

CABLE SYSTEMS AND OPEN VIDEO SYSTEMS

ST. MARY'S COUNTY, MARYLAND



February 18, 2003

ORDINANCE NO. 03-_____

CABLE SYSTEMS AND OPEN VIDEO SYSTEMS
ST. MARY’S COUNTY, MARYLAND

	<u>Page</u>
1. GENERAL PROVISIONS	1
(a) Title	1
(b) Effective Date and Repealer	1
(c) Findings and Purpose	1
(d) Delegation of Powers.....	2
2. DEFINITIONS AND RULES OF CONSTRUCTION	3
(a) Rules of Construction	3
(b) Defined Terms	3
3. GRANT OF FRANCHISE	11
(a) Grant.....	11
(b) Term of Franchise.	12
(c) Franchise Characteristics.	12
(d) Franchisee Subject to Other Laws, Police Power.	14
(e) Interpretation of Franchise Terms.....	14
(f) Acts at Franchisee's Expense	14
(g) Eminent Domain	15
4. APPLICATIONS FOR GRANT OF FRANCHISE.....	15
(a) Application Required.	15
(b) Application Process.....	15
(c) Contents of Application.....	18
(d) Public Hearing.....	21
(e) Acceptance of Franchise	21
(f) Filing Fees.....	21
5. DESIGN AND CONSTRUCTION	22
(a) System Construction Schedule	22
(b) Construction Procedures	22
(c) Construction Standards	23
(d) Use of Public Property	28
(e) Interference with Public Projects	28
6. CONSUMER PROTECTION	29
(a) General Provisions	29
(b) Installations, Connections, and Other Franchisee Services	30
(c) Telephone and Office Availability.....	32
(d) Scheduling and Completing Service	33
(e) Notice to Subscribers	35

	(f)	Billing.....	37
	(g)	Disconnection/Downgrades	39
	(h)	Changes in Service.....	41
	(i)	Parental Control Option.....	42
	(j)	Subscriber Contracts	42
	(k)	Enforcement.....	42
	(l)	Exclusive Contracts and Anticompetitive Acts Prohibited.....	43
7.		RATE REGULATION	44
	(a)	Reservation of Rights.....	44
	(b)	Notice to Subscribers	44
8.		FRANCHISE FEE	44
	(a)	Finding	44
	(b)	Payment of Franchise Fee	44
	(c)	Not a Tax or in Lieu of Any Other Tax or Fee	45
	(d)	No Accord or Satisfaction.....	45
	(e)	Allocation of Discounts	45
9.		REPORTS AND RECORDS	46
	(a)	Open Books and Records	46
	(b)	Communication with Regulatory Agencies	47
	(c)	Annual Report.....	47
	(d)	Updated Maps	50
	(e)	Special Reports	50
	(f)	Records Required	51
	(g)	Voluminous Materials.....	52
	(h)	Retention of Records; Relation to Privacy Rights	52
	(i)	Waiver of Reporting Requirements	53
10.		INSURANCE, SURETY, AND INDEMNIFICATION	53
	(a)	Insurance Required	53
	(b)	Qualifications of Sureties.....	54
	(c)	Policies Available for Review.....	54
	(d)	Indemnification.....	54
	(e)	No Limit of Liability.....	55
11.		PERFORMANCE GUARANTEES AND PENALTIES	55
	(a)	Liquidated Damages	55
	(b)	Amount of Liquidated Damages.....	57
	(c)	Termination On Account of Certain Assignments or Appointments.....	60
	(d)	Remedies Cumulative	62
	(e)	Procedure For Remedying Franchise Violations	62
	(f)	Relation to Insurance and Indemnity Requirements	62
12.		TRANSFERS	63

	(a)	County Approval Required	63
	(b)	Application.....	63
	(c)	Determination by County.....	65
	(d)	Transferee's Agreement	67
	(e)	Closing	67
	(f)	Approval Does Not Constitute Waiver	67
13.		OPEN VIDEO SYSTEMS.....	67
	(a)	Applicability of Ordinance.....	67
	(b)	Application for Open Video System Authorization.....	68
	(c)	Fee In Lieu of Franchise Fee.....	69
	(d)	Public, Educational, and Governmental Access Obligations	69
	(e)	Right-of-Way Usage	69
14.		RIGHTS OF INDIVIDUALS PROTECTED.....	69
	(a)	Discriminatory Practices Prohibited	69
	(b)	Subscriber Privacy	71
15.		ADMINISTRATION.....	71
	(a)	Duties of the County Administrator.....	71
	(b)	Duties of the Board	72
16.		MISCELLANEOUS PROVISIONS.....	72
	(a)	Compliance With Laws.....	72
	(b)	No Recourse Against the County.....	72
	(c)	Rights and Remedies.....	72
	(d)	Amendments to this Ordinance.....	74
	(e)	Calculation of Time	74
	(f)	Severability	74

1. GENERAL PROVISIONS

(a) *Title.* This Ordinance shall be known and may be cited as the “St. Mary’s County Cable Television Franchise Act.”

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

(c) *Findings and Purpose*

(1) St. Mary’s County, Maryland (“County”) finds that the further development of cable communications may result in great benefits for the people of the County. Cable technology is rapidly changing, and cable plays an essential role as part of the County’s basic infrastructure. Cable television systems permanently occupy and extensively make use of scarce and valuable Public Rights-of-Way, in a manner different from the way in which the general public uses them, and in a manner reserved primarily for those who provide essential services to the public subject to special public interest obligations, such as utility companies. The grant of a Franchise has the effect of giving the holder extensive economic benefits and placing the holder in a position of public trust. The County finds that public convenience, safety, and general welfare can best be served by establishing regulatory powers vested in the County or such Persons as the County so designates to protect the public and to ensure that any Franchise granted is operated in the public interest.

(2) Further, it is recognized that Cable Systems have the capacity to provide not only entertainment and information services to the County’s residents, but can provide a

variety of broadband, interactive communications services to institutions and individuals. Many of these services involve County agencies and other public institutions.

(3) In light of the foregoing, the following goals, among others, underlie the provisions set forth in this Ordinance:

- (A) Cable 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.
- (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 shall 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 occupation and use of local Public Rights-of-Way.

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

(d) *Delegation of Powers.* The County may delegate the performance of any act, duty, or obligation, or the exercise of any power, under this Ordinance or any Franchise

2(a): DEFINITIONS AND RULES OF CONSTRUCTION

Agreement to any employee, officer, department or agency of the County, except where prohibited by applicable law.

2. **DEFINITIONS AND RULES OF CONSTRUCTION**

(a) Rules of Construction

(1) For the purposes of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. 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, their common and ordinary meaning.

(2) When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender.

(3) The words “shall” and “will” are mandatory, and “may” is permissive.

(4) Unless otherwise specified, references to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

(b) Defined Terms

(1) Access Channel. Any channel on a Cable System set aside by a Franchisee for Public, Educational, or Governmental Access.

(2) Affiliate. Any Person who owns or controls, is owned or controlled by, or is under common ownership or control with a Franchisee.

2(b): DEFINITIONS AND RULES OF CONSTRUCTION

(3) Cable Act. The Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 *et seq.*, as amended from time to time.

(4) Cable Operator. Any Person or group of Persons (A) who provides Cable Service over a Cable System and directly or through one or more Affiliates owns a significant interest in a substantial portion of such Cable System, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

(5) Cable Service. (a) The one-way transmission to Subscribers of video programming or other programming service; and (b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(6) Cable System or System. A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple Subscribers within the County, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves Subscribers without using any Public Rights-of-Way and without connecting to a facility that uses any Public Rights-of-Way; (3) 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; (4) an open video system that complies with 47 U.S.C. § 573; or (5) any facilities of any electric utility used solely for operating its electric utility system.

