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# Chapter 69 — Cable Television

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## **Article I — Title and Definitions**

### **§ 69-101 Short Title.**

This Chapter shall be known, and may be cited, as the “Alburtis Cable Television Ordinance.”

### **§ 69-102 Definitions – In General.**

For purposes of this Chapter, the terms defined in the remaining sections of this Article I shall have the meanings indicated, whether with or without initial capital letters, unless the context in which they are used clearly indicates a different meaning.

### **§ 69-103 Borough.**

The term “Borough” shall mean the Borough of Alburtis, Lehigh County, Pennsylvania.

### **§ 69-104 Cable System.**

The term “Cable System” means a system of equipment, apparatus, fixtures, and/or facilities to provide for the transmission to subscribers of video programming or other programming services, but does not include a system which provides such services to a subscriber located in the Borough without utilizing any equipment, apparatus, fixtures, and/or facilities within the Borough other than on the subscriber’s property (such as via a home satellite antenna).

### **§ 69-105 Person or Applicant.**

The term “person” or “applicant” shall mean any individual or individuals, partnership, firm, limited partnership, association, corporation, company, or organization of any kind.

### **§ 69-106 Public Utility.**

The term “public utility” shall mean any person or corporation now or hereafter owning or operating in the Commonwealth of Pennsylvania equipment or facilities or producing, generating, transmitting, distributing, or furnishing electricity for the production of light, heat, or power, to or for the public for compensation; or conveying passengers or property, or both, by railroad or railway for public use and the facilities thereof.

**§ 69-107 Streets.**

The term “streets” shall include all public streets, alleys, rights-of-way, roads, highways, and utility areas within the Borough.

## **Article II — Registration and Grant of Privilege**

**§ 69-201 In General.**

It shall be unlawful for any person to operate a Cable System which provides services to any subscribers located within the Borough unless—

(a) the person properly registered with the Borough prior to June 27, 2007 for the privilege of engaging in the business of community antenna television systems and received a certificate of privilege from the Borough; and has lawfully provided its services to subscribers within the Borough at all times thereafter in full compliance with the terms, conditions, fees, and penalties accompanying the grant of privilege as provided in Articles II, III, and IV of this Chapter, and as otherwise provided in the grant of privilege, and the agreements and assurances provided in the person’s application for the privilege; *or*

(b) the person operates the Cable System in full compliance with all the terms and conditions of a franchise granted by the Borough as set forth in a Franchise Agreement authorized under Article V of this Chapter. A person described in this subsection (b) shall comply with the terms and conditions of the Franchise Agreement and shall be relieved from any obligation to comply with any inconsistent provisions in the remaining sections of this Article II, or in Article III of this Chapter.

**§ 69-202 [RESERVED]****§ 69-203 [RESERVED]****§ 69-204 Levy of Borough Privilege Fee.**

A Borough privilege fee of the sum of five percent (5%) of the annual gross service income for the privilege of using the Borough streets is herewith levied. Payment of the fee is to be made as set forth in § 69-205(b).

**§ 69-205 Books and Records.**

For the purpose of administering this Chapter, the applicant shall:

(a) Keep and render its books and records in a manner which will permit the preparation of a detailed statement clearly disclosing the amount of rentals received by the applicant in arriving at the determination of the gross receipts rental as set forth in § 69-204.

(b) Within thirty (30) days after the close of each calendar year, the applicant shall file with the Borough Manager a verified statement of the gross service income received by it from rentals in the Borough for the preceding year, together with payment of the privilege fee in the sum of five percent (5%) of the annual gross service income for that year.

(c) Permit the Borough Manager, Treasurer, or auditors the right at reasonable times to inspect the books and records of the company for the purpose of verifying the aforesaid gross service income.

## **Article III — Facilities**

**§ 69-301 Installation of Facilities.**

Except as otherwise provided in a Franchise Agreement authorized under Article V of this Chapter, no poles, cables, equipment, apparatus, or wires for the construction, maintenance, and operation of a Cable System shall be installed on, in, or upon any streets within the confines of the Borough unless it is upon poles and rights-of-way of a public utility presently operating within the Borough, and there is filed in the office of the Borough Manager proper written permission therefor from the public utility.

**§ 69-302 Erection of Poles.**

Except as otherwise provided in a Franchise Agreement authorized under Article V of this Chapter, only public utilities shall be permitted to erect poles upon any of the streets and rights of way of the Borough, and any poles as well as any and all wires, cables, apparatus, or equipment thereon shall be deemed to be under the license, operation, and control of the public utility owning said poles.

## Article IV — Enforcement

### § 69-401 Forfeiture of Privileges.

Any person violating any of the provisions of this Chapter shall be guilty of a summary offense and, upon conviction thereof, work a forfeiture of any of the privileges that may have been granted.

