

Chapter A188

CABLE FRANCHISES

[HISTORY: Adopted by the Borough Council of the Borough of Upland 8-7-1979 as indicated in article histories. Amendments noted where applicable.]

ARTICLE I

Southeastern Cable Vision Company

[Adopted 8-7-1979 by Ord. No. 2-1979]

§ A188-1. Title.

This ordinance shall be known and may be cited as the "Borough of Upland Community Television Company Franchise Ordinance."

§ A188-2. Definitions.

For the purpose of this ordinance, the terms set forth below are defined as follows:

BOROUGH — The Borough of Upland.

COMPANY — The grantee of rights under this franchise.

COUNCIL — The Council of the Borough of Upland.

GROSS ANNUAL RECEIPTS — Any and all payments made to or compensation received by Comcast or its affiliates, from subscribers of cable service in connection with the operation of the cable system within the franchise area. Gross annual receipts shall include fees charged to subscribers for basic cable service; fees charged to subscribers for any premium, per-channel or per-program services; charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for video or audio programming; rental or sales of any and all equipment, including converters and remote control devices; advertising revenues, including national, regional, and local advertising received by the area system (excluding agency commissions) and commissions received from home shopping channel sales generated in the franchise area, and cable modem (Internet access) service only to the extent that the company lawfully offers such service as a cable service. Gross annual receipts shall not include non-cable service items such as late payment fees; NSF check charges; converter deposits; bad debts or any taxes on services furnished by Comcast and imposed directly upon any subscriber or user by the Borough, state, federal or other governmental unit. [Amended 10-9-2001 by Ord. No. 6-2001]

PERSON — Any natural person, firm, partnership, association, corporation, company, trust, estate or organization of any kind.

SUBSCRIBER — Any person or entity receiving for any purpose the CATV service from a CATV system of the company herein.

§ A188-3. Franchise to be nonexclusive.

The franchise granted herein shall be nonexclusive.

§ A188-4. Grant of franchise.

- A. There is hereby granted by the Borough to the company the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof and additions thereto, in the Borough, poles, wires, cables and underground conduits, as directed by the Borough, manholes and other television conductors and fixtures necessary for the maintenance and operation in the Borough of a CATV system for the reception and distribution of television and audio signals.
- B. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the Borough reserves the right to grant similar use of said streets, alleys, public ways and places to any other person during the term of the franchise.

§ A188-5. Compliance with applicable rules and regulations.

The company shall at all times during the initial and renewal terms of this ordinance comply with and adhere to all provisions of this ordinance and all other ordinances of the Borough, laws of the United States of America and of the Commonwealth of Pennsylvania and rules and regulations of all federal and state departments, bureaus, commissions and boards of the United States of America and the Commonwealth of Pennsylvania, including rules and regulations of the Federal Communications Commission and the Department of Labor and Industry of the Commonwealth of Pennsylvania.

§ A188-6. Territorial area involved.

This franchise shall extend throughout the territorial limits of the Borough either as presently constituted or as hereafter adjusted.

§ A188-7. Liability and indemnification.

- A. The company shall indemnify, hold harmless and defend the Borough from and against any and all costs, expenses (including reasonable counsel fees), liabilities, losses, damages, suits, actions, fines, penalties, claims or demands of any kind asserted by or on behalf of any person or governmental agency or authority arising out of or in any way connected with, and the Borough shall not be liable to the company on account of any of the following:
 - (1) Any failure by the company to abide by, keep or perform any of the terms, conditions or provisions of this franchise;
 - (2) Any failure by the company to comply with any statutes, ordinances, regulations or orders of any governmental authority;

- (3) Any bodily injury (including death) or property damage arising with respect to this franchise; or
 - (4) Any act or activity relating to the granting of this franchise to the company or to the operations conducted thereunder.
- B. In connection with any suit or other proceeding in which the Borough shall be made a part, involving this franchise or any act or activity conducted thereunder or relating thereto and which may have any direct effect upon the Borough, the company, upon the written request of the Borough, shall come in and defend such suit on behalf of the Borough and shall bear all of the costs and expenses relating thereto.
- C. Throughout the term of this franchise, the company shall, at its own cost and expense, maintain comprehensive general liability insurance insuring the Borough and the company with regard to all liabilities and contingencies mentioned in Subsection A herein in the minimum amounts of: [Amended 10-9-2001 by Ord. No. 6-2001]
 - (1) One million dollars for bodily injury or death to any one person;
 - (2) One million dollars for bodily injury or death of any two or more persons resulting from one occurrence; and
 - (3) One million dollars for property damage resulting from any one accident.
- D. The company shall maintain, during the period of construction, a performance bond in favor of the Borough, with a good and sufficient surety approved by the Borough, in the sum of \$25,000, conditioned upon the company's well and truly performing its several obligations as set forth in this franchise, with regard to the construction phase of this franchise. Said bond shall be to insure the faithful performance of all undertakings of the company as represented in its application for municipal consent incorporated herein.
- E. The insurance policy and bond obtained by the company, in compliance with this section, must be approved by the Council, which approval shall not reasonably be withheld, and such insurance policy and bond shall be filed and maintained with the Council during the term of this franchise.
- F. Neither the provisions of this section, nor any bond accepted by the Borough pursuant thereto, shall be construed as excusing faithful performance by the company or as otherwise limiting the liability of the company under this franchise.

