

## **Chapter 13**

### **Licenses, Permits and General Business Regulations**

#### **Part 1**

#### **CATV Franchises**

- §13-101. General Provisions
- §13-102. Definitions and Word Usage
- §13-103. Grant of Franchise
- §13-104. Applications for Grant, Renewal or Modification of Franchises
- §13-105. Design and Construction
- §13-106. Consumer Protection
- §13-107. Rate Regulation
- §13-108. Franchise Fee
- §13-109. Performance Guarantees and Remedies
- §13-110. Transfers
- §13-111. Rights of Individuals Protected
- §13-112. Theft of Service
- §13-113. Miscellaneous Provisions

Exhibit 13-1-A: List of Participating Municipalities

Exhibit 13-1-B: FCC Customer Service Obligations



**Part 1****CATV Franchises****§13-101. General Provisions.**

1. *Title.* This Part shall be known and may be cited as the “Ferndale Cable Communications Regulatory Ordinance.”

2. *Effective Date.* This Part shall take effect and be in force from and after passage. All prior ordinances or parts of ordinances in conflict with the provisions of this Part are hereby repealed.

3. *Purpose.*

A. The Borough of Ferndale (the “Municipality”) finds that the further development of cable communications may result in great benefits for the people of the Municipality. Because of the complex and rapidly changing technology associated with cable communications, the Municipality further finds that the public convenience, safety and general welfare can best be served by establishing certain regulatory procedures and powers that are vested in the Municipality or such persons or agencies as the Municipality shall designate. Any franchise issued pursuant to this Part shall be deemed to include this finding as an integral part thereof.

B. Further, it is recognized that cable systems have the capacity to provide not only entertainment and information services to the Municipality’s residents, but can provide a variety of broadband, interactive communications services to institutions and individuals. Many of these services involve municipal agencies and other public institutions.

C. For these purposes, the following goals, among others, underlie the regulations contained herein:

(1) Cable services should be provided to the maximum number of municipal residents.

(2) Cable systems should be capable of accommodating both the present and reasonably foreseeable future cable-related needs of the Municipality.

(3) A cable system should be improved and upgraded expeditiously during the term of a franchise so that new facilities necessary for the operation of the system may be integrated to the maximum extent possible with existing facilities, subject to public demand and economic and technical feasibility.

(4) Cable systems authorized by this Part shall be responsive to the needs and interests of the local community, and shall provide the widest possible diversity of information sources and service to the public.

(Ord. 453, 8/12/1996, §1)

**§13-102. Definitions and Word Usage.**

For the purposes of this Part, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future

tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words “shall” and “will” are mandatory, and “may” is permissive. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, Chapter 5, subchapter V-A, 47 U.S.C. §521 *et seq.*, (the Cable Act), as amended, and, if not defined therein, their common and ordinary meaning.

*Affiliate*—any person who owns or controls, is owned or controlled by, or is under common ownership or control with a franchisee.

*Basic service*—any service tier which includes the retransmission of local television broadcast signals.

*Cable Act*—the Cable Communications Policy Act of 1984, 47 U.S.C. §521 *et seq.*, an amendment to the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and as may be amended from time to time.

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

*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 to provide cable television service which includes video programming and which is provided to multiple customers within the Municipality, 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 customers without using any public right-of-way, including streets or easements; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a Cable System if such facility is used in the transmission of video programming, whether on a common carrier or noncommon carrier basis, directly to customers; or (4) any facilities of any electric utility used solely for operating its electric utility systems.

*Cable TV advisory committee or committee*—a nonpolitical body to be known as the Greater Johnstown Communications Advisory Committee, which shall be administered by the Council of Governments (“COG”) and created to advise member municipalities named in “Exhibit 13-1-A” regarding the means to recommend and promote future uses for cable systems.

*Channel*—a six Megahertz (MHz) frequency band, which is capable of carrying either one standard video signal, a number of audio, digital or other nonvideo signals or some combination of such signals.

*Converter or home terminal*—an electronic device which may serve as an interface between a system and a subscriber’s television receiver or other terminal equipment, and which may perform a variety of functions, including signal security, descrambling, electronic polling, frequency conversion and channel selection.

*Council of Governments or “COG”*—the Cambria-Somerset Council of Governments. COG is empowered by resolution to serve as the regulatory

representative for the Municipality.

*Drop*—a connection from feeder cable to the subscriber television set, radio or other terminal equipment.

*Educational access channel*—any channel on a cable system set aside by a franchisee for educational use.

*Fair market value*—the price that a willing buyer would pay to a willing seller for a going concern at the time.

*FCC*—the Federal Communications Commission, its designee, or any successor governmental entity thereto.

*Franchise*—a nonexclusive authorization granted pursuant to this Part to construct, operate, and maintain a cable system along the public rights-of-way within all or a specified area of the Municipality. Any such authorization, in whatever form granted, shall not mean or include any general license or permit required for the privilege of transacting and carrying on a business within the Municipality as required by other ordinances and laws of the Municipality.

*Franchise agreement*—a contract entered into in accordance with this Part between the Municipality and a franchisee that sets forth, subject to this Part, the terms and conditions under which a franchise will be granted and exercised. Subject to applicable law, any franchise agreement shall define the services any franchisee is so authorized to provide.

*Franchise area*—the area for which a franchise is granted under the authority of a franchise agreement.

*Franchisee*—a natural person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind that has been granted a cable franchise by the Municipality.

*Government access channel*—any channel on a cable system set aside by a franchisee for government use.

*Installation*—the connection of the drop to subscribers' television receivers or other terminal equipment.

*Leased access channel* or *commercial access channel*—any channel on a cable system designated or dedicated for use by a person unaffiliated with the franchisee.

*Municipality*—the Borough of Ferndale, Cambria County, Pennsylvania.

*Person*—an individual, partnership, association, joint stock company, organization, corporation, or any lawful successor thereto or transferee thereof, but such term does not include the Municipality.

*Public access channel*—any channel on a cable system set aside by a franchisee and designated or dedicated for use by the general public or noncommercial organizations, which is made available for use without charge and on an equitable nondiscriminatory basis.

