. Part 11, FCC rules and regulations, Emergency Alert System (EAS). To the extent required by Federal and State law, grantee shall assist the grantor in working with the Centre County Office of Emergency Services and the Centre Region Emergency Management Council in the establishment of an emergency response plan.

9. *Controlling Law.* This Part and a franchise shall be construed and enforced in accordance with the substantive laws of the Commonwealth of Pennsylvania except to the extent the Supremacy Clause of the United States Constitution requires application of Federal law.

10. *Captions.* The paragraph captions and headings in a franchise are for

convenience and reference purposes only and shall not affect in any way the meaning of interpretation of a franchise.

11. *Calculation of Time.* Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

12. *Court Jurisdiction.* Except as may be permitted by applicable court rules, any proceedings relating to this Part or a franchise granted pursuant to it will be venued in the courts of Centre County, Pennsylvania.

13. *Force Majeure.* The grantee shall not be held in default under, or in noncompliance with, the provisions of this Part or franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the cable system, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

14. *No Third-Party Beneficiaries.* Nothing in this Part or the grantee's franchise agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Part or the franchise agreement.

(Ord. 907, 8/18/2008, §14)

§13-215. Effective Date; Publication and Time of Acceptance.

1. *Publication; Effective Date.* A franchise shall be signed by the designated head of the governing body, the Mayor, or acting Mayor, and attested by the grantor Manager/Secretary. The franchise shall be published in accordance with the requirements of grantor and State law and shall take effect upon acceptance by grantee.

2. *Time of Acceptance; Incorporation of Proposal; Exhibits.*

A. A grantee shall have 30 days from the date of adoption of a franchise by the grantor to accept a franchise and written evidence of the authority of the person signing the Acceptance and franchise agreement has been so authorized. Such acceptance by grantee shall be deemed the grant of a franchise for all purposes. In the event acceptance does not take place within 30 days or such other time as the grantor might allow, a franchise shall be null and void.

B. Upon acceptance of a franchise, a grantee shall be bound by all the terms and conditions contained in this Part and the franchise.

C. With its acceptance, a grantee shall also deliver any security deposit, insurance certificates, and/or performance bonds as required in this Part and in a franchise agreement.

(*Ord. 907*, 8/18/2008, §15)

EXHIBIT A

FRANCHISE FEE PAYMENT WORKSHEET

REVENUE SOURCE*	NUMBER OF SUBSCRIBERS	GROSS REVENUE	5% FRANCHISE FEE	YTD
Installation/Repair				
Basic Service				
Lifeline				
Tier 1				
Tier 2				
Tier 3				
Digital and HDTV				
Premium Services				
Pay-Per-View Services				
Additional Outlets				
Remote Control/Converter				
Interactive Services				
Late Fees				
Collection Fees				
Advertising				
Shopping				
DVR - Digital Video Recorder				
Other				
TOTAL				

A grantee must periodically update the list of services contained on the worksheet, similar to this worksheet, made part of a franchise. Failure to do so will not relieve a grantee of the requirements to pay franchise Fees on any services that are actually provided and included in the gross revenue definition in §13-203 of this Part This Exhibit A and a similar worksheet made part of a franchise will be periodically updated to comply with the gross revenue definition in this Part and changing cable service.

CERTIFICATION. I hereby certify to the best of my knowledge and belief, the above information on the ledgers and records of grantee is true and factual.

By: _____

Date: _____

Title: _____

REVENUE SOURCE DESCRIPTION:

INSTALLATION:

Standard Installation	Commonly occurring normal installation
Additional Outlet	Installation on additional sets within a customer's home
DVR	Installation of converter to a Digital Video Recorder
Reconnection of Service	Reconnection of cable to a customer's address
Relocation	Moving an outlet within a customer's home
Non-standard	Usually installation of a commercial type of an account
Change of Service	Charge for upgrading or switching a premium service

BASIC SERVICE:

Basic Service	Revenue derived from basic service
Bulk Rates	Revenue derived from non-standard billings (i.e., apt. complex)
Reduced Promotional Basic	Revenue derived from a discounted basic service

PREMIUM SERVICE:

All Premium Services	Revenue derived from premium service(s)
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PAY-PER-VIEW:

All Movie Services	Revenue derived from separate pay movie services
Events	Revenue derived from special events (i.e., concerts, boxing matches, etc.)

