

**ARLINGTON COUNTY CODE**

**Chapter 41.2**

**CABLE TELEVISION COMMUNICATIONS**

- § 41.2-1. General Provisions.**
- § 41.2-2. Definitions.**
- § 41.2-3. Grant of Franchise.**
- § 41.2-4. Applications for Initial Grant, Renewal, Extension, or Modification of a Franchise.**
- § 41.2-5. Filing Fees.**
- § 41.2-6. Provision of Cable Service, Quality of Cable Service.**
- § 41.2-7. Design and Construction.**
- § 41.2-8. Channels and Facilities for Public, Educational and Governmental Use, Leased Access.**
- § 41.2-9. Consumer Protection.**
- § 41.2-10. Rate Regulation.**
- § 41.2-11. Franchise Fee.**
- § 41.2-12. Reports and Records.**
- § 41.2-13. Indemnification of the County and Residents.**
- § 41.2-14. Performance Bond, Security Fund, Revocation and Termination Due to Bankruptcy.**
- § 41.2-15. Transfers.**
- § 41.2-16. Open Video Systems.**
- § 41.2-17. Rights of Individuals Protected.**
- § 41.2-18. Administration.**
- § 41.2-19. Miscellaneous Provisions.**

**§ 41.2-1. General Provisions.**

- A. *Title.* This chapter shall be known and may be cited as the "County Cable Television Ordinance."
- B. *Purpose.*
  - 1. It is the policy of the Board to provide for the adequate, economical, and efficient delivery of Cable Service to Subscribers, and to protect Subscribers from excessive prices and unfair competition. The following purposes, among others, underlie the provisions set forth in this chapter:
    - a. Cable Service should be available to as many County residents as possible.
    - b. A Cable System should be capable of accommodating both present and reasonably foreseeable future cable-related needs of the County and its residents.
    - c. A Cable System should be constructed and maintained during a Franchise term so that changes in technology may be integrated to the maximum extent possible into existing System facilities.
    - d. A Cable System should be responsive to the needs and interests of the local community, and should provide the widest possible diversity of information sources and service to the public.
    - e. A cable operator should pay fair compensation to the County for the use of local public rights-of-way, and reimburse the County for costs and expenses incurred as a result of

actions requested by a Franchisee for the benefit of the Franchisee.

2. The County intends that all provisions set forth in this chapter be construed to serve the public interest and the foregoing public purposes, and that any Franchise issued pursuant to this chapter be construed to include the foregoing public purposes as integral parts thereof.

C. *Delegation of powers.* To the extent permitted by law, the Board may delegate the performance of any act, duty, or obligation, or the exercise of any power, under this chapter or under any Certificate issued pursuant hereto, to any County employee, officer, department or agency.  
(Ord. No. 98-21, 6-20-98)

#### § 41.2-2. Definitions.

*Definitions and usage--General.* For the purposes of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless the context clearly indicates otherwise. 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, words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words "shall" and "will" are mandatory. The word "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, as amended, and, if not defined therein, words shall be given their common and ordinary meaning.

“Access Channel” means any Channel on a Cable System set aside by a Franchisee for public, educational, or governmental use.

“Administrator” means the County Manager of Arlington County or his designee(s).

“Affiliate” means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with a Franchisee.

“Basic Service” means any service tier that includes the retransmission of all signals of locally-received television broadcast stations provided to any Subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the Cable System), any public, educational and governmental access signals, and any additional video programming signals added to the basic tier by a Franchisee.

“Board” means the County Board of Arlington County, Virginia.

“Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended from time to time.

“Cable Programming Service” means any video programming provided over a Cable System, other than Basic Service and video programming offered on a pay-per-channel or pay-per-program basis.

“Cable Service” means:

- (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, including but not limited to Internet access.

“Cable System” or “System” means 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 Subscribers within the County, but such term does not include (i) a facility that serves only to retransmit the television signals of one (1) or more television

broadcast stations; (ii) a facility that serves Subscribers without using any Public Rights-of-Way; (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System if such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) an open video system that complies with 47 U.S.C. § 573; or (v) any facilities of any electric utility used solely for operating its electric utility system. A reference to a Cable System in this chapter refers to any part of such System, including, without limitation, Converters. The foregoing definition of "Cable System" shall not be deemed to circumscribe or limit the authority of the County to regulate or Franchise the activities of any other communications system or provider of communications services to the full extent permitted by law. Any Certificate issued to a Franchisee shall define the services which the Franchisee is authorized to provide using the Public Rights-of-Way.

"Certificate" means a certificate of public convenience and necessity entered into pursuant to this chapter between the County or the Board and a Franchise holder that sets forth the terms and conditions under which a Franchise will be granted and exercised.

"Channel" means a band of frequencies six (6) megahertz wide in the electromagnetic spectrum, which is capable of carrying either one standard audio-video television signal, a number of audio, digital or other non-video signals, or some combination of such signals.

"Converter" means an electronic device which may serve as an interface between a System and a Subscriber's television receiver, and which may convert signals to a frequency not susceptible to interference within the television receiver of a Subscriber, permit a Subscriber to view all signals delivered at designated dial locations and perform a variety of functions, including signal security, descrambling, and electronic polling.

"County" means Arlington County, Virginia, and any agency or department thereof.

"County Manager" means the administrative head of the County government or his designee.

"Customer" means same as "Subscriber".

"Educational Access Channel" or "Educational Channel" means any Channel on a Cable System set aside by a Franchisee for Noncommercial educational use.

"Equitable Price" means Fair Market Value adjusted downward for any economic harm or property damage sustained by the County or Subscribers as a result of a Franchisee's breach of its Franchise or any violation of this chapter, and as further adjusted to account for other equitable factors that may be lawfully considered by the County.

"Fair Market Value" means the price for a Cable System valued as a going concern, but with no value allocated to the Franchise itself.

"FCC" means the Federal Communications Commission, its designee, or any successor governmental entity thereto.

"Franchise" means a non-exclusive authorization granted pursuant to this chapter and applicable law to construct, operate, and maintain a Cable System within the Public Rights-of-Way to provide Cable Service within all or a specified area of the County. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the County as required by State or County laws, ordinances or regulations, or for attaching devices to poles or other structures, whether owned by the County or a private entity, or for excavating or performing other work in or along Public Rights-of-Way.

"Franchise Area" means the area of the County that a Franchisee is authorized to serve by its Certificate.

"Franchisee" means a natural Person, partnership, domestic or foreign corporation, stock or non-stock

corporation, joint stock company, association, joint venture, limited liability company, professional limited liability company, or organization of any kind that has been granted a Franchise by the Board in accordance with the provisions of applicable law.

“Governmental Access Channel” or “Governmental Channel” means any Channel on a Cable System set aside by a Franchisee for Noncommercial government use.

“Gross Revenues” means any and all revenues, including cash, credits, property or other consideration of any kind or nature arising from, attributable to, or in any way derived directly or indirectly by a Franchisee, or its Affiliates, or by any other entity that is a cable operator of a Cable System, from the operation of a Franchisee's System (including the studios and other facilities associated therewith) to provide Cable Services. Gross Revenues include, by way of illustration and not limitation, monthly fees charged to Subscribers for any basic, optional, premium, per-channel, per-program service, or other Cable Service; including, without limitation, Internet access fees charged to Subscribers; installation, disconnection, reconnection, and change-in-service fees; Leased Access Channel fees; late fees and administrative fees; fees, payments, or other consideration received from programmers for carriage of programming on the System and accounted for as revenue under GAAP; revenues from rentals or sales of Converters or other equipment; any studio rental, production equipment, and personnel fees; advertising revenues; barter; revenues from program guides; revenues from the sale or carriage of other cable-related services; and revenues from home shopping, bank-at-home Channels and other revenue sharing arrangements. Gross Revenues shall include revenues received by an entity other than the Certificate Holder, an Affiliate, or another entity that operates the System where necessary to prevent evasion or avoidance of the obligation under this chapter or a Franchise to pay the franchise fee. Gross Revenues shall not include: (i) to the extent consistent with generally accepted accounting principles, actual bad debt write-offs not to exceed two percent (2%) of annual revenues, provided, however, that all or part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by a Franchisee which are imposed directly on any Subscriber or user by the Commonwealth of Virginia, the County, or other governmental unit and which are collected by the Franchisee on behalf of said governmental unit. A franchise fee is not such a tax.

“Installation” means the connection of System services to Subscribers' television receivers or other Subscriber-owned or Subscriber-provided terminal equipment.

“Leased Access Channel” or “Commercial Access Channel” means any channel on a Cable System designated or dedicated for use by a Person unaffiliated with a Franchisee pursuant to 47 U.S.C. § 532.

“Noncommercial” means not engaged in the promotion of particular products and services. This term, however, shall not be interpreted to prohibit Public, Educational and Governmental Access Channel operators from soliciting and receiving financial support to produce and transmit video programming on a Public, Educational or Governmental Access Channel, or from acknowledging a contribution.

“Normal Business Hours” means the hours from 8:00 a.m. to 8:00 p.m., Monday through Friday, and 12 p.m. to 6 p.m. on Saturday.

“Normal Operating Conditions” means those service conditions that are within the control of a Franchisee. Conditions that are deemed to be within the control of a Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular or reasonable anticipatable peak or seasonal demand periods, and maintenance or upgrade of a Cable System. Conditions that are deemed not to be within the control of a Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions.

“Person” means an individual, partnership, association, joint stock company, joint venture, domestic or foreign corporation, stock or non-stock corporation, limited liability company, professional limited liability company, or organization of any kind, or any lawful successor thereto or transferee thereof. Such term does not include the County.

“Programmer” means any Person or entity that produces or otherwise provides program material or

information for transmission by video, audio, digital or other signals, either live or from recorded traces or other storage media, to Users or Subscribers by means of a Cable System.

“Public Access Channel” means any Channel on a Cable System set aside by a Franchisee for Noncommercial use by the general public, including groups and individuals, and which is available for such use on a non-discriminatory basis.

“Public Rights-of-Way” means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, easement, or similar property or waters within the County in which the County now or hereafter holds any property interest, including, but not limited to, any riparian right, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining a Cable System. No reference herein, or in any Certificate, to a "Public Right-of-Way" shall be deemed to be a representation or guarantee by the County that its interest or other right to control the use of such property is sufficient to permit use of the property for the purpose of installing, operating and maintaining a Cable System. A Franchisee shall be deemed to gain only those rights to use the property as are properly in the County, in its sole determination, and as the County may have the right and power to give.

“Security Fund” means a performance bond, letter of credit, cash deposit, set aside letter, or other form of security acceptable to the Administrator.

“Service Interruption” means loss of picture or sound on one or more cable channels, or a reduction in the quality of sound or picture of one or more channels below the average level of over-the-air broadcasts received within a one mile radius of a Subscriber's location.

“State” means the Commonwealth of Virginia, its agencies and departments.

“Subscriber” means any Person who legally receives any service delivered over a Cable System.

“System Outage” means a Service Interruption affecting more than ten (10) Subscribers.

“Transfer” means any transaction in which (i) an ownership or other interest in a Franchisee, its Cable System, or any Person that is a cable operator of the Cable System is transferred from one Person or group of Persons to another Person or group of Persons so that control of a Franchisee is transferred; or (ii) the rights or obligations held by a Franchisee under a Certificate are transferred or assigned to another Person or group of Persons. The term "control," as used in this definition, means working control, in whatever manner exercised. By way of illustration, and not limitation, the addition, deletion, or other change of any general partner of a Franchisee, any Person who owns or controls a Franchisee, or a cable operator of a Cable System is such a change of control.

“User” means a Person or organization using a Channel or equipment and facilities for purposes of producing or transmitting signals.

(Ord. No. 98-21, 6-20-98)

### § 41.2-3. Grant of Franchise.

A. *Grant.*

1. The Board may grant one or more cable Franchises, and each such Franchise shall be awarded in accordance with and subject to the provisions of this chapter and applicable law.
2. No Person may construct or operate a Cable System within Arlington County without a Franchise. No Person may be granted a Franchise without having been issued a Certificate by the Board pursuant to this chapter.
3. This chapter may be amended from time to time, and in no event shall this chapter be considered a

contract between the county and a Franchisee or the Board and a Franchisee, such that the Board would be prohibited from exercising its legislative discretion to amend any provision of this chapter.

B. *Term of franchise.* No Franchise shall be granted for a period of more than fifteen (15) years, except that a Franchisee may apply at any time for renewal, extension, or modification pursuant to applicable law.

C. *Franchise characteristics.*

1. A Franchise authorizes use of Public Rights-of-Way for installing cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of a Cable System to provide Cable Service 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 the owner's 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 or any other public property without a separate agreement with the owners thereof.
2. A Franchise shall constitute both a right and an obligation to provide the Cable Services regulated by the provisions of this chapter and a Certificate.
3. A Franchise is non-exclusive and will not: explicitly or implicitly preclude the issuance of other Franchises to operate Cable Systems within the County; affect the County's right to authorize use of Public Rights-of-Way by other Persons to operate Cable Systems or for other purposes as the County deems appropriate; or affect the County's right to itself construct, operate, or maintain a Cable System, with or without a Franchise.
4. All privileges prescribed by a Franchise shall be subordinate to (without limitation) the County's use and any prior lawful occupancy of the Public Rights-of-Way.
5. The County reserves the right to reasonably designate where a Franchisee's facilities are to be placed within the Public Rights-of-Way and to resolve any disputes among users of the Public Rights-of-Way.

D. *Franchisee subject to other laws, police power.*

1. A Franchisee at all times shall be subject to and shall comply with all applicable federal, State, and local laws. A Franchisee at all times shall be subject to all lawful exercise of the police power of the County, including but not limited to all rights the County may have under 47 U.S.C. § 552. Nothing in a Certificate shall be deemed to waive the requirements of the various codes, ordinances, policies, rules, regulations, and practices of the County and the Board.
2. No course of dealing between a Franchisee and the County, or any delay on the part of the County in exercising any rights hereunder, or any acquiescence by the County in the actions of a Franchisee that contravene any of the County's rights (except to the extent such rights are expressly waived by the County in writing), shall operate as a waiver of any such rights of the County.
3. The County shall have the maximum authority to regulate Cable Systems, Franchisees, and Franchises as may now or hereafter be lawfully permissible; unless rights are expressly waived in a Certificate, they are hereby reserved, whether expressly enumerated or not.
4. The County and the Board may, from time to time, issue such rules and regulations concerning Cable Systems as are consistent with, or authorized by, applicable law.
5. The County and the Board may do all things which are necessary and convenient in the exercise of

its jurisdiction under this chapter.