*Public rights-of-way*—the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property in which the Municipality now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the

purpose of installing and maintaining a cable system.

*Resident*—any person residing in the Municipality as otherwise defined by applicable law.

*Security fund*—a performance bond or letter of credit, or either or both of these, to the extent applicable to a given franchisee.

*Stage*—the Commonwealth of Pennsylvania.

*Subscriber*—any person, firm, corporation or other entity who or which elects to subscribe, for any purpose, to a service provided by a franchisee by means of or in connection with a cable system.

*User*—a person or organization utilizing a channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a subscriber.

(Ord. 453, 8/12/1996, §2)

### **§13-103. Grant of Franchise.**

#### *1. Grant.*

A. The Municipality may grant one or more franchises, and each such franchise shall be awarded in accordance with and subject to the provisions of this Part. A franchise shall constitute both a right and an obligation to provide the cable services regulated by the provisions of this Part and the franchise agreement.

B. No person may construct or operate a cable system without a franchise granted by the Municipality. No person may be granted a franchise without having entered into a franchise agreement with the Municipality pursuant to this Part.

*2. Franchise Characteristics.* A franchise authorizes use of public rights-of-way for installing cables, wires, lines, optical fibers, underground conduit, and other devices necessary and appurtenant to the operation of a cable system within a franchise area, but does not expressly or implicitly authorize a franchisee to provide service to, or install a cable system on, private property without owner consent (except for use of compatible easements pursuant to §621 of the Cable Act, 47 U.S.C. §541(a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners.

#### *3. Acceptance of Franchise.*

A. Following approval by the Municipality, any franchise granted pursuant to this Part, and the rights, privileges and authority granted by a franchise agreement, shall take effect and be in force from and after the first date on which both the franchisee and the Municipality have accepted and signed the franchise agreement.

B. All privileges prescribed by a franchise shall be subordinate to any prior lawful occupancy of the public rights-of-way, and the Municipality reserves the right to reasonably designate where a franchisee's facilities are to be placed within the public rights-of-way.

#### *4. Franchisee Subject to Other Laws, Police Power.*

A. A franchisee shall at all times be subject to and shall comply with all applicable Federal, State, and local laws. A franchisee shall at all times be subject to all lawful exercise of the police power of the Municipality including all rights the

Municipality may have under 47 U.S.C. §552. Nothing in a franchise agreement shall be deemed to waive the requirements of the various codes and ordinances of the Municipality regarding permits, fees to be paid, or manner of construction.

B. No course of dealing between a franchisee and the Municipality, or any delay on the part of the Municipality in exercising any rights hereunder, or any acquiescence by the Municipality in the actions of a franchisee which are in contravention of such rights, except to the extent such rights are preempted by Federal or State law, or are expressly waived by the Municipality, or are expressly provided for in a franchise agreement, shall operate as a waiver of any such rights of the Municipality.

C. The Municipality shall have the maximum authority to regulate cable systems, franchisees, and franchises as may now or hereafter be lawfully permissible; except where rights are expressly waived by a franchise agreement, or preempted by Federal or State laws, rules or regulations, they are reserved, whether expressly enumerated or not.

5. *Interpretation of Franchise Terms.*

A. The provisions of this Part and a franchise agreement will be liberally construed in order to effectuate their purposes and objectives and to promote the public interest.

B. Subject to Federal law or regulation, a franchise agreement will be governed by and construed in accordance with the laws of the State of Pennsylvania.

6. *Operation of a Cable System Without a Franchise.* Any person who occupies the public rights-of-way of the Municipality for the purpose of operating or constructing a cable system and who does not hold a valid franchise from the Municipality shall be subject to all provisions of this Part including, but not limited to, its provisions regarding construction and technical standards and franchise fees. In its discretion, the Municipality at any time may require such person to apply for a franchise within 30 days of receipt of a written notice by the Municipality that a franchise agreement is required; require such person to remove its property and restore the area to a condition satisfactory to the Municipality within a reasonable time period, as the Municipality shall determine; remove the property itself and restore the area to a satisfactory condition and charge the person the costs therefor; and/or take any other action it is entitled to take under applicable law, including filing for and seeking damages under trespass. In no event shall a franchise be created unless it is issued by action of the Municipality and subject to a written franchise agreement.

7. *Acts at Franchisee's Expense.* Subject to applicable Federal or State law, any act that a Franchisee is required to perform under this Part, a franchise agreement, or applicable law shall be performed at the franchisee's expense, unless expressly provided to the contrary in this Part, the franchise agreement, or applicable law.

8. *Eminent Domain.* Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the Municipality's rights of eminent domain to the extent to which they may apply to any public utility or cable system.

(Ord. 453, 8/12/1996, §3)

**§13-104. Applications for Grant, Renewal or Modification of Franchises.**1. *Written Application.*

A. A written application shall be filed with the Municipality for grant of an initial franchise or modification of a franchise agreement, in accordance with applicable law.

B. To be acceptable for filing, a signed original of the application shall be submitted together with 12 copies. The application must be accompanied by any required application filing fee as set forth in subsection .6, conform to any applicable request for proposals, and contain all required information. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

C. All applications accepted for filing shall be made available by the Municipality for public inspection.

2. *Application for Grant of an Initial Franchise.*

A. A person may apply for an initial franchise by submitting a request for issuance of a request for proposals ("RFP") by the Municipality. Upon receipt of a request for an RFP, the Municipality shall, if necessary, commence a proceeding to identify the future cable-related needs and interests of the community and, upon completion of that proceeding, shall promptly issue an RFP, which shall be mailed to the person requesting its issuance and made available to any other interested party.

B. The applicant shall respond to the RFP by filing an application within the time directed by the Municipality, providing the information and material set forth in subsection .4. The procedures, instructions, and requirements set forth in the RFP shall be followed by each applicant. The Municipality or its designee may seek additional information from any applicant and establish deadlines for the submission of such information.