2(b): DEFINITIONS AND RULES OF CONSTRUCTION

(7) County. The County Commissioners for St. Mary's County and any agency, department, or agent thereof.

(8) Construction, operation or repair. This and similar formulations mean the named actions interpreted broadly, encompassing, among other things, Installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation and the management of a Cable System or open video system and its operations.

(9) Converter. An electronic device which may serve as an interface between a System and a Subscriber's television receiver or other terminal equipment, and which may perform a variety of functions, including signal security, descrambling, electronic polling, frequency conversion and channel selection.

(10) Educational Access. Access where educational institutions are the designated Programmers or Users having editorial control over their communications.

(11) FCC. The Federal Communications Commission, its designee, or any successor governmental entity thereto.

(12) Franchise. A non-exclusive authorization granted pursuant to this Ordinance to construct, operate, and maintain a Cable System along 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 general license or permit required for the privilege of transacting and carrying on a business within the County as required by the ordinances and laws of the County, 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.

2(b): DEFINITIONS AND RULES OF CONSTRUCTION

(13) Franchise Agreement. A contract entered into pursuant to this Ordinance between the County and a Franchisee that sets forth, subject to this Ordinance, the terms and conditions under which a Franchise will be granted and exercised.

(14) Franchise Area. The area of the County that a Franchisee is authorized to serve by its Franchise Agreement.

(15) Franchisee. A natural Person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind that has been granted a Franchise by the County.

(16) Governmental Access. Access where government institutions or their designees are the designated Programmers or Users having editorial control over their communications.

(17) Gross Revenues. Any and all cash, credits, property or other consideration of any kind or nature derived from the operation of a Franchisee's Cable System to provide Cable Services. This definition shall be construed so as to include all Gross Revenues to the maximum extent permitted by federal law, except to the extent specifically excluded in Section 2(b)(17)(B), and encompasses revenues that may develop in the future, whether or not anticipated.

(A) Gross Revenues include, by way of illustration and not limitation, fees for any Cable Service; Installation, disconnection, reconnection, and change-in-service fees; leased channel fees; late fees and administrative fees; fees, payments, or other consideration received from Programmers for carriage of programming on the System, except launch fees received from Programmers to compensate a Franchisee for marketing and promotional costs and

2(b): DEFINITIONS AND RULES OF CONSTRUCTION

shown by the Franchisee to be used for that purpose; revenues from rentals or sales of Converters or other equipment; advertising revenues; barter; revenues from program guides; and revenues from home shopping and bank-at-home channels.

- (B) “Gross Revenues” shall be construed broadly to include revenues of Affiliates (other than those revenues which are already treated as the revenues of the Franchisee), to prevent avoidance of fees owed on Gross Revenues derived from the operation of the Cable System to provide Cable Service.
- (C) Gross Revenues shall not include (i) any taxes on services furnished by the Franchisee which are imposed directly on any Subscriber or User by the state, 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, and Franchise fee expenses may not be deducted in determining the amount of the fee due to the County. In addition, Gross Revenues shall not include (ii) any revenues attributable to or derived from any area within the County for which the County is not authorized to grant a Franchise (*e.g.*, the Patuxent Naval Air Station and the incorporated municipality of Leonardtown); or (iii) any uncollected receipts (*i.e.*, “bad debt”), provided, however, that all or any part of any such actual bad debt that is written off but

2(b): DEFINITIONS AND RULES OF CONSTRUCTION

subsequently collected shall be included in Gross Revenues in the period collected.

(18) Inflation. Inflation shall be measured based on the Federal Bureau of Labor Statistics Consumer Price Index (CPI-U) for the Washington-Baltimore, District of Columbia, Maryland, Virginia, West Virginia area. In the event that the Bureau of Labor Statistics should cease to publish the CPI-U in its present form and calculated on its present basis, an index reflecting similar changes in the cost of living shall be selected by the Franchisee and the County to ascertain any Inflation adjustments.

(19) Installation. The connection of System services to Subscribers' television receivers or other Subscriber-owned or -provided terminal equipment.

(20) Leased Access Channel or Commercial Access Channel. Any channel on a Cable System designated or dedicated for use by a Person unaffiliated with the Franchisee.

(21) Normal Business Hours. Those hours during which most similar businesses in the community are open to serve customers, including some evening hours at least one night per week and/or some weekend hours.

(22) Normal Operating Conditions. Those service conditions that are within the control of a Franchisee. Conditions that are not within the control of a Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, and telephone network outages. Conditions that are within the control of a Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of a Cable System.

(23) PEG. Public, Educational, and/or Governmental.

2(b): DEFINITIONS AND RULES OF CONSTRUCTION

(24) Person. An individual, partnership, association, joint stock company, organization, corporation, or any lawful successor thereto or transferee thereof, but such term does not include the County.

(25) Programmer. 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.

(26) Public Access. Access where organizations, groups, or individual members of the general public are the designated Programmers or Users having editorial control over their communications.

(27) Public Rights-of-Way. The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, road, or right-of-way within the County, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System.

(28) School. Any publicly funded primary or secondary school accredited by the State of Maryland.

(29) Security Fund. A performance bond, letter of credit, or cash deposit, or any or all of these, to the extent required by a Franchise Agreement.

(30) Service Interruption. Loss of picture or sound on one or more channels, or degradation of picture or sound beyond permissible levels as defined by applicable law.

(31) Subscriber. The County or any Person who is lawfully receiving, for any purpose or reason, any Cable Service via a Cable System, whether or not a fee is paid for such service.

2(b): DEFINITIONS AND RULES OF CONSTRUCTION

(32) Transfer.

- (A) “Transfer” shall mean any transaction in which: (i) any ownership or other right, title, or interest of more than ten percent (10%) in a Franchisee or its Cable System is transferred, sold, assigned, leased, sublet, or mortgaged, directly or indirectly, in whole or in part; or (ii) there is any change in control of a Franchisee; or (iii) the rights and/or obligations held by a Franchisee under the Franchise are transferred, directly or indirectly, to another party; or (iv) any change or substitution occurs of the managing general partners of a Franchisee, where applicable.
- (B) “Control” for purposes of this Section means the legal or practical ability to exert actual working control over the affairs of an entity, either directly or indirectly, whether by contractual agreement, majority ownership interest, any lesser ownership interest, or in any other manner.
- (C) A rebuttable presumption that a change of control has occurred shall arise upon the acquisition or accumulation of ten percent (10%) or more of the ownership of an entity by any Person or group of Persons acting in concert, none of whom already own or control fifty percent (50%) or more of such right or control, singularly or collectively.
- (D) An assignment, mortgage, pledge or other encumbrance of the Franchise, the System or assets relating thereto, as collateral to

3(a): GRANT OF FRANCHISE

secure any financing provided to a Franchisee or its performance of obligations related thereto, shall not by itself constitute a Transfer.

(E) A transfer or grant of an option or other right to acquire equity in a Franchisee shall not constitute a Transfer until such option or right is exercised.

(F) A Franchisee is responsible for ensuring that the intent of Section 12 herein is carried out. If for any reason an event occurs that would require the County's approval under Section 12, whether or not such event is directly or indirectly within the Franchisee's control, such event shall constitute a "Transfer" for purposes of the Franchise Agreement, this Ordinance, and any applicable law.

(33) User. A Person or organization using a channel or equipment or facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a Subscriber.

