

APPENDIX

Chapter A226

CABLE TELEVISION FRANCHISE

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| § A226-1. Short title. | § A226-11. Rate schedule. |
| § A226-2. Definitions and word usage. | § A226-12. Ownership and use of the cable television system. |
| § A226-3. Grant of authority. | § A226-13. Service to Borough schools and municipal buildings. |
| § A226-4. Pole attachments and construction and maintenance of cable television system. | § A226-14. Technical standards. |
| § A226-5. Insurance and indemnification. | § A226-15. Termination for cause by the Borough. |
| § A226-6. Conditions of street occupancy. | § A226-16. Unforeseen and uncontrollable acts. |
| § A226-7. Company's rules. | § A226-17. Repealer. |
| § A226-8. Franchise fee. | § A226-18. Severability. |
| § A226-9. Level of service. | § A226-19. Binding effect. |
| § A226-10. Transfer of control. | § A226-20. Joinder. |

[HISTORY: Adopted by the Borough Council of the Borough of Dallastown 11-10-2003 by Ord. No. 506¹. Amendments noted where applicable.]

GENERAL REFERENCES

Streets and sidewalks — See Ch. 178.

Trees — See Ch. 202.

§ A226-1. Short title.

This ordinance shall be known and may be cited as the "Cable Television franchise Ordinance."

§ A226-2. Definitions and word usage.

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense shall include the future, words in the plural number shall include the singular, and words in the singular number shall include the plural. "May" will be interpreted as permissive, and "shall" will be interpreted as mandatory.

ADDITIONAL SERVICE — Tier, pay channels or pay-per view events offered by the company to subscribers for extra charges above the charge for basic services.

1. Editor's Note: This ordinance also superseded former Ch. A226, Cable Television franchise, adopted 8-12-1988 by Ord. No. 392, as amended 4-13-1998 by Ord. No. 432.

ANNUAL GROSS REVENUES — Such yearly revenues received by company derived from the operation of the cable system in the Borough, and annual gross revenues shall include subscriber revenues from providing basic and additional service, advertising revenues, home shopping revenues and any other revenues derived from cable services (including revenues from installations, late fees and equipment rent) received by the company from the operation of the cable system.

BASIC SERVICE — The programming service provided by the company which includes any over-the-air television signals which the company may carry and is providing to all subscribers for payment of the applicable monthly charge.

BOROUGH — Dallastown Borough, a borough located in York County, Pennsylvania.

CABLE ACT — The Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, and as further amended by the Telecommunications Competition and Deregulation Act of 1996.

CABLE TELEVISION SYSTEM — A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and other services, including Internet access, and voice and data transmissions and which is provided to multiple subscribers within a community, excluding however, those facilities excluded from such definition of cable system in the Cable Act.

COMPANY — York Cable Television, Inc., a corporation, and grantee of rights under this franchise, or its assignee or successor.

COUNCIL — The Borough Council of the Borough of Dallastown.

FRANCHISE — The nonexclusive right, privilege and authority granted by this ordinance to construct, maintain and operate a cable television system in Borough, and shall permit, in addition to the privilege to operate within Borough, the company to construct, maintain and operate a cable television system with whatever wires or components are necessary over, under or within all the Borough rights-of-way and the streets situate therein located in the Borough.

FRANCHISE FEE — The monies required to be paid to the Borough by the company for the right to operate in the Borough, which are allowable by any federal statute or regulation or state statute or regulation.

STATE — The Commonwealth of Pennsylvania.

STREET and RIGHT-OF-WAY — The surface of as well as the space above and below all streets, roadways, highways, freeways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, easements, rights-of-way or other public ways in the Borough which have been or may hereafter be dedicated and opened to public use or such other public property so designated by law which shall, within their proper use and meaning, entitle Borough and company to access thereon for the purpose of installing or transmitting cable transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, broadcasters, receivers, attachments and any other property as may be necessary and pertinent to operation of the business within the Borough.

SUBSCRIBER — Any person, firm, company, corporation or association paying for basic service from the company.

§ A226-3. Grant of authority.