E. *Interpretation of franchise terms.*

1. The provisions of this chapter and any Certificate or Franchise shall be liberally construed to effectuate the purposes and objectives of this chapter and the Franchise or Certificate, consistent with the public interest.
2. The terms of a Franchise or Certificate shall be subject to this chapter. In the event of a clear conflict between this chapter and a Certificate or Franchise, the terms of this chapter shall control.
3. Subject to federal law or regulation, a Certificate will be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

F. *Operation of a cable system without a franchise.* Any Person occupying the Public Rights-of-Way of the County for the purpose of operating or constructing a Cable System, which Person does not hold a valid Franchise from the County, shall be subject to all provisions of this chapter, including, but not limited to, those provisions regarding construction, technical standards and Franchise fees. The County at any time may require such Person to obtain a Certificate within thirty (30) days of receipt of a written notice from the County that a Certificate is required; require such Person to remove its property from the Public Rights-of-Way, and, at such Person's sole expense, restore the area to a condition satisfactory to the County within a reasonable time period as the County 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 permitted by law, including, but not limited to, filing for and seeking damages for trespass. In no event shall a Franchise be created unless it is issued by action of the Board and the Franchise terms are set forth in a Certificate.

G. *Acts at franchisee's expense.* Any act that a Franchisee is or may be required to perform under this chapter, a Certificate, or applicable law shall be performed at the Franchisee's expense, unless expressly provided to the contrary in this chapter, a Certificate, or applicable law.

H. *Eminent domain.* Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the County's rights of eminent domain to the extent to which such rights may apply to any Cable System. (Ord. No. 98-21, 6-20-98)

**§ 41.2-4. Applications for Initial Grant, Renewal, Extension, or Modification of a Franchise.**

A. *Application required.*

1. A written application shall be filed with the Administrator for the grant of an initial Franchise or modification of a Certificate pursuant to 47 U.S.C. § 545.
2. To be considered accepted for filing, a fully completed, signed original application, in a form prepared by or acceptable to the Administrator, shall be submitted as provided in this section together with twelve (12) copies. The application shall be accompanied by any required filing fee, conform to any applicable request for proposals, and contain all information required by the County. All applications shall include the names and addresses of persons authorized to act on behalf of all applicants with respect to the application.
3. To the extent permitted by law, all applications accepted for filing shall be made available by the County for public inspection.

B. *Application for grant of an initial franchise.*

1. A Person may apply for an initial Franchise by submitting an application containing the information required in § 41.2-4.C to the Administrator. Upon receipt of such an application, the

Administrator may either (i) evaluate the application pursuant to § 41.2-4.B.4, conducting such investigations as deemed necessary; or (ii) issue a Request for Proposals ("RFP"), after conducting, if necessary, a proceeding to identify the future cable-related needs and interests of the community. Any such RFP shall be mailed to any Person requesting its issuance and made available to any other interested Person. The RFP may contain a proposed Certificate.

2. An applicant shall respond to a RFP by filing a proposal with the Administrator within the time directed by the County, providing the information and material set forth in § 41.2-4.C. The procedures, instructions, and requirements set forth in the RFP shall be followed by each applicant. Any applicant that has already filed materials pursuant to § 41.2-4.B.1 herein need not refile the same materials with its proposal, but shall clearly identify each portion of the previously filed materials that are intended to satisfy the RFP requirements. The applicant shall further amplify its application to include any additional or different materials required by the RFP. The Administrator may seek additional information from any applicant and establish deadlines for the submission of such information.
3. Notwithstanding the provisions of §§ 41.2-4.B.1 and 41.2-4.B.2, a Person may apply for an Initial Franchise by submitting an unsolicited application containing the information required in § 41.2-4.C and requesting an evaluation of that application pursuant to § 41.2-4.B.4. Prior to evaluating that application, the Administrator may conduct, or cause to be conducted, such investigations as are necessary to determine whether the application satisfies the standards set forth in § 41.2-4.B.4 and may seek additional applications by RFP or otherwise.
4. In evaluating an application for a Franchise, the Administrator shall consider, among other things, the following factors:
  - a. The extent to which the applicant has substantially complied with applicable law and the material terms of any existing cable Franchise for the County;
  - b. Whether the quality of the applicant's service under any existing Franchise or similar grant in the County, 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;
  - c. Whether the applicant has the financial, technical, and legal qualifications to provide Cable Service;
  - d. Whether the application satisfies any minimum requirements established by the County 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;
  - e. Whether, to the extent not considered under § 41.2-4.B.4.d, the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support;
  - F. Whether issuance of a Franchise is 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 to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications; and
  - g. What effects a grant of the application may have on competition in the delivery of Cable Service in the County.



5. After evaluating a fully-completed application, including all additional information requested by the County, the Administrator shall transmit recommendations to the Board.
  6. If the Board finds that it is in the public interest to issue a Franchise after considering the factors set forth in § 41.2-4.B.4 and any other relevant factors permitted by law to be considered, and subject to the applicant's agreement to the terms of an appropriate Certificate, the Board shall issue a Franchise, after complying with the public hearing requirements of § 41.2-4.G. If the Board denies the request for a Franchise, then the Board will issue a written decision explaining why the Franchise was denied. Prior to deciding whether or not to issue a Franchise, the Board may hold one (1) or more public hearings or implement other procedures under which comments from the public on an application may be received. The Board 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 chapter is not intended and shall not be interpreted to grant any applicant or existing Franchisee standing to challenge the denial of its application or the issuance of a Franchise to another.
- C. *Contents of application.* An RFP for the grant of an initial Franchise shall require, and any such application shall contain, at a minimum, the following information:
1. The name, address and form of business of the applicant, and an identification of the ownership and control of the applicant, including: the names and addresses of the ten (10) largest holders of an ownership interest in the applicant and Affiliates of the applicant, and all Persons with five percent (5%) or more ownership interest in the applicant and its Affiliates; the Persons who exercise working control over the applicant and its Affiliates, and the Persons who control those Persons, to the ultimate parent; all officers and directors of the applicant and its Affiliates; and any other business affiliation and Cable System ownership interest of each named Person.
  2. A demonstration of the applicant's technical ability to construct and/or operate the proposed Cable System, including identification of key personnel.
  3. 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:
    - a. If the Board has lawfully denied an applicant's previous request for an initial Franchise or a Franchise renewal, then that applicant may not apply for an initial or renewal Franchise again until at least three (3) years have elapsed since the date of such lawful denial;
    - b. The applicant shall not have had any cable television Franchise validly revoked by any franchising authority within three (3) years preceding the date of the submission of the application;
    - c. The applicant shall have the necessary authority under Virginia law to operate a Cable System;
    - d. The applicant shall have the necessary authority under federal law to hold the Franchise and operate a Cable System. An applicant shall have, or show that it is qualified to obtain, any necessary federal licenses or waivers required to operate the System proposed;
    - e. The applicant is willing to enter into a Franchise, to pay required compensation, and to abide by the provisions of applicable law, including those relating to the construction, operation or repair of its facilities, and has not entered into any agreement which would prevent the applicant from doing so;

- f. The applicant shall not be issued a Franchise if, at any time during the ten (10) years preceding the date of submission of the application, the applicant was convicted of any act or omission of such character that, in the sole opinion of the County, the applicant cannot be relied upon to deal truthfully with the County and the Subscribers of the Cable System, or to substantially comply with its lawful obligations under applicable law, including acts of moral turpitude, and obligations under consumer protection laws and laws prohibiting anticompetitive acts, fraud, racketeering, or other similar conduct;
- g. The applicant shall not be issued a Franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide; and
- h. The applicant shall not be issued a Franchise if an elected official of the County has a personal interest in the Franchise, unless otherwise permitted by the Virginia State and Local Government Conflict of Interests Act, Va. Code §§ 2.2-3100 through 2.2-3131, or holds a controlling interest in the applicant or an Affiliate of the applicant.

Notwithstanding the foregoing, and to the extent permitted by applicable law, the Board shall provide an applicant with an opportunity 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.

- 4. A demonstration of the financial qualifications of the applicant, including at least the following:
  - a. The applicant's proposed rate structure, including projected charges for each service tier, Installation, Converters, and all other proposed equipment or services for the ensuing five (5) years;
  - b. A certified statement prepared by a certified public accountant regarding the applicant's financial ability to complete the construction proposed, to meet the time frame proposed and to operate the Cable System proposed. If an applicant is a joint venture or partnership, the same information shall be provided for each participant in the joint venture or partnership; and
  - c. 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.
- 5. A description of the applicant's prior experience in Cable System ownership, construction, and operation, and an identification of each locality in which the applicant or any of its principals have, or have had, a cable Franchise or any interest therein, including the name, address and phone number of each local franchising authority and references from each authority.
- 6. A written description and a detailed map of the exact area or areas of the County to be served by the proposed Cable System, including a description of the proposed Franchise Area's boundaries.
- 7. A detailed description of the physical facilities proposed to be provided within Arlington County, which description shall include at least the following:
  - a. A description of the channel capacity, technical design, performance characteristics, headend, access (and institutional network) facilities and equipment;

- b. The location of the proposed System and System design, including a description of the miles of plant to be installed, and a description of the size of equipment cabinets, shielding and electronics that will be installed along the plant route, the power sources that will be used and a description of the noise, exhaust and pollutants, if any that will be generated by the operation of the same;
  - c. A map of the route the Cable System will follow; a designation of the portions of the System that will be placed above-ground and portions that will be placed underground, and the construction techniques that the operator proposes to use in installing the System above-ground and underground; where applicable, a schedule for construction of the System, describing when and where construction will begin, how it will proceed, and when it will be completed; and the expected effect on right-of-way usage, including information on the ability of the Public Rights-of-Way to accommodate the proposed System, an estimate of the availability of space in conduits, and an estimate of the cost of any necessary rearrangement of existing facilities; and
  - d. A description, where appropriate, of how services will be converted from existing facilities to new facilities, and what will be done with existing facilities.
8. A demonstration of how and when 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 County, and how and when the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support to meet the community's needs and interests.
  9. Copies of any agreements which an applicant has entered into or proposes to enter into with any other Person relating to the proposed System.
  10. If the applicant proposes to provide Cable Service to an area already served by an existing Cable Franchisee, a written description and a detailed map of the area where the overbuild would occur and the ability of the Public Rights-of-Way and other property that would be used by the applicant to accommodate an additional System.
  11. To the extent an applicant is in any respect relying on the financial or technical resources of another Person, including an Affiliate, the proofs required under §§ 41.2-4.C.2 and 41.2-4.C.4 shall be provided for that Person.
  12. Any other information that the Administrator determines is reasonably necessary to demonstrate compliance by the applicant with the requirements of this chapter.
  13. Any additional information that the Administrator or the Board may request of the applicant that is relevant to the County's consideration of the application.
  14. 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.
  15. A declaration that no Person not shown in the application has, or without the prior written consent of the Board, will have, any equity interest in the Franchise exceeding five percent (5%).
  16. A declaration that the applicant agrees to comply with this chapter, and will abide by the Board's decision to grant or deny a Franchise.
- D. *Application for grant of a renewal franchise or extension.*

1. If neither a renewal applicant nor the County activates in a timely manner or can activate the renewal process set forth in 47 U.S.C. § 546(a)-(g) (including, for example, if the provisions are amended or repealed), and except as to applications submitted pursuant to 47 U.S.C. § 546(h), the provisions of §§ 41.2-4.A--C shall apply and a renewal request shall be evaluated using the same criteria as any other request for a Franchise. The following requirements shall apply to renewal requests properly submitted pursuant to the Cable Act and this chapter.
2. If the provisions of 47 U.S.C. § 546(a)-(g) are properly invoked, the County shall issue an RFP after conducting a proceeding to: (i) review the renewal applicant's past performance; and (ii) identify the County's future cable-related community needs and interests. The Administrator shall establish deadlines and procedures for responding to the RFP, may seek additional information from the applicant, and shall establish deadlines for the submission of that additional information. Following receipt of the application responding to the RFP (and such additional information as may be provided in response to requests by the County), the Board shall determine that the Franchise should be renewed, or make a preliminary assessment that the Franchise should not be renewed. This determination shall be made in accordance with the time limits established by the Cable Act. The preliminary determination shall be made by Resolution. If the Board determines that the Franchise should not be renewed, and the applicant that submitted the renewal application notifies the County, either in its RFP response or within thirty (30) days of the preliminary assessment, that the applicant wishes to pursue any rights to an administrative proceeding it has under the Cable Act, then the County shall commence an administrative proceeding after providing prompt public notice thereof, in accordance with the Cable Act. If the Board decides preliminarily to grant renewal, the Administrator shall prepare a final Certificate that incorporates, as appropriate, the commitments made by the applicant in the renewal application. If the applicant accepts the Certificate, and the final Certificate is ratified by the Board in accordance with applicable laws and procedures including, but not limited to, the public hearing requirements of § 41.2-4.G, the Franchise shall be renewed. If the Certificate is not so accepted and ratified within the time limits established by 47 U.S.C. § 546(c)(1), renewal shall be deemed preliminarily denied, and an administrative proceeding commenced, if the applicant that submitted the renewal application requests a proceeding within thirty (30) days of the expiration of the time limit established by 47 U.S.C. § 546(c)(1).
3. If an administrative proceeding is commenced pursuant to 47 U.S.C. § 546(c), the applicant's renewal application shall be evaluated considering such matters as may be considered consistent with federal law. The following procedures shall apply:
  - a. The Board shall, by Resolution, appoint an administrative hearing officer or officers (referred to hereafter as "hearing officer"). The Board may appoint itself as hearing officer. The hearing officer shall conduct a formal administrative hearing at which the County and the applicant shall have the right to present evidence.
  - b. The hearing officer shall establish a schedule for the hearing which allows for documentary discovery and interrogatory responses, production of evidence, and cross-examination of witnesses. Depositions shall not be permitted unless the party requesting the deposition shows that documentary discovery and interrogatory responses will not provide it with an adequate opportunity to require the production of evidence necessary to present its case. The hearing officer shall have the authority to require the production of evidence as the interests of justice may require, including the right to require the production of evidence by the applicant that submitted the renewal application and any entity that owns or controls or is owned or controlled by, or under common control with, such applicant directly or indirectly. The hearing officer may issue protective orders, but shall not prohibit discovery on the ground that evidence sought is proprietary or involves business secrets. Any order may be enforced by a court of competent jurisdiction or by imposing appropriate sanctions in the administrative hearing.

- c. The hearing officer may conduct a prehearing conference and establish appropriate prehearing orders. Intervention by non-parties is not authorized, except to the extent required by the Cable Act.
  - d. The hearing officer shall require the County and the applicant to submit prepared testimony prior to the hearing. Unless the parties agree otherwise, the applicant shall present evidence first, the County shall present evidence second, and the applicant shall then have an opportunity for rebuttal.
  - e. Any reports or the transcript or summary of any proceedings conducted pursuant to 47 U.S.C. § 546(a) shall, for purposes of the administrative hearing, be regarded no differently than any other evidence. The County and the applicant shall be afforded full procedural protection regarding evidence related to these proceedings, including the right to refute any evidence introduced in these proceedings or sought to be introduced by the other party. Both parties shall have the opportunity to submit additional evidence related to issues raised in the proceeding conducted pursuant to 47 U.S.C. § 546(a).
  - f. Following completion of any hearing, the hearing officer shall require the parties to submit proposed findings of fact with respect to the matters that the County is entitled to consider in determining whether renewal ought to be granted. Based on the record of the hearing, the hearing officer thereafter shall prepare written findings with respect to those matters the County may consider, and submit those findings to the Board and to the parties (unless the hearing officer is the Board, in which case the written findings shall constitute the final decision of the County).
  - g. If the hearing officer is not the Board, the parties shall have thirty (30) days from the date the findings are submitted to the Board to file exceptions to those findings. The Board shall thereafter issue a written decision granting or denying the application for renewal, consistent with the requirements of the Cable Act and based on the record of the entire administrative proceeding, including, without limitation, the RFP, the response to the RFP, the formal hearing, the findings of fact, and any exceptions to the findings of fact. A copy of the final decision of the Board shall be provided to the applicant.
  - h. In conducting the proceedings, the hearing officer will apply such procedures and requirements as may be necessary in the interest of justice.
4. Notwithstanding the above, a cable operator may submit an application for renewal of a Franchise pursuant to 47 U.S.C. § 546(h). Such a proposal may be submitted at any time and the Board may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings have been commenced in accordance with 47 U.S.C. § 546(a)). An informal renewal application may be denied for any reason. If an informal renewal application is granted, then the steps specified in subsections D.2 and D.3.(a--g) of this section need not be taken, notwithstanding the provisions of those subsections.
5. The provisions of this § 41.2-4.D shall be read and applied so that they are consistent with Section 626 of the Cable Act, 47 U.S.C. § 546.