3. GRANT OF FRANCHISE

(a) *Grant.*

(1) The County may grant one or more cable Franchises, and each such Franchise shall be awarded in accordance with and subject to the provisions of this Ordinance.

(2) This Ordinance may be amended from time to time, and in no event shall this Ordinance be considered a contract between the County and a Franchisee such that the County would be prohibited from amending any provision hereof. However, subject to the

County's lawful police powers and other lawful authority, the County may not alter any of a Franchisee's material rights, benefits, obligations, or duties specified in its Franchise Agreement.

(3) No Person may construct or operate a Cable System in the County without a Franchise granted by the County. No Person may be granted a Franchise without having entered into a Franchise Agreement with the County pursuant to this Ordinance.

(b) Term of Franchise.

No Franchise shall be granted for a period of more than fifteen (15) years, except that a Franchisee may apply for renewal or extension 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 or other public property without owner consent (except for use of compatible easements pursuant to Section 621 of the Cable Act, 47 U.S.C. § 541(a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners.

(2) A Franchise shall constitute both a right and an obligation to provide the Cable Service regulated by the provisions of this Ordinance and the Franchise Agreement.

(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 it determines appropriate; or affect the County's right to itself construct, operate, or maintain a Cable System, with or without a Franchise.

3(c): GRANT OF FRANCHISE

(4) This franchise shall not be construed as any limitation upon the right of the County to grant to other persons or entities rights, privileges and authority similar to or different from the rights, privileges and authority granted to a given Franchisee. If after the Effective Date the County grants a second Franchise on different terms and conditions for an area of the County overlapping the area served by an existing Franchisee, the existing Franchisee and the County shall enter into good-faith negotiations to ensure that its existing Franchise and such new Franchise, on the whole, do not impose more than a minor competitive disadvantage on either Franchisee, taking into consideration without limitation each Franchisee's aggregate undertakings set forth in its Franchise Agreement, including by way of illustration and not limitation each Franchisee's cable plant specifications, operating standards, and institutional network and PEG construction requirements and expenditures.

(5) 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.

(6) 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.

(7) No reference herein, or in any Franchise Agreement, to "Public Rights-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 its use for such purposes, and a Franchisee shall be deemed to gain only those rights to use as are properly in the County and as the County may have the undisputed right and power to give.

(d) Franchisee Subject to Other Laws, Police Power.

(1) A Franchisee shall at all times be subject to and shall comply with all applicable federal, state, and local laws. A Franchisee shall at all times be subject to all lawful exercise of the police power and any other lawful authority of the County, including without limitation all rights the County may have under 47 U.S.C. § 552. Nothing in a Franchise Agreement shall be deemed to waive the requirements of the various codes and ordinances of the County regarding permits, zoning, fees to be paid, or manner of construction, Installation, operation, maintenance, or repair of System equipment.

(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 are in contravention of such rights (except to the extent such rights are expressly waived by the County) shall operate as a waiver of any such rights of the County.

(3) Except where rights are expressly waived by a Franchise Agreement, they are reserved, whether expressly enumerated or not.

(e) Interpretation of Franchise Terms.

(1) The provisions of this Ordinance and any Franchise Agreement will be liberally construed in order to effectuate their purposes and objectives consistent with the public interest.

(2) A Franchise Agreement will be governed by and construed in accordance with the laws of the State of Maryland.

(f) Acts at Franchisee's Expense. Any act that a Franchisee is or may be required to perform under this Ordinance, a Franchise Agreement, or applicable law shall be performed at

3(g): APPLICATIONS FOR GRANT OF FRANCHISE

the Franchisee's expense, unless expressly provided to the contrary in this Ordinance, the Franchise Agreement, or applicable law.

(g) *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 they may apply to any public utility or Cable System.

4. **APPLICATIONS FOR GRANT OF FRANCHISE**

(a) *Application Required.*

(1) A written application shall be filed with the County for grant of an initial cable Franchise.

(2) To be acceptable for filing, a signed original of the application shall be submitted together with twelve (12) copies. The application must be accompanied by any required application filing fee, conform to any applicable request for proposals, and contain all required information. All applications shall include the names and addresses of Persons authorized to act on behalf of all applicants with respect to the application.

(3) All applications accepted for filing shall be made available by the County for public inspection.

(b) *Application Process*

(1) A Person may apply for an initial cable Franchise by submitting an application containing the information required in Section 4(c). Upon receipt of such an application, the County may either (a) evaluate the application pursuant to Section 4(b)(3), conducting such investigations as it deems necessary; or (b) issue a Request for Proposals ("RFP"), after conducting, if necessary, a proceeding to identify the future cable-related needs

4(b): APPLICATIONS FOR GRANT OF FRANCHISE

and interests of the community. Any such RFP shall be mailed to the Person requesting its issuance and made available to any other interested party. The RFP may contain a proposed Franchise Agreement.

(2) An applicant shall respond to a RFP by filing an application within the time directed by the County, providing the information and material set forth in Section 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 subsection 4(b)(1)(a) herein need not refile the same materials with its RFP response, but must amplify its application to include any additional or different materials required by the RFP. The County or its designee may seek additional information from any applicant and establish deadlines for the submission of such information.

(3) In evaluating an application for a cable Franchise, the County shall consider, without limitation, the following factors:

- (A) Whether the applicant has the financial, technical, and legal qualifications to provide Cable Service;
- (B) 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 County, taking into account the cost of meeting such needs and interests;
- (C) Whether, to the extent not considered under subsection 4(b)(3)(B), the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support;

4(b): APPLICATIONS FOR GRANT OF FRANCHISE

- (D) Whether issuance of a Franchise is warranted in the public interest considering the immediate and future effect on the Public Rights-of-Way and private property that would be used by the Cable System, including the extent to which Installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the Public Rights-of-Way; the effect of granting a Franchise on the ability of cable to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications.
- (E) What effects a grant of the application may have on competition in the delivery of Cable Service in the County.
- (F) Whether, at any time during the ten (10) years preceding the submission of the application, the applicant or any Person with a controlling interest in the applicant was convicted of any act or omission of such character that 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 obligations under consumer protection laws and laws prohibiting anticompetitive acts, fraud, racketeering, or other similar conduct.

(4) If the County finds that it is in the public interest to issue a Franchise considering the factors set forth above, and subject to the applicant's entry into an appropriate

4(c): APPLICATIONS FOR GRANT OF FRANCHISE

Franchise Agreement, it shall issue a Franchise. If the County denies a Franchise, it will issue a written decision explaining why the Franchise was denied. Prior to deciding whether or not to issue a Franchise, the County may hold one or more public hearings or implement other procedures under which comments from the public on an application may be received. The County 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 Ordinance 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 to the extent such entity would not otherwise have such standing under applicable law, nor to deprive such an entity of any such standing it may have pursuant to applicable law.

(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) Name and address of the applicant and 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 (5) percent or more ownership interest in the applicant and its Affiliates; the Persons who control the applicant and its Affiliates; all officers and directors of the applicant and its Affiliates; and any other business affiliation and Cable System ownership interest of each named Person.

(2) A demonstration of the applicant's technical ability to construct and/or operate the proposed Cable System, including identification of key personnel.

4(c): APPLICATIONS FOR GRANT OF FRANCHISE

(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) The applicant must have the necessary authority under Maryland law to operate a Cable System.

(B) The applicant must have the necessary authority under federal law to hold the Franchise and operate a Cable System. An applicant must have, or show that it is qualified to obtain, any necessary federal Franchises or waivers required to operate the System proposed.

(4) A demonstration of the applicant's financial ability to complete the construction and operation of the Cable System proposed.