OTHER:

Subscriber Franchise Fees	Fees collected from subscribers to pay franchise fees
Equipment	Revenue from sale or lease of subscriber-related equipment (converters, digital video recorders, remote controls, etc.)
Shopping/Advertising	Revenue proportional to grantor derived by a grantee from advertising and home shopping
Digital and HDTV Services	Revenue from digital and high definition services

Part 3

Emergency Alarm Equipment

§13-301. Intent and Purposes.

It is the intent and purpose of this Part to adopt emergency alarm provisions which will prescribe effective standards, requirements and controls to reduce the frequency of false alarms within the Township.

(Ord. 530, 7/20/1992, §401)

§13-302. Definitions.

The following definitions shall apply in the interpretation and enforcement of this Part:

Alarm - a communication to the public safety agency indicating that a crime, fire or other emergency situation warranting immediate action by the public safety agency has occurred or is occurring.

Alarm Supplier - the business by any individual, partnership, corporation or other entity of selling, leasing, maintaining, servicing, repairing, altering, replacing, moving or installing any alarm system or causing any alarm system to be sold, leased, maintained, serviced, repaired, altered, replaced, moved or installed, in or on any building, structure or facility.

Alarm System - any assembly of equipment, mechanical, electrical or battery operated, arranged to signal the occurrence of a police, fire, hazard or medical emergency requiring urgent attention and to which police, medical or fire units are expected to respond. Exceptions:

- (1) Manual fire alarm pull stations are not regulated by this Part.
- (2) Residential smoke detectors that do not transmit an alarm signal off premises are not regulated by this Part.
- (3) Personal medical alarm.

[Ord. 820]

Answering Service - a service whereby trained employees, in attendance at all times, receiving prerecorded voice messages from automatic dialing devices reporting an emergency at a stated location, where such employees have the duty to relay immediately any such emergency message to the communications center of the police, fire or medical agency. [Ord. 820]

Audible Alarm - any device, bell, horn or siren which is attached to the interior or exterior of a building, structure or facility and emits a warning signal audible outside the building, structure or facility and is designed to attract attention when activated by a criminal act or other emergency requiring police or fire or medical agency response. [Ord. 820]

Automatic Dialing Device - a device which is interconnected to a telephone line and is programmed to transmit a signal by a voice or coded message that indicates

that an emergency condition exists and the need for an emergency response is required.

Central Station - a protective system or group of such systems operated privately for customers by a person, firm or corporation which accepts recorded messages from automatic dialing devices at a central station having operators and guards in attendance at all times who have the duty to take appropriate action upon receipt of a signal or message, including the relaying of messages to the communications center of the police, fire or medical agency. [Ord. 820]

Chief of Police - Chief of the Township Police Department.

COG - the Centre Region Council of Governments.

Director - Director of the Centre Region Code Administration Agency.

Emergency - a police, fire, hazard or medical emergency.

False Alarm - any alarm activated in the absence of an emergency, whether willfully or by inadvertence, negligence or unintentional act, including the malfunction of the alarm system; the intentional activation of a holdup alarm for other than a holdup in progress; the intentional activation of a burglary alarm for other than a burglary; the intentional activation of a medical alarm for other than a medical emergency; or the intentional activation of a fire alarm for other than a fire or hazard to which the police or fire agency responds. Exception: An alarm caused by the testing or repairing of telephone or electrical lines or equipment outside the premises; acts of God, such as earthquake, flood, windstorm, thunder or lightning; an attempted illegal entry of which there is visible evidence; a crime in progress; or in the case of an emergency medical alarm, an actual medical emergency requiring police, fire and/or medical personnel is excluded. [Ord. 820]

Fire Agency - the Alpha Fire Company or any covering fire company. [A.O]

Fire Chief - Chief of the fire agency or an authorized designee.

Fire Emergency - a fire, smoke, or overheating.

Hazard Emergency - an explosion, leak of toxic gas, liquid or solid, or a potential explosion or leak.

Intermediary - a central station protective system or an answering service as herein defined.

