

Chapter 76

CABLE TELEVISION

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[HISTORY: Adopted by the Borough Council of the Borough of Bechtelsville 6-6-1966 by Ord. No. 85. Amendments noted where applicable.]

GENERAL REFERENCES

Streets and sidewalks — See Ch. 182.

Cable television franchise — See Ch. A207.

§ 76-1. Short title.

This chapter shall be known and may be cited as the “Cable Television Franchise Ordinance.”

§ 76-2. Definitions and word usage.

For the purposes of this chapter, 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 include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

BOROUGH — The Borough of Bechtelsville.

BOROUGH COUNCIL — The Borough Council of the Borough of Bechtelsville.

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

QUALIFYING COMPANY — Any person or entity which is granted a nonexclusive franchise pursuant to the terms of this chapter.

§ 76-3. Grant of authority.

The Borough Council is hereby authorized to grant the right and privilege to qualifying companies to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways, and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the Borough, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the Borough of a community television system and for closed circuit cable services.

- A. Nonexclusive grant. No right to use and occupy said streets, alleys, public ways and places granted pursuant to this chapter shall be deemed to be exclusive, and the Borough reserves the right to grant similar rights to any other qualifying company at any time.
- B. State Highway Department permits. Grants by the Borough pursuant to this chapter are subject to provisions of the Borough Code of the Commonwealth of Pennsylvania¹ and more particularly to the provisions of the ordinances of the Borough which require that, before any conduits, pipe or other structures be erected upon or in any portion of a Borough street, a permit must be obtained from the Borough. Where a state highway is involved, such construction shall be made under the conditions, restrictions and regulations as may be prescribed in the permit to be obtained from the State Highway Department.
- C. Grant of prescribed rights. Grants pursuant to this chapter further shall be subject to the qualifying companies obtaining any and all necessary easements, rights-of-way and other grants from any and all property owners who may be affected by the construction, operation and maintenance of the aforesaid conductors and fixtures.

§ 76-4. Compliance with applicable laws and ordinances.

Qualifying companies shall, at all times during the life of a franchise granted pursuant hereto, be subject to all lawful exercise of the police power by the Borough, and to such reasonable regulation, pursuant to the exercise of such police power, as the Borough, County of Berks, Commonwealth of Pennsylvania or United States of America shall hereafter by resolution, ordinance, statute or regulation provide.

- A. Interference. If there is any interference, intentional, unintentional or otherwise, on any television set, radio or other electronic device not on the conductors or fixtures of the qualifying company caused by the conductors or fixtures of the qualifying company, the qualifying company shall immediately at its own cost and expense eliminate such interference. If such interference cannot be eliminated within 48 hours, Borough shall have the power to suspend, by direction of the Borough Council or its designee, and without hearing, the operation of the qualifying company within the Borough until such interference is eliminated.

1. Editor's Note: See 53 P.S. § 45101 et seq.

- B. Building permits. In addition, the qualifying company shall apply for and take out any and all building permits required by the Borough for any construction to be undertaken by said qualifying company.

§ 76-5. Liability indemnification; insurance requirements. ²

It is expressly understood and agreed by and between any qualifying company and the Borough that the qualifying company shall save the Borough harmless from all loss sustained by the Borough on account of any suit, judgment, execution, claim, or demand whatsoever, resulting from the operations of the qualifying company in the construction, operation or maintenance of its television system in the Borough. The Borough shall notify the qualifying company's representative in the Borough within 10 days after the presentation of any claim or demand, either by suit or otherwise, made against the Borough on account of any damages or losses as aforesaid resulting from the operations of the qualifying company. The qualifying company shall furnish to the Borough, prior to the grant of a franchise hereunder, evidence in writing that the qualifying company has in force, and will maintain in force during the term of any franchise granted pursuant to this chapter, duly issued by an insurance company or insurance companies authorized to do business in this Commonwealth:

- A. Liability insurance protecting the qualifying company and the Borough with regard to damages and/or penalties, in the following minimum amounts:
- (1) Five hundred thousand dollars for bodily injury or death to any one person, within the limit, however, of \$1,000,000 for bodily injury or death resulting from any one accident, and \$2,000,000 for all injuries or deaths resulting from any one accident.
 - (2) Five hundred thousand dollars for property damage resulting from any one accident.
- B. Worker's compensation insurance on all employees engaged in installation or service of its equipment.

§ 76-6. Qualifying company rules.

The qualifying company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the qualifying company to exercise its rights and perform its obligations under this franchise, and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof, additional regulations or ordinances of the Borough of Bechtelsville, the laws of the State of Pennsylvania, or the laws of the United States of America.

§ 76-7. Conditions on street occupancy.

- A. Use. All transmission and distribution structures, lines and equipment erected by the qualifying company within the Borough shall be so located as to cause minimum

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights of reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

- B. Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the qualifying company shall, at its own cost and expense and in a manner approved by the Borough Engineer, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced. Said restoration shall also be subject to the ordinances of the Borough of Bechtelsville and the rules and regulations of the State Highway Department, as appropriate.
- C. Relocation. In event that at any time during the period of any franchise granted pursuant to this chapter the Borough shall lawfully elect to alter or change the grade of any street, alley or other public way, the qualifying company, upon reasonable notice by the Borough, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other television fixtures at its own expense.
- D. Placement of fixtures. The qualifying company, insofar as it is reasonably possible to do so, shall locate its wires, cables, conduits and other television conductors and fixtures on existing utility poles of either the electric or the telephone company. The qualifying company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant or main, and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curbline; those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways.
- E. Temporary removal of wire for building moving. The qualifying company shall, on the request of any person holding a building moving permit issued by the Borough, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the qualifying company shall have the authority to require such payment in advance. The qualifying company shall be given not less than 48 hours' advance notice to arrange for such temporary wire changes.
- F. Tree trimming. The qualifying company shall have the authority, to the same extent that the Borough has such authority, to trim trees upon and overhanging streets, alleys, sidewalks and public places of the Borough so as to prevent the branches of such trees from coming in contact with the wires and cables of the qualifying company.