(5) A description of the applicant's prior experience in Cable System ownership, construction, and operation, and identification of communities in which the applicant or any of its principals have, or have had, a cable Franchise or any interest therein.

(6) Identification of the area 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, including channel capacity, technical design, performance characteristics, headend, and access facilities.

(8) Where applicable, a description of the construction of the proposed System, including an estimate of plant mileage and its location; the proposed construction schedule; a description, where appropriate, of how services will be converted from existing

4(c): APPLICATIONS FOR GRANT OF FRANCHISE

facilities to new facilities; and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.

(9) A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any recent community needs assessment conducted by or for the County, and how the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support to meet the community's needs and interests.

(10) 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.

(11) If the applicant proposes to provide Cable Service to an area already served by an existing cable Franchisee, the identification of the area where the overbuild would occur and the ability of the Public Rights-of-Way and other property that would be used by the applicant to accommodate an additional System.

(12) Any other information that may be reasonably necessary to demonstrate compliance with the requirements of this Ordinance.

(13) Any additional information that the County 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 and certifying that the application meets all federal and state law requirements.

4(d): APPLICATIONS FOR GRANT OF FRANCHISE

(15) A certificate of good standing, if applicable, from the Maryland State Department of Assessments and Taxation.

(16) The County may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by this Section 4(c).

(d) *Public Hearing.* Prior to the issuance of a cable Franchise, the County shall provide for the holding of a public hearing within the proposed Franchise Area, following reasonable notice to the public, at which the applicant and its application shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard.

(e) *Acceptance of Franchise.* Following approval by the County, any Franchise granted pursuant to this Ordinance, and the rights, privileges and authority granted by a Franchise Agreement, shall take effect and be in force from and after the first date on which both the Franchisee and the County have accepted and signed the Franchise Agreement.

(f) *Filing Fees.* To be acceptable for filing, an application submitted after the effective date of this Ordinance shall be accompanied by a nonrefundable filing fee, payable to the County, in the following amount to cover costs incidental to the awarding or enforcement of the Franchise, as appropriate:

- | | |
|--|---------|
| (1) For an initial Franchise: | \$5,000 |
| (2) For renewal of a Franchise: | \$2,500 |
| (3) For modification of a Franchise Agreement: | \$2,500 |
| (4) For approval of a Transfer: | \$1,500 |

In addition, the County may require the Franchisee, or, where applicable, a transferor or transferee, to reimburse the County for its reasonable out-of-pocket expenses in considering the

application, including consultants' fees. Payments made by a Franchisee hereunder are not a Franchise fee and fall within one or more of the exceptions in 47 U.S.C. § 542(g)(2), and no such payments may be passed through to Subscribers in any form.

5. DESIGN AND CONSTRUCTION

(a) *System Construction Schedule.* Every Franchise Agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the Cable System.

(b) *Construction Procedures.* A Franchisee shall construct, operate and maintain its Cable System subject to the supervision of the County or its designees in strict compliance with all applicable laws, ordinances, rules and regulations.

(1) The System and all its parts shall be subject to inspection by the County at the times and in the manner specified in the Franchise Agreement.

(2) No construction, reconstruction or relocation of the System or any part thereof within the Public Rights-of-Way shall be commenced until all applicable written permits have been obtained from the proper County officials. In any permit so issued, such officials may impose such reasonable, non-discriminatory conditions and regulations as a condition of the granting of the permit as are necessary for the purpose of protecting any structures in the Public Rights-of-Way and for the proper restoration of such Public Rights-of-Way and structures, and for the protection of the public and the continuity of pedestrian and vehicular traffic.

(3) A Franchisee shall participate in any "Miss Utility" program active in its Franchise Area with regard to giving and receiving notice of the location of facilities and excavations, and shall mark all its facilities upon request.

(4) A Franchisee shall cooperate with the County in coordinating street cuts with ongoing road construction projects.

(c) *Construction Standards*

(1) The construction, operation, maintenance, and repair of a Cable System shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended; the most current edition of the National Electrical Safety Code and National Electric Code; Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration; Construction, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules Part 17; Applicant's Construction Procedures Manual; and other applicable federal, state, or local laws and regulations that may apply to the operation, construction, maintenance, or repair of a Cable System, including, without limitation, local zoning and construction codes and laws and accepted industry practices, all as hereafter may be amended or adopted. In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as those standards, if followed, would result in a System that could not meet requirements of federal, state or local law, or is expressly preempted by other such standards). The County may adopt additional reasonable, non-discriminatory standards as required to ensure that work continues to be performed in an orderly and workmanlike manner.

(2) All wires, cable lines, and other transmission lines, equipment, and structures shall be installed and located to cause minimum interference with the rights and convenience of the County and its residents and to minimize hindrance or obstruction to pedestrian or vehicular traffic

5(c): DESIGN AND CONSTRUCTION

(3) All Installation of electronic equipment shall be of a permanent nature, using durable components.

(4) Without limiting the foregoing, all work on a Franchisee's System shall be performed in accordance with good engineering practices, by experienced and properly trained maintenance and construction personnel.

(5) A Franchisee shall at all times employ at least ordinary care and shall install and maintain in use commonly accepted methods and devices intended to prevent failures and accidents that are likely to cause damage, injury, or nuisance to the public.

(6) In the event of a failure by a Franchisee to complete any work required for the protection or restoration of the Public Rights-of-Way, or any other work required by municipal law or ordinance, within the time specified by and to the reasonable satisfaction of the County, the County, following notice and an opportunity to cure, may cause such work to be done, and the Franchisee shall reimburse the County the cost thereof within thirty (30) days after receipt of an itemized list of such costs; or the County may recover such costs through the Security Fund provided by the Franchisee.

(7) A Franchisee shall not place facilities, equipment, or fixtures where they will interfere with any gas, electric, telephone, water, sewer, or other utility facilities, or obstruct or hinder in any manner the various utilities serving the residents of the County of their use of any Public Rights-of-Way.

(8) Any and all Public Rights-of-Way, public property, or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or reconstruction of a System shall be promptly repaired by the Franchisee.

5(c): DESIGN AND CONSTRUCTION

(9) A Franchisee shall, by a time specified by the County with reasonable advance notice, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the County by reason of traffic conditions; public safety; public right-of-way construction; public right-of way maintenance or repair (including resurfacing or widening); change of public right-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility; public-right-of-way vacation; or for any other purpose where the convenience of the County would be served thereby; provided, however, that the County may by written consent permit the Franchisee to abandon any property in place.

(10) If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another Person that is authorized to use the Public Rights-of-Way, the County shall give a Franchisee at least thirty (30) days' advance written notice, and the Franchisee shall take action to effect the necessary changes requested by the responsible entity by the time specified in the County's notice. The County may resolve disputes as to responsibility for costs associated with the removal, relaying, or relocation of facilities as among entities authorized to install facilities in the Public Rights-of-Way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or a state or federal law or regulation.

(11) In the event of an emergency, or where a Cable System creates or is contributing to an imminent danger to health, safety, or property, the County may remove, relay, or relocate any or all parts of that Cable System without prior notice.

5(c): DESIGN AND CONSTRUCTION

(12) A Franchisee shall, on the request of the County or any Person holding a permit issued by the County, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting same, and the Franchisee shall have the authority to require such payment in advance, except in the case where the request is made by the County, in which case no such payment shall be required. The Franchisee shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

(13) A Franchisee shall have the authority to trim trees, underbrush and growth that overhang a public right-of-way of the County so as to prevent the branches of such trees from coming in contact with the facilities, wires and cables of the Franchisee.