### § 69-402 Penalties.

(a) **Civil Penalty.** Any person who violates any provision of this Chapter shall be subject to a civil penalty of Three Hundred Dollars (\$300.00).

(b) **Initial Determination of Violation.** Council hereby delegates the initial determination of violations under this Chapter to the Borough Manager. The Borough Manager shall serve notice of the violation(s) upon the person determined to have violated this Chapter in person or by first class U.S. mail addressed to that person at his/her last known address. The notice shall include a description of the violation(s), the provision(s) of the Codified Ordinances violated (*i.e.* section, subsection, paragraph, etc.), the penalty imposed for each violation, and the time for payment prior to the commencement of a civil enforcement proceeding. Service shall be complete on the date of in-person service or the date of mailing.

(c) **Civil Enforcement Proceeding.** When the penalty imposed for a violation(s) of this Chapter is not voluntarily paid to the Borough within fifteen (15) calendar days after service of the violation notice under subsection (b), the Borough Manager shall initiate a civil enforcement proceeding in the name of the Borough before a magisterial district judge (or, where applicable under Borough Code § 3321(5), 53 PA. STAT. ANN. § 48321(5), the Lehigh County Court of Common Pleas). The civil enforcement proceeding shall be initiated by complaint or by such other means as may be provided by the Pennsylvania Rules of Civil Procedure. Any person found to have violated this Chapter in the civil enforcement proceeding shall be assessed court costs and reasonable attorney fees incurred by the Borough in the proceedings, in addition to the penalty provided.

(d) **Separate Offenses.** Each day or portion of a day that a given violation exists or continues shall constitute a separate offense, and each violation of a separate section, subsection, paragraph, or other division of this Chapter shall constitute a separate offense.

(e) **Equitable Remedies.** In addition to or in lieu of enforcement of this Chapter through a civil action, the Borough may enforce this Chapter through an action in equity brought in the Court of Common Pleas of Lehigh County. The Borough Solicitor shall have authority to commence the action in equity on behalf of the Borough without explicit authorization of Council in any situation where the Solicitor or the President of Council deems it advisable to act before the next regular Council meeting.

## Article V — Franchise Agreements

### § 69-501 RCN Telecom Services, Inc. — 2007

The Borough of Alburytis shall enter into a Franchise Agreement with RCN Telecom Services, Inc. in the form attached to Ordinance 460 as **Exhibit A**, which is incorporated into this Article by reference, *provided that* RCN Telecom Services, Inc. shall first approve and execute the Franchise Agreement. The President (or Vice President) of Borough Council is hereby authorized and directed to execute the Franchise Agreement on behalf of the Borough upon receipt of the document executed by RCN Telecom Services, Inc.

## Appendix

### ¶ 69-A Disposition of Ordinance 226.

<u>Ordinance 226</u>	<u>2003 Codified Ordinances</u>
§ I	§ 69-101
§ II (intro)	§ 69-102
§ II(A)	§ 69-103
§ II(B)	§ 69-104
§ II(C)	§ 69-105
§ II(D)	§ 69-106
§ II(E)	§ 69-107
§ III	§ 69-201
§ IV	§ 69-301
§ V	§ 69-302
§ VI	§ 69-202
§ VII	§ 69-203
§ VIII	§ 69-204
§ IX	§ 69-205
§ X	§ 69-401
§ XI	§ 69-402

## ¶ 69-B Source Ordinances.

Ordinance 226	05-11-1983
Ordinance 252	03-11-1987
Ordinance 415	10-29-2003
Ordinance 460	06-27-2007
Ordinance 518	03-12-2014
Ordinance 526	01-28-2015

## ¶ 69-C Derivation of Unofficial Appendix Chapter A145 to 1981 Code.

In 1984 and 1988, General Code Publishers Corp. printed an unofficial codification of Ordinance 226 (as amended by Ordinance 252) to Appendix Chapter A145 of the 1981 Code. Borough Council did not formally add Ordinance 226 to the 1981 Code, and did not formally adopt any of the numbering and stylistic changes made by General Code Publishers Corp. However, Ordinance 252 did cross-reference Appendix Chapter A145 as well as cite to Ordinance 226.

A copy of the GCP unofficial Appendix Chapter A145 (after Ordinance 252) is provided with the on-line and CD-ROM versions of the Codified Ordinances.

The provisions of the GCP unofficial Appendix Chapter A145 were derived from Ordinance 226 (as amended by Ordinance 252) as follows:

<u>Unofficial Appendix Chapter A145</u>	<u>Ordinance 226 (as amended by Ord. 252)</u>
§ A145-1	§ I
§ A145-2	§ II
§ A145-3	§ III
§ A145-4	§ IV
§ A145-5	§ V
§ A145-6	§ VI
§ A145-7	§ VII
§ A145-8	§ VIII
§ A145-9	§ IX
§ A145-10	§ X
§ A145-11	§ XI