Key - to use a telephone line and/or other equipment for transmitting a message either directly or indirectly by an automatic dialing device. [Ord. 820]

Medical Emergency - an emergency involving the health of a person.

Municipality - the Borough of State College, College Township, Ferguson Township, Harris Township and Patton Township. [Ord. 820]

Permit - written authorization granted to an applicant by the director upon payment of the required fee.

Person - an individual, corporation, partnership, incorporated association or similar entity.

Police Agency - the Centre Region Police Departments or Pennsylvania State Police. [Ord. 820]

Police Emergency - an incident requiring prompt response by a police agency.

Police, Fire and Medical Communications Center - the police, fire and medical communications rooms and other rooms which house communications equipment.

Professional Alarm License - legal document authorizing a person the right to sell, install and service an alarm system within the Township.

Public Safety Agency - the Centre Region Police Departments, Pennsylvania State Police and/or covering fire and ambulance companies. [Ord. 820]

(Ord. 530, 7/20/1992, §402; as amended by Ord. 820, 12/8/2003)

§13-303. Permit and License Requirements.

1. A permit and/or license shall be governed by the following requirements on and after the effective date of this Part:

A. An alarm system permit shall be required for each structure having an alarm system or multiple alarm systems. The provisions of §13-306, entitled "Alarm System Permit," shall apply.

B. A building permit shall be required for the installation of an alarm system unless the system is battery powered.

C. An annual professional alarm license shall be required for the persons selling, installing, or servicing alarm systems within the Township. The provisions of §13-305, entitled "Professional Alarm License," shall apply.

D. The alarm system permit and professional alarm license fees shall be established by resolution of the Township. The building permit fee shall be established through the adoption of the International Building Code or the International Residential Code, or as either may be subsequently amended [Chapter 5, Parts 1 and 3, respectively], by the Township. [Ord. 820]

2. *Exception.* The owner or occupant of the structure is exempt from an alarm system permit and professional alarm license when installing an alarm system providing:

A. The Township and COG shall be issued an alarm system permit where applicable and shall be exempt from any alarm system permit fees.

[Ord. 820]

(Ord. 530, 7/20/1992, §403; as amended by Ord. 820, 12/8/2003)

§13-304. Prohibited Equipment.

1. *Exterior Alarms.* On and after the effective date of this Part, owners or users of exterior audible alarms must equip such exterior audible alarms with a timing mechanism that will disengage the exterior audible alarm after a maximum of 15 minutes except for water flow alarms. Exterior audible alarms without such a timing mechanism shall be unlawful in the Township and must be disconnected by the owner or user within 60 days from the effective date of this Part.

2. *Automatic Dialing Devices.* On and after the effective date of this Part, no automatic dialing devices may be keyed to the police and fire communications center.

(Ord. 530, 7/20/1992, §404)

§13-305. Professional Alarm License.

1. On and after the effective date of this Part, no one except an alarm supplier holding a valid professional alarm license (hereinafter referred to as "license") from the Township or its designee shall sell, install or service any alarm system within the Township.

2. The director shall issue a license to an alarm supplier meeting the requirements of this Section upon the filing of the required application and payment of a fee as established by resolution. Each license shall be an annual license and bear the signature of the director. A copy of the license shall be physically displayed upon each of the premises using the alarm system and shall be available for inspection by the director or by an authorized code inspector. A license is not required where no alarm system permit is required.

3. The alarm supplier applying for a license shall furnish the director an insurance certificate on an annual basis confirming that the alarm supplier has in force general liability insurance coverage in an amount of not less than \$300,000 for each occurrence. The alarm supplier who self insures such coverage shall furnish evidence of financial ability.

4. No corporation, sole proprietor, partner, joint venturer, trustee, executor, administrator, employee, fiduciary, or stockholder with a 5% or greater interest in a corporation (except a corporation whose stock is publicly traded and registered with the Securities and Exchange Commission or with a state security commission) applying for a license shall have been convicted of a felony or pleaded nolo contendere to a felony charge or indictment.