- A. Effective November 1, 2003, company is hereby granted by the Borough the right, privilege and franchise to construct, direct, operate, modify and maintain for a period of five years a cable television system for the sale and distribution of audio, video, digital and other forms of electronic signals within, upon, along, across, over and under the Borough streets and anywhere where such conduct may be done lawfully within the boundaries of Borough.
- B. The company shall provide service in accordance with the following guidelines:
- (1) In areas where aerial construction is permitted, the company shall construct all sections which are contiguous to the existing system and which shall have at least 30 homes per mile, but densely populated areas shall be addressed so that population centers are served. In areas where underground construction is required, the company shall construct all sections which are contiguous to the existing system and have at least 40 homes per mile. In the event that a given extension would be less than one mile, the company shall construct the extension if the number of homes passed in the proposed extension is in the same proportion in relation to the length of said extension as the standard set forth above for a one-mile extension (and for the same type of construction).
 - (2) In all areas where the company has constructed its cable television system, the company shall provide service at the normal installation costs (being those costs as normally published and charged) to a potential subscriber whose home can be reached by an aerial drop line of 150 feet or less. "Aerial drop line" shall mean a line that runs above ground from the cable feeder lines on the poles to the individual subscriber's residence.
 - (3) Notwithstanding anything to the contrary, the company shall have the right to deny service if the above-mentioned conditions are not met unless the subscriber or subscribers in question agree to reimburse the company for any extraordinary costs. In the case of Subsection B(1), above, "extraordinary costs" shall be costs in excess of the amount required to build one cable subscriber connection assuming aerial construction density of 30 homes per mile and the then current construction costs and penetration levels. In the case of Subsection B(2), "extraordinary costs" shall be costs in excess of the amount required to provide one aerial cable drop of 150 feet at the then current cost.

§ A226-4. Pole attachments and construction and maintenance of cable television system.

- A. The poles and posts used for the company's cable television system lines shall be those erected by the company or by such other persons, firms or corporations maintaining poles or posts within the Borough limits, providing mutually satisfactory rental agreements can be entered into with such persons, firms or corporations.

- B. The distribution facilities of company shall be at all times maintained in good and safe way and condition and shall be constructed and maintained so as not to interfere with television reception by inhabitants of the Borough not using company's services.
- C. In the maintenance and operation of its cable television transmission and distribution system in the Borough and in the course of construction or addition to its facilities, the company shall proceed so as to cause the least possible inconvenience to the general public, and any opening or obstruction in the streets or other public places made by the company in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fencings or boardings, the bounds of which during the periods of dusk and darkness shall be designated by warning lights of approved types.
- D. Whenever the company shall take up or disturb any pavement, sidewalk or other improvement of any street, avenue, alley, highway or other public place, the same shall be replaced and the surface restored in as good condition as before entry as soon as practicable without unnecessary delay.
- E. The location of any poles, anchors, wires, cables, conduits, vaults, laterals and other fixtures, or the erection, laying or removal of same, shall not interfere unreasonably with ordinary travel and/or the use of the streets, alleys, bridges, public ways or electrical installations of the Borough.

§ A226-5. Insurance and indemnification.

- A. Insurance. The company shall carry insurance in such form as shall protect the Borough and company from and against any and all claims for injury or damages to persons or property, both real and personal, caused by the construction, erection, operation or maintenance of any structure, equipment, appliance or products authorized or used pursuant to authority or any activity of company within this Borough arising from or growing out of their operation pursuant to the authority granted in this franchise. The amount of such insurance against liability due to damage to property shall be not less than \$500,000 as to any one person and \$1,000,000 as to any one accident.
- B. Indemnification of the Borough. The company shall indemnify and hold the Borough harmless at all times during the term of this franchise and thereafter from and against any and all claims, demands, actions, disputes or suits for injury, losses and damages of any kind whatsoever arising from or caused by the construction, erection, operation and maintenance of any structure, facility, equipment, appliance, system or products authorized or used pursuant to the authority of this franchise or the cable system or the existence of this franchise. Further, the company, upon receipt of due notice in writing from the Borough within five days of receipt of a claim or legal complaint, shall defend, at its own expense, any action or proceeding against the Borough in which it is claimed that personal injury or property damage arose from any activity within the Borough for which the company agreed to indemnify the Borough.