C. Notwithstanding the provisions of subsections .2.A and .2.B, a person may apply for an initial franchise by submitting an unsolicited application containing the information required in subsection .4 and requesting an evaluation of that application pursuant to subsection .2.D. Prior to evaluating that application, the Municipality may conduct such investigations as are necessary to determine whether the application satisfies the standards set forth in subsection .2.D and may seek additional applications.

D. In evaluating an application for a franchise, the Municipality shall consider, among other things, the following factors:

(1) The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing cable franchise for any municipality.

(2) Whether the quality of the applicant's service under any existing franchise in any municipality, including signal quality, response to customer complaints, billing practices, and the like, has been reasonable in light of the needs and interests of the communities served.

(3) Whether the applicant has the financial, technical, and legal qualifications to provide cable service.

(4) Whether the application satisfies any minimum requirements established by the Municipality and is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests.

(5) Whether, to the extent not considered under subsection .2.D(4), the applicant will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support.

(6) Whether issuance of a franchise is warranted in the public interest considering the immediate and future effect on the public rights-of-way and private property that would be used by the cable system, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the public rights-of-way; the effect of granting a franchise on the ability of cable systems to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications.

(7) What effects a grant of the application may have on competition in the delivery of cable service in the Municipality.

E. If the Municipality finds that it is in the public interest to issue a franchise considering the factors set forth above, and subject to the applicant's entry into an appropriate franchise agreement, it shall issue a franchise. If the Municipality denies a franchise, it will issue a written decision explaining why the franchise was denied. Prior to deciding whether or not to issue a franchise, the Municipality may hold one or more public hearings or implement other procedures under which comments from the public on an application may be received. The Municipality also may grant or deny a request for a franchise based on its review of an application without further proceedings and may reject any application that is incomplete or fails to respond to an RFP. This Part is not intended and shall not be interpreted to grant any applicant or existing franchisee standing to challenge the issuance of a franchise to another.

### 3. *Application for Grant of a Renewal Franchise.*

A. The renewal of any franchise to provide cable service shall be conducted in a manner consistent with §626 of the Cable Act, 47 U.S.C. §546.

B. Subject to applicable law, the Municipality may delegate to the COG the authority to carry out any or all renewal procedures.

4. *Contents of Applications for an Initial Franchise.* An RFP for the grant of an initial franchise shall require, and any such application submitted shall contain, at a minimum, the following information:

A. Name and address of the applicant and identification of the ownership and control of the applicant, including the names and addresses of the 10 largest holders of an ownership interest in the applicant and affiliates of the applicant, and all persons with 5 percent or more ownership interest in the applicant and its affiliates; the persons who control the applicant and its affiliates; all officers and directors of the applicant and its affiliates; and any other business affiliation and cable system ownership interest of each named person.

B. A demonstration of the applicant's technical ability to construct and/or

operate the proposed cable system, including identification of key personnel.

C. A demonstration of the applicant's legal qualifications to construct and/or operate the proposed cable system including, but not limited to, a demonstration that the applicant meets the following criteria:

(1) The applicant must not have submitted an application for an initial or renewal franchise to the Municipality, which was denied on the ground that the applicant failed to propose a cable system meeting the future cable-related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved adversely to the applicant, within 3 years preceding the submission of the application.

(2) The applicant must not have had any cable television franchise validly revoked by any franchising authority within 3 years preceding the submission of the application.

(3) The applicant must have the necessary authority under Pennsylvania law to operate a cable system.

(4) The applicant must have the necessary authority under Federal law to hold the franchise and operate a cable system. An applicant must have, or show that it is qualified to obtain, any necessary Federal franchises or waivers required to operate the system proposed.

(5) The applicant shall not be issued a franchise if, at any time during the 10 years preceding the submission of the application, the applicant was convicted of any act or omission of such character that the applicant cannot be relied upon to deal truthfully with the Municipality and the subscribers of the cable system, or to substantially comply with its lawful obligations under applicable law, including obligations under consumer protection laws and laws prohibiting anticompetitive acts, fraud, racketeering, or other similar conduct.

(6) The applicant shall not be issued a franchise if it filed materially misleading information in its application or intentionally withheld information that the applicant lawfully is required to provide.

(7) The applicant shall not be issued a franchise if an elected official of the Municipality holds a controlling interest in the applicant or an affiliate of the applicant. Notwithstanding the foregoing, the Municipality shall provide an opportunity to an applicant to show that it would be inappropriate to deny it a franchise by virtue of the particular circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of cable systems.

D. A statement prepared by a certified public accountant regarding the applicant's financial ability to complete the construction and operation of the cable system proposed.

E. A description of the applicant's prior experience in cable system ownership, construction, and operation, and identification of communities in which the applicant or any of its principals have, or have had, a cable franchise or any interest therein, provided that an applicant that holds a franchise for the Municipality and is seeking renewal of that franchise need only provide this

information for other communities where its franchise was scheduled to expire in the 2 calendar years prior to and after its application was submitted.

F. Identification of the area of the Municipality to be served by the proposed cable system, including a description of the proposed franchise area's boundaries.

G. A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, head end, and access facilities.

H. Where applicable, a description of the construction of the proposed system, including an estimate of plant mileage and its location; the proposed construction schedule; a description, where appropriate, of how services will be converted from existing facilities to new facilities; and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.

I. The proposed rate structure, including projected charges for each service, installation, converters, and all other proposed equipment or services.

J. A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any recent community needs assessment conducted by or for the Municipality, and how the applicant will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support to meet the community's needs and interests.

K. Pro forma financial projections for the proposed franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules.

L. If the applicant proposes to provide cable service to an area already served by an existing cable franchisee, the identification of the area where the overbuild would occur, the potential subscriber density in the area that would encompass the overbuild, and the ability of the public rights-of-way and other property that would be used by the applicant to accommodate an additional system.

M. Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this Part.

N. Information that the Municipality may request of the applicant that is relevant to the Municipality's consideration of the application.

O. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all Federal and State law requirements.

P. The Municipality may, at its discretion or upon request of an applicant, waive in writing the provision of any of the information required by this subsection .4.

