

CHAPTER 8
FRANCHISES

Part 1

Telephone

- §101. Booth Locations**
- §102. Presentation of Construction Plan or Plans**
- §103. Construction Supervised by Borough Engineer**
- §104. Borough Use Restricted**
- §105. Maintenance**
- §106. Conflict of Use or Rights**
- §107. Rules Governing Operation**
- §108. Effective Date**
- §109. Acceptance**
- §110. Company to Pay Fees in Connection With Passage of Ordinance**

Part 2

Cable Television

- §201. Approval of Installation Plans Required**
- §202. Installation and Maintenance Under the Direction of Borough Officials**
- §203. Replacement of Damaged or Displaced Sidewalk or Street**
- §204. Erection, Construction, and Maintenance Requirements**
- §205. Compliance**
- §206. Public Liability Policy**
- §207. Exclusiveness of Rights**
- §208. Permission and Privileges May be Revoked**
- §209. Existing Utility Poles/Facilities**
- §210. Removal of Equipment**
- §211. Contracts to be Filed With Borough Secretary**
- §212. Acceptance of Terms**
- §213. Company to Pay Fees in Connection With Passage of Ordinance**
- §214. Schedule of Fees**
- §215. Payments Due Borough**
- §216. Report of Income**
- §217. Rights Reserved by Borough**
- §218. Violation and Penalty**

Part 1

Telephone

§101. Booth Locations.

All booths erected by said Company shall be so located as in no way to interfere with the safety or convenience of persons traveling on or over the said streets, alleys and highways, and in the installation and maintenance of its underground system, said Company shall not open or encumber more of any street, alley or highway than will be necessary to enable it to perform the work with proper economy and efficiency. (Ordinance 250, May 4, 1964, §1)

§102. Presentation of Construction Plan or Plans.

Whenever the said Company shall desire to erect, lay down or construct any booths, posts, conduits or manholes, it shall present a plan or plans showing the location, number and size thereof to the Borough Engineer, who shall approve or disapprove the same as to location which plan or plans, or copy thereof, with approval endorsed thereon, shall be filed with the Borough Secretary, before any work shown thereon is started. In case the said Borough Engineer disapproves any plan or plans, he shall designate thereon, by the use of appropriate words or marks, or both, some other location suitable for the purposes of the said Company. (Ordinance 250, May 4, 1964, §2)

§103. Construction Supervised by Borough Engineer.

The erection of booths and the construction of conduits and manholes under the provisions of this ordinance shall be subject to the supervision of the Borough Engineer and said Company shall replace and properly relay that portion of any sidewalk or street pavement which may have been displaced or damaged by it in the construction and maintenance of its system. (Ordinance 250, May 4, 1964, §3)

§104. Borough Use Restricted.

Not more than one duct in each run of conduits constructed under the provisions of this ordinance may be used, free of charge, for the purpose of carrying wires of any Fire Alarm or Police Telegraph System owned and maintained by the said Borough, provided the said wires are placed and maintained in such a manner as may be prescribed by the said Company, and that no use shall be made of such space by the said Borough, which will result in interfering with or impairing the operation or use of the said Company's property or service or will endanger its property or employees. (Ordinance 250, May 4, 1964, §4)

FRANCHISES

§105. Maintenance.

The said Company shall maintain all posts, booths, telephones, cables, wires, conduits, ducts, mains, pipes, manholes, and all other apparatus erected or constructed under the provisions of this ordinance, in good and safe order and condition, and shall at all times fully indemnify, protect and save harmless the said Borough from and against all actions, claims, suits, damages and charges, and against all loss, and necessary expenditures arising from the erection, construction and maintenance of its system, or from its neglect or failure to maintain the said apparatus in good and safe order and condition. (Ordinance 250, May 4, 1964, §5)

§106. Conflict of Use or Rights.

Nothing in this ordinance contained shall be construed to grant unto the said Company any exclusive right, or to prevent a grant of similar privileges to other companies, nor to conflict with the powers and jurisdiction now or hereafter vested by law in the Pennsylvania Department of Highways or the Pennsylvania Public Utility Commission and their successors over certain highways or with any rules and regulations issued from time to time by the said Department or Commission and their successors, governing the use of such highways by public service corporations. (Ordinance 250, May 4, 1964, §6)

§107. Rules Governing Operation.

The said Company shall be governed by all legal ordinances of a general nature affecting its operations in the Borough of Fountain Hill, that are now in force and enacted under and by virtue of the police powers of the said Borough or the laws of the State, as well as all such ordinances hereafter so enacted, provided the terms conditions and regulations prescribed therein do not impair or abridge the permission contained in this ordinance. (Ordinance 250, May 4, 1964, §7)

§108. Effective Date.

This ordinance shall take effect at the expiration of 30 days from the date when a copy thereof shall have been filed in the office of the Secretary of the Pennsylvania Public Utility Commission; provided that if the Commission shall, prior to the expiration of such period, institute a proceeding under the provisions of §911 of the Public Utility Law affecting its validity, this ordinance shall become effective only upon approval by said Commission. (Ordinance 250, May 4, 1964, §8)

§109. Acceptance.