(14) A Franchisee shall use, with the owner's permission, existing poles, conduits and other facilities whenever feasible. A Franchisee may not erect poles, conduits, or other facilities in Public Rights-of-Way without the express permission of the County.

(15) All buried cable shall be at least six inches underground, except, however, where natural and man-made obstacles such as existing plant, customer landscaping or preference, or buried utilities would render that six-inch depth impracticable or unsafe. In such cases a Franchisee shall bury cable at a depth which is practical under the circumstances.

(16) System cable and facilities may be constructed overhead where poles already exist and electric or telephone lines or both are already overhead, but where no overhead poles exist all cables and facilities, excluding System passive or active electronics that may be housed in low-profile, above-ground pedestals, shall be constructed underground. Whenever and wherever electric lines and telephone lines are moved from overhead to underground placement, all Cable System cables shall be similarly moved at no cost to the County.

5(c): DESIGN AND CONSTRUCTION

(17) The County shall have the right to install and maintain free of charge upon any poles owned by a Franchisee any wire and pole fixtures that do not unreasonably interfere with the Cable System operations of the Franchisee.

(18) Prior to erection of any towers, poles, or conduits or the construction, upgrade, or rebuild of a Cable System, a Franchisee shall first submit to the County for approval a concise description of the Cable System facilities proposed to be erected or installed, together with a map and plans indicating the proposed location of all such facilities. No such erection or construction shall be commenced by any Person until approval therefor has been received from the County.

(19) Any contractor or subcontractor used for work or construction, Installation, operation, maintenance, or repair of System equipment must be properly licensed under laws of the State and all applicable local ordinances, where applicable, and each contractor or subcontractor shall have the same obligations with respect to its work as the Franchisee would have if the work were performed by the Franchisee. The Franchisee must ensure that contractors, subcontractors and all employees who will perform work for it are trained and experienced. The Franchisee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the Franchise and applicable law, shall be fully responsible for all acts or omissions of contractors or subcontractors, shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and shall implement a quality control program to ensure that the work is properly performed.

(20) The County does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures. In Public Rights-of-Way, where necessary, the location shall be verified by excavation.

(21) To the extent practicable, above-ground equipment placed on private property shall be placed at the location and in the manner requested by the property owner. A Franchisee shall provide affected homeowners with at least ten days' advance written notice of its plans to install new equipment, and shall make reasonable efforts to confer with such homeowners before any work is done.

(d) Use of Public 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, relocate or change its System so as to conform with the new grades or lines.

(2) Any alteration to the water mains, sewerage or drainage system or to any County, state or other public structures in the Public Rights-of-Way required on account of the presence of a Franchisee's System in the Public Rights-of-Way shall be made at the sole cost and expense of the Franchisee. During any work of constructing, operating or maintaining of a System, the Franchisee shall also protect any and all existing structures belonging to the County and any other Person. All work performed by the Franchisee shall be done in the manner prescribed by the County or other officials having jurisdiction therein.

(e) Interference with Public Projects. Nothing in this Ordinance or any Franchise Agreement shall be in preference or hindrance to the right of the County and any board, authority, commission or public service corporation to perform or carry on any public works or public improvements of any description, and should a Franchisee's System in any way interfere with the construction, maintenance or repair of such public works or public improvements, the

Franchisee shall protect or relocate its System, or part thereof, as reasonably directed by any County official, board, authority, commission or public service corporation.

6. CONSUMER PROTECTION

(a) *General Provisions.* This Section 6 sets forth minimum customer service standards that a Franchisee must satisfy. In addition, the Franchisee shall at all times satisfy any additional or stricter requirements established by FCC regulations, or other applicable federal, state, or local law or regulation, as the same may be adopted or amended from time to time.

- (1) Nothing in this Ordinance may be construed to prevent or prohibit:
 - (A) the County and a Franchisee from agreeing to customer service requirements that exceed the standards set forth in this ordinance;
 - (B) the County from enforcing, through the end of a Franchise term, pre-existing customer service requirements that exceed the standards set forth in this Ordinance and are contained in current Franchise Agreements;
 - (C) the County from enacting or enforcing any customer service or consumer protection laws or regulations; or
 - (D) the establishment or enforcement of any County law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in this Ordinance, a Franchise Agreement or federal or state law;

(E) the County from waiving, for good cause, requirements established in this Section 6.

(2) Nothing in this Ordinance in any way relieves a Franchisee of its obligation to comply with other applicable consumer protection laws and its Franchise Agreement.

(3) The Franchisee shall keep such records as are required to enable the County to determine whether the Franchisee is complying with all telephone answering standards required by applicable customer service regulations.

(b) Installations, Connections, and Other Franchisee Services

(1) Standard Installations. Except as federal rate regulations may otherwise require, the Franchisee shall not assess a Subscriber any cost other than a standard Installation charge for service drops of three hundred (300) feet or less, for a single outlet, unless the Franchisee demonstrates to the County's satisfaction that extraordinary circumstances justify a higher charge.

(2) Non-Standard Installations. Except as applicable law may otherwise require, where a drop exceeds three hundred (300) feet in length, a Franchisee may charge a Subscriber for Franchisee's actual costs associated with installing the drop beyond three hundred (300) feet, provided that drop length shall be the shorter of (1) the actual length of the installed drop or (2) the shortest distance to the point where the Franchisee would be required to extend its distribution system. The Subscriber's preference as to the point of entry into the residence shall be observed whenever feasible. Runs in building interiors shall be as unobtrusive as possible. The Franchisee shall use due care in the process of Installation and shall repair any damage to the Subscriber's property caused by said Installation. Such restoration shall be undertaken as

soon as possible after the damage is incurred and shall be completed within no more than thirty (30) days after the damage is incurred and after all insurance clearances and releases are obtained, and provided that weather conditions permit such repairs.

(3) Location of Drops. In locations where the Franchisee's System must be underground, drops must be placed underground as well and shall be under at least six inches of cover. Except as federal law may otherwise require, in any area where a Franchisee would be entitled to install a drop above-ground, the Franchisee will provide the homeowner the option to have the drop installed underground if requested, but may charge the homeowner the difference between the actual cost of the above-ground Installation and the actual cost of the underground Installation.

(4) Time for Extension. Where a Franchisee is required under this Section 6(a)(3) to provide service to a Person, it must provide such service (i) within 30 days if such Person resides no further than three hundred (300) feet from the Franchisee's distribution system; (ii) within sixty days if the Person resides more than hundred (300) feet from the Franchisee's distribution system, but the distribution system need not be extended for one-half mile or more to provide service; and (iii) within six months if an extension of the distribution system for one-half mile or more is required. These time periods shall be counted from the date that all necessary permits have been obtained and all necessary make-ready completed, provided that the Franchisee has timely applied for such permits and diligently pursued the completion of these requirements.

(c) *Telephone and Office Availability*

(1) Each Franchisee serving 3,000 or more customers in St. Mary's County shall maintain an office at a convenient location in the County that shall be open during Normal Business Hours to allow Subscribers to request service, pay bills, and conduct other business.

(2) Each Franchisee will maintain at least one local, toll-free or collect call telephone access line which will be available to Subscribers 24 hours a day, seven days a week. Trained representatives of a Franchisee shall be available to respond to Subscriber telephone inquiries during Normal Business Hours.

(3) Under Normal Operating Conditions, the following standards shall be met by a Franchisee at least ninety (90) percent of the time, measured quarterly, except that during the period specified in a franchise agreement for a system upgrade or rebuild, the following standards need only be met at least eighty (80) percent of the time, measured quarterly.