E. *Extension of a franchise.* If a Franchisee is requesting a Franchise extension of more than twelve (12) months, the Franchisee shall submit an application to the Administrator that contains all of the information required by § 41.2-4.C of this Chapter. If a Franchisee is requesting a Franchise extension of twelve (12) months or less, the foregoing application requirement shall not apply, and the Franchisee shall only file a written request with the Administrator that (i) explains the reason(s) for the proposed extension and (ii) describes any proposed terms and conditions.

F. *Application for modification of a franchise.*

1. An application for modification of a Certificate 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 pro forma financial statements;
  - c. A statement indicating whether the modification is sought pursuant to § 625 of the Cable Act, 47 U.S.C. § 545, and, if so, a demonstration 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 County to make an informed determination on the application for modification; and
  - 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 the requirements of applicable law.
2. A request for modification submitted pursuant to 47 U.S.C. § 545 shall be considered in accordance with the requirements of that section.

G. *Public hearings.* An applicant for an initial Franchise, or modification or renewal of an existing Franchise, 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 Board shall provide for the holding of a public hearing, following reasonable notice to the public, at which every applicant and its applications shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard.

H. *Acceptance of franchise.* Following approval by the Board, any Franchise granted pursuant to this chapter, and the rights, privileges and authority granted by a Certificate, shall take effect and be in force from and after the first date on which both the Franchisee and the County have accepted and signed the Certificate. (Ord. No. 98-21, 6-20-98)

#### **§ 41.2-5. Filing Fees.**

To be acceptable for filing, an application for an initial Franchise, a renewal Franchise, a Transfer, a Franchise modification or a Franchise extension shall be accompanied by a nonrefundable filing fee, payable to the Treasurer of Arlington County, Virginia, in the following amount or the maximum amount permitted by law, whichever is greater, to cover costs incidental to the award, renewal, modification, or extension of a Franchise, as appropriate:

- A. For an initial Franchise:
  1. A request for issuance of an RFP: five thousand dollars (\$5,000.00)
  2. A Response to an RFP or an unsolicited application: five thousand dollars (\$5,000.00)
- B. For an existing Franchise:
  1. For renewal of a Franchise: ten thousand dollars (\$10,000.00)
  2. For modification of a Certificate: five thousand dollars (\$5,000.00)

3. For review of a Transfer: five thousand dollars (\$5,000.00)
4. For extension of a Franchise for a period greater than twelve (12) months: seven thousand and five hundred dollars (\$7,500.00)

In addition to the foregoing initial filing fees, an applicant shall reimburse the County for the actual costs and expenses incurred by the County that are related to, or arise in the course of, reviewing and processing of each application described in subsections A and B above, including the costs of legal, engineering, accounting and other consultants retained by the County, or services obtained by the County, to assist in reviewing the application. The Franchisee shall reimburse the County for any such costs within thirty (30) days of receipt of an invoice from the County.

(Ord. No. 98-21, 6-20-98)

**§ 41.2-6. Provision of Cable Service, Quality of Cable Service.**

A. *Provision of service.* In addition to satisfying such requirements as may be established in a Franchise, every Franchisee shall operate its Cable System subject to the following conditions, except as prohibited by federal law:

1. It is the policy of the County that every Franchisee shall provide service throughout its Franchise Area upon request to any Person. Service shall be provided within the time limits specified in § 41.2-6.A.2.
2. Except as a Franchise otherwise provides, a Franchisee shall extend service to any Person or to any government building in the Franchise Area which requests it within seven (7) business days of the request.
3. Upon the request of the County, every Franchisee shall provide the following, free of charge, to:
  - (i) each floor of all buildings, or portions thereof, in its Franchise Area that are owned or leased by the County or the Arlington County Public Schools; (ii) all public institutions of higher education in the County; and (iii) all certified K--12 schools in the County:
    - a. At least one (1) service drop and outlet;
    - b. At least one (1) Converter, which shall be replaced with a digital Converter, as necessary, to receive Basic Service and Cable Programming Service; and
    - c. Activated Basic Service and Cable Programming Service.

B. *Quality of service.*

1. To the extent permitted by law, a Franchisee's Cable System within the County shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601, et seq., and any other applicable technical standards.
2. A Franchisee shall perform, at its sole cost, all tests necessary to demonstrate compliance with the requirements of a Certificate and other technical and performance standards established by applicable law. Unless a Certificate or applicable law provides otherwise, all tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of the National Cable Television Association's "Recommended Practices for Measurements on Cable Television Systems," or such other manual as may be directed under FCC regulations. A written report of any test results shall be filed with the County within fourteen (14) days of a request by the Administrator. If a location fails to meet technical or performance specifications, the Franchisee, without requirement of additional notice or request from the County, shall promptly

take corrective action, and retest the locations.

C. *Interconnection.*

1. A Franchisee shall design its Cable System so that it may be interconnected with other Cable Systems or similar communications systems in the area. Interconnection of systems may be made by direct cable connection, microwave link, satellite or other appropriate methods. A Franchisee shall cooperate with any interconnection corporation, regional interconnection authority, or state or federal regulatory agency which may be hereafter established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of communications systems beyond the boundaries of the County.
2. Upon receiving the directive of the County to interconnect, a Franchisee shall immediately initiate negotiations with the other affected system or systems. The County may grant reasonable extensions of time to interconnect or rescind its request to interconnect upon petition by a Franchisee to the County.
3. No interconnection shall take place without notice to the County, and a demonstration that all signals to be interconnected will comply with applicable FCC technical standards for all classes of signals.

D. *System maintenance.* Scheduled maintenance shall be performed by a Franchisee so as to minimize the effect of any necessary interruptions of Cable Service.

E. *Continuity of service.*

1. It is the right of all Subscribers in a Franchise Area to continuously receive all available services from a Franchisee as long as their financial and other obligations to the Franchisee are satisfied.
2. A Franchisee shall ensure that all Subscribers receive continuous and uninterrupted service. At the County's request, a Franchisee shall, as trustee for its successor in interest, operate its System for a temporary period (the "Transition Period") following the termination or revocation of its Franchise, as necessary to maintain service to Subscribers, and shall cooperate with the County to assure an orderly transition from the existing Franchisee to the successor Franchisee.
3. During such Transition Period, a Franchisee shall neither sell any of the System assets, nor make any physical, material, administrative or operational change that would tend to reduce the quality of service to Subscribers, decrease the System's income, or materially increase expenses, without the express written permission of the County.
4. The County may seek legal and/or equitable relief to enforce the provisions of this section.
5. The Transition Period shall be no longer than the reasonable period required to ensure that Cable Service will be available to Subscribers, and shall be no longer than thirty-six (36) months, unless extended by the Board for good cause. During the Transition Period, a Franchisee will continue to be obligated to comply with the terms and conditions of its Franchise, this chapter, and applicable laws and regulations.
6. If a Franchisee abandons its System during the Franchise term, or fails to operate its System in accordance with the terms of its Franchise during any Transition Period, the County, at its option, may (i) operate the System, (ii) designate another entity to operate the System temporarily until the Franchisee restores service under conditions acceptable to the County or until the Franchise is revoked and a new Franchisee designated by the Board is providing service, or (iii) obtain an injunction requiring the Franchisee to continue operations. If the County is required to operate or designate another entity to operate the Cable System, the Franchisee shall promptly reimburse the



County or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the Cable System.

7. The County shall be entitled to injunctive relief under the preceding paragraph if:
  - a. The Franchisee fails to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Area for ninety-six (96) consecutive hours, unless the County authorizes a longer interruption of service or the failure is due to force majeure, as characterized in a Franchise ; or
  - b. The Franchisee, for any period, willfully, and without cause refuses to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Area.

(Ord. No. 98-21, 6-20-98)

**§ 41.2-7. Design and Construction.**

A. *System construction schedule.* Every Certificate shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the Cable System. The schedule shall provide for prompt completion of the construction, upgrade or rebuild, considering the amount and type of work required, and shall show areas of the County that will be affected.

B. *Construction procedures.*

1. The construction, operation and repair of Cable Systems are subject to, and shall be performed in strict compliance with, all federal, State and County laws, ordinances, rules and regulations, policies, and practices. In addition, the construction, operation and repair of Systems shall be performed in a manner consistent with high industry standards. Persons engaged in the construction, operation or repair of Cable Systems shall exercise reasonable care in the performance of all their activities, and use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.
2. Every System, and all parts thereof, shall be subject to the right of periodic inspection and testing by the County to determine compliance with the provisions of this chapter, a Certificate, and other applicable law. The County shall have the right, upon request, to be notified and to be present when a System is tested by a Franchisee. Each Franchisee shall respond to requests for information regarding its System and its plans for the System as the County may from time to time issue, including requests for information regarding its plans for construction, operation, and repair, and the purposes for which the plant is being constructed, operated or repaired.
3. Construction, operation or repair of a Cable System shall not commence until written permits have been properly filed for and obtained from the proper County officials and required permit and associated fees are paid. In any permit so issued, the County may impose, as a condition of the granting of the permit, such conditions and regulations as may be necessary to the management of the Public Rights-of-Way, including, by way of example and not limitation, conditions and regulations for the purpose of protecting any structures in the Public Rights-of-Way, for the proper restoration of such Public Rights-of-Way and structures, and for the protection of the County, the public and the continuity of pedestrian and vehicular traffic. A Franchisee may immediately begin emergency repairs without a written permit; provided that the Franchisee notifies the County of such repairs no later than the next business day following the commencement of the repair work, and then applies for all necessary permits in accordance with applicable procedures. The notice provided to the County shall clearly identify the location of the emergency work, and explain why such work was necessary.
4. Cable System operators shall follow County requirements for placement of facilities in Public

Rights-of-Way, including the specific location of facilities in the Public Rights-of-Way, and shall in any event install facilities in a manner that minimizes interference with the use of the Public Rights-of-Way by others, including others that may be installing Cable Systems, other communications facilities, or utilities. With respect to a particular construction, repair or maintenance project, the County may establish conditions on the time, place, and manner in which work is done; may deny access if the operator is not willing to comply with the County's requirements; may remove any facility that is not installed in compliance with the requirements established by the County, or which is installed without prior County approval of the time, place, or manner of installation, and charge the operator for all the costs associated with removal; and may require a Person using the Public Rights-of-Way to cooperate with others to minimize adverse impacts on the Public Rights-of-Way through joint trenching and other arrangements. The County shall have the right to inspect all facilities being placed underground. A Franchisee shall provide notice to the appropriate County official that construction of underground facilities has been completed at least forty-eight (48) hours before they are covered. It shall be the operator's responsibility to comply with the terms of any applicable permit. The County shall have the right to require an operator to reopen a trench or other underground installation if any facilities are covered before the County has inspected them.

5. Upon order of the Administrator, all work which does not comply with the permit, the approved plans or specifications for the work, or the requirements of this chapter, the Franchise, or other applicable law, shall be promptly removed by the Franchisee at its expense.
6. Every Franchisee shall make available to other Franchisees, at a reasonable, non-discriminatory rental rate, any conduit installed after the effective date of this chapter for which the Franchisee has no present or reasonably foreseeable use. Any conduit provided to other Franchisees pursuant to this provision may be reclaimed upon sixty (60) days' notice that the Franchisee has a need for the conduit. In a Certificate, the County may require as a condition of issuing any Public Right-of-Way permit for underground conduit, the installation of which requires excavation of or along any traveled way, that the Franchisee emplace conduit, in excess of its present and reasonably foreseeable requirements, for the purpose of accommodating other franchisees for a reasonable charge.
7. Each Franchisee that places facilities underground shall be a member of the One Call Notification System (otherwise known as "Miss Utility") and shall field mark the locations of its underground facilities upon request. Throughout the term of a Franchise, a Franchisee shall locate its facilities for the County at no charge to the County.
8. To the extent possible, a Franchisee shall use existing poles and conduit in installing its Cable System. In no case may additional poles or other structures be installed in the Public Rights-of-Way or on any public property without the prior permission of the County. Any Person who is permitted to install poles shall lease capacity on those poles to others, at a rate not higher than the rate that would be permitted if 47 U.S.C. § 224 applied.
9. No tree trimming shall be performed without the permission of the County and other affected authorities. Any tree trimming shall be performed in strict accordance with this Code and all County rules, regulations, policies and procedures.
10. At the expiration of the term for which a Franchise is granted, or upon the expiration of any renewal or extension period which may be granted, or upon the termination or revocation of a Certificate, the County will have the right to require a Franchisee, at its sole expense: (i) to remove all portions of its Cable System from all Public Rights-of-Way within the County; and (ii) to restore affected sites to their original condition. Should a Franchisee fail, refuse, or neglect to comply with the County's directive, all portions of the Franchisee's Cable System, or any part thereof, may be removed, altered or relocated by the County at the cost of the Franchisee. The County will not be liable to a Franchisee for damages resulting from such removal, alteration or

relocation.