5. Alarm suppliers shall demonstrate a working knowledge of burglar, hold up, fire or medical alarm systems that they sell and shall be authorized by the manufacturer of the alarm equipment to sell, install and maintain the same. [Ord. 820]

6. A license shall be removed or renewal denied when:

A. The alarm supplier fails to meet the requirements necessary to obtain a license.

B. The license fee is not paid.

C. The director, Chief of Police, Fire Chief or other designee has reason to believe the alarm supplier's installations are the cause of false alarms.

D. The alarm supplier fails to provide emergency service as required by the Part.

7. Every alarm supplier that installs one or more alarm systems in the Township shall make service available directly or through an agent on a 24 hour per day basis, 7 days a week, to repair in a timely manner such devices and to correct malfunctions as they occur. Any person using an alarm system shall make arrangements for service to be available for such device on a 24 hour per day, 7 days a week basis.

8. Every alarm supplier who, after the effective date of this Part, sells or leases in the Township an alarm system, shall furnish operating instructions and manual to the buyer or lessee.

(Ord. 530, 7/20/1992, §405; as amended by Ord. 820, 12/8/2003)

§13-306. Alarm System Permit.

1. The user's fee for an alarm system permit shall be established by resolution of the Township and said permit shall be obtained by or on behalf of the owner of the premises upon which the alarm system is installed from the Centre Region Code Administration Agency prior to the installation of the alarm.

2. The alarm system permit shall bear the signature of the director and be valid for the period that the owner owns the premises upon which the alarm system is installed, or until revoked by the director. The permit shall be physically present upon the premises using the alarm system and shall be available for inspection by the director or by an authorized code inspector.

3. The alarm system permit shall contain the address of the property, the name of the business (if applicable), the name of the owner, tenant or agent responsible for the property, the alarm supplier or other entity responsible for maintaining the system (if applicable), the type of alarm (fire, burglary, holdup, medical), at least two alternative emergency numbers of person to be contacted to secure the property and any additional information as may be determined to be necessary. It shall be information as may be determined to be necessary. It shall be the owner's responsibility to amend the foregoing information whenever the information changes during the life of the permit.

4. Users who fail to obtain an alarm system permit within 60 days after the alarm system is activated, or within 60 days after the effective date of this Part, shall be liable to pay a late charge penalty as designated by resolution of the Township for each calendar month or part thereof that the permit is not obtained.

(Ord. 530, 7/20/1992, §406)

§13-307. Installation, Operational and Inspection Requirements.

Every alarm supplier selling, leasing or furnishing to any user, or a user who privately installs an alarm system which is located on premises within the Township shall:

A. Be permitted to install only equipment that is listed by Underwriter's Laboratories, Inc., as being electrically safe and meeting the Township requirements for the alarm system. Wiring for the alarm system must conform with all applicable Township codes.

B. Be required to cause each alarm system installed to be provided with standby battery power which shall automatically and immediately take over in the event of a power failure without initiating an alarm except for trouble signal.

C. Be required to install equipment in such a way as to neutralize electrical surges on the alarm system.

D. Be required to deactivate any alarm system within a reasonable period of time when multiple false alarms are received.

E. The sensory mechanisms used in connection with an alarm device must be adjusted to suppress false indications of fire or intrusion, so that the alarm device will not be activated by impulses due to transient pressure change in water pipes, short flashes of light, wind noises (such as the rattling or vibrating of doors or windows), vehicular noise adjacent to the premises or other forces unrelated to

genuine alarm situations.

F. Application for a permit for the installation of an alarm system and subsequent installation of such system pursuant to a permit issued or the continuance of the use of any alarm system already installed at the effective date of this Part shall constitute consent by the owner or lessee thereof and authorization for the inspection of any installation and/or operation by the director or his representative.

G. All such entries upon the premises where an alarm system is installed and all such inspections of the installation and operation of alarm systems shall be at reasonable times and upon reasonable notice, except in emergency situations.

(Ord. 530, 7/20/1992, §407)

§13-308. False Alarms.