(A) 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.

(B) A customer will receive a busy signal less than three percent (3%) of the time.

(C) When the business office is closed, an answering machine or service capable of receiving and recording service complaints and inquiries shall be employed. Inquiries received after hours must be responded to by a trained representative of a Franchisee on the next business day. A Franchisee shall take steps to ensure that

telephones are answered in a timely manner after hours, and shall immediately address any complaint regarding after-hours answering.

(d) Scheduling and Completing Service

(1) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards shall be met by all Franchisees at least 95% of the time, as measured on a quarterly basis:

- (A) Installations located up to three hundred (300) feet from a Franchisee's existing distribution system shall be completed within seven (7) business days after the order is placed. Installations not located within three hundred (300) feet from a Franchisee's existing distribution system shall be completed within ten (10) business days after the order is placed.
- (B) A Franchisee shall begin working on service interruptions promptly and in no event less than twenty-four (24) hours after the Subscriber reports the problem to the Franchisee or its representative or the interruption otherwise becomes known to the Franchisee. Such work shall be completed within twenty-four hours after the interruption is reported or otherwise becomes known, except where the work could not be completed in that time period even with the exercise of all due diligence, in which case it shall be completed as soon as reasonably possible. A Franchisee shall begin working on all other service problems by the next

6(d): CONSUMER PROTECTION

business day after the problem is reported or otherwise becomes known, and shall complete such work within three (3) days from the date of the initial request. In any case where, for reasons beyond a Franchisee's control, the work could not be completed in the specified time periods even with the exercise of all due diligence, the Franchisee shall complete the work in the shortest time possible; the failure of a Franchisee to hire sufficient staff or to properly train its staff shall not justify a Franchisee's failure to comply with this provision. Except as federal law requires, no charge shall be made to the Subscriber for this service, except for the cost of repairs to the Franchisee's equipment or facilities where it can be documented that the equipment or facility was damaged by a Subscriber.

- (C) The appointment window for Installations, service calls, and other Installation activities will be either a specific time or, at maximum, a four-hour time block during Normal Business Hours.
- (D) A Franchisee may not cancel an appointment with a Subscriber after the close of business on the business day preceding the appointment. If a Franchisee's representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted, and the appointment rescheduled, as necessary, at a time which is convenient for the Subscriber.

6(e): CONSUMER PROTECTION

(2) Under Normal Operating Conditions, billing inquiries and requests for service, repair, and maintenance not involving Service Interruptions must 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 respond to all other inquiries within five (5) business days of the inquiry or complaint.

(3) Except as federal law requires, no charge shall be made to the Subscriber for repairs or maintenance of Franchisee-owned equipment or facilities, except for the cost of repairs to the Franchisee's equipment or facilities where it can be shown that the equipment or facility was damaged by a Subscriber.

(4) A Franchisee shall have a policy to compensate a Subscriber who experiences a missed appointment due to the fault of the Franchisee.

(5) Upon Subscriber request, each Franchisee shall arrange for pickup and/or replacement of Converters or other Franchisee equipment at the Subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer). A Subscriber may be asked, but not required, to disconnect a Franchisee's equipment and return it to the business office.

(e) Notice to Subscribers

(1) When a Subscriber is connected or reconnected to a Cable System and at least once annually afterwards, and at any time upon request, the Franchisee shall provide each Subscriber with written information concerning the following. Copies of all such materials provided to Subscribers shall also be provided to the County and shall be made available on a generally accessible Internet site.

6(e): CONSUMER PROTECTION

- (A) a written description of products and services offered, including a schedule of rates and charges, a list of channel positions, and a description of programming services, options, and conditions;
- (B) a written 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;
- (C) a written description of the Franchisee's billing and complaint procedures, including the address and telephone number of the County office responsible for receiving Subscriber complaints;
- (D) a copy of the service contract, if any;
- (E) notice regarding Subscribers' privacy rights pursuant to 47 U.S.C. § 551;
- (F) notice of the availability of universal remote controls and other compatible equipment (a list of which, specifying brands and models, shall be provided to any Subscriber upon request).

(2) The Franchisee shall provide to all Subscribers at least thirty days' written notice before the implementation of any change in rates, programming services, business hours, legal holidays, or procedures for responding to inquiries after Normal Business Hours. At least five working days before the Subscriber notice, the Franchisee shall provide to the County (at the address specified for notices in its Franchise Agreement) the specific points to be contained in a Subscriber notice and the text of the Subscriber notice, if available, unless this requirement is

waived by the County or the Franchisee is in good faith unable to comply. If the text is not available, it shall be provided to the County as soon as it is available.

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

(4) A Franchisee shall provide the County with copies of all notices of general applicability provided to significant groups of Subscribers at the same time the notices are first sent to such Subscribers.

(f) Billing

(1) Bills shall be clear, concise, and understandable. Bills must be fully itemized with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall clearly delineate all activity during the billing period, including optional charges, rebates, and credits. If a Franchisee chooses to itemize, as a separate line item on bills, Franchise fees or other government-imposed fees, the description used in the bill to indicate such elements shall be correct, truthful, and not misleading.

(2) Refund checks to Subscribers shall be issued promptly, but no later than the later of the Subscriber's next billing cycle, or sixty (60) days following resolution of the refund request, whichever is earlier.

(3) Credits for service shall be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

(4) A Franchisee's first billing statement after a new Installation or service change shall be prorated as appropriate and shall reflect any security deposit.

(5) A Franchisee's billing statement must show a specific payment due date. Once that due date has passed, and once at least twenty (20) days have elapsed since the date the bill was sent to the Subscriber by the Franchisee, the Franchisee may assess a late fee consistent with applicable law if it has not received payment. Any late fee shall appear on the following month's billing statement.

(6) A Franchisee must notify the Subscriber that he or she can remit payment in person at the Franchisee's business office and inform the Subscriber of the address of that office.

(7) Subscribers shall not be charged a late fee or otherwise penalized for any failure by a Franchisee, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made.

(8) The account of any Subscriber shall be credited a prorated share of the monthly charge for service, upon the Subscriber's reasonably prompt request or without a Subscriber's request if the Franchisee can reasonably identify the affected Subscribers, whenever:

- (A) the Subscriber is without service for a period that exceeds six hours during any twenty-four-hour period; or
- (B) service is effectively unviewable on at least some channels for any reason for a period that exceeds twelve hours during any twenty-four-hour period.

- (9) The credits required under subsection 6(f)(8) shall not apply if:
- (A) it can be documented that a Subscriber seeks a refund for an outage or impairment that the Subscriber caused; or
 - (B) a planned outage occurred between the hours of 12:00 midnight and 6:00 a.m. and the Subscriber had prior notice; or
 - (C) a planned outage for a limited period occurred during the rebuild as a result of the rebuild; or
 - (D) an outage is a result of *force majeure*.

(10) A Franchisee shall respond to all written billing complaints from Subscribers within thirty (30) days.

(g) *Disconnection/Downgrades*

(1) A Subscriber may terminate service at any time.

(2) A Franchisee shall promptly disconnect or downgrade any Subscriber. No period of notice prior to voluntary termination or downgrade of service may be required of Subscribers by any Franchisee. So long as the Subscriber returns, or permits the Franchisee to retrieve, 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.

(3) Any funds due the Subscriber shall be refunded on disconnected accounts after any customer premises equipment provided by the Franchisee has been recovered by the Franchisee. The refund must be made within sixty (60) days or by the end of the next billing cycle, whichever is earlier, from the date disconnection was requested (or, if later, the date on which any customer premises equipment provided by the Franchisee is returned).