11. The County shall have the right to install and maintain, free of charge upon any poles or in any conduit or duct owned by a Franchisee, any wire and pole fixtures that do not unreasonably interfere with Cable System operations of a Franchisee. A Franchisee shall notify the County when the Franchisee enters into an agreement for the use of its poles, ducts and conduits. Such notice shall specify the name, telephone number and address of the party that will be using the Franchisee's poles, ducts and conduits. Copies of agreements for the use of a Franchisee's conduits, ducts or poles in the Public Rights-of-Way or on other public property shall be available for review by the County upon request. A Franchisee shall not enter into such an agreement with a third party unless that person has represented that it has the requisite authority to occupy or otherwise use the affected Public Rights-of-Way or public property.
  12. Work by or on behalf of a Franchisee concerning installation, replacement or removal of a Cable System, or any part thereof, shall be publicized by the Franchisee, at its cost, in the manner and at the times the Administrator periodically may direct.
- C. *Use of public and private property.*
1. Should the grades or lines of the Public Rights-of-Way that a Franchisee is authorized by a Franchise to use and occupy be changed at any time during the term of a Franchise, the Franchisee shall, if necessary, as determined by the County, relocate or change its System, at its own cost and expense, so as to conform with the new grades or lines.
  2. Any alteration to any water and sewage mains or lines, to any drainage system or to any structures in the Public Rights-of-Way, on public property, or on private property, which alteration is required on account of the presence of a Franchisee's System in the Public Rights-of-Way or on such public property or private property, 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 protect all existing structures belonging to the County and any other Person. The County may prescribe the manner in which a Franchisee shall perform any such work performed within the Public Rights-of-Way, on public property, or on private property.
  3. Unless otherwise specified in a Franchise, all System facilities shall be constructed, installed, and located in accordance with all applicable laws, ordinances, regulations and policies, and in accordance with the following terms and conditions:
    - a. Consistent with § 41.2-7.B.6, System facilities shall be installed within an existing underground duct or conduit whenever excess capacity exists within such utility facility.
    - b. Poles, underground conduits, ducts or other wireholding structures shall not be installed in the Public Rights-of-Way or on other County property without the written permission of the County, or on the property of any third party without the written permission of the owner, except when a Franchisee has a legal right to place facilities on private property without permission of the owner.
    - c. Whenever any existing telephone, electric utility, Cable System, or other similar facilities are located underground within a certain portion of the Public Rights-of-Way, a Person installing another Cable System also shall place its facilities in that portion of the Public Rights-of-Way underground.
    - d. Whenever all existing telephone, electric utility, or communications facilities are to be located or relocated underground within a portion of the Public Rights-of-Way specified by the County, Franchisees that then occupy that portion of the Public Rights-of-Way shall concurrently relocate their respective facilities underground, at their own expense,

and shall not assess their Subscribers any direct charges for the costs of required construction outside the approved rate structure. The expenses incurred by a franchisee pursuant to this provision may be considered external costs under the FCC's rate regulation rules.

4. All Public Rights-of-Way, public property, or private property that is disturbed or damaged during the construction, operation or repair of a Cable System shall be promptly repaired, at its own cost and expense, by the franchisee that disturbed or damaged the Public Rights-of-Way, public property or private property.

D. *Interference with public projects; relocation of facilities.*

1. Nothing in this chapter or any Certificate shall be in preference to, or in hindrance of, the right of the County, the Board or any board, authority, commission or public service corporation to perform or carry on any public works or public improvements of any description. Should a Franchisee's System in any way interfere with the construction, maintenance or repair of any public works or public improvements, the Franchisee shall, at its sole cost and expense, protect or relocate its System, or part thereof, as directed by the County, the Board, the Administrator or any County official, board, authority, or commission.
2. If any Person that is authorized to place facilities in the Public Rights-of-Way requests a Franchisee to protect, support, temporarily disconnect, remove, or relocate its facilities to accommodate the construction, operation, or repair of the facilities of such other Person, the Franchisee shall, after thirty (30) days' advance written notice, take action to effect the necessary changes requested. If the requested action is necessary to address an emergency that, in the opinion of the County, might affect the public health, safety or welfare, then the Franchisee shall take immediate action upon receipt of notice of the request to complete the requested action. Unless the matter is governed by a valid contract, a local ordinance, regulation or policy, or a State or federal law or regulation, or in other cases where the System that is being requested to move was not properly installed, the reasonable cost of the same shall be borne by the party requesting the protection, support, temporary disconnection, removal, or relocation and performed at no charge to the County.
3. A Franchisee shall, at the request of any Person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the temporary or permanent moving of buildings, structures, equipment of whatever nature, or other objects. With the exception of the County, the expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same. A Franchisee shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

E. *Permits.* A Franchisee shall be required to obtain permits for the installation of its facilities in the Public Rights-of-Way, as required by any applicable provision of the County Code. A Franchisee shall also be required to obtain any other applicable permits that may be required by the County or any other entity having jurisdiction.

(Ord. No. 98-21, 6-20-98)

**§ 41.2-8. Channels and Facilities for Public, Educational and Governmental Use, Leased Access.**

A. *Management of channels.* The Board may designate one (1) or more entities, including a non-profit community access corporation, to perform any or all of the following functions:

1. To manage any necessary scheduling or allocation of capacity on the institutional network; and/or
2. On the County's behalf, to program any public, educational or governmental Access Channel. Until such entities have been designated, the Administrator shall be responsible for these

functions.

B. *Public access programming rules.* For any Public Access Channel, the community access corporation managing such Channel shall prohibit the presentation of: any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); and lottery information, and shall establish rules to this effect as well as rules requiring first-come, nondiscriminatory access, and rules permitting the public inspection of the names and addresses of all persons and groups requesting access time. Records of such requests shall be retained by the entity managing the Public Access Channel for a period of two (2) years.

C. *Leased access.* A Franchisee shall provide Leased Access Channels as required by federal law. (Ord. No. 98-21, 6-20-98)

#### **§ 41.2-9. Consumer Protection.**

A. *General provisions.*

1. This § 41.2-9 sets forth customer service standards that a Franchisee shall satisfy. In addition, a Franchisee shall at all times satisfy any additional or stricter requirements established by a Certificate or other applicable federal, State, or local law or regulation, as the same may be amended from time to time, including, without limitation, consumer protection laws.
2. Nothing in this chapter shall be construed to prevent or prohibit the Board from waiving the requirements established in this § 41.2-9, where such waiver is in the best interests of the County and its residents.
3. Nothing in this chapter in any way relieves a Franchisee of its obligation to comply with other applicable consumer protection laws and its Certificate.

B. *Telephone and office availability.*

1. Each Franchisee shall maintain an office at a convenient location in the County that shall be open at least during Normal Business Hours to allow Subscribers to request service, pay bills, and conduct other business. Each Franchisee shall perform service calls, installations, and disconnects during at least the hours 8:00 a.m. to 8:00 p.m. Monday through Saturday, provided that a Franchisee shall respond to System Outages twenty-four (24) hours a day, seven (7) days a week. Each Franchisee shall establish a publicly listed, local toll free telephone number. The phone shall be answered by customer service representatives at least Monday through Saturday, 8:00 a.m. to 8:00 p.m., for the purpose of receiving requests for service, inquiries, and complaints from Subscribers; after those hours, a Franchisee shall arrange for the phone to be answered so that customers can register complaints and report service problems on a twenty-four (24) hour per day, seven (7) day per week basis, and so that the Franchisee can respond to Service Outages as required herein.
2. Telephone answering time shall not exceed thirty (30) seconds, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional thirty (30) seconds. This standard shall be met ninety-five percent (95%) of the time, measured quarterly. Under Normal Operating Conditions a Subscriber will receive a busy signal less than three percent (3%) of the time. When the business office is closed, an answering service capable of receiving and recording service complaints and inquiries shall be employed. The after-hours answering service shall comply with the same telephone answer time standard set forth in this Section. Thirty (30) days after the end of each calendar quarter, a Franchisee shall supply the County statistical data to verify it has met the standards set forth herein.
3. A Franchisee shall hire sufficient staff so that it can adequately respond to Customer inquiries,

complaints, and requests for service in its office, over the telephone, and at the Subscriber's residence.

C. *Scheduling work.*

1. All appointments for service, installation, or disconnection shall be specified by date. Each Franchisee shall specify a specific time at which the work shall be done, or offer a choice of time blocks, which shall not exceed four (4) hours in length. If at any time an installer or technician believes it impossible to make a scheduled appointment time, an attempt to contact the Customer will be made prior to the time of appointment and the appointment scheduled at a specific time between 8:00 a.m. and 8:00 p.m., seven (7) days a week, that is convenient to the Customer, if rescheduling is necessary. It is a Franchisee's burden to prove it met an appointment.
2. With regard to mobility-limited Customers, upon a Subscriber's 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).
3. Requests for service, repair, and maintenance shall be acknowledged by a trained customer service representative within twenty-four (24) hours, or prior to the end of the next business day, whichever is earlier. A Franchisee shall acknowledge all other inquiries (including billing inquiries) within five (5) business days of the inquiry or complaint.
4. Repairs and maintenance for outages or Service Interruptions and other repairs not requiring work within a Subscriber's premises shall be completed within twenty-four (24) hours of the time the Subscriber reports a problem. Work on all other requests for service shall be begun by the next business day after notification of the problem or at a later time mutually agreeable to a Franchisee and a Subscriber. A Franchisee shall exercise its best efforts to complete such work within three (3) days from the date of the initial request, except installation requests, provided that a Franchisee shall complete the work in the shortest time possible where, for reasons beyond the Franchisee's control, the work could not be completed in those time periods 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.
5. A Franchisee shall not cancel a service or installation appointment with a Customer after the close of business on the business day preceding the appointment.
6. The standards of §§ 41.2-9.C.4 and 41.2-9.C.5 shall be met at least ninety-five percent (95%) of the time, measured on a quarterly basis.
7. The installation time standard in § 41.2-6.A.2, and below shall be met no less than ninety-five percent (95%) of the time, measured on a quarterly basis: requests for additional outlets, service upgrades or other connections (i.e., DMX, VCR, A/B Switch) separate from an initial installation shall be performed within seven (7) business days after an order has been placed.

D. *Notice to subscribers.*

1. A Franchisee shall provide each Subscriber at the time Cable Service is installed, and at least every twelve (12) months thereafter, the following materials:
  - a. Instructions on how to use the Cable Service;
  - b. Billing and complaint procedures, and written instructions for placing a service call, filing a complaint, or requesting an adjustment (including when a Subscriber is entitled to refunds for outages and how to obtain them);

- c. A notice showing the telephone number of the County office responsible for receiving Customer complaints;
  - d. A schedule of rates and charges, channel positions, and a description of products and services offered;
  - e. Prices and options for programming services and conditions of subscription to programming and other services; and
  - f. A description of the Franchisee's installation and service maintenance policies, delinquent Subscriber disconnect and reconnect procedures, and any other of its policies applicable to its Subscribers.
2. Copies of all Subscriber notices and publications shall be provided to the County at least ten (10) days before they are scheduled to be published or otherwise generated. Except as applicable federal, State and local rate regulations may provide to the contrary, a Franchisee shall provide the Administrator and all Subscribers with at least thirty (30) days' prior notice of any significant changes in the information required to be provided by this § 41.2-9.D. Such notice shall be in writing and by announcement on the System.
  3. All Franchisee promotional materials, announcements, and advertising of 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 shall clearly and accurately disclose price terms and in the case of telephone orders, a Franchisee shall take appropriate steps to ensure that customer service representatives clearly and accurately disclose price terms to potential Customers in advance of taking the order.
  4. Each Franchisee shall maintain a public file containing all notices provided to Subscribers under these customer service standards, as well as all promotional offers made to Subscribers. The notices and offers shall be kept in the file for at least one (1) year from the date of such notice or promotional offer.
  5. Upon request, a Franchisee shall work with Subscribers to provide the notices required by this § 41.2-9.D in formats accessible to disabled persons.
- E. *Interruptions of service.*
1. A Franchisee shall schedule maintenance on its Cable System at times that will minimize the likelihood of interruptions in service to Subscribers. 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, only after a minimum of forty-eight (48) hours' prior notice to Subscribers, the Administrator and Public Educational and Governmental Access Channel operators of the anticipated Service Interruptions; provided, however, that planned maintenance that does not require more than two (2) hours' interruption of service that occurs between the hours of 12:00 midnight and 6:00 a.m., shall not require such notice to Subscribers, but shall require notice to the County no less than twenty-four (24) hours prior to the anticipated Service Interruption. Brief interruptions of service of less than five (5) minutes which are necessary to conduct planned maintenance shall not require notice to Subscribers, the County, or Public, Educational and Governmental Access Channel operators.
  2. For any period in which a Subscriber suffers a Service Interruption for more than eight (8) hours in any twenty-four (24) hour period, other than a planned interruption pursuant to § 41.2-9.E.1, a Franchisee shall credit against the Subscriber's next bill an amount equal to one-thirtieth (1/30) of the monthly charge for any service or service tier affected, and shall pay a direct refund to any

Subscriber who terminates service before all credits owed are applied. The charge for any per-program selection that is materially affected by the outage shall also be refunded or credited. A Franchisee shall be responsible for making such refunds or credits upon receipt of a complaint of a Service Interruption from a Subscriber, unless the Franchisee can show that the Service Interruption was insufficient in length or character to require a credit, or that the Subscriber was responsible for the Service Interruption.

F. *Billing.*

1. A Franchisee's first billing statement after a new installation or service change shall be prorated as appropriate and shall reflect any security deposit.
2. A Franchisee's billing statement shall be clear, concise and understandable, shall itemize each category of service and equipment provided to the subscriber and must state clearly the charge therefor.
3. A Franchisee's billing statement shall show a specific payment due date not earlier than twenty (20) days after the date the statement is mailed. Any balance not received by the due date may be assessed a late fee not exceeding a Franchisee's reasonable costs of collection or any other amount permitted by State law. The late fee shall appear on the following month's billing statement. Subscribers shall not be charged a late fee or otherwise penalized for any failure by a Franchisee, including failure to timely or correctly bill a Subscriber, or failure to properly credit a Subscriber for a payment timely made.
4. A Franchisee shall notify a Subscriber that he or she can remit payment in person at the Franchisee's office in the County and inform the Subscriber of the address of that office.
5. A Franchisee shall provide an initial response or acknowledgment to all written billing complaints from Subscribers within five (5) days of receipt of the complaint and a final written response within thirty (30) days of receipt of the complaint.
6. Refund checks to Subscribers shall be issued no later than the Subscriber's next billing cycle following resolution of the refund request, or thirty (30) days, whichever is later.
7. Credits for Cable Service shall be issued no later than the Subscriber's next billing cycle after the determination that the credit is warranted.
8. If a Subscriber terminates service before the end of a prepaid period, a pro rata portion of any prepaid service fee, using the actual number of days in the month as a basis, shall be refunded to the Subscriber.

G. *Disconnection/downgrades.*

1. A Subscriber may terminate service at any time.
2. A Franchisee shall promptly disconnect from its System or downgrade any Subscriber who so requests. 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 that does not require a service call, except to the extent that federal law specifically provides that the Franchisee shall be permitted to so charge a Subscriber. So long as a Subscriber returns any equipment necessary to receive a service within five (5) business days of the disconnection, no charge may be imposed by any Franchisee for any Cable Service delivered after the date of the disconnect request. However, if a Subscriber does not return, or permit a Franchisee to retrieve, such equipment within five (5) business days after disconnection, a Franchisee may charge a Subscriber for any Cable Service delivered until the equipment is



returned.

3. A Subscriber may be asked, but not required, to disconnect a Franchisee's equipment and return it to the business office.
4. Any security deposit and/or other funds due a Subscriber that disconnects or downgrades service shall be returned to the Subscriber within thirty (30) days or in the next billing cycle, whichever is later, from the date the disconnection or the downgrade was requested, except in cases where the Subscriber does not permit a Franchisee to recover its equipment, in which case the amounts owed shall be paid to Subscribers within thirty (30) days of the date the equipment was recovered, or in the next billing cycle, whichever is later.
5. 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 forty-five (45) days from the due date of the monthly Subscriber fee or other charge, plus at least ten (10) days advance written notice to the Subscriber in question of intent to disconnect, given after the forty-five (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 a reconnection charge, if any, the Franchisee shall promptly reinstate service.
6. A Franchisee may immediately disconnect a Subscriber if (i) the Subscriber is damaging or destroying the Franchisee's Cable System or equipment; or (ii) the Subscriber is not authorized to receive Cable Service, or is facilitating, aiding or abetting the unauthorized reception of Cable Service by others. A Franchisee may pursue criminal or civil action against said Subscriber as appropriate. After disconnection, a Franchisee shall restore service if the Subscriber provides adequate assurances, 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.
7. 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.
8. With respect to home wiring, a Franchisee shall comply with 47 C.F.R. §§ 76.800-806 (Part 76, Subpart M of the FCC's rules), as amended from time to time, and any other applicable rules or requirements, or amendments thereto.