§ A226-6. Conditions of street occupancy.

- A. Relocation. The company shall, upon reasonable notice without expense to the Borough, temporarily relocate its facilities to accommodate such public works or improvements as the Borough shall in its judgment designate. The company shall, at the expense of any person other than the Borough requesting said adjustment, temporarily raise, lower or remove its wires to permit the improvement of property. In such event, the company shall be given not less than 14 days' advance written notice to arrange for the temporary wire changes.
- B. Overhead and underground construction. The company shall be permitted to place its cables, wires or other equipment overhead when local or state law permits overhead construction or when other like facilities are overhead. The company shall place its cables, wires or other equipment underground where local or state law requires underground placement and where all other like facilities are underground. Overhead and underground construction shall be governed by § A226-3 of this franchise ordinance.
- C. Clear accessways. The company may trim trees or other vegetation within the right-of-way of the Borough to prevent their branches or leaves from touching or otherwise interfering with its wires, cables or other structures. The company shall obtain permission of the owner of any private land, tree or other vegetation before it trims or prunes the same, unless otherwise provided by the right-of-way agreement.

§ A226-7. Company's rules.

The company shall have the right to prescribe service rules and regulations for the conduct of its business not inconsistent with the provisions of this ordinance or any ordinances of the Borough.

§ A226-8. Franchise fee.

- A. As consideration of the franchise granted herein, the company shall pay to the Borough an annual fee equal to 5% of the annual gross revenues attributable to cable services received from the operation of the cable television system in the Borough by the company until the current franchise term expires.
- B. Allocation of revenues. Borough's annual franchise fee shall be determined by adding the sums obtained in Subsections B(1) and (2) below:
- (1) Five percent of the annual gross revenue received by company from subscribers for cable services derived from the operation of the cable television system with the Borough.
 - (2) Five percent of nonsubscriber revenues attributable to the Borough where revenues received by the company are not directly related to the number of subscribers using a service of the cable system with the Borough. (I.e., Commissions from advertising, home shopping channels or similar commission base programs). For purposes of this Subsection B(2), nonsubscriber revenues attributable to the Borough shall be determined by (a) dividing the number of Borough subscribers by

the total of Borough plus non-Borough subscribers and (b) multiplying the quotient obtained in (a) by the total revenues received by the company which were not directly related to the number of subscribers using a service of the cable system in the Borough.

- C. Payment of the aforesaid franchise fee shall be made on a quarterly basis within 30 days after the end of March, June, September and December of each year of service. Failure to pay after 10 days' notice of default shall result in the addition of a ten-percent penalty charge.
- D. company shall provide the Borough, within 90 days after the close of each annual period, a statement of a company officer certifying the correctness and accuracy of the franchise fee payments made during the year. In addition, company, at Borough's expense, shall permit Borough to have a certified public accountant conduct an audit of the company records and of the accounting procedures followed each year to assure that there is proper payment of the correct sums to the Borough.

§ A226-9. Level of service.

- A. Company shall provide within the Borough a cable television system, which will be capable of carrying video and audio programming, data services, Internet access and other forms of electronic or electric signals. The programming on said channels may include television programming available off the air and programming imported from distant markets and received from cable satellite networks. Company shall have the right to determine the programming and the time, place and manner in which such programming will be provided to subscribers.
- B. The company shall maintain its service in accordance with accepted standards of the industry so as to provide its subscribers with a high level of quality and reliability.
- C. Whenever it shall be necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the company shall do so at such time as it will cause the least amount of inconvenience to its subscribers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its subscribers.
- D. The company shall maintain a business office within the York service area, which shall be open during usual business hours.

§ A226-10. Transfer of control.

- A. No transfer of control of a franchise shall take place whether by forced or voluntary sale, lease, mortgage, assignment, encumbrance, transfer of stock or any other form of disposition without prior approval of the Borough, which shall not be unreasonably withheld. Nothing contained herein shall be deemed to prohibit the assignment of the franchise or mortgage of the company's property for financing purposes subject to the rights of the Borough under this ordinance.