(4) 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 beginning of the period for which the service being billed is rendered, plus advance written notice to the Subscriber in question of intent to disconnect, mailed to the Subscriber at least seven days in advance or otherwise delivered to the Subscriber at least five days in advance after the 45 days have elapsed. If the Subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the Franchisee shall not disconnect service. After disconnection, upon payment by the Subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the Franchisee shall promptly reinstate service.

(5) A Franchisee may immediately disconnect a Subscriber if the Subscriber is damaging or destroying the Franchisee's Cable System or equipment. After disconnection, the Franchisee shall restore service after the Subscriber provides adequate assurance 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.

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

6(h): CONSUMER PROTECTION

(7) If a Franchisee fails to remove its property from a Subscriber's premises within thirty (30) days of the termination of service, the property shall be deemed abandoned, unless such Subscriber is responsible for the Franchisee's failure to remove such property.

(8) A Franchisee shall reconnect service to customers wishing restoration of service, provided such a customer shall first satisfy any previous obligations owed and the Franchisee's reasonable security deposit requirements.

(h) Changes in Service

(1) At the time a Franchisee alters the service it provides to a class of Subscribers, it must provide each Subscriber thirty (30) days' notice, explain the substance and full effect of the alteration, and provide the Subscriber the right to opt to receive any combination of services thereafter offered by Franchisee.

(2) To the extent not inconsistent with applicable federal law, no charge may be made for any service or product that the Subscriber has not affirmatively indicated it wishes to receive. Payment of the regular monthly bill does not in and of itself constitute such an affirmative indication.

(3) A Franchisee not subject to effective competition shall not require a Subscriber to purchase any service other than basic service as a condition of purchasing premium or pay-per-view programming.

(i) *Parental Control Option.* A Franchisee shall make available to any Subscribers upon request the option of blocking the video or audio portion of any channel or channels of programming entering the Subscriber's home. The control option described herein shall be made available to all Subscribers requesting it when any Cable Service is provided, or reasonably soon thereafter.

(j) *Subscriber Contracts.* No Franchisee shall require a Subscriber, as a condition of service, to waive any rights the Subscriber may have against the Franchisee at law or equity. Notwithstanding the foregoing, a subscriber contract may provide for arbitration as a necessary first-step in addressing complaints.

(k) *Enforcement.*

(1) A Franchisee shall keep such records as are necessary to show compliance with these customer service standards and FCC customer service standards.

(2) A Franchisee shall file annually with the County a statement signed by an officer or employee certifying compliance with these customer service standards and FCC customer service standards for each calendar quarter. Each such certification shall be filed with the Franchisee's annual report. If a Franchisee is unable to certify full compliance for each calendar quarter, it must indicate in its filing those standards with which it is in non-compliance.

(3) If a Franchisee in non-compliance with any standard during any calendar quarter, it shall include in its annual filing a statement specifying areas of non-compliance, the reason for the non-compliance and a remedial plan.

(4) An officer or employee of a Franchisee who knowingly and intentionally signs a false compliance certificate or noncompliance statement shall be guilty of a misdemeanor punishable by up to 90 days in jail or a fine of \$500 or both.

(5) A Franchisee that fails to file a compliance certificate or noncompliance statement as required herein shall be liable for the penalty specified for violation of customer service standards herein.

(6) In addition, except as prohibited by federal law, a Franchisee shall be subject to penalties, forfeitures and any other remedies or sanctions available under federal, state or local law, including without limitation this Ordinance and a Franchisee's Franchise with the County, if it fails to comply with the standards herein.

(l) Exclusive Contracts and Anticompetitive Acts Prohibited

(1) No Franchisee shall enter into an exclusive contract for the provision of Cable Service with any Person (including, but not limited to, a building owner), or demand the exclusive right to serve a Person or location as a condition of extending service.

(2) No Franchisee shall engage in acts that have the purpose or effect of limiting competition for the provision of Cable Service or services similar to Cable Service in the County, except for such actions as are expressly authorized by federal or state law.

7. RATE REGULATION

(a) *Reservation of Rights.* The County reserves the right to regulate all rates and charges except to the extent it is prohibited from doing so by law.

(b) *Notice to Subscribers.* Regardless of whether the County regulates rates for Cable Service, a Franchisee may not change its rates and charges unless it has first given a minimum thirty (30) calendar days' prior written notice of such change to the County and to all Subscribers.

8. FRANCHISE FEE

(a) *Finding*

The County finds that Public Rights-of-Way of the County to be used by a Franchisee for the operation of a Cable System are valuable public property acquired and maintained by the County at great expense to the taxpayers. The County 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*

(1) Each Franchisee shall pay a Franchise fee in an amount determined in the Franchise Agreement.

(2) In the event that any Franchise fee payment or any recomputation amount is not paid by the due date, then interest shall accrue to the County from such due date at a rate equal to the interest rate then chargeable for unpaid federal income taxes (26 U.S.C. § 6621). In addition to the foregoing, the failure of a Franchisee to make timely payment shall subject the Franchisee to an additional late charge of five percent of the amount of such payment. Such late charge shall not apply if the payment results from a good-faith recomputation by the Franchisee.

The County shall also have the authority to waive such late charge if payment is delayed through no fault of the Franchisee.

(3) In the event that a Franchise is revoked prior to its expiration date, the Franchisee shall file with the County, within thirty days after the date of revocation, a financial statement certified by the Franchisee's chief financial officer or an independent certified public accountant clearly showing the Gross Revenues received by the Franchisee since the previous Franchise fee payment period and shall pay at that time any Franchise fees accrued as of the date of revocation.

(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, nor shall it be considered in lieu of other taxes or fees imposed by the County except to the extent that federal law requires such other taxes or fees to be considered part of the Franchise fee.

(2) No Franchisee may designate the Franchise fee as a tax in any communication to a Subscriber.

(d) No Accord or Satisfaction. No acceptance of any payment by the County 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 acknowledgement that the amount paid is the correct amount due.

(e) Allocation of Discounts. For purposes of calculating Franchise fee payments under applicable Franchise provisions, any discount reflected in an aggregated bill for services which include Cable Service will be allocated proportionately to Cable Service provided by the

Franchisee. Such proportional allocations shall be in accordance with generally accepted accounting principles (GAAP).

9. REPORTS AND RECORDS

(a) Open Books and Records

(1) Except to the extent prohibited by federal law, the County shall have the right to inspect and copy at any time during Normal Business Hours at the County Cable System office or at such location as the County may designate, all books, receipts, maps, plans, financial statements, contracts, service complaint logs, performance test results, records of requests for service, computer records, codes, programs, and disks or other storage media and other like material relating to the System which the County deems useful in order to monitor compliance with the terms of the Cable Ordinance, this Agreement, or applicable law. This includes not only the books and records of the Franchisee, but any books and records held by an Affiliate, a Cable Operator of the Cable System, or any contractor, subcontractor or any Person holding any form of management contract for the Cable System. The Franchisee is responsible for collecting the information and producing it at the location specified above, and by accepting its Franchise it affirms that it can and will do so.

(2) The Franchisee shall maintain financial records that allow analysis and review of its operations in the County.

(3) Access to the Franchisee's records shall not be denied by the Franchisee on the basis that said records contain proprietary or confidential information. Refusal to provide information required herein to the County shall be grounds for revocation. All confidential

information received by the County shall remain confidential insofar as permitted by *Md. Ann. Code*, State Gov't Article, § 10-611, *et seq.*, and other applicable state and federal law.