5. *Application for Modification of a Franchise.* An application for modification of a franchise agreement pursuant to 47 U.S.C. §545 shall include, at minimum, the following information:

A. The specific modification requested.

B. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, inter alia, submission of financial pro formas.

C. A statement demonstrating that the requested modification meets the standards set forth in 47 U.S.C. §545.

D. Any other information that the applicant believes is necessary for the Municipality to make an informed determination on the application for modification.

E. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all Federal and State law requirements.

6. *Filing Fees.* To be acceptable for filing, an application submitted after the effective date of this Part shall be accompanied by a filing fee in an amount as established from time to time by resolution of Borough Council to cover costs incidental to the awarding or enforcement of the franchise, as appropriate. In addition, the Municipality may require an applicant for an initial franchise to reimburse the Municipality for its reasonable out-of-pocket expenses in considering the application, including consultants' fees. Payments made by a franchisee hereunder are not a franchise fee and fall within one or more of the exceptions in 47 U.S.C. §542(g)(2), and no such payments may be passed through to subscribers in any form. [Ord. 489]

7. *Public Hearings.* An applicant shall be notified of any public hearings held in connection with the evaluation of its application and shall be given an opportunity to be heard. In addition, prior to the issuance of a franchise, the Municipality shall provide for the holding of a public hearing within the proposed franchise area, following reasonable notice to the public, at which every applicant and its application shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard. Reasonable notice to the public shall include causing notice of the time and place of such hearing to be published in a newspaper of general circulation in the proposed franchise area once a week for 2 consecutive weeks. The first publication shall be not less than 14 days before the day of the hearing.

(Ord. 453, 8/12/1996, §4; as amended by Ord. 489, 10/13/2014)

### **§13-105. Design and Construction.**

1. *System Construction Schedule.* Franchise agreements shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of a cable system.

2. *Construction Procedures.*

A. A franchisee shall construct, operate and maintain a cable system subject to the supervision of the Municipality or its designees, and in strict compliance with all applicable laws, ordinances, rules and regulations affecting the system.

B. A system, and all parts thereof, shall be subject to the right of periodic inspection by the Municipality.

C. No construction, reconstruction or relocation of a system or any part thereof within the public rights-of-way shall be commenced until written permits,

where applicable, have been obtained from the proper Municipality officials. Such permits shall not be unreasonably withheld or delayed and shall be issued in accordance with applicable ordinances and codes of the Municipality that apply to users of the Municipality's public rights-of-way. In any permit so issued, such officials may impose such nondiscriminatory conditions and regulations as a condition of the granting of the permit as are necessary for the purpose of protecting any structures in the public rights-of-way and for the proper restoration of such public rights-of-way and structures, and for the protection of the public and the continuity of pedestrian and vehicular traffic.

3. *Use of Public Property.*

A. Should the grades or lines of the public rights-of-way that a franchisee is authorized by franchise to use and occupy be changed at any time during the term of a franchise, the franchisee shall, if necessary, relocate or change its system so as to conform with the new grades or lines.

B. Any alteration to the water mains, sewerage or drainage system or to any Municipality, State or other public structures in the public rights-of-way that are required on account of the presence of a franchisee's system in the public rights-of-way shall be made at the sole cost and expense of the franchisee. During any work of constructing, operating or maintaining of a system, a franchisee shall also protect any and all existing structures belonging to the Municipality and any other person. All work performed by the franchisee shall be done in the manner prescribed by the Municipality or other officials having jurisdiction therein.

4. *Interference with Public Projects.* Nothing in this Part or any franchise agreement shall be in preference or hindrance to the right of the Municipality and any board, authority, commission or public service corporation to perform or carry on any public works or public improvements of any description, and should a franchisee's system in any way interfere with the construction, maintenance or repair of such public works or public improvements, a franchisee shall protect or relocate its system, or part thereof, as reasonably directed by any Municipality official, board, authority, commission or public service corporation.

(Ord. 453, 8/12/1996, §5)

**§13-106. Consumer Protection.**

1. *General Provisions.*

A. In addition to the provisions contained herein, a franchisee must comply with the customer service obligations established by the FCC, as may be amended from time to time, and which are set forth in current form in "Exhibit 13-1-B" and are incorporated herein by reference. In addition, a franchisee shall at all times satisfy any additional or stricter requirements established by a franchise agreement or other applicable law or regulation.

B. Nothing in this Part may be construed to prevent or prohibit the Municipality from waiving, for good cause, requirements established in this Section.

2. *Installations, Connections, and Other Franchisee Services.*

A. *Standard Installations.* Except as Federal rate regulations may otherwise

require, the franchisee shall not assess a subscriber any cost other than a standard installation charge for service drops of 150 feet or less, for a single outlet, unless the franchisee demonstrates to the Municipality's satisfaction that extraordinary circumstances justify a higher charge.

B. *Nonstandard Installations.* Except as applicable law may otherwise require, where a drop exceeds 150 feet in length, a franchisee may charge a subscriber for franchisee's actual costs associated with installing the longer drop, provided that drop length shall be the shorter of (1) the actual length of the installed drop or (2) the shortest distance to the point where the franchisee would be required to extend its distribution system. The subscriber's preference as to the point of entry into the residence shall be observed whenever feasible. Runs in building interiors shall be as unobtrusive as possible. The franchisee shall use due care in the process of installation and shall repair any damage to the subscriber's property caused by said installation. Such restoration shall be undertaken within no more than 30 days after the damage is incurred and shall be completed as soon as possible thereafter.

C. *Location of Drops.* Except as Federal rate regulations may otherwise require, in any area where a franchisee would be entitled to install a drop above-ground, the franchisee will provide the homeowner the option, where feasible, to have the drop installed underground if requested, but may charge the homeowner the difference between the actual cost of the aboveground installation and the actual cost of the underground installation.