H. *Deposits.* A Franchisee may require a reasonable, non-discriminatory deposit on equipment provided to Subscribers, in addition to any allowable monthly fees. All deposits shall be returned to a Subscriber as soon as the Subscriber's account has not been in arrears for a period of six (6) consecutive months, or when the Subscriber returns all equipment in a condition as good as that in which it was received (excepting reasonable wear and tear) at time of disconnection of reception of service, whichever is sooner.

I. *Complaint procedures.*

1. Each Franchisee shall establish a clear procedure for resolving complaints filed by any interested party, providing that complaints may be made orally or in writing, at the complainant's option, and identifying a person responsible for handling complaints that are not already being handled by a customer service representative.
2. Each Franchisee shall provide an initial response to a complaint within five (5) days of its receipt and a final written response within thirty (30) days after the complaint is made. The final written

response shall include a notice stating that, if the complaint has not been resolved to the complainant's satisfaction, the matter may be referred to the Administrator.

J. *Parental control option.* A Franchisee shall make available to any Subscribers, upon request, the option of blocking the video and audio portion of any channel or channels of programming entering a Subscriber's home. This control option shall be provided at no charge, except to the extent that federal law specifically provides that a franchisee shall be permitted to so charge a Subscriber, provided that the Franchisee may require a reasonable deposit for the use of any customer premises device. The control option described herein shall be made available to all Subscribers requesting it when any Cable Service is provided, or within a reasonable time thereafter.

K. *Enforcement.* Within forty-five (45) days of the end of each calendar quarter during the term of a Franchise, or any extension(s) thereof, a Franchisee shall submit a quarterly written report to the County, in a form reasonably satisfactory to the County, that shows whether the Franchisee is meeting all applicable customer service standards, including, but not limited to: telephone answering and transfer time requirements; the minimum busy signal percentage; appointment scheduling and response requirements; Subscriber notice and billing requirements; and disconnection procedures. A Franchisee shall keep such records as are reasonably required to enable the County to determine whether the Franchisee is complying with all such customer service standards, and shall maintain adequate procedures to demonstrate such compliance.

L. *Exclusive contracts and anticompetitive acts prohibited.*

1. A Franchisee may not require a Subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing or continuing Cable Service. However, nothing herein prevents a Franchisee from entering into an otherwise lawful, mutually desired exclusive arrangement with a building owner or manager of a multiple dwelling unit or commercial Subscriber.
2. No Franchisee shall engage in acts prohibited by federal or State law that have the purpose or effect of limiting competition for the provision of Cable Service or services similar to Cable Service in the County.

(Ord. No. 98-21, 6-20-98)

#### **§ 41.2-10. Rate Regulation.**

A. *Scope and applicability.*

1. *General authority.* The County may regulate all rates and charges to the extent permitted by law.
2. *Applicability to franchisees.* The procedures in this chapter govern the regulation of rates within the County for any Franchisee subject to rate regulation by the County pursuant to applicable law.
3. *Consistency with FCC regulations.* The provisions set forth herein are intended to be consistent with all FCC regulations governing the regulation of basic service rates and equipment. The county will regulate and interpret these provisions so that they are consistent with FCC regulations, as if those regulations were set forth in full herein.
4. *Extension of deadlines.* For good cause, the Administrator may extend any deadline for filing or response, except where such an extension would violate FCC regulations.
5. *Effect of delay or failure to enforce.* No delay or failure to enforce any provision in this § 41.2-10 shall operate against the County as an estoppel or waiver.
6. *Definitions.* For purposes of this § 41.2-10, the term "basic service" or "basic cable service" has the same meaning as the term "basic service" as defined in 47 C.F.R. § 76.901, and the term "equipment" refers to all equipment and services subject to regulation under 47 C.F.R. § 76.923.

- B. *Rate filings.*
1. *Initial rate filings.* A Franchisee that is notified that its basic service and equipment rates are subject to regulation shall file a submission ("initial rate filing") within thirty (30) days of the notification, except to the extent otherwise specifically provided by governing law. The initial rate filing shall justify the Franchisee's basic service and equipment rates in accordance with FCC rules. All rates, for all customer classifications, shall be justified, except to the extent that such rates are specifically exempted from regulation by FCC regulations or other governing law.
  2. *Subsequent rate filings.*
    - a. Once a Franchisee has been notified by the County that its rates are subject to regulation, it may not thereafter increase its rates for basic service or equipment without making any rate filings required by applicable law and obtaining the prior approval of the County, in accordance with this chapter. This requirement applies in all cases, including to increases in rates announced prior to the date the operator was notified its rates were subject to regulation where the increases were not implemented prior to the date of notice, except insofar as governing law specifically permits a Franchisee to raise rates without prior approval.
    - b. A Franchisee shall submit a rate filing at any other time such a filing is required under FCC rules, or by the County in accordance with such rules.
    - c. For purposes of this § 41.2-10.B, a "rate increase" occurs when there is either an increase in rates, a new basic service or equipment rate, or a reduction in program or customer services without a corresponding decrease in rates.
    - d. Rate filings proposing and supporting rate increases shall be filed with the Administrator for review at least thirty (30) days in advance of the proposed effective date of the increase. This requirement does not alter or eliminate any other notice requirement.
    - e. A Franchisee shall provide at least thirty (30) days prior written notice (or such longer period as may be specified in FCC regulations) to subscribers and to the Administrator of any proposed changes in rates, programming services, or channel positions, whether or not the Franchisee believes the affected rates are subject to regulation, except to the extent such notice requirement is specifically waived by governing law.
  3. *Rate filings: Where and how made.*
    - a. Every rate filing shall be submitted by the Franchisee to the Administrator. A rate filing shall be considered filed for review on the date the rate filing and all required copies are received by the Administrator. Five (5) copies of each rate filing (including all supporting materials) shall be submitted.
    - b. Information that the operator claims is proprietary under § 41.2-10.F herein shall be clearly identified and segregated from the remainder of the filing and clearly marked so that the County may determine where and how the proprietary information was used to determine rates.
  4. *Rate filings: contents.*
    - a. Subject to any FCC regulations governing the burden of proof, a rate filing submitted by a Franchisee shall show that the rates the Franchisee proposes to charge for basic service and equipment are reasonable under applicable FCC regulations.

- b. The rate filing shall contain all applicable FCC forms and these forms shall be correctly and fully completed.
  - c. The pages of each rate filing shall be numbered sequentially.
  - d. Every rate filing shall clearly state in a cover letter:
    - (1) Whether the rate filing justifies existing rates, or proposes an increase in rates;
    - (2) Any changes the rate filing proposes, in the form of a brief, narrative description of any proposed changes in rates or in service;
    - (3) The method on which any service rate is based (e.g., benchmark or cost-of-service); and
    - (4) Whether any pages of the rate filing contain information that the Franchisee claims is proprietary, and so indicate clearly on each page or portion thereof.
- C. *Review of rate filings.*
- 1. *Receipt and notice of rate filings.*
    - a. After receiving a rate filing, the Administrator shall give notice that a rate filing has been received and that the filing is available for public review to the extent permitted by law. The notice shall state that interested parties may comment on the filing, and shall provide interested parties a reasonable time, in light of the dates by which the Administrator shall issue his/her orders, to submit written comments on the filing to the Administrator.
    - b. A Franchisee shall notify the Administrator as soon as possible of any deficiencies it may discover in a rate filing, and shall submit an amended filing in accordance with the filing requirements of § 41.2-10.B as soon as possible (and in any event within five (5) business days) to cure such deficiencies, together with a full explanation of the deficiencies and the correction. However, the provisions of § 41.2-10.C.1.a shall not apply to any refilings or corrected filings made by a Franchisee to replace, amend, or supplement an initial rate filing. The County need not accept any amendment that is not filed in time for the Administrator to evaluate and consider in reaching a decision prior to the effective date of the rate. Any such amendment must be accompanied by an adequate explanation of the changes made to the rate filing.
  - 2. *Final rate order.*
    - a. After completing its review of a Franchisee's rate filing and any additional information submitted in response to information requests, the Administrator shall make any comments received and recommendations the Administrator's proposed actions available for public inspection. When the comments and proposed actions are made available for public inspection, the Administrator shall set a reasonable deadline by which a Franchisee may submit a response to public comments or to the Administrator's proposed actions. A Franchisee's response shall be considered by the Administrator only if it is submitted in a timely fashion.
    - b. After reviewing the Franchisee's response, if any, the Administrator shall issue a written order, which may be in any lawful form, approving the proposed rate in whole or in part, or denying the proposed rate in whole or in part and determining maximum permitted rates pursuant to applicable FCC regulations.

- c. The Administrator may issue partial orders setting particular rates and ordering refunds and other appropriate relief with regard to such rates, unless specifically prohibited by FCC regulations, without prejudice to their/his/her right to issue further orders in accordance with applicable FCC regulations.
3. *Refunds.* If a rate order determines that refunds should be provided to subscribers, the Franchisee shall file with the Administrator, within thirty (30) days of the date of the Administrator's order, a detailed calculation of the appropriate refunds, including interest, to all relevant classes of subscribers, and a description of its proposed refund methodology, together with all supporting materials necessary to allow the Administrator to verify the Franchisee's calculations. The Franchisee's calculations shall also show, in detail, how the Franchisee proposes to calculate any portion of the refund properly attributable to Franchise fees. The Administrator may require further supporting information with regard to the Franchisee's calculations, and the Franchisee shall provide all such information reasonably necessary to determine the refund and Franchise fee amounts.
- D. *Provisions generally applicable to rate orders.*
  1. *Form.* Orders relating to rate regulation ("rate orders") shall be written and may be issued in any lawful form.
  2. *Authority to issue rate orders.* The Administrator shall have the authority to issue rate orders taking any action that the County is permitted to take by this § 41.2-10 including, without limitation: (i) rate orders that establish maximum permitted rates for basic cable service, equipment or installation, or require refunds to cable subscribers ("final rate orders"); (ii) orders that toll deadlines for review and (2) review; and (iii) orders that allow rates to take effect subject to refund and/or direct a cable operator to keep an accurate account of all amounts received and on whose behalf such amounts were paid, pursuant to 47 C.F.R. § 76.933(a)--(c).
  3. *Notice of final rate orders.* Any final rate order shall be served on a Franchisee no later than the next business day after date it is released to the public. Public notice shall be given of any final rate order, including releasing the text of any written decision to the public.
  4. *Actions regarding rates.* The County may take any actions that it is not prohibited by governing law from taking to protect the public interest as part of any rate order or by any other means. By way of illustration and not limitation, the Administrator may require refunds; set rates; impose forfeitures and penalties directly; enforce refund orders; apply to the FCC for determinations regarding the status of allegedly a la carte programming; investigate and respond to certifications by small systems; grant petitions for extension of time; participate in any appeals of rate decisions; seek clarification of FCC rules from the FCC, or by legal action; refer cost-of-service determinations to the FCC; issue default orders; reopen rate proceedings, or commence new proceedings, in the light of new information or new legal or administrative determinations (for example, modification of the FCC's regulations); or withdraw the County's certification to regulate rates. The County shall take such actions as are necessary or appropriate to achieve the goals of rate regulation and to serve the public interest, to the extent permitted by governing law, in accordance with any pertinent deadlines set by the FCC.
  5. *Notice and opportunity to comment.* Before prescribing a rate or ordering a refund to subscribers, the Administrator shall ensure the Franchisee has had notice and an opportunity to comment on the proposed rate or refunds. If the proposed actions of the Administrator propose a refund or a rate, then mailing a copy of the proposed actions to the Franchisee at the time it is submitted to the Administrator shall be deemed to provide the Franchisee this notice, and the Franchisee shall comment on the refund or rate in its response to the proposed actions.

6. *Rate orders subject to amendment.* No order approving or setting a rate pursuant to FCC regulations shall be deemed to establish a just and reasonable rate to subscribers. Every such rate approved or established shall be subject to further reduction and refund to the extent permitted under applicable laws and regulations, as the same may be amended from time to time. By way of illustration and not limitation, should the FCC revise its rules for calculating maximum permitted rates, the Administrator shall have the right to reduce a Franchisee's rates and to require a Franchisee to refund any amounts collected above the benchmark, except to the extent prohibited by governing law.
- E. *Franchisees' duties.*
  1. *Books and records.* It is each Franchisee's responsibility at all times to keep accurate and complete books and records of account so that it can refund any amounts owed to subscribers.
  2. *Completeness of filings.* It is each Franchisee's duty to submit as complete a rate filing as possible. Knowingly withholding information or making a filing that is incomplete under applicable law shall be treated as a violation of this chapter, subject to any applicable sanctions and remedies under FCC regulations, § 41.2-10.C.1.b herein, and any other applicable law or contract.
  3. *Continuing accuracy and completeness.* Each Franchisee is responsible for the continuing accuracy and completeness of information furnished to the County. Whenever information furnished by a Franchisee is no longer accurate and complete in all significant respects, the Franchisee shall correct such deficiencies as required in § 41.2-10.C.1.b.
  4. *Information requests.* A Franchisee and any other entity that has records of revenues or expenses that are allocated to the Franchisee's system shall respond to requests for information from the Administrator by deadlines established by the Administrator (including requests that specified information be submitted at the time of future rate filings). A Franchisee is responsible for ensuring that such other entity responds to the Administrator's requests.
  5. *Implementation.* A Franchisee shall implement remedial requirements, including prospective rate reductions and refunds, as soon as possible after an order requiring such remedies is issued, but in any case within sixty (60) days of the date the Administrator issues an order mandating a remedy. However, if FCC regulations require the Franchisee to implement a remedy more quickly, or require that the Franchisee be allowed more time to implement a remedy, then the FCC requirement shall control.
  6. *Certification of compliance.* Within thirty (30) days after implementing a remedy, but in no event more than ninety (90) days after the date an order mandating a remedy is issued, a Franchisee shall file a certification, signed by an authorized representative of the Franchisee:
    - a. Stating whether the Franchisee has complied fully with all provisions of the Administrator's order;
    - b. Describing in detail the precise measures taken to implement the Administrator's order;
    - c. Describing in detail any respects in which the Franchisee has not complied fully with all provisions of the Administrator's order; and
    - d. Showing how any applicable refunds (including interest) were calculated and distributed.
- F. *Proprietary information.*
  1. *Submission of information deemed proprietary.* If these provisions, or any request for information, require the production of proprietary information, a Franchisee shall produce the information.