- B. The company may, with notice to the Borough, assign this franchise to a subsidiary, affiliate or successor corporation of the company.

§ A226-11. Rate schedule.

A. Rate change and rate schedule.

- (1) Company shall provide information as to its initial monthly rates, installation charges and all other charges, including but not limited to equipment fees, late fees, and other administrative charges, if any.
- (2) Company shall give subscribers at least 30 days' notice of its intention to change monthly rates, equipment charges and installation charges by mailing notices thereof to each of the current subscribers to whom such charges will apply. Company shall give the Borough Manager or his/her designee 30 days' advance notice of any rate change.

§ A226-12. Ownership and use of the cable television system.

Company shall have the unrestricted right and availability to utilize the cable television system for telecommunications purposes other than cable television service, including but not limited to telephones, Internet access, point-to-point data and voice and message transmission so long as said uses do not unduly interfere with the cable television service being provided to subscribers.

§ A226-13. Service to Borough schools and municipal buildings.

Upon written request by the Borough, the company shall provide a standard cable television service hookup of basic service via drop line from trunk or feeder line cable to each municipal building, firehouse and public school located within the Borough at no charge where company's trunk lines currently pass or in the future pass said municipal building, firehouse and public schools.

§ A226-14. Technical standards.

The cable television system within the Borough shall at all times be constructed and operated in conformance with the technical standards, rules and regulations governing cable television service promulgated by the Federal Communications Commission.

§ A226-15. Termination for cause by the Borough.

- A. The Borough may terminate this franchise at any time prior to its expiration date upon any material breach of any material term or condition of this ordinance. The Borough shall notify the company in writing of its intent to terminate and the reason for its revocation. The company shall be afforded 60 days during which to adequately explain what has caused the alleged material breach or other grounds for termination. If it is determined that such breach was inadvertent, company shall be afforded 60 days during

which to cure the alleged breach or to take affirmative action to commence or cure said breach. If the company fails to cure or take affirmative action toward curing the breach within such sixty-day period or in the event it appears that such breach was not inadvertent or the reason is other than for an immaterial breach, then the Borough shall schedule a public hearing on its intent to revoke the franchise. Company shall be afforded the due process rights of notice, representation and the right to be heard at such public hearing. After such public hearing, the Borough shall have the right to revoke the franchise for just cause if said cause is established or to impose a lesser penalty if so desired.

- B. In the event that revocation is imposed upon the company, company shall have the right to sell, transfer and convey the cable television system and its business operation within the Borough to a qualified purchaser at fair market value so long as the same is diligently pursued. company shall be obligated to continue its operation of the cable television system and operation within the Borough until such sale.

§ A226-16. Unforeseen and uncontrollable acts.

The company shall not be liable or responsible for any delay or failure of performance of its franchise if prevented from doing so by the resulting acts of God, flood, storms, fires, explosions, strikes, lockouts, riots, wars, whether or not declared, insurrections, epidemics or any law, rule or acts of any court or instrumentality, whether federal, state or municipal government, or any causes beyond its control, provided that the same is not willfully done or brought about for the purpose of excusing failure or omissions to perform under the franchise and providing that, using reasonable care, the same could not have been avoided by the company. In the event company is rendered unable to perform in whole or in part, the company shall begin to perform its franchise as soon as is practical after such conditions cease to exist.

§ A226-17. Repealer.

On and as of October 8, 2003, all agreements or parts of agreements conflicting with the provisions of this ordinance shall be and the same are hereby repealed.

§ A226-18. Severability.

If any section, sentence, clause or phrase of this ordinance is held unconstitutional or otherwise invalid or preempted by state or federal statutes or regulations, said section, sentence, clause or phrase shall be null and void. The remaining portion of the ordinance shall remain valid and binding upon the Borough and the company.

§ A226-19. Binding effect.

This ordinance shall constitute a contract between the Borough and the company upon execution of this ordinance and the company's written acceptance of the terms of the ordinance.

§ A226-20. Joinder.

Company and Borough, intending to be legally bound hereby, do, by the signature of their duly authorized officers, hereby accept and agree to abide by the terms of this ordinance as a contracted obligation.