D. *Time for Extension.* Except as a franchise agreement may otherwise require, where a franchisee is required under this subsection to provide service to a person, it must provide such service (1) within 30 days of the person's request if such person resides no further than 150 feet from the franchisee's distribution system; or (2) within 60 days if the person resides more than 150 feet from the franchisee's distribution system, provided the person agrees to reimburse the franchisee for the cost of installing such service in accordance with paragraph .B above; but the distribution system need not be extended for  $\frac{1}{4}$  mile or more to provide service.

E. *Deposits.* A franchisee may require a reasonable, nondiscriminatory deposit on equipment provided to subscribers, in addition to any allowable monthly rental fees. Any subscriber deposit required by franchisee shall bear interest in accordance with applicable law or at the going rate, which shall be not less than the prime rate of the bank being used by the Municipality for the conduct of ordinary business. All deposits, with interest, shall be returned to the subscriber within 6 months or when the equipment is returned at time of disconnection of reception of service (whichever is sooner).

F. *Antennas and Antenna Switches.* A franchisee shall not, as a condition to providing cable service, require any subscriber or potential subscriber to remove any existing antenna structures for the receipt of over-the-air television signals.

G. *Delinquent Accounts.* A franchisee shall use its best efforts to collect on delinquent subscriber accounts before terminating service. In all cases, the franchisee shall provide the customer with at least 10 days written notice prior to disconnection.

3. *Telephone and Office Availability.*

A. Each franchisee shall maintain an office at a convenient location in the Municipality, or in the general geographical area which includes the Municipality, that shall be open during normal business hours to allow subscribers to request service, pay bills, and conduct other business.

B. Each franchisee will maintain at least one local, toll-free or collect call telephone access line which will be available to subscribers 24 hours a day, 7 days a week. Trained representatives of a franchisee shall be available to respond to subscriber telephone inquiries during normal business hours.

C. A franchisee must hire sufficient staff so that it can adequately respond to customer inquiries, complaints, and requests for service in its office, over the phone, and at the subscriber's residence.

4. *Scheduling and Completing Service.* In addition to the customer service standards contained in "Exhibit 13-1-B," all franchisees shall meet the following service standards, under normal operating conditions, at least 95 percent of the time, as measured on a quarterly basis:

A. *Prompt Service.* Repairs for service interruptions and other system repairs not requiring work within a subscriber's premises must be begun within 24 hours after the subscriber reports the problem to the franchisee or its representative or the interruption or need for repairs otherwise becomes known to the franchisee. All such work must be completed within 3 days from the date of the initial request, except installation requests, or in the shortest time possible where, for reasons beyond the franchisee's control, the work could not be completed within 3 days even with the exercise of all due diligence; the failure of a franchisee to hire sufficient staff or to properly train its staff shall not justify a franchisee's failure to comply with this provision. Except as Federal law permits, no charge shall be made to the subscriber for this service or for the cost of repairs to franchisee's equipment or facilities, except where it can be shown that the equipment or facility was damaged by a subscriber.

B. *Emergency Maintenance.* A franchisee shall keep an emergency system maintenance and repair staff, capable of responding to and repairing system malfunctions or interruptions, on a 24-hour basis, and shall respond to service interruptions 24 hours a day, 7 days a week under normal operating conditions.

C. *Other Inquiries.* Under normal operating conditions, requests for service, repair, and maintenance not involving service interruptions must be acknowledged by a trained customer service representative within 24 hours, or prior to the end of the next business day, whichever is earlier. A franchisee shall respond to all other inquiries (including billing inquiries) within 5 business days of the inquiry or complaint.

D. *Mobility-Limited Subscribers.* With regard to mobility-limited subscribers, upon a subscriber request, each franchisee shall arrange for pickup and/or replacement of converters or other franchisee equipment at the subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

5. *Interruptions of Service.* A franchisee may intentionally interrupt service on the cable system only for good cause and for the shortest time possible and, except in emergency situations or as necessary to fix a service problem, only after a minimum of

48 hours prior notice to subscribers and the Municipality of the anticipated service interruption; provided, however, that planned maintenance that does not require more than 2 hours interruption of service and that occurs between the hours of 12 midnight and 6 a.m. shall not require such notice to subscribers, but shall require notice to the Municipality no less than 24 hours prior to such an anticipated service interruption.

6. *Notice to Subscribers.*

A. In addition to the notification requirements contained within the customer service standards in “Exhibit 13-1-B,” a franchisee shall also provide the following materials to each subscriber at the time cable service is installed, at least annually thereafter, and at any time upon request. Copies of all such subscriber materials shall also be provided to the Municipality, upon request.

(1) A schedule of rates and charges.

(2) A written description of the franchisee’s delinquent subscriber disconnect and reconnect procedures, and any other of its policies applicable to its subscribers.

B. All promotional materials, announcements, and advertising of residential cable service to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all promotional materials must clearly and accurately disclose price terms and in the case of telephone orders, a franchisee shall take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential subscribers before the order is accepted.

C. Each franchisee shall maintain a public file containing all notices provided to subscribers under these customer service standards. Copies of all promotional or special offers made to subscribers shall be filed promptly with the Municipality, upon request.

7. *Billing.*

A. A franchisee’s first billing statement after a new installation or service change shall be prorated as appropriate and shall reflect any security deposit.

B. A franchisee’s billing statement must show a specific payment due date not earlier than the midpoint of the period for which the service being billed is rendered (e.g., the fifteenth day of a 30-day billing cycle). Any balance not received by 7 days after the end of the period for which the service being billed is rendered may be assessed a late fee not exceeding \$5, or such other amount as the Municipality and the franchisee may agree, consistent with State and local law. The late fee shall appear on the following month’s billing statement.

C. A franchisee must notify the subscriber that he or she can remit payment in person at the franchisee’s business office and inform the subscriber of the address of that office.

D. Subscribers shall not be charged a late fee or otherwise be penalized for any failure by a franchisee, including failure to timely or correctly bill the subscriber, or failure to properly credit the subscriber for a payment timely made.

E. The account of any subscriber shall be credited a prorated share of the monthly charge for the service upon the subscriber’s prompt request, or where the franchisee can reasonably identify the affected subscribers, if said subscriber is

without service or if service is substantially impaired for any reason for a period exceeding 4 hours during any 24-hour period, except where it can be shown that a subscriber seeks a refund for an outage or impairment which that subscriber caused, or in the case of a planned outage occurring between the hours of 12 midnight and 6 a.m.