However, at the time the allegedly proprietary information is submitted, a Franchisee may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure. The request shall state the reason why the information should be treated as proprietary and the facts that support those reasons. Requests for confidential treatment, or for inspection of proprietary information, will be reviewed by the County based on FCC regulations, and applicable state and local law, including the Virginia Freedom of Information Act.

2. *Identification of information deemed proprietary.* Information that the operator claims is proprietary shall be clearly identified. If it is part of a larger submission, such as a rate filing, the proprietary information shall be segregated from the remainder of the submission. It shall also be clearly marked so that the County may determine where the proprietary information belongs within the submission, how it relates to the remainder of the submission, and the basis for the Franchisee's claim that the marked material is proprietary.
3. *Requests to inspect proprietary information.* Any request for public records containing information designated by the Franchisee as proprietary shall be governed by the Virginia Freedom of Information Act.

G. *Nondiscrimination.* Nondiscriminatory rates. Subject to applicable law, a Franchisee shall establish rates that are nondiscriminatory within the same general class of subscribers and which shall be applied fairly and uniformly to all subscribers in the Franchise area for all services. Nothing contained herein shall prohibit a Franchisee from offering, by way of illustration and not limitation, (i) discounts to senior citizens or economically disadvantaged groups; (ii) discounts to commercial and multiple-family dwelling subscribers billed on a bulk basis; (iii) promotional discounts; or (iv) reduced installation rates for subscribers who have multiple services. (Ord. No. 98-21, 6-20-98; Ord. No. 02-3, 3-9-02)

#### **§ 41.2-11. Franchise Fee.**

A. *Finding.* The Board finds that Public Rights-of-Way to be used by a Franchisee for the operation of a Cable System are valuable public property acquired and maintained by the State and County at great expense to the taxpayers. The Board further finds that the grant of a Franchise to use Public Rights-of-Way is a valuable property right without which a Franchisee would be required to invest substantial capital.

B. *Payment of franchise fee.* Each Franchisee shall pay a Franchise fee of five percent (5%) of Gross Revenues, unless otherwise specified in a Certificate. Every Certificate shall reserve the right to increase this fee to the maximum that may be charged consistent with federal and State law.

C. *Not a tax or in lieu of any other tax or fee.*

1. Payment of the Franchise fee shall not be considered in the nature of a tax or in lieu of other taxes or fees imposed by the County.
2. The Franchise fee is in addition to all other taxes, fees and payments that a Franchisee may be required to pay under its Certificate or under any federal, State, or local law, except to the extent that such fees, taxes, or assessments shall be treated as a Franchise fee under § 622 of the Cable Act, 47 U.S.C. § 542.
3. A Franchisee shall not designate the Franchise fee as a tax in any communication to a Subscriber.

D. *No accord or satisfaction.* No acceptance by or payment to the County of a franchise fee, or any portion thereof, shall be construed as a release or an accord and satisfaction of any claim the County may have for further or additional sums due or for the performance of any other obligation of a Franchisee, or as an acknowledgment that the amount paid is the correct amount due. (Ord. No. 98-21, 6-20-98)

**§ 41.2-12. Reports and Records.****A. Access to books and records.**

1. The County shall have the right, upon reasonable notice, to inspect and copy at any time during Normal Business Hours the documents, books, records, maps, plans, income tax returns, proof of performance tests, and other like materials of a Franchisee which the County deems appropriate in order to monitor compliance with a Franchise. Access to records and other materials shall not be denied by a Franchisee on the basis that said records and materials contain proprietary or confidential information. Documents, books, and records shall be maintained for a period of at least five (5) years, except that (i) any record that is a public record shall be maintained for the period required by State law; (ii) any contract shall be maintained until it expires; and (iii) a Franchisee may specify a shorter period for certain categories of voluminous documents, books and records where the information contained therein can be derived simply from other materials. Failure to provide any information required by this chapter shall be grounds for appropriate remedies. All such information received by the County shall remain confidential insofar as permitted by applicable law.
2. For purposes of this chapter, the terms "records," "documents" and "books" shall be construed as such terms are defined in the Virginia Freedom of Information Act and shall be read expansively to include information in whatever format stored. Records, documents, and books requested shall be produced to the County at the Administrator's office, unless the County directs otherwise, or by agreement or pursuant to § 41.2-12.A.3.
3. If any documents, books and records are too voluminous, or for security reasons cannot be copied and moved, then a Franchisee may request that the inspection take place at some other location mutually agreed to by the County and a Franchisee, provided that (i) the Franchisee shall make necessary arrangements for copying documents, books and records selected by the County after its review; and (ii) the Franchisee shall pay all travel and additional copying expenses incurred by the County (above those that would have been incurred had the documents, books and records been produced in the County) in inspecting those documents, books and records or having those documents, books and records inspected by its designee.
4. Without limiting the foregoing, a Franchisee shall provide the County with the following in accordance with the deadlines specified in § 41-12.C:
  - a. Notices of deficiency or forfeiture related to the operation of the System; and
  - b. Copies of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by a Franchisee, or by any partnership or corporation that owns or controls the Franchisee directly or indirectly.

**B. Retention of records; relation to privacy rights.** Each Franchisee shall take all reasonable steps throughout the term of the Franchise to ensure that it is able to provide the County with all information which shall be provided or may be requested under this chapter, a Franchise or applicable law, including by providing appropriate Subscriber privacy notices. Each Franchisee shall be responsible for redacting any data that applicable law prevents it from providing to the County. Nothing in this section shall be read to require Franchisee to violate State or federal law protecting Subscriber privacy.

**C. Communications with regulatory agencies.**

1. A Franchisee shall file with the County all reports and materials submitted to or received from the FCC, the Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction over any matter pertaining to any aspect of operations hereunder or the financial arrangements therefor. For purposes of this subsection, reports and



materials to be filed with the County include, by way of example and not limitation, proof of performance tests and results, Equal Employment Opportunity reports, and all petitions, applications and communications of all types regarding the Franchisee's Cable System, or a group of Cable Systems of which the Franchisee's System is a part, including any such material submitted by or received by a Franchisee, an Affiliate, or any other Person on behalf of the Franchisee.

2. Materials filed with the County pursuant to § 41.1-12.C.1 shall be submitted as follows: (i) materials submitted by a Franchisee, an Affiliate, or any other Person on behalf of a Franchisee shall be filed with the County at the time they are submitted to the receiving agency; and (ii) materials received by a Franchisee shall be filed with the County within thirty (30) days of the date they are received by the Franchisee, except that if applicable law permits a response to such materials by the County and sets a deadline of sixty (60) or fewer days for the County's response, they shall be filed with the County within five (5) days of the date they are received by the Franchisee.

D. *Reports.*

1. Within forty-five (45) days of the end of each calendar quarter, a Franchisee shall submit a report to the County containing the following information:
  - a. The number of service calls (calls requiring a truck roll) received by type during the prior quarter, and the percentage of service calls compared to the Subscriber base by type of complaint; and
  - b. The number and type of System Outages known by the Franchisee for the prior quarter, identifying separately the following:
    - (1) Each planned System Outage, the time it occurred, its duration, and the estimated area and number of Subscribers affected;
    - (2) Each known unplanned System Outage, the time it occurred, its estimated duration and the estimated area and number of Subscribers affected, and if known, the cause; and
    - (3) The total estimated hours of known System Outages as a percentage of total hours of Cable System operation.
2. No later than ninety (90) days after the end of its fiscal year, a Franchisee shall submit a written report to the Administrator containing such information as may be required from time to time by the County, and at least the following:
  - a. A summary of the previous year's activities in the development of the Cable System, including descriptions of services begun or discontinued, and the number of Subscribers gained or lost for each category of Cable Service;
  - b. A summary of complaints for which records are required under § 41.2-12.E.1, identifying both the number and nature of the complaints received and an explanation of their dispositions;
  - c. A fully audited revenue report from the previous calendar year for the Cable System prepared according to Generally Accepted Auditing Standards by an independent certified public accountant;
  - d. A statement of the Franchisee's financial operations for the immediately preceding year

- in such form and in such detail as will show the Franchisee's rate of return on investment, cash flow, and such other information as may be reported by the County;
- e. An ownership report, indicating all Persons who at the time of filing control or own an interest in the Franchisee of five percent (5%) or more;
  - f. A list of officers and members of the Board of Directors of the Franchisee and any Affiliates directly involved in the operation or the maintenance of the Cable System;
  - g. An organizational chart showing all Persons with more than a five percent (5%) ownership interest in the Franchisee, and the nature of that ownership interest (whether limited partner, general partner, preferred shareholder, or other Person); and showing the same information for each corporation or partnership that holds such an interest in the corporations or partnerships so identified, and so on, until the ultimate corporate and partnership interests are identified;
  - h. An annual report for each entity identified in § 41.2-12.D.2.g which issues an annual report; and
  - i. A complete report on the Franchisee's plant. This plant report shall state the physical miles of plant construction and plant in operation during the prior calendar year (categorized as aerial and underground, and as fiber optic, including the fiber count, and coaxial); identify any cases where Subscribers contributed to plant extension; and report the results of appropriate electronic measurements to show conformity with FCC technical standards. Each Franchisee shall annually provide a Countywide map of cable facilities in the Public Rights-of-Way. The map shall be referenced to Virginia State Plane Coordinates, the Alexandria Drafting Company grid system, or any subsequent system adopted by the County, and shall be in both digital and paper formats. The annual map shall have an interlinked data base table of addresses of homes passed, which may be displayed upon the digital map.
3. Notwithstanding the above, once the information required by § 41.2-12.D.2.e—through 41.2-12.D.2.g has been filed once, it need only be refiled if it changes.
- E. *Records required.* A Franchisee shall at all times maintain:
1. Records of all complaints received with information sufficient to allow a Franchisee to prepare the reports required in this § 41.2-12. The term "complaints" as used herein and throughout this chapter refers to written complaints, and written documentation of oral complaints that are not resolved in a Franchisee's initial conversation with a Subscriber, about any aspect of the Cable System or a Franchisee's operations, including, without limitation, complaints requiring service calls, and complaints about employee courtesy, billing, prices, programming, outages and signal quality;
  2. Records of outages known to a Franchisee, with information sufficient to allow a Franchisee to prepare the reports required in this § 41.2-12;
  3. Records of service calls for repairs and maintenance indicating the date and time service was requested, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved; and
  4. Records of installation/reconnection and requests for service extension, indicating the date of request, the date of acknowledgment, and the date and time service was extended.

F. *Additional records and reports.* The County may require Franchisees to maintain records, and to prepare reports relevant to determining a Franchisee's compliance with the terms and conditions of this chapter and a Franchise.

G. *Maps.*

1. Each Franchisee shall maintain accurate as built maps and improvement plans which show the location, size, and a general description of all facilities installed in the Public Rights-of-Way and any power supply sources (including voltages and connections). Maps shall be based upon post-construction inspection to verify location. Each Franchisee shall provide a map to the County showing the location of its facilities, in such detail and scale as may be directed by the Administrator. New as built maps shall be promptly submitted to the County when a Cable System expands or is relocated. Copies of maps shall be provided in digital format.
2. During specific project construction, each Franchisee shall submit permit plans in digital format, along with fifty (50) scale paper copies.
3. All maps and permit plans shall be submitted in digital format, such as a DXF file, compatible with ESRI ArcInfo 8.0 software or other software as required by the County, and shall be tied to Virginia State Plane Coordinates or the Alexandria Drafting Company grid system.

H. *Performance evaluation.*

1. The County may, at its discretion, hold performance evaluation sessions. All such evaluation sessions shall be open to the public. A Franchisee may be required by the County to notify Subscribers of all such evaluation sessions by announcement on a designated local channel on the System between the hours of 9:00 a.m. and 9:00 p.m. for five (5) consecutive days preceding each session.
2. Topics that may be discussed at any evaluation session may include, but not be limited to, System performance and construction, a Franchisee's compliance with this chapter and its Certificate, customer service and complaint response, Subscriber privacy, services provided, programming offered, service rate structures, Franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.
3. During the evaluation process, a Franchisee shall fully cooperate with the County and shall provide such information and documents as the County may need to reasonably perform its review, including information which may be deemed proprietary.

I. *Waiver of reporting requirements.* The Board may, at its discretion, waive in writing the requirement of any particular report specified in this § 41.2-12.

J. *Office.* Every Franchisee shall maintain an office in the County at a place to be determined in the Certificate, for as long as the Franchisee continues to operate a System or any portion thereof. (Ord. No. 98-21, 6-20-98)

**§ 41.2-13. Indemnification of the County and Residents.**

A. *Indemnification and hold harmless.*

1. No Franchise or other authorization to use the Public Rights-of-Way issued to a Franchisee shall be valid or effective until and unless the County obtains adequate indemnity from such Franchisee. The indemnity shall, at a minimum:
  - a. Release, indemnify, hold harmless, and defend the County, its elected and appointed

officials, officers, boards, commissions, commissioners, agents, and employees against any and all claims, suits, causes of action (whether frivolous or otherwise), proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of a Cable System; copyright infringements or a failure by a Franchisee, or its Affiliates to secure consents from the owners, authorized distributors, or franchisees of programs to be delivered by the Cable System, other than programs delivered on Public, Educational or Governmental Access Channels, Channels leased pursuant to 47 U.S.C. § 532, or an institutional network (excluding programming controlled by the Franchisee); the acts, errors, or omissions of a Franchisee or its agents, employees or independent contractors; the conduct or presence of a Franchisee's business in the County; or in any way arising out of a Franchisee's enjoyment or exercise of the privileges granted by a Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this chapter or a Franchise. Each Franchisee agrees not to sue or to seek any monetary damages from the County, including the Persons and entities described in this subparagraph, in connection with the above-mentioned matters. This indemnification does not extend to claims by a Franchisee against the County for injunctive relief to enforce the terms of a Franchise;

- b. Indemnify, defend, and hold harmless the County, and its elected and appointed officials, officers, boards, commissions, commissioners, employees, and agents from and against any and all claims, demands, suits, or causes of action of any kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, orders, decrees, liabilities, and judgments, whether for damages or otherwise, subject to 47 U.S.C. § 558, arising out of or alleged to arise out of any claim against a Franchisee for invasion of the right of privacy, defamation of any Person, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any Person. This indemnity does not apply to programming carried on Public, Educational or Governmental Access Channels, or Channels leased pursuant to 47 U.S.C. § 532, unless a Franchisee was in any respect engaged in determining the editorial content of the program, or adopts a policy of prescreening programming for the purported purpose of banning or regulating indecent or obscene programming;
- c. Provide that the County shall give a Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this § 41.1-13.A. The Franchisee shall provide the defense of any claims brought against the County under this subsection of the Code or similar provisions in a Franchise, subject to the terms of any applicable insurance policy, by selecting and paying for counsel of the Franchisee's choice to defend the claim, subject to the consent of the County, which consent shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the County from cooperating with a Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense; provided, however, that after consultation with the County, a Franchisee shall have the right to defend or settle any claim or action arising hereunder, and the Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the County does not consent to the terms of any such settlement or compromise agreed to by the claimant or claimants, then a Franchisee shall not settle the claim or action, but its obligation to indemnify the County shall in no event exceed the amount of such otherwise agreed upon settlement.
- d. Provide that the covenants and representations relating to the indemnification and hold harmless provisions shall survive the term of any Franchise for acts of a Franchisee committed while a Franchise was in effect or performed under color of a Franchise after the expiration, revocation, cancellation, termination or forfeiture of the Franchise; and
- e. Provide that, to the extent permitted by applicable rules of civil, criminal and appellate

procedure, a Franchisee shall not implead or join the Board, the County, its elected and appointed officers, officials, boards, commissions, commissioners, employees, and agents in any cause of action against the Franchisee arising out of the exercise of any rights the Franchisee has under its Franchise, unless a court of competent jurisdiction has determined that the County is a necessary party.