1. The permittee shall be notified in writing by the Public Safety Agency for each and every false alarm activated in the absence of an emergency, whether willfully or by inadvertence, negligence, or unintentional act, including the malfunction of the alarm system to which the police, fire or medical agency responds. Each 24 hour period during which an alarm occurs shall constitute a separate offense and each offense shall accumulate over a 12 month period as follows: [Ord. 820]

False Alarm Notification

First alarm	Written warning
Second alarm	Written warning
Third alarm	Written warning
*Fourth alarm	*Charge as established by resolution
*Fifth alarm	
*Each additional alarm	

2. When the fourth and subsequent false alarm occurs, the Public Safety Agency shall, within 20 days from the date of the false alarm, notify the permittee that a false alarm charge is due and payable and the amount thereof. Such notice shall be forwarded by certified mail to the permittee at their last known address. Failure of the Public Safety Agency to mail notice of assessment of the false alarm charge within 20 days from the occurrence of a false alarm shall preclude the Township from assessing a false alarm charge for said false alarm.

3. A false alarm charge shall be due and payable at the office of the Township within 25 days from the date of the mailing of the notice of assessment of the charge. The Township and COG shall be exempt from payment of all fees.

4. Failure of the permittee to pay a false alarm charge on or before the due date shall constitute a violation of this Part and shall subject said person to the penalties set forth in §13-309, hereof.

5. If doubt exists as to the cause of the false alarm, the Chief of Police or Fire Chief or their designee shall make a decision regarding the circumstances of the activation.

6. Multiple alarms received by the police or fire agency before the system can be deactivated within a reasonable period of time shall be considered a single alarm.

(*Ord. 530, 7/20/1992, §408; as amended by Ord. 820, 12/8/2003*)

§13-309. Violations and Penalties.

1. Should any person fail to pay the false alarm charges as required under §13-308 of this Part, such failure shall constitute a violation of this Part, and such unpaid charges may be collected as fines by suit or summary proceeding brought in the name of the Township before any District Justice of this Commonwealth having jurisdiction. Such proceedings for such violations and for the collection of such fees imposed herein and unpaid may be commenced by warrant or by summons, at the discretion of the District Justice before whom such proceedings are begun. Each 24 hour period during which failure to comply continues shall constitute a separate violation of the terms of this Part.

2. Any person who is convicted of a violation shall be subject to prosecution in a summary proceeding brought before a District Justice having jurisdiction, and upon conviction shall be liable for a fine of not less than one hundred dollars nor more than \$1,000 plus costs of prosecution and, in default thereof, may be sentenced and committed to imprisonment for a period not exceeding 30 days.

3. The Township and COG shall be exempt from all penalties under this Part.
(*Ord. 530, 7/20/1992, §409*)

§13-310. Liability of Township and COG.

1. The issuance of any permit under this Part shall not constitute acceptance by the Township or COG of any liability to maintain any equipment, to answer alarms, nor otherwise render the Township or COG liable to any person for any loss or damage relating to the alarm system or procedure.

2. In the event the owner of such premises is a person other than the permit applicant, as in the instance of a lessee or other user not the owner of the premises on which the alarm is installed, such permit application shall constitute an indemnification agreement by the applicant to hold harmless any such police officer, firefighter or medical personnel; the police department, fire department or the medical agency; the Township or COG, as appropriate, from any and all damages whatsoever claimed by the lessor or owner of the premises on which the alarm is installed. [*Ord. 820*]

(*Ord. 530, 7/20/1992, §410; as amended by Ord. 820, 12/8/2003*)

§13-311. Administration and Enforcement.

Administration and enforcement of this Part shall be a function of the Code Administration Agency and police services of the Township and shall include the following:

A. Authority to accept or reject a permit application or revoke a permit because of a misrepresentation or false statement contained in any application for a permit, failure to correct any deficiencies in equipment or operation of an alarm device connected to the central receiving station after due notice, or not meeting other conditions and specifications of this Part.

B. Authority to order the disconnection of an alarm device to the central receiving station for a violation of this Part, or failure to pay any of the appropriate

fees.

(*Ord. 530, 7/20/1992, §411*)

§13-312. Right to Appeal.

Any applicant or permit holder shall have a right of appeal under this Part. An appeal may be taken when the fire department or the Township empowered to make a decision regarding an installation, operation or maintenance of an alarm device for which a permit has been required and is denied, or upon which a permit has been issued and a revocation of said permit has occurred. Such an appeal, when filed, shall be in writing and filed within 10 days following such decision. The appeal shall be filed with the governing body of the Township making the decision. The governing body shall promptly conduct a hearing to affirm, modify or reverse the decision appealed from. The decision of the governing body shall be final.