F. Except by reason of emergency, loss of programming signal, permanent changes in programming or in the channel lineup on the system, or for other legitimate and business reasons as permitted or required by applicable law or programming contract, the franchisee shall not deliberately interrupt the normal programming offered on the system to subscribers without prior notification. Applicable Federal or State law or regulation shall govern whether subscribers are entitled to any refund or credit for such interruptions.

8. *Disconnection/Downgrades.*

A. A subscriber may terminate service at any time.

B. Upon request, a franchisee shall promptly disconnect or downgrade any subscriber. No period of notice prior to voluntary termination or downgrade of service may be required of subscribers by any franchisee. No charge may be imposed for any voluntary disconnection or downgrade, except to the extent that Federal law specifically provides that the franchisee must be permitted so to charge a subscriber. So long as the subscriber returns any equipment necessary to receive a service within 5 business days of the disconnection, no charge may be imposed by any franchisee for any cable service delivered 24 hours prior to the return of such equipment. However, if a subscriber does not return, or permit the franchisee to retrieve, such equipment within 5 business days after disconnection, a franchisee may charge a subscriber for any cable service delivered until the equipment is returned.

C. Any security deposit and/or other funds due the subscriber shall be refunded on disconnected accounts after any customer premises equipment provided by the franchisee has been recovered by the franchisee. The refund must be made within 30 days or by the end of the next billing cycle, whichever is earlier, from the date disconnection was requested (or, if later, the date on which any customer premises equipment provided by the franchisee is returned).

D. If a subscriber fails to pay a monthly subscriber fee or other fee or charge, a franchisee may disconnect the subscriber's service; however, such disconnection shall not be effected until after 45 days from the beginning of the period for which the service being billed is rendered, plus at least 10 days advance written notice to the subscriber in question of intent to disconnect, given after the 45 days have elapsed. If the subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the franchisee shall not disconnect service. After disconnection, upon payment by the subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the franchisee shall promptly reinstate service.

E. A franchisee may immediately disconnect a subscriber if the subscriber is damaging or destroying the franchisee's cable system or equipment and may pursue criminal or civil action against said subscriber as appropriate. After disconnection, the franchisee shall restore service if the subscriber provides

adequate assurance, including monetary or legal assurances, that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and amounts owed the franchisee for damage to its cable system or equipment.

F. A franchisee may also disconnect a subscriber that causes signal leakage in excess of Federal limits. Disconnection may be effected after 5 days written notice to the subscriber, if the subscriber fails to take steps to correct the problem. In addition, a franchisee may disconnect a subscriber without notice where signal leakage is detected originating from the subscriber's premises in excess of Federal limits, provided that the franchisee shall immediately notify the subscriber of the problem and, once the problem is corrected, reconnect the subscriber without charge.

G. A franchisee shall reconnect service to customers wishing restoration of service, provided such a customer shall first satisfy any previous obligations owed.

9. *Parental Control Option.* A franchisee shall make available to any subscribers upon request, the option of blocking the video or audio portion of any channel or channels of programming entering the subscriber's home. The control option described herein shall be made available to all subscribers requesting it when any cable service is provided, or reasonably soon thereafter.

10. *Enforcement.*

A. A franchisee shall file annually with the Municipality, in the franchisee's annual report, a statement describing the extent of compliance with the customer service standards contained in "Exhibit 13-1-B" herein. If a franchisee is in noncompliance with any element of such standards during any calendar quarter, it shall include in its annual report a description of such noncompliance, the reason for the noncompliance and a remedial plan.

B. Subject to Federal law, and after appropriate notice and a reasonable period allowed for cure, a franchisee may be subject to penalties, forfeitures and any other remedies or sanctions available under Federal, State or local law including, without limitation, this Part and a franchisee's franchise agreement with the Municipality, if it repeatedly fails to comply with the standards herein.

11. *Exclusive Contracts and Anticompetitive Acts Prohibited.* Except as authorized by Federal or State law, no franchisee shall enter into an exclusive contract for the provision of cable service with any person (including, but not limited to, a building owner), or demand the exclusive right to serve a person or location as a condition of providing or continuing service.

(Ord. 453, 8/12/1996, §6)

**§13-107. Rate Regulation.**

The Municipality reserves the right to regulate the rates and charges for cable service to the maximum extent permitted by Federal law or regulation. Regardless of whether the Municipality regulates rates for cable services, a franchisee may not change its rates and charges unless it has first given a minimum 30 calendar days prior written notice of such change to the Municipality and to all subscribers.

(Ord. 453, 8/12/1996, §7)

**§13-108. Franchise Fee.**

1. *Finding.* The Municipality finds that public rights-of-way of the Municipality and State to be used by a franchisee for the operation of a cable system are valuable public property acquired and maintained by the State and Municipality at great expense to the taxpayers. The Municipality further finds that the grant of a franchise to use public rights-of-way is a valuable property right.

2. *Not a Tax or in Lieu of Any Other Tax or Fee.*

A. Subject to Federal law or regulation, payment of a franchise fee shall not be considered in the nature of a tax or in lieu of other taxes or fees imposed by the Municipality.

B. The franchise fee shall be in addition to all other taxes and payments that a franchisee may be required to pay under its franchise agreement, any Federal, State, or local law, including any applicable amusement taxes, except to the extent that such fees, taxes, or assessments must be treated as a franchise fee under 47 U.S.C. §522.

3. *No Accord or Satisfaction.* No acceptance of any payment by the Municipality shall be construed as a release or an accord and satisfaction of any claim the Municipality may have for further or additional sums payable as a franchise fee under a franchise agreement or for the performance of any other obligation of a franchisee. (*Ord. 453, 8/12/1996, §8*)

**§13-109. Performance Guarantees and Remedies.**

1. *Penalties.*

A. For violation of provisions of this Part or a franchise agreement granted pursuant to this Part, the Municipality may impose penalties (chargeable to a franchisee's security fund, to the extent available), as follows:

(1) For failure to submit any required plans indicating expected dates of installation of various parts of the System: \$400/day for each violation for each day the violation continues.