§ 76-8. Assignment.

All franchises and privileges granted pursuant to the terms of this chapter shall be unassignable unless such assignment has been approved by Borough by resolution at a duly convened meeting of the Borough Council.

§ 76-9. Borough rights in franchise.

- A. Borough rules. The right is hereby reserved to the Borough to adopt by resolution, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulations shall be reasonable, and not in conflict with the rights herein granted, and shall not be in conflict with the laws of the State of Pennsylvania.
- B. Use of system by Borough. The Borough shall have the right, during the life of this franchise, free of charge, where serial construction exists, of maintaining upon the poles of the qualifying company within the Borough limits wire and pole fixtures necessary for a police and fire alarm system, such wires and fixtures to be constructed and maintained to the satisfaction of the qualifying company and in accordance with its specification.
- C. Inspection. The Borough shall have the right to inspect all construction or installation work during such construction or installation or at any time after completion thereof, in order to insure compliance with the provisions of this chapter and all other governing ordinances.

§ 76-10. Franchise fee. [Amended 3-4-1968 by Ord. No. 92³]

The franchisee shall pay to the Borough for the privilege of obtaining a franchise permit and operating a franchise hereunder a fee of 5% of annual revenues received by franchisee from its operation of the cable system within the Borough. The franchisee shall make pro-rata payments of the franchise fee to the Borough on a semiannual basis within 60 days after the close of each semiannual period. The semiannual period shall end on June 30 and December 31 of each year. Franchisee shall submit to the Borough within 90 days of the close of the calendar year a report of annual revenues for such fiscal year, certified by an officer of the franchisee and, upon the Borough's request, compiled by a certified public accountant.

§ 76-11. Records and reports.

The qualifying company shall at all times maintain adequate records of the gross receipts from service rental income, which shall be available at all reasonable times to inspection by the Borough through its duly designated agents or officers.

§ 76-12. Term of franchise. ⁴

Franchises issued pursuant to the terms of this chapter shall be issued for a term not to exceed 15 years, with a provision that the franchise can be reviewed after a period of five years to determine if the qualifying company has complied in all respects with the terms of the chapter and the agreement and to confirm that it maintains a financial condition satisfactory to the Borough.

3. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 76-13. Violations and penalties.

Any violation by a qualifying company, its servants, agents or employees, under the provisions of this chapter or any material portion or portions hereof, or the failure of any qualifying company to exercise the rights granted pursuant hereto within six months of the grant of a franchise, shall be cause for the forfeiture of such franchise and all rights thereunder to the Borough. In the event of such forfeiture, Borough shall notify such qualifying company of such fact.

§ 76-14. Franchise permits.

- A. All applicants for franchise permits shall submit to the Borough a statement containing the following:
- (1) Name and address of applicant.
 - (2) Evidence of financial condition of the applicant and, if the applicant is a corporation or partnership, the names of the principal stockholders or partners, whichever is applicable. A financial statement of the person shall be submitted and shall be certified by a certified public accountant.
 - (3) Description of the area to be covered by the franchise.
 - (4) Schedule of proposed rates to be charged by the applicant for all services to be rendered within the Borough.
- B. Such application shall be made upon forms to be supplied by the Borough. Borough reserves the right to request such other information as it may deem necessary. Upon receipt of the above information, together with such other information as is requested by the Borough, the Borough Council shall determine whether or not it is in the best interests of the Borough to grant a franchise permit to the applicant.

§ 76-15. Rates.

Rates charged by a qualifying company for service hereunder shall be fair and reasonable and designed to meet all necessary costs of the service, including a fair rate of return on net valuation of its properties devoted thereto under efficient and economical management. Qualifying companies agree that they shall be subject to all authority now or hereafter possessed by the Borough or any other regulatory body having competent jurisdiction to fix just, reasonable and compensatory rates. Qualifying companies shall not charge rates in excess of the rates shown on the schedule filed with the application, unless such different rates are approved by action of the Borough Council, or, in the event of the failure of the Borough Council to approve such rates, by a Board of Arbitrators composed of three members, one of whom shall be selected by the Borough, one of whom shall be selected by the qualifying company and the third of whom shall be selected by the aforementioned designees. The decision of said Board of Arbitrators shall be rendered either approving or disapproving the proposed change of rates within 30 days after the date of the appointment of the last member of said Board and such decision shall be binding upon the Borough and the qualifying company. Appointments to said Board of Arbitrators by the Borough and by the qualifying

company shall be made within 15 days after action of the Borough disapproving the proposed rate change.

§ 76-16. Termination of franchise.

Upon revocation of the franchise of a qualifying company by the Borough, or at the end of the term of a franchise of a qualifying company, the qualifying company shall remove all of its equipment and other facilities from the Borough within a reasonable time.