The said Company, shall, under its seal and by its proper officers, within 60 days from the date of the final enactment of this ordinance, signify in writing its acceptance of all the terms, conditions, regulations and restrictions herein contained, in default of which

this ordinance shall become null and void and of no effect. (Ordinance 250, May 4, 1964, §9)

§110. Company to Pay Fees in Connection With Passage of Ordinance.

All legal advertising or printing fees incurred by the Borough of Fountain Hill, County of Lehigh, State of Pennsylvania, in connection with the passage of this ordinance, shall be paid by the said Company, Bell Telephone Company of Pennsylvania. (Ordinance 250, May 4, 1964, §10)

Part 2

Cable Television

§201. Approval of Installation Plans Required.

No poles, cables, equipment, wires or apparatus of any kind for the construction, maintenance and operation of community antenna television systems shall be installed, or the installation thereof commenced, within the Borough of Fountain Hill unless and until specifications and the manner and the method of installation are submitted in writing to the proper officers of the Borough for approval and the same are approved in writing, and unless or until the proposed location of such poles, cables, equipment and apparatus is set forth on a plot or map showing the existing poles, streets, alleys and highways of the Borough and said map is submitted to the proper officers of the Borough and approved in writing by such officers. (Ordinance 280, June 19, 1968, §1)

§202. Installation and Maintenance Under the Direction of Borough Officials.

The installation and maintenance of all poles, cables, equipment, wires and apparatus shall be performed at such times as the proper officers, of the Borough shall direct so that there shall be no substantial interference with the use by the public of any streets, alleys or highways of the Borough. (Ordinance 280, June 19, 1968, §2)

§203. Replacement of Damaged or Displaced Sidewalk or Street.

Any sidewalk or street paving displaced or damaged by the erection of any poles shall be immediately replaced to the satisfaction of the proper officers of the Borough at no cost or expense to the property owner or to the Borough. (Ordinance 280, June 19, 1964, §3)

§204. Erection, Construction, and Maintenance Requirements.

All poles, cables, equipment, wires or apparatus shall be erected, constructed and maintained in a good and safe condition and in accordance with the best engineering practices and safety requirements. Wires shall, wherever possible, be placed only where service poles for light, telephone and power lines have been or will be installed so as to preserve the prevailing character of the neighborhood and maintain clear and unobstructed streets as much as possible. Where a street crossing is necessary for transmission or home service lines, a minimum vertical height above the curb of 18 feet shall be maintained. (Ordinance 280, June 19, 1964, §4)

FRANCHISES

§205. Compliance.

In the event that there is a failure or refusal to comply with any of the provisions of this ordinance, or in the event the operation of a community antenna television system is discontinued, either voluntarily or involuntarily, the community antenna television system shall be removed forthwith by the operator thereof from the Borough without any cost or expense whatsoever to the Borough. (Ordinance 280, June 19, 1964, §5)

§206. Public Liability Policy.

The operator of a community antenna television system shall at all times fully indemnify, protect and save harmless, the Borough and its agents and employees from all and any claims for personal injuries to property damages, or any other claims and costs, including attorney's fees, expenses of investigation and litigation of claims and suits thereon, which may arise from the installation and/or operation of the community antenna television system and which may also arise from the installation, adjustment, or repair of any Borough electrical equipment of any kind whatsoever whenever the operator of a community antenna television system in response to a request by the Borough lends its aid to the Borough and without cost for the aforementioned adjusting, repairing, or installing Borough electrical equipment. In case suit shall be filed against the Borough, either independently or jointly with said operator, to recover for any said claim or damages, said operator, upon notice to it by the Borough, shall defend the Borough, its agents and employees, against said action, and, in the event of a judgment being obtained against the Borough, either independently or jointly with said operator, the said operator shall pay said judgment and all costs, and hold the Borough harmless therefrom. For this purpose, said operator shall carry and at all times maintain and keep in force, a public liability policy or policies in the name of said operator and the Borough as their respective interests may appear, insuring said operator and the Borough against any and all liability arising from the installation and/or operation of said system, which policy or policies shall be approved by the Borough. Such liability policy or policies shall be in the sum of not less than \$100,000 for damage to property in any one accident, and not less than \$100,000 for injury or death to any one persons, and not less than the sum of \$300,000 for death or injury to all persons affected by any one accident. Such policies of insurance shall be issued by a company licensed to do business in the Commonwealth of Pennsylvania and certificates thereof shall be submitted to the Secretary of the Borough showing that liability insurance, as aforesaid, is in effect at all times. Said operator shall also carry workmen's compensation insurance for all employees and shall submit to the Secretary of the Borough a certificate of insurance showing that workmen's compensation coverage is in effect at all times. (Ordinance 280, June 19, 1964, §6)

§207. Exclusiveness of Rights.

Any right or privilege granted hereunder to operate a community antenna television system shall not be construed to be an exclusive grant, right or privilege to any one op-

erator as to prevent the granting of similar rights and privileges to others. (Ordinance 280, June 19, 1964, §8)

§208. Permission and Privileges May be Revoked.