§ A188-8. Operation and maintenance of system.

- A. The company shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time reasonably possible. Such interruptions, insofar as possible, shall be preceded by notice and shall, insofar as possible, occur during period of minimum use of the system.
- B. During the term of this franchise and any renewal thereof, the company shall maintain a local business office or agent for the purpose of receiving, investigating and resolving all complaints regarding the quality of service, equipment malfunctions and similar matters.

Such local business office shall be open during normal business hours and in no event less than between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday.

§ A188-9. Service to governmental and institutional buildings; schools and libraries. [Amended 10-9-2001 by Ord. No. 6-2001]

- A. Cable service to governmental and institutional buildings. The company shall, upon request, provide free installation of one outlet and complimentary basic cable service to each municipal administrative building (e.g., Borough Hall, Police Station, Public Works Garage, fire and ambulance facilities), schools (K-12) and public libraries located in the franchise area within 125 feet of the company's distribution cable.
- B. Cable modem service to schools and library buildings. The company shall, upon request, provide free installation of one outlet and complimentary cable modem service to schools (K-12) and public libraries located in the franchise area within 125 feet of the company's distribution cable.
- C. The company shall not be required to provide an outlet to such buildings where a nonstandard installation beyond 125 feet is required, unless the Borough or building owner/occupant agrees to pay the incremental cost of any necessary cable system extension and/or nonstandard installation. If additional outlets of cable service or cable modem service are to be provided, the building owner/occupant shall pay the usual installation and service fees associated therewith.

§ A188-10. Safety requirements; use of company poles; obligations of company.

- A. In the use and occupation of the surfaces, subsurfaces and spaces above, below and adjoining the streets, public ways and places of the Borough, the company's equipment and plant and their construction, operation and maintenance shall be in accordance with the provisions of the following:
 - (1) The National Electrical Code of the National Board of Fire Underwriters;
 - (2) The Standards and Practices Code of the National Community Television Association; and
 - (3) Such applicable ordinances, codes, laws and regulations of the Borough, County of Delaware, State of Pennsylvania and the United States of America, which are now in effect or hereafter enacted.
- B. The company's equipment and plant shall be kept and maintained in a safe, suitable and substantial condition and in good order and repair so as not to endanger the lives or interfere unreasonably with the rights of persons or to cause physical damage to property or to interfere with improvements the Borough may deem proper to make or to hinder or obstruct unnecessarily pedestrian or vehicular traffic on streets, public ways and places.
- C. Where the Borough or a public utility serving the Borough desires to make use of the poles or other wire-holding structures of the company but agreement therefor with the company cannot be reached, the Council may require the company to permit such use for such consideration and upon such terms as the Council shall determine to be just and

reasonable if it is determined by the Council that the use would enhance the public convenience and would not unduly interfere with the company's operations.

- D. The company shall, upon not less than five working days' advance notice, temporarily raise, lower or relocate its wires and cables to permit the moving of buildings, and the expenses incurred by the company in such raising, lowering or relocation shall be paid, in advance, by the person or concern requesting the same.
- E. The company shall, at its own cost and expense, replace, restore or repair any street, sidewalk, alley, public way or paved area destroyed or damaged by the company or its agents, employees or servants.
- F. If, at any time during the term of this franchise, the Borough shall elect to alter or change the grade of any street, sidewalk, alley or other public way or, when required by reason of traffic conditions, public safety, street vibration, freeway and street construction, installation of sewers, drains, water pipes, power lines, signal lines and tracks or any other type of structure or improvements when acting in a governmental or proprietary capacity, the company, upon reasonable notice by the Borough, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own cost and expense.
- G. The company has the right, at its own cost and expense, to set their own poles if necessary for the proper, efficient and economical establishment of the cable television system. The setting of said poles shall be with the approval of the Borough.