(2) For failure to commence operations in accordance with the requirements of the Franchise Agreement: \$1,000/day for each violation for each day the violation continues.

(3) For failure to complete construction of any System or upgrade in accordance with the Franchise Agreement: \$200/day for each day the violation continues.

(4) For transferring the Franchise without approval: \$1,000/day for each violation for each day the violation continues.

(5) For failure to comply with requirements for public, educational, and governmental use of the System: \$100/day for each violation for each day the violation continues.

(6) For repeated failure to supply information, reports, or filings lawfully required under the Franchise Agreement or applicable law or by the Municipality: \$50/day for each violation for each day the violation continues.

(7) For repeated violation of customer service standards: \$100 per

violation.

(8) For failure, unless such failure is beyond the Franchisee's control, of the system to perform in the event of a public emergency or vital information situation: \$250 per occurrence.

(9) For failure to render payment for reimbursement of any Franchise expenses, or failure to pay Franchise fees or liquidated damages: \$100 per day.

(10) For failure to file, obtain or maintain any required Security Fund in a timely fashion: \$50 per day.

(11) For failure to restore damaged property: \$50 per day, in addition to the cost of the restoration as required elsewhere herein or in a Franchise Agreement.

(12) For any other violations: \$100/day for each violation for each day the violation continues.

B. To the extent that penalties are applied to a franchisee under this subsection, a franchisee shall not be subject to liquidated damages payable to the Municipality for the same violation.

C. The Municipality may reduce or waive any of the above-listed penalties for good cause shown.

D. Before the remedies specified herein may be applied, the Municipality shall first notify the franchisee in writing of the violation, and the franchisee shall have 30 days, or such additional time as the Municipality shall specify, to cure the violation without penalty.

E. Pending litigation or any appeal to any regulatory body or court having jurisdiction over a franchisee shall not excuse the franchisee from the performance of its obligations under this Part or its franchise agreement unless a stay is obtained from a forum of competent jurisdiction.

2. *Remedies Cumulative.* All remedies under this Part and the franchise agreement are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve a franchisee of its obligations to comply with its franchise. Remedies may be used singly or in combination; in addition, the Municipality may exercise any rights it has at law or equity.

3. *Relation to Insurance and Indemnity Requirements.* Recovery by the Municipality of any amounts under insurance, a performance bond, or letter of credit, or otherwise does not limit a franchisee's duty to indemnify the Municipality in any way; nor shall such recovery relieve a franchisee of its obligations under a franchise, or in any respect prevent the Municipality from exercising any other right or remedy it may have.

(Ord. 453, 8/12/1996, §9)

### **§13-110. Transfers.**

1. *Municipality's Approval Required.*

A. A franchise shall be a privilege that is in the public trust and personal to the original franchisee. A franchisee's obligations under this franchise involve

personal services whose performance involves personal credit, trust, and confidence in the franchisee, and transfer without the prior written approval of the Municipality shall be considered to impair the Municipality's assurance of due performance.

B. No transfer (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur without prior written notice to and approval of the Municipality, and only then upon such reasonable terms and conditions as relate to the legal, financial and technical qualifications of the transferee, as the Municipality deems necessary and proper, as provided for in a franchise agreement and subject to Federal law or regulation. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer.

2. *Approval Does Not Constitute Waiver.* Approval by the Municipality of a transfer of a franchise does not constitute a waiver or release of any of the rights of the Municipality under this Part or a franchise agreement, whether arising before or after the date of the transfer.

(Ord. 453, 8/12/1996, §10)

### **§13-111. Rights of Individuals Protected.**

1. *Discriminatory Practices Prohibited.*

A. A franchisee shall not deny service, deny access, or otherwise discriminate against subscribers, programmers, or residents of the Municipality on the basis of race, color, religion, national origin, sex, or age.

B. A franchisee shall not discriminate among persons or take any retaliatory action against a person because of that person's exercise of any right it may have under Federal, State, or local law, nor may the franchisee require a person to waive such rights as a condition of taking service.

C. A franchisee shall not deny access or levy different rates and charges on any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

D. Subject to applicable law and except to the extent the Municipality may waive such a requirement, a franchisee is prohibited from discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers; provided, however, that a franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a nondiscriminatory basis to similar classes of subscribers throughout the Municipality; and a franchisee may offer discounts for the elderly, the handicapped, non-for-profit persons or organizations, or the economically disadvantaged, and such other discounts as it is expressly entitled to provide under Federal law, if such discounts are applied in a uniform and consistent manner. A franchisee shall comply at all times with all applicable Federal, State, and Municipality laws, and all executive and administrative orders relating to nondiscrimination.

E. *Information Accessibility.* Each document required to be maintained, filed or submitted under the provisions of this cable ordinance or a franchise agreement, or by Federal or State law or regulation, except those designated as confidential by a franchisee, pursuant to applicable law, is a public document, available for public

inspection and copying at the requester's expense, at the office of the Municipality or a franchisee.

2. *Protection of Subscriber Privacy.* A franchisee shall at all times protect the privacy of subscribers, consistent with §631 of the Cable Act, 47 U.S.C. § 551, and other applicable Federal, State, and local laws.

(Ord. 453, 8/12/1996, §11)

### **§13-112. Theft of Service.**

Subject to applicable law, it shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchisee's system within the Municipality for the purpose of enabling anyone to receive any services of the system or gain profit thereby without authority of or payment to the franchisee. Any such unlawful and unauthorized connection shall be punishable as a misdemeanor of the first degree upon arrest by municipal law enforcement agencies and conviction in municipal court.

(Ord. 453, 8/12/1996, §12)

### **§13-113. Miscellaneous Provisions.**

1. *Compliance with Laws.* Each franchisee shall comply with all Federal and Pennsylvania laws, as well as Municipal ordinances, resolutions, rules and regulations, heretofore or hereafter adopted or established during the entire term of its franchise.