2. Nothing in this Chapter or a Franchise shall be construed to waive the tort or any other immunity or applicable defense of the County, and its elected and appointed officials, officers, Boards, commissions, commissioners, agents, and employees.
3. Neither the provisions of this section nor any damages recovered by the County shall be construed to limit the liability of a Franchisee for damages to the County, its elected and appointed officers, officials, Boards, commissions, employees, and agents under the Franchise.

B. *Insurance.* No Franchise to use the Public Rights-of-Way issued to a Franchisee shall be valid or effective until and unless the County obtains assurance that the Franchisee (and those acting on its behalf) have adequate insurance. At a minimum, the following insurance requirements shall be satisfied by a Franchisee:

1. A Franchisee shall not commence construction or operation of a Cable System without obtaining all insurance required under this section and approval of such insurance by the County. The required insurance shall be obtained and maintained for the entire term of a Franchise, or any extension(s) thereof. If the Franchisee, its contractors or subcontractors do not have the required insurance, then the County may order such entities to stop operations until the insurance is obtained and approved.
2. Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the County. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse in coverage. For entities that have facilities in the Public Rights-of-Way as of the effective date of this chapter, the certificate shall be filed within sixty (60) days of the date of this chapter, annually thereafter, and as provided below in the event of a lapse in coverage, unless a pre-existing Certificate provides for filing of certificates in a different manner.
3. These certificates shall contain a provision that coverages afforded under these policies will not be canceled, suspended, or amended until at least sixty (60) days' prior written notice has been delivered to the Administrator. Policies shall be issued by companies authorized to do business under the laws of the Commonwealth of Virginia. Financial ratings shall be no less than "A-1" in the latest edition of "Best's Key Rating Guide," published by A.M. Best Guide.
4. In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the term of a Franchise, then in that event, the Franchisee shall furnish, at least thirty (30) days' prior to the expiration of the date of such insurance, a renewed certificate of insurance as evidence that equal and like coverage will be in force for the balance of the period of the Franchise under which the Cable System operates. Certified copies of the required policies will be provided by the Franchisee to the County upon request.
5. A Franchisee and its contractors or subcontractors engaged in work on the Franchisee's behalf in, on, under or over Public Rights-of-Way, shall maintain the following minimum insurance:
  - a. Commercial General Liability insurance with respect to the construction, operation, and maintenance of a Cable System, and the conduct of a Franchisee's business in the County, in a minimum amount of five million dollars (\$5,000,000.00) per occurrence, combined single limit for property damage and bodily injury. The policy must include coverage for Contractual Liability, Premises and Operations, Independent Contractors, Broad Form Property Damage, Personal Injury, and Products and Completed Operations. The policy

shall also include coverage for explosion, collapse and underground (XCU) hazard. The Completed Operations and Products liability insurance specified above shall cover all occurrences during the term of the policy, including any occurrence discovered within two (2) years after the termination of a Franchise (in the case of a System owner or operator) or completion of work for the System owner (in the case of a contractor or subcontractor).

- b. Automobile Liability Coverage, with a minimum limit of liability of two million dollars (\$2,000,000.00), per occurrence, combined single limit for bodily injury and property damage coverage. The policy must include coverage for owned automobiles, leased or hired automobiles, and non-owned automobiles.
  - c. Broadcasters' Liability Coverage, covering errors and omissions and negligent acts and other operations of a Franchisee, committed during the term of a Franchise, with a limit of liability of at least one million dollars (\$1,000,000.00) per claim and aggregate and a maximum deductible of twenty-five thousand (\$25,000.00).
  - d. Workers' Compensation Coverage meeting all requirements of Virginia law and Employers' Liability Coverage, with the following minimum limits: Bodily Injury by Accident – one hundred thousand dollars (\$100,000.00) each accident, Bodily Injury by Disease – five hundred thousand dollars (\$500,000.00) policy limits and Bodily Injury by Disease – one hundred thousand dollars (\$100,000.00) each employee. Each Franchisee shall require its subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each Franchisee.
6. All of the insurance policies providing the coverage required by this Section shall respond to valid claims occurring during the policy term on an occurrence basis. In the event that any of the occurrence policies above are replaced by a claims-made policy, such policy shall provide for a retroactive reporting date which coincides with the effective date of a Franchise, and shall include an extended reporting period of no less than one (1) year after its termination date. Such replacement shall be brought to the attention of the County, in writing, no later than fifteen (15) days before the replacement date.
  7. All liability insurance policies, excluding those specified in § 41.2-13.B.5.b and 41.2-13.B.5.d, shall name the County, its elected and appointed officers, officials, boards, commissions, employees, and agents as additional insureds. In the event of a claim under any of the above insurance policies, the Franchisee shall pay all deductibles.
  8. In every Certificate, the County shall reserve the right to: (i) review the insurance amounts and policy terms specified in paragraph 5 no more than once a year; and (ii) require reasonable adjustments to such amounts and policy terms, consistent with the public interest.
  9. Failure to comply with the insurance requirements set forth in this section shall constitute a material violation of a Franchise.

(Ord. No. 98-21, 6-20-98)

#### **§ 41.2-14. Performance Bond, Security Fund, Revocation and Termination Due to Bankruptcy.**

A. *Performance bond.* Every certificate shall require the Franchisee to post a performance bond in an amount acceptable to the County to secure the performance of the Franchisee's obligations to repair and restore the Public Rights-of-Way in accordance with this Code.

B. *Security fund.*

1. Every Franchisee shall establish a Security Fund to secure the payment of fees owed, to secure any other performance promised in a Certificate or required by this Code, and to pay any taxes, fees or liens owed to the County. The Board, or its designee, shall set the amount of the Security Fund in a Certificate. Any letter of credit provided to satisfy this requirement shall be in a form acceptable to the County Attorney and with an institution acceptable to the Administrator. Should the County draw upon the Security Fund, it shall promptly notify the Franchisee, and the Franchisee shall promptly restore the Security Fund to the full required amount. This Security Fund may be reduced by the Board for a Franchisee where the Board determines, in its discretion, that a particular Franchisee's operations are sufficiently limited that a Security Fund is not necessary to secure the required performance. The Board may from time to time increase the amount of the required Security Fund to reflect increased risks to the County and to the public.
  2. The following procedures shall apply to drawing on the Security Fund:
    - a. If a Franchisee fails to make timely payment to the County of any amount due under its Certificate, this Chapter, or other applicable law, or fails to compensate the County within ten (10) days of written notification that such compensation is due, for any damages, costs, or expenses the County suffers or incurs by reason of any act or omission of the Franchisee in connection with this Agreement or its enforcement, or fails, after ten (10) days' written notice, to comply with any provision of its Certificate or this Chapter that the Administrator determines can be remedied by an expenditure of the security, the County may withdraw the amount thereof, with interest and any penalties, from the Security Fund.
    - b. Within three (3) days of a withdrawal from the Security Fund, the County shall mail to a Franchisee, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the Franchisee.
    - c. If at the time of a withdrawal from the Security Fund by the County, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Franchisee to the County until it is paid.
    - d. No later than thirty (30) days after mailing of notification to the Franchisee by certified mail, return receipt requested, of a withdrawal under the Security Fund, the Franchisee shall restore the Security Fund to the total amount specified herein.
    - e. Upon termination of the Franchise under conditions other than those stipulating forfeiture of the Security Fund, the balance then remaining in the Security Fund shall be returned to the Franchisee within ninety (90) days of such termination, provided that there is then no outstanding default on the part of the Franchisee.
- C. *Failure constitutes material violation.* Failure to maintain or restore the Security Fund or a Performance Bond shall constitute a material violation of this chapter and a Certificate.
- D. *Revocation, or reduction of franchise term.*
1. When, after notice and providing a Franchisee with an opportunity to be heard, the Board finds that a System is being maintained or operated in violation of this chapter or in substantial violation of the terms of a Franchise, the Board may make an appropriate reduction in the remaining term of a Franchise or revoke a Franchise. Before a Franchise is revoked or shortened, the Administrator shall establish and conduct a compliance proceeding that comports with the requirements of this § 41.2-14.C. At the conclusion of the compliance proceeding, the Administrator shall transmit a recommended decision to the Board. A Franchisee may appeal the Administrator's recommendation to the Board, but any such appeal shall be filed within thirty (30) days of the

receipt by the Franchisee of the written decision of the Administrator. If no appeal is filed, the Board may immediately determine whether to revoke or shorten the term of a Franchise in accordance with the requirements of this provision. However, if an appeal is filed by a Franchisee, the Board shall not revoke or shorten the term of the Franchise until the appeal has been decided. Notwithstanding the foregoing, a Franchise may not be revoked unless a Franchisee (i) was given notice of the default; (ii) was given thirty (30) days to cure the default; and (iii) the Franchisee failed to cure the default, or to propose a schedule for curing the default that is acceptable to the County. The required notice may be given before the Administrator conducts the proceeding required by this paragraph. No opportunity to cure is required for repeated material violations or any Transfer without the prior consent of the County, and fraud may be deemed incurable.

2. Upon termination of a Franchise, whether by action of the Board as provided above, or by passage of time, a Franchisee shall be obligated to cease using its System for the purposes authorized by the Franchise. The County may either take possession of some or all of the Franchisee's facilities in the Public Rights-of-Way or require the Franchisee or its surety to remove some or all of the Franchisee's facilities from the Public Rights-of-Way and to restore the Public Rights-of-Way to their proper condition. Notwithstanding anything in this chapter to the contrary, should a Franchisee fail, refuse, or neglect to remove such facility, the County may remove the facility at the expense of the Franchisee. Regardless of the existence or amount of any security fund or performance bond, the obligation of a Franchisee to remove shall survive the termination of the Franchise. This provision, however, does not authorize the County to take possession of, or require a Franchisee to remove, any facilities that are used to provide another service for which the Franchisee holds a valid Franchise issued by the Board.

E. *Termination due to bankruptcy.*

1. Any Franchise may, at the option of the County following a public hearing, be revoked by the Board one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within that one hundred twenty (120) day period:
  - a. Such assignment, receivership, or trusteeship has been vacated; or
  - b. Such assignee, receiver, or trustee has fully complied with the terms and conditions of this chapter and the applicable Certificate and has executed an agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this chapter and the applicable Certificate, and such other conditions as may be established or as are required under § 41.2-13 of this chapter.
2. Notwithstanding the foregoing, in the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a Franchisee, the Board may revoke the Franchise, following a public hearing, by serving notice on the Franchisee and the successful bidder, in which event the Franchise and all rights and privileges of the Franchise will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:
  - a. The Board has approved the Transfer of the Franchise to the successful bidder; and
  - b. The successful bidder has covenanted and agreed with the County to assume and be bound by the terms and conditions of the Certificate and this chapter, and such other conditions as may be established or as are required pursuant to this chapter or a Certificate.

F. *Penalties and forfeitures.* In addition to any other remedies available, a Franchisee may be subject to penalties and forfeitures for any violation of this chapter, unless prohibited by applicable law, including, without



limitation:

1. Any knowing submission of false or fraudulent information to the County;
2. Any failure to comply with any lawful order of the County or request for information under this chapter; or
3. An evasion of any lawful order of the County, any provision of this chapter, or other applicable law.

G. *Purchase or transfer of a cable system by the County.*

1. If a Franchise granted under this chapter expires, the County may acquire ownership of the Cable System at Fair Market Value, subject to a Franchisee's rights under 47 U.S.C. § 546.
2. If the Board revokes or terminates a Franchise for cause, the County may acquire ownership of the Cable System at an Equitable Price.

H. *Remedies cumulative.* All remedies under this chapter and any Certificate are cumulative unless otherwise expressly stated. The exercise of one (1) 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 County may exercise any rights it has at law or equity.

I. *Relation to insurance and indemnity requirements.* Recovery by the County of any amounts under insurance, a Security Fund, a performance bond, or otherwise does not limit a Franchisee's duty to indemnify and hold harmless the County and its elected and appointed officers, officials, Boards, commission, employees, agents and volunteers in any way; nor shall such recovery relieve a Franchisee of its obligations under a Franchise, limit the amounts owed to the County, or in any respect prevent the County from exercising any other right or remedy it may have. Nothing herein shall be construed to authorize the double-recovery of damages.

J. *Effects of litigation.* 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 chapter or its Certificate unless a stay specifically applicable to the performance of the obligation is obtained from a court or regulatory body of competent jurisdiction. Failure of the Franchisee to perform such obligations because of pending litigation or a petition, in the absence of a stay issued by a court or regulatory body of competent jurisdiction, may result in forfeiture or revocation pursuant to the provisions of this chapter and/or a Certificate. (Ord. No. 98-21, 6-20-98)

**§ 41.2-15. Transfers.**

A. *Board approval required.*

1. A Franchise shall be a privilege that is in the public trust and personal to the Franchisee. A Franchisee's obligations under its Franchise involve personal services whose performance involves personal credit, trust, and confidence in the Franchisee.
2. No Transfer (including, but not limited to, Transfer as a result of forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made by the Franchisee to the Board and the Board's prior written consent is obtained, pursuant to this chapter and a Certificate, and only then upon such terms and conditions as the Board deems necessary and proper. Any such Transfer without the prior written consent of the Board shall be considered to impair the County's assurance of due performance. The granting of approval for a Transfer in one instance shall not render unnecessary approval of any subsequent Transfer.