§ A188-11. New developments.

It shall be the policy of the Borough to liberally amend this franchise, upon application of the company, when necessary to enable the company to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity to more effectively, efficiently or economically service its customers; provided, however, that this section shall not be construed to require the Borough to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

§ A188-12. Removal or abandonment of property of company.

- A. In the event that the use of any part or all of the CATV system is discontinued for any reason for a continuous period of 12 months or that such system or property has been installed in any street or public place without complying with the requirements of this franchise or that the franchise shall have been terminated, canceled or expired for any reason, the company, upon notice, shall promptly remove from the streets or public places all such property and poles of such system other than any which the Council may permit to be abandoned in such place and shall also remove house distribution cables and connections. In the event of any such removal, the company shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the Council.
- B. Upon termination of service to any subscriber, the company shall promptly remove all of its facilities and equipment from the premises of such subscriber upon his or her request.

Failure to return said equipment may result in criminal charges for theft being brought against the subscriber, since said facilities and equipment are the property of the company and remain the property of the company even after the termination of the service.

§ A188-13. Failure to perform street work.

Upon failure of the company to complete any work required by law or by provision of this ordinance to be done in any street within the time prescribed and to the satisfaction of the Council, the Borough may cause such work to be done, and the company shall pay to the Borough the cost thereof in the itemized amounts reported by the Director of Streets and Public Improvements to the company, within 30 days after receipt of such itemized report.

§ A188-14. Preferential or discriminatory practices prohibited.

The company shall not, as to rates, charges, service, facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

§ A188-15. Transfer of franchise.

- A. The company shall not transfer this franchise to another person, nor shall the identity of the general partner of this company be changed, without the prior written approval of the Borough, which approval shall not be unreasonably withheld.
- B. The company shall file forthwith with the Council a list of the names and addresses of all of its present limited partners. The company shall also inform the Council in writing of the names and addresses of any other persons who shall thereafter become limited partners in the company, either by original purchase from the company or transfer, within 15 days after such person acquires his limited partnership interest.

§ A188-16. Filings and communications with regulatory agencies.

Copies of all petitions, applications and communications submitted by the company to the Federal Communications Commission, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting CATV operations authorized pursuant to this franchise shall be made available to the Borough if requested. The company and Borough shall fully cooperate with each other in obtaining approval from the Federal Communications Commission in all respects.

§ A188-17. Borough's rights.

- A. The right is hereby reserved to the Council to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power.
- B. The Borough shall have the right to inspect the books, records, maps, plans and other like materials of the company at any time during normal business hours.

- C. The Borough shall have the right, during the terms of this franchise, to install and maintain free of charge upon the poles of the company any wire and pole fixtures necessary for a police and/or fire alarm system on the condition that such wire and pole fixtures do not interfere with the CATV operations of the company.

§ A188-18. Reports.

An annual summary report showing gross receipts received by the company from its operations within the Borough during the preceding year, and such other information as the Borough shall reasonably request with respect to properties and expenses related to the company's service within the Borough, shall be filed with the Borough by the company on or before April 4 of each year.

§ A188-19. Payment of quarterly franchise fee to Borough. [Amended 10-9-2001 by Ord. No. 6-2001]

- A. The company shall pay to the Borough of Upland, on an annual basis throughout the term of this franchise, a sum totaling 5% of gross annual receipts received by Comcast from its operation of the cable system within the Borough. Such amount shall be paid by the company to the Borough in quarterly installments due no later than 45 days following the end of calendar quarters ending March 31, June 30, and September 30; and 60 days following the end of the calendar year, ending December 31.
- B. Upon the request of the Borough, the company shall submit a report of gross annual receipts for such calendar year certified by a representative of Comcast. Upon 20 business days' written notice, the Borough shall have the right to conduct an independent audit of the company's financial records that are directly relevant to the payment of the franchise fee. All audits shall be at the expense of the Borough unless the audit reveals an underpayment of more than 5% in the amount of the franchise fee due the Borough, in which event the cost of the audit shall be borne by the company.
- C. In the event that federal law is amended, notwithstanding § A188-19A herein above, Comcast shall pay the maximum franchise fee percentage amount permitted by law during the term of the franchise. Any increase in the franchise fee shall be pursuant to formal action by the governing body and shall be implemented as soon as practicable, but no later than 60 days following receipt of written notice from the Borough to Comcast requesting the increase. A copy of the resolution or ordinance authorizing the rate increase shall accompany such written notice.