(*Ord. 530, 7/20/1992, §412*)

Part 4

Liquor License Transfers

§13-401. Applications.

All applicants for the location or relocation of a liquor license within the boundaries of Ferguson Township are required to submit a written application to the Township specifying the following information.

A. The applicant's full name and address (for the purpose of the application, "applicant" shall refer to every individual and/or corporation that has an interest in the licensed establishment).

B. The applicant's Pennsylvania Liquor Control Board License Number.

C. The applicant's current business address.

D. The names, addresses and telephone numbers of all parties having an ownership in the business in which the liquor license will be located.

E. The name, address and telephone number of the owner(s) of the location at which the liquor license will be located.

F. The address and a description of the property in which the applicant desires to locate or relocate the liquor license.

G. The names, addresses and tax parcel numbers of the property owners of all adjoining properties to the proposed location of the liquor license within Ferguson Township.

H. The date at which the applicant proposes to locate or relocate the liquor license within Ferguson Township.

I. The type of business establishment the applicant intends to establish within Ferguson Township.

J. A copy of the completed application required by the Pennsylvania Liquor Control Board including, but not limited to, the applicant's criminal history and any liquor control board violations.

K. The number of existing liquor licenses maintained by the applicant.

L. A letter from the Township Zoning Administrator that the intended use and location satisfies the Township Zoning Ordinance [Chapter 27]. [*Ord. 820*]

M. A traffic study based on a scope of work established by the Township.

(*Ord. 773, 5/7/2001, §101; as amended by Ord. 820, 12/8/2003*)

§13-402. Advertisement and Posting.

Upon receipt of a complete application as determined by the Township and the appropriate filing fee and escrow payment as established by the Township Board of Supervisors, the Township will conspicuously post the property. The property will be posted in a manner consistent with the posting requirements for a proposed land development plan. The Township will advertise the date, time and place of the hearing to be conducted by the governing body of Ferguson Township in a manner consistent

with public meeting notices and the Home Rule Charter.

(Ord. 773, 5/7/2001, §102)

§13-403. Hearing Criteria.

Ferguson Township has established objective criteria consideration by the Board of Supervisors in reaching a decision pursuant to the Pennsylvania Liquor License Law. The criteria to be considered by the Board of Supervisors in reaching its decision may include:

- A. Proximity to existing and proposed licensed liquor establishments. The location of a property line of the new or transferred license shall not be closer than 2,500 feet from the property line of an existing license or newly transferred license. This location requirement includes all classification of licenses.
- B. The number of existing liquor license establishments (all types).
- C. Traffic flow projections.
- D. The type of establishment, such as restaurant, night club, etc.
- E. Proximity of the proposed establishment to existing or proposed adult businesses (as defined by the Township Code of Ordinances). The new or transferred license shall not be located within 2,500 feet of the property line of an existing adult business as defined by the Township's adult business ordinance.
- F. Concerns expressed by area residents and/or adjoining property owners.
- G. Whether the total number of existing restaurant liquor licenses and eating place retail dispenser licenses exceeds one license per three thousand inhabitants of the Township.
- H. The prior Liquor Law compliance history of the applicant.
- I. Whether the proposed location is in compliance with the Zoning Ordinance of the Township [Chapter 27].

(Ord. 773, 5/7/2001, §103)

§13-404. Application Fees.

An application fee along with an escrow payment shall be established by resolution of the Board of Supervisors to reimburse the Township for expenses incurred in the administration of applications and hearings for new or transferred liquor licenses into the Township, which fee and escrow payment are intended to defray the costs of public notices, court stenographers, secretarial costs, fees paid to members of the governing body to conduct the hearing and administrative overhead. The applicant shall include with his/her/its completed application said application fee and escrow payment.

(Ord. 773, 5/7/2001, §104)

§13-405. Hearing.

The Township will conduct a hearing to determine whether to approve the new or transferred liquor license into Ferguson Township in compliance with the above referenced Act 141 of 2000. Any approval will be limited to the individual applicant, the applied for location and the applied for establishment. Any change will require Township approval. The Township may also impose additional conditions.

(*Ord. 773, 5/7/2001, §105*)