2. *Captions.* The captions to Sections throughout this Part are intended solely to facilitate reading and reference to the Sections and provisions of this Part. Such captions shall not affect the meaning or interpretation of this Part.

3. *No Recourse Against the Municipality.* Without limiting such immunities as the Municipality or other persons may have under applicable law, a franchisee shall have no recourse whatsoever against the Municipality or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this Part or because of the enforcement of this Part or the Municipality's exercise of its authority pursuant to this Part, a franchise agreement, or other applicable law, unless the same shall be caused by criminal acts or by willful or gross negligence. Nothing contained herein, however, shall preclude, restrict or limit any right the franchisee may have to bring an action against the Municipality seeking injunctive and/or equitable relief.

4. *Rights and Remedies.*

A. The rights and remedies reserved to the Municipality by this Part are cumulative and shall be in addition to and not in derogation of any other rights and remedies which the Municipality may have with respect to the subject matter of this Part.

B. The Municipality hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this Part or a franchise agreement.

C. Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.

D. No franchisee shall be relieved of its obligation to comply with any of the provisions of this Part or a franchise agreement by reason of any failure of the Municipality to enforce prompt compliance. Nor shall any inaction by the Municipality be deemed to waive a provision voiding any provision of this Part.

5. *Amendments to this Part.* In order to fulfill the public interest goals of this Part, to provide additional communications service to the Municipality through the use of cable systems and thereby to ensure the benefits which will result from such service, the Municipality specifically reserves the right lawfully to amend this Part to effectuate the public interest in the operation of a cable system; provided, however, that any such amendment which has the effect of directly or indirectly changing the provisions of any existing franchise agreement shall not be enforceable by the Municipality, excluding general police powers, unless or until such changes have been effected by a subsequent amendment to such franchise agreement.

6. *Public Emergency.* In the event of a major public emergency or disaster as determined by the Municipality or declared by the Governor of Pennsylvania, a franchisee shall immediately cooperate with the Municipality or other civil defense or governmental agency designated by the Municipality for the term of such emergency or disaster for the emergency purposes.

7. *Connections to System; Use of Antennae.*

A. Subscribers shall have the right to attach devices to a franchisee's cable system to allow them to convey signals or services for which they have paid to VCRs, televisions, other receivers, and other terminal equipment, so long as such devices do not interfere with the operation of the cable system, or the reception of any cable subscriber, nor serve to circumvent the security procedures established by the franchisee, nor for any purpose to obtain services illegally. Subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment, where applicable and compatible, and a franchisee shall provide information to consumers which will allow them to adjust such devices so that they may be used with the franchisee's system.

B. A franchisee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna or disconnect an antenna, or prohibit or discourage a subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable codes and technically able to shield the cable system from any interference.

8. *Calculation of Time.* Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Part or any franchise agreement, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration time.

9. *Force Majeure.* A franchisee granted a franchise under the provisions of this Part shall not be deemed in default of this Part where performance of the provisions and obligations herein are rendered impossible by causes, circumstances or other reasons beyond the control of the franchisee, and the franchise shall not be revoked nor the franchisee penalized for such noncompliance; provided, the franchisee takes immediate and diligent steps to restore its compliance as soon as possible under the circumstances of its franchise without unduly endangering the health, safety, and

integrity of the franchisee's employees or property, the public, the public rights-of-way or public or private property.

10. *Severability.* If any term, condition, or provision of this Part shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the Municipality and shall thereafter be binding on the franchisee and the Municipality. Nothing in this Part shall require a franchisee to violate any applicable law, rule or regulation.

11. *Ordinance Supersedes All Previous Ordinances.* This Part hereby supersedes and repeals all previous ordinances of the Borough of Ferndale pertaining to cable communications or relating to the awarding or provisions of a cable television franchise for the Borough of Ferndale and shall become effective upon the final passage of this Part.

(*Ord. 453, 8/12/1996, §13*)

## **Exhibit 13-1-A: List of Participating Municipalities**

Borough of Benson  
Borough of Brownstown  
City of Johnstown  
Conemaugh Township - Somerset County  
Borough of Daisytown  
Borough of Dale  
East Taylor Township  
Borough of Ferndale  
Borough of Franklin  
Borough of Geistown  
Jackson Township  
Borough of Lorain  
Lower Yoder Township  
Middle Taylor Township  
Richland Township  
Borough of Southmont  
Stonycreek Township  
Upper Yoder Township  
Borough of Westmont



## **Exhibit 13-1-B: FCC Customer Service Obligations**

As of Date of Enactment

CODE OF FEDERAL REGULATIONS  
TITLE 47—TELECOMMUNICATION  
CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION  
SUBCHAPTER C—BROADCAST RADIO SERVICES  
PART 76—CABLE TELEVISION SERVICE  
SUBPART H—GENERAL OPERATING REQUIREMENTS

### **Section 76.309 Customer service obligations.**

(a) A cable franchise authority may enforce the customer service standards set forth in subsection (c) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in subsection (c) of this Section;

(2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in subsection (c) of this Section and are contained in current franchise agreements;

(3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in subsection (c) of this Section.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability—

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, 7 days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a

trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90 percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than 3 percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than 95 percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within 7 business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a 4-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers—

(i) Notifications to subscribers—

(A) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(1) Products and services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services;

(3) Installation and service maintenance policies;

(4) Instructions on how to use the cable service;

(5) Channel positions programming carried on the system; and,

(6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(B) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of 30 days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by the preceding paragraph.

(ii) Billing—

(A) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(B) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

(iii) Refunds—refund checks will be issued promptly, but no later than either—

(A) The customer's next billing cycle following resolution of the request or 30 days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(iv) Credits—credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions—

(i) Normal business hours—the term “normal business hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, “normal business hours” must include some evening hours at least one night per week and/or some weekend hours.

(ii) Normal operating conditions—the term “normal operating conditions” means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) Service interruption—the term “service interruption” means the loss of picture or sound on one or more cable channels.