§ A188-20. Intervention by Borough.

The company agrees not to oppose intervention by the Borough in any suit or proceeding to which the company is a party and which may have a predictable direct affect on the company's operations within the Borough.

§ A188-21. Duration of franchise.

- A. The consent herein granted shall expire 20 years from the effective date of this ordinance.

B. The consent granted herein shall be subject to renewal for a period of 20 years at the expiration of the present term. Said franchise shall automatically renew itself under the present terms and conditions, upon the failure of either the Borough or the company to give the other party 180 days' notice in writing of its intention to terminate said franchise or to renegotiate said franchise. In the event that either party desires to renegotiate said franchise, there shall be a review of the performance of the company and the adequacy of the terms of the present franchise in a determination of any extension or renewal of said franchise.

§ A188-22. Rates, fees, charges. [Amended 10-9-2001 by Ord. No. 6-2001]

All rates, fees, charges, deposits and associated terms and conditions to be imposed by the company or any affiliated person for any cable service shall be in accordance with the FCC's rate regulations. Before any new or modified rate, fee, charge, deposit or associated term or condition may be imposed, the company must follow the applicable FCC notice requirements and rules and notify affected customers, which notice may be by any means permitted under applicable law. The preceding requirement shall not prevent the company from using bulk, commercial, promotional and other rates as acceptable by federal law.

§ A188-23. Construction timetable.

The company shall begin construction no later than six months after the receipt by the company of all Federal Communications Commission permits and approvals, all state and local permits and approvals and the signing of all joint-use agreements for the necessary public utility companies and after all necessary rearrangement of existing utility poles has been completed in order that they are put in compliance with the National Electric Safety Code. Said construction will continue by the company until all construction is completed.

§ A188-24. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

§ A188-25. Implementation of ordinance.

The Borough and the executive officers of said Borough shall issue to the company, in the name of the Borough, all permits necessary or convenient to evidence the grant of the franchise herein and to implement the provisions of this ordinance.

§ A188-26. Prevalence of provisions more favorable to municipality.

In the event that this ordinance is inconsistent with or not in conformity with any ordinance in Delaware County to which Southeastern Cable Vision Company is a party or signatory, the premises of said other ordinance shall control in all cases where the provisions of that ordinance are more favorable to the municipality than the present ordinance.

§ A188-27. Repealer.

All ordinances or parts of ordinances conflicting with the provisions of this ordinance are

hereby repealed to the extent of such conflict.

§ A188-28. Commitments considered binding upon applicant; application in conflict.

All of the written commitments contained in the written application, except as modified herein, are to be considered to be binding upon the applicant as the terms and conditions of this consent, and that application shall be annexed hereto and made a part hereof by reference. Any portion of said application in conflict with the provisions of Federal Communications Commission Rules and Regulations, Section 76.1 et seq. (1972), as amended and as clarified, Federal Communications Commission clarification of rules, 39 Federal Register 14288 through 14300 (April 1974) and report and order adopted July 22, 1977, released September 30, 1977, in the matter of amendment of Subparts b and c of Part 76 in the Commission's rules pertaining to applications for certifications of compliance of federal-state/local regulatory relationships, and which exceeds any Federal Communications Commission rules, shall not be considered effective or enforceable.

§ A188-29. Fees incurred by Borough paid by company.

The company agrees to pay the Borough any and all responsible attorney fees, engineering fees and other professional fees incurred by Borough in the adoption of this ordinance by the Borough and in the implementation of the franchise herein granted.

§ A188-30. When effective.

This municipal ordinance shall become effective as of the date upon which the municipality received written notification that the company accepts the terms and conditions herein.

ARTICLE II

Verizon Pennsylvania, Inc.

[Adopted 6-24-2008 by Ord. No. 6-2008]

§ A188-31. Agreement with Borough.

The Borough of Upland hereby authorizes the entering into of a cable franchise agreement with Verizon Pennsylvania, Inc., to construct, install, maintain, extend and operate a cable communications system, the specific terms of which, agreeable to both parties, shall be memorialized in said agreement.

§ A188-32. Severability.

If any sentence, clause, section or part of this ordinance is, for any reason, found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof. It is hereby declared as the intent of the Borough of Upland Council that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

¹. Editor's Note: A copy of the application is on file in the office of the Borough Secretary.

§ A188-33. Repealer.

All ordinances or parts of ordinances conflicting with any provisions of this ordinance are hereby repealed insofar as the same affects this article.

§ A188-34. When effective.

This amendment shall be effective five days following adoption, as by law provided.