3. Application.
  - a. A Franchisee shall promptly notify the Administrator of any proposed Transfer. If any Transfer should take place without prior notice to the Administrator, the Franchisee will promptly notify the County that such a Transfer has occurred.
  - b. At least one hundred twenty (120) calendar days prior to the contemplated effective date of a Transfer, the Franchisee shall submit to the Administrator an application for approval of the Transfer. Such an application shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the transferee, and on the potential impact of the Transfer on Subscriber rates and service. At a minimum, the following information shall be included in the application, provided that, a Franchisee is not required to duplicate information that it submits to the Administrator to comply with its obligations under federal or State law:
    - (1) All information and forms required under federal law or the equivalent of such forms if no longer required by federal law;
    - (2) All information required in §§ 41.2-4.C.1 to 41.2-4.C.5, 41.2-4.C.11 and 41.2-4.C.14 of this chapter, with respect to the proposed transferee;
    - (3) Any contracts, financing documents, or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein;
    - (4) Any documents related to the transaction that have been provided to any entity that has been asked to provide financing (debt, equity, or any other kind) for, or to underwrite any offering made in connection with, the proposed transaction;
    - (5) Any shareholder reports or filings with the Securities and Exchange Commission or the Federal Trade Commission that discuss the transaction, and any filings required under federal or State law in connection with the proposed transaction;
    - (6) Complete financial statements for the transferor and the proposed transferee(s) for the last three (3) years, including balance sheets, income statements, profit and loss statements, and documents detailing capital investments and operating costs;
    - (7) A detailed description of the sources and amounts of funds to be used in the proposed transaction, indicating how the debt-to-equity ratio of the Cable System will change in the course of the transaction; what entities will be liable for repayment of any debt incurred; what interest, payment schedule, and other terms or conditions will apply to any debt financing; any debt coverages or financial ratios any potential transferee(s) will be required to maintain over the term of a Franchise if the proposed transaction is approved; what financial resources would be available to the System under the control of the proposed transferee; whether the proposed transferee can meet debt-to-equity or any other required ratios without increasing rates, with any assumptions underlying that conclusion, and if not, what increases would be required, at what specific dates, and why;
    - (8) Complete information regarding any potential impact of the Transfer on Subscriber rates and service;

- (9) Any representations made to anyone, in connection with the transaction, about the transferor's compliance with its Franchise; and
- (10) A brief summary of the proposed transferee's plans for at least the next five (5) years regarding line extension, plant and equipment upgrades, Channel capacity, expansion or elimination of services, and any other changes affecting or enhancing the performance of the Cable System. This summary shall include the expected dates that specific plans will be implemented, and the projected costs of such plans.

- c. In addition to providing the information specified in § 41.2-15.A.3.b, a Franchisee shall, at the request of the County, furnish any other information necessary to provide a complete and accurate understanding of the financial position of the Cable System before and after the proposed Transfer.
- d. For the purposes of determining whether it shall consent to a Transfer, the County or its agents may inquire into all qualifications of the prospective transferee and such other matters as the County may deem necessary and relevant to determine whether the Transfer is in the public interest and should be approved, denied, or conditioned as provided under § 41.2-15.B. A Franchisee and any prospective transferees shall assist the County in any such inquiry, and if they fail to do so, the request for a Transfer may be denied.

B. *Determination by County.* In making a determination as to whether to grant, deny, or grant subject to conditions, an application for a Transfer of a Franchise, the County may consider, without limitation, the legal, financial, and technical qualifications of the transferee to operate the Cable System; any potential effects of the Transfer on Subscriber rates or services; whether a Franchisee is in compliance with its Franchise, and this chapter and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transferee owns or controls any other Cable System in the County, and whether operation by the transferee may eliminate or reduce competition in the delivery of Cable Service in the County; and whether operation by the transferee or approval of the Transfer would adversely affect Subscribers, the public, or the County's interest under this chapter, a Franchise, or other applicable law.

C. *Transferee's agreement.* No application for a Transfer of a Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this chapter and the Franchise and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this chapter and the Franchise, for all purposes, including renewal.

D. *Approval does not constitute waiver.* Approval by the Board of a Transfer does not constitute a waiver or release of any of the rights of the County under this chapter or a Certificate, whether arising before or after the date of the Transfer.

E. *Exception for intra-company transfers.* Notwithstanding the foregoing, a Certificate may provide that Transfers to Affiliates of a Franchisee shall be excepted from the requirements of § 41.2-15.A where (i) the Affiliate is wholly-owned and managed by an entity that will guarantee the performance under a Franchise; and (ii) the transferee Affiliate:

1. Notifies the Administrator of the Transfer at least sixty (60) days before it occurs and, at that time provides the agreements and warranties required by this § 41.2-15, describes the nature of the Transfer, and submits complete information describing who will have direct and indirect ownership and control of the Cable System after the Transfer;
2. Warrants that it has read, accepts and agrees to be bound by each and every term of the Certificate and related amendments, regulations, ordinances and resolutions then in effect;

3. Agrees to assume all responsibility for all liabilities, acts and omissions, known and unknown, of its predecessor Franchisee(s), for all purposes, including renewal;
4. Agrees that the Transfer shall not permit it to take any position or exercise any right which could not have been exercised by its predecessor Franchisee(s);
5. Warrants that the Transfer will not substantially increase the financial burdens upon or substantially diminish the financial resources available to the Franchisee (the warranty to be based on comparing the burdens upon and resources that will be available to the transferee compared to its predecessors), or otherwise adversely affect the ability of the Franchisee to perform;
6. Warrants that the Transfer will not in any way adversely affect the County or Subscribers (including by increasing rates);
7. Notifies the County that the Transfer is complete within five (5) business days of the date the Transfer is completed; and
8. Agrees that the Transfer in no way affects any evaluation of its legal, financial or technical qualifications that may occur under the Franchise or applicable law after the Transfer, and does not directly or indirectly authorize any additional Transfers.

(Ord. No. 98-21, 6-20-98)

#### **§ 41.2-16. Open Video Systems.**

- A. *Applicability of chapter.*
    1. This chapter shall apply to open video systems that comply with 47 U.S.C. § 573, to the extent permitted by applicable law, except that the following sections shall not apply: § 41.2-3.A through 41.2-3.C (regarding grant of franchise), § 41.2-4 (franchise applications), § 41.2-5 (filing fees), § 41.2-7.A (construction schedule), § 41.2-10 (rate regulation), § 41.2-14.A.1.b—through 41.2-14.A.1.d and 41.2-14.A.1.h (certain penalties), § 41.2-14.E (franchise termination due to bankruptcy), and § 41.2-15 (Transfers).
    2. In applying this chapter to an open video system, "Franchisee" shall be taken to refer to the open video system operator, "Cable System" to the open video system, and similar terms shall apply similarly.
  - B. *Fee in lieu of franchise fee.* An open video system operator shall pay to the County a fee in lieu of the Franchise fee required in § 41.2-11 of this chapter, pursuant to the procedures and conditions specified in applicable law, including FCC regulations, § 41.2-11, and generally herein.
  - C. *Public, educational, and governmental access obligations.* An open video system operator shall be subject to obligations pertaining to public, educational, and governmental access pursuant to applicable law and to the requirements herein.
  - D. *Right-of-way usage.* An open video system operator shall be subject to all requirements of State and local law regarding authorization to use or occupy the Public Rights-of-Way, except to the extent specifically prohibited by federal law. FCC approval of an open video system operator's certification pursuant to 47 U.S.C. § 573 shall not be taken to confer upon such operator any authority to use or occupy the Public Rights-of-Way that such operator would not otherwise possess.
- (Ord. No. 98-21, 6-20-98)

#### **§ 41.2-17. Rights of Individuals Protected.**

- A. *Discriminatory practices prohibited.*

1. A Franchisee shall not deny service, deny access, or otherwise discriminate against Subscribers, Programmers, or residents of the County on the basis of race, color, religion, national origin, sex, age, condition of physical handicap, creed, ethnic background, marital status or sexual orientation.
  2. A Franchisee shall not discriminate among Persons or the County, or take any retaliatory action against a Person or the County because of that entity's exercise of any right it may have under federal, State, or local law, nor may the Franchisee require a Person or the County to waive such rights as a condition of taking service.
  3. Except as federal law prohibits enforcement of this provision, a Franchisee shall not deny access or levy different rates and charges on any group of potential cable subscribers because of the income of the residents of the local area in which such group resides.
  4. Subject to applicable law and except to the extent that a Franchisee is relieved of 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 non-discriminatory basis to similar classes of Subscribers throughout the County; 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 County laws, and all executive and administrative orders relating to non-discrimination.
  5. Information Accessibility: Each document required to be maintained, filed or submitted under the provisions of this chapter or a Certificate, except those specifically designated as confidential by a Franchisee and not required to be disclosed by the County under applicable law, is a public document, available for public inspection and copying at the requestor's expense, at the office(s) of the Franchisee or the County during normal business hours.
- B. *Equal employment opportunity.* A Franchisee shall not refuse to employ, discharge from employment, or discriminate against any Person in compensation or in terms, conditions, or privileges of employment because of race, color, religion, national origin, sex, sexual orientation, age, disability, or marital status. A Franchisee shall comply with all federal, State, and local laws and regulations governing equal employment opportunities, as the same may be amended from time to time.
- C. *Subscriber privacy.*
1. A Franchisee shall at all times protect the privacy rights of all Subscribers, including but not limited to those rights secured by the provisions of Section 631 of the Cable Act, 47 U.S.C. § 551.
  2. Neither a Franchisee nor any other Person shall initiate in any form the discovery of any information on or about an individual Subscriber's premises without prior valid authorization from the Subscriber potentially affected. This provision is not intended to prohibit the transmission of signals useful only for the control or measurement of System performance.
  3. A Franchisee shall not permit the installation of any special terminal equipment in any Subscriber's premises that will permit transmission from such Subscriber's premises of two-way services utilizing aural, visual or digital signals without such Subscriber's prior valid authorization.
  4. As used in this § 41.2-17.C, "valid authorization" shall mean written permission from a Subscriber.

5. A Franchisee shall strictly observe and protect the privacy rights and property rights of Subscribers and Users at all times. Individual Subscriber preferences of any kind, viewing habits, political, social or economic philosophies, beliefs, creeds, religions, or telephone numbers shall not be revealed to any person, governmental unit, police department or investigating agency unless upon the authority of a court of law or upon prior voluntary valid authorization of a Subscriber.
6. A Franchisee may release the number of its Subscribers, but only as a total number and as a percentage of the potential Subscribers throughout the County or served by the System. When indicating the number of Subscribers viewing a particular Channel at a particular time, a Franchisee shall indicate only the total number of Subscribers viewing during the relevant time and the percentage of all Subscribers which they represent, but never the identity of a particular Subscriber.
7. A Franchisee may maintain such information as is necessary to bill Subscribers for any System service.
8. No monitoring of any Subscriber terminal shall take place without specific prior valid authorization by the Subscriber in question; provided, however, that a franchisee may conduct System-wide or individually addressed "sweeps" for the purpose of verifying System integrity and may take reasonable efforts necessary to prevent signal theft. In no event shall aural or visual monitoring of any kind take place without a clear indication to the Subscriber that such monitoring is taking place.
9. A Franchisee shall not disclose any test results that would reveal the commercial product preferences or opinions of individual Subscribers, members or their families or their invitees, licensees or employees, without a Subscriber's prior valid authorization.
10. A Subscriber may at any time revoke any authorization to release information by delivering to a Franchisee in writing, by mail or otherwise, the Subscriber's decision to revoke the authorization. Any such revocation shall be effective upon receipt by the Franchisee.
11. A Franchisee shall not condition Subscriber service on the Subscriber's valid authorization or denial of permission to collect, maintain or disclose personally identifiable information, except to the extent that such information is necessary for credit check or billing purposes.
12. Each compilation, publication, tabulation or other dissemination of information made or permitted to be made in violation of this § 41.2-17.C shall be considered a separate violation.

(Ord. No. 98-21, 6-20-98)

**§ 41.2-18. Administration.**

A. *Duties of the Administrator.* The Administrator, either directly or through a duly appointed designee or designees, shall have the responsibility for overseeing the day-to-day administration of this chapter, Certificate, and related Agreements. The Administrator shall be empowered to take all administrative actions on behalf of the County, except for those actions specified in this chapter that are reserved to the Board. The Administrator may recommend that the Board take certain actions with respect to a Franchise. The Administrator shall keep the Board apprised of developments in cable and provide the Board with assistance, advice and recommendations as appropriate.

B. *Authority of the Board.* The Board shall have the sole authority to regulate rates for Cable Service; grant Franchises; authorize the entering into of Certificates; modify Certificates; renew Franchises; revoke Franchises; and authorize the Transfer of a Franchise.

C. *Transfer of authority.* If at any time the powers of the Board, or any agency or official of the County or the Board are transferred by law to any other board, agency, authority or official, then such other board,

agency, authority or official shall have the powers, rights and duties previously vested under this chapter or by law in the Board, or any agency or official of the County or the Board.  
(Ord. No. 98-21, 6-20-98)

**§ 41.2-19. Miscellaneous Provisions.**

A. *Compliance with laws.* Each Franchisee shall comply with all federal, State, and local laws and regulations heretofore and hereafter adopted or established during the entire term of the Franchise granted to the Franchisee.

B. *Captions.* The captions and headings of sections throughout this chapter are intended solely to facilitate reading and reference to the sections and provisions of this chapter. Such captions shall not affect the meaning or interpretation of this chapter.

C. *No recourse against the County.* Without limiting such immunities as the County or other Persons may have under applicable law, a Franchisee shall have no recourse against the County, its elected or appointed officials, officers, boards, commissions, commissioners, employees and agents for any loss, cost, expense, claim, liability or damage arising out of any action undertaken or not undertaken by the Franchisee pursuant this chapter or a Franchise, whether or not such action or non-action was required by this chapter or a Franchise, arising out of the enforcement or non-enforcement by the County or the Board of any provision or requirement of this chapter or a Franchise, or otherwise arising out of this chapter or a Franchise. This subsection shall not preclude injunctive relief.

D. *Rights and remedies.*

1. The rights and remedies reserved to the Board and the County by this chapter are cumulative and shall be in addition to and not in derogation of any other rights and remedies which the Board or the County may have with respect to the subject matter of this chapter.
2. The County hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this chapter or a Certificate.
3. 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.
4. No Franchisee shall be relieved of its obligation to comply with any of the provisions of this chapter or a Certificate by reason of any failure of the County, the Board or the Administrator to enforce prompt compliance. No inaction by the County, the Board or the Administrator shall be deemed to waive or void any provision of this chapter or a Certificate.

E. *Amendments to this chapter.* In order to fulfill the public interest goals of this chapter, to provide additional communications services to the County through the use of Cable Systems, and thereby to ensure the benefits which will result from such services, the Board specifically reserves the right to amend this chapter to effectuate the public interest in the operation of a Cable System.

F. *Public emergency.* In the event of a major public emergency or disaster, as determined by the County or declared by the Governor of Virginia, a Franchisee shall immediately make its entire Cable System, employees, and property, as may be necessary, available for use by the County or any other civil defense or governmental agency designated by the County to operate the System for the term of such emergency or disaster for the emergency purposes. In the event of such use, a Franchisee shall waive any claim that such use by the County constitutes a use of eminent domain, provided that the County shall return use of the entire System, employees, and property to the Franchisee after the emergency or disaster has ended or has been dealt with.

G. *Connections to system; use of antennae.*

1. To the extent consistent with federal law, Subscribers shall have the right to attach devices to a Franchisee's System to allow Subscribers to transmit signals or services for which they have paid to VCRs, 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 a Franchisee's security procedures, 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, 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.
2. 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.

H. *Calculation of time.* Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this chapter or any Certificate, 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.

I. *Severability.* If any term, condition, or provision of this chapter shall, to any extent, be held to be invalid or unenforceable by a valid order of any court or regulatory agency, 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 County or the Board and shall thereafter be binding on the Franchisee and the County.

J. In exercising its powers pursuant to this chapter, the Board may grant Certificates or authorize renewals, extensions, modifications, or transfers of a Franchise that contain terms that vary from the requirements of this chapter, provided that the Board determines that such terms are in the best interests of the County or enhance the public health, safety or welfare.

(Ord. No. 98-21, 6-20-98; Ord. No. 06-10, 6-13-06)