Attachments made hereunder may remain until the expiration of five years from the first day of June, 1959, and shall continue thereafter from year to year and unless either the Borough or the licensee shall give 90 days notice in writing, prior to the end of any licensed year, of its intentions to terminate the same. (Ordinance 280, June 19, 1964; as amended by Ordinance 348, January 4, 1982)

§209. Existing Utility Poles/Facilities.

Nothing herein shall be interpreted as meaning that the Borough conveys or gives the right to use the now existing poles, facilities or property of the Pennsylvania Power and Light Company, Bell Telephone Company, or any utility, railroad or private corporation, person or partnership, without first obtaining written permission from said parties, which written permission shall be filed with the Secretary of the Borough before any erection or field work is performed. (Ordinance 280, June 19, 1964, §10)

§210. Removal of Equipment.

If at any time the facilities being used are ordered removed by the proper officers of the Borough, or voluntarily removed by the utility, railroad, private corporation, person or partnership now using such facility, then upon 60 days written notice from the Borough, the said wires, equipment and cables shall be removed at the expense of the operator of the community antenna television system within said time as ordered, and the Borough Council shall have the right to declare any and all privileges withdrawn and forfeited. (Ordinance 280, June 19, 1964, §11)

§211. Contracts to be Filed With Borough Secretary.

Certified copies of any existing or future contracts by and between an operator of a community antenna television system, with any public utility servicing the Borough, shall be filed with the Secretary of the Borough prior to the commencement of any construction, maintenance or installation of any cables, wires or equipment of any kind whatsoever. (Ordinance 280, June 19, 1964, §12)

§212. Acceptance of Terms.

Any operator of any community antenna television system shall, under its seal and by its proper officers, within 30 days from the date of the resolution granting permission, signify in writing its acceptance of all the terms, conditions, regulations and restrictions

FRANCHISES

of this ordinance, and shall also furnish the aforesaid certificates of insurance and bond and other documents required by this ordinance, in default of any of which the resolution shall become null and void and be of no effect. (Ordinance 280, June 19, 1964, §13)

§213. Company to Pay Fees in Connection With Passage of Ordinance.

All legal advertising and printing costs and other expenses incurred by the Borough in connection with the passage of the within ordinance or any resolution thereunder, shall be paid by the operator of the community antenna television system. (Ordinance 280, June 19, 1964, §14)

§214. Schedule of Fees.

There shall be filed with the Borough Secretary a schedule of uniform tariffs covering installations and hook-up charges for both commercial and residential buildings and service charges relating thereto and any subsequent changes in said tariffs. (Ordinance 280, June 19, 1964, §15)

§215. Payments Due Borough.

The Grantee shall pay to the Borough the following sum:

1. The sum of 5% of the cable system operator's gross revenues received from residents of the Borough during the calendar year.

The foregoing sum shall be accepted by the Borough in full payment for the right and privilege and the franchise granted by this Part 2 to use the streets of the Borough. All sums to be paid by the Grantee to the Borough under the provisions of this section shall be paid within one month following the end of the period for which the payment is made.

(Ordinance 348, January 4, 1982; as amended by Ordinance 386, November 4, 1985)

§216. Report of Income.

At the time the Grantee makes the payments specified in §215, the Grantee, at its own expense, shall submit a report confirmed by a certified public accountant setting forth, for the period for which the payment is made, the gross revenues received from the customers in the Borough who are subscribers. The Borough, through its duly authorized officers, employees or agents, shall, at reasonable times during normal business hours, have the right to inspect, examine and, if necessary, audit the books and records of the Grantee relating to the information to be included in the report specified in this section, provided that unless the Borough alleges a breach of the provisions of this Part 2, any inspection, examination, or audit shall not be more often than one time each year. If the

Borough alleges a breach of the provisions of this Part, it shall, at reasonable times when necessary, have access to and the right to inspect, examine and audit the books and records of the Grantee relating to the information to be included in the report specified in this section to determine whether a breach of the provisions of this Part has occurred. All information obtained by the Borough as a result of the inspection, examination and auditing of the Grantee's books and records shall be confidential and shall not be disclosed by the Borough or any of its officers, employees, or agents, except in a legal proceeding to which the Borough may be a party involving this Part or upon the appropriate order of a court, agency or administrative body of competent jurisdiction. (Ordinance 348, January 4, 1982)

§217. Rights Reserved by Borough.

The Borough of Fountain Hill expressly reserves unto itself the right in the future to impose license or franchise fees upon the operations of community antenna television systems. (Ordinance 280, June 19, 1964, §16)

§218. Violation and Penalty.

Any person who shall violate any of the provisions of this ordinance shall, upon conviction thereof, be sentenced to pay a fine of not more than \$300 and costs of prosecution, for each offense, and each occurrence shall be considered a new offense and finable as such, or to imprisonment in the Lehigh County Prison for not more than one day for each \$10 of unpaid balance of fine and costs. (Ordinance 280, June 19, 1964, §17; as amended by Ordinance 348, January 4, 1982)