(b) *Communication with Regulatory Agencies*

(1) The Franchisee shall file with the County all reports and materials submitted to or received from the following agencies by the Franchisee or its Affiliates that relate specifically to the Cable System or could materially affect the Franchisee's operations in the County: the FCC, the Security and Exchange Commission, and any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the Franchisee's System. Such reports and materials shall include, but are not limited to, annual reports to the FCC and any petitions or applications regarding the Cable System or a group of Cable Systems of which the Franchisee's Cable System is a part.

(2) Materials filed with the County pursuant to Section 9(b)(1) shall be filed as follows: Materials submitted by the Franchisee, an Affiliate, or any other Person on the behalf of the Franchisee shall be filed with the County at the time they are submitted to the receiving agency. Materials received by the 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.

(3) Public access to such reports received by the County shall not be denied, except to the extent expressly required by law.

(c) *Annual Report:* Unless this requirement is waived in whole or in part by the County, no later than 90 days after the end of its fiscal year, the Franchisee shall submit a written

report to the County, at the address specified for notices in its Franchise Agreement, in a form directed by the County, which shall include:

(1) a summary of the previous year's activities in development of the Cable System, including but not limited to descriptions of services begun or dropped, the number of Subscribers gained or lost for each category of service, the number of pay units sold, the amount collected annually from Users of the System and the character and extent of the services rendered to such Users, including Leased Access Channel Users;

(2) a summary of complaints, identifying the number and nature of the complaints received and an explanation of their dispositions, as such records are kept by the Franchisee. Where complaints involve recurrent System problems, the nature of each problem and the corrective measures taken shall be identified;

(3) a report showing the number of service calls received by type during each quarter;

(4) a report showing the number of outages and service degradations for each quarter and the total hours of outages and service degradations as a percentage of total hours of Cable System operation;

(5) a report showing the Franchisee's percentage figures for each of those measurements specified in Sections 6(c)(3) and 6(d)(1) for the preceding year, broken down by month and quarter, explaining how these figures were determined, together with the certification required by Section 6(k)(2);

(6) a copy of the Franchisee's rules and regulations applicable to Subscribers of the Cable System;

(7) an annual statement of Gross Revenues derived from the operation of the Cable System, certified by the Franchisee's chief financial officer or an independent certified public accountant;

(8) an annual financial report for the previous calendar year, certified by the Franchisee's chief financial officer or an independent certified public accountant, including year-end balance sheet; income statement showing Subscriber revenue from each category of service and every source of non-Subscriber revenue, line item operating expenses, depreciation expense, interest expense, and taxes paid; statement of sources and applications of funds; capital expenditures; and depreciation schedule;

(9) an annual list of officers and members of the Board of Directors or similar controlling body of the Franchisee and any Affiliates;

(10) an organizational chart showing all corporations or partnerships with more than a five (5) percent ownership interest in the Franchisee, and the nature of that ownership interest (limited partner, general partner, preferred shareholder, etc.); 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;

(11) an annual report and SEC 10(k) filing for each entity identified in subsection 9(c)(10) of this Section that generates such documents;

(12) a summary of the results of, and/or, at the Franchisee's option, copies of the System's technical tests and measurements performed during the past year;

(13) a full schedule of all Subscriber and other User rates, fees and charges;

(14) the Franchisee's policies regarding Subscriber privacy.

(d) *Updated Maps:* Upon request, the Franchisee shall submit to the County updated system maps depicting the location of all cable plant, showing areas served and locations of all trunk lines and feeder lines in the County. These maps shall be submitted in electronic form in a format acceptable to the County, provided that the Franchisee continues to use computer assisted drawings; otherwise, the Franchisee shall provide a hard copy of such materials.

(e) *Special Reports:* Unless this requirement is waived in whole or in part by the County, the Franchisee shall deliver the following reports under specified conditions to the County, at the address specified for notices in its Franchise Agreement:

(1) The Franchisee shall submit monthly construction reports to the County for any System upgrade or similar major construction undertaken during the term of the Franchise until such construction is complete. The Franchisee must submit updated as-built System design maps to the County, or make them available for inspection with notice of their availability, within 30 days of the completion of such construction in any geographic area. The maps shall be developed on the basis of post-construction inspection by the Franchisee and construction personnel to assess compliance with System design. Any departures from design must be indicated on the as-built maps.

(2) The Franchisee must submit a copy of any notice of deficiency, forfeiture, or other document issued by any state or federal agency instituting any investigation or civil or criminal proceeding regarding the Cable System, the Franchisee, or any Affiliate of the Franchisee, and a copy of any response to such notice, to the extent the same may affect or bear on operations in the County. By way of illustration and not limitation, a notice that an Affiliate that has a management contract for the Cable System was not in compliance with FCC EEO

requirements would be deemed to affect or bear on operations in the County. This material shall be submitted in accordance with the deadlines specified in Section 9(b)(2) herein.

(3) The Franchisee must submit a copy and brief explanation of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Franchisee or by any partnership or corporation that owns or controls the Franchisee directly or indirectly. This material shall be submitted in accordance with the deadlines specified in Section 9(b)(2) herein.

(f) Records Required

(1) The Franchisee shall maintain:

- (A) Records of all complaints received. The term “complaints” as used herein and throughout this Agreement refers to complaints about any aspect of the Cable System or the Franchisee's operations, including, without limitation, complaints about employee courtesy. Complaints recorded may not be limited to complaints requiring an employee service call.
- (B) A full and complete set of plans, records, and “as built” maps showing the exact location of all System equipment installed or in use in the County, exclusive of Subscriber service drops.
- (C) Records of outages, indicating date, duration, area, and the estimated number of Subscribers affected, type of outage, and cause.
- (D) Records of service calls for repair and maintenance indicating the date and time service was required, the date of acknowledgement

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.

- (E) Records of Installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended.
- (F) A public file showing its plan and timetable for construction of the Cable System.

(g) *Voluminous Materials:* If any books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then the Franchisee may request that the inspection take place at some other location, provided that (1) the Franchisee must make necessary arrangements for copying documents selected by the County after review; and (2) the Franchisee must pay all travel and additional copying expenses incurred by the County in inspecting those documents or having those documents inspected by its designee.

(h) *Retention of Records; Relation to Privacy Rights:* The Franchisee shall take all steps that may be required to ensure that it is able to provide the County all information which must be provided or may be requested under the Cable Ordinance or this Agreement, including by providing appropriate Subscriber privacy notices. Nothing in this Section shall be read to require the Franchisee to violate 47 U.S.C. §551. Each Franchisee shall be responsible for redacting any data that federal law prevents it from providing to the County. The County retains

9(i): INSURANCE, SURETY, AND INDEMNIFICATION

the right to question any such redaction and to challenge it in any forum having jurisdiction over such a challenge. Records shall be kept for at least five (5) years.

(i) *Waiver of Reporting Requirements:* The County may, at its discretion, waive in writing the requirement of any particular report specified in this Section 9.

10. INSURANCE, SURETY, AND INDEMNIFICATION

(a) *Insurance Required*

(1) A Franchisee shall maintain, and by its acceptance of the Franchise specifically agrees that it will maintain, throughout the entire length of the Franchise period, at least the following liability insurance coverage insuring the County and the Franchisee: (A) worker's compensation insurance to meet all requirements of Maryland law and (B) general comprehensive general liability insurance with respect to the construction, operation, and maintenance of a Cable System, including the operation of motor vehicles, in the following minimum amounts:

- (A) For bodily injury, including death, \$500,000 for any one Person, and \$1,000,000 for any one accident;
- (B) For property damage \$1,000,000; and
- (C) For damages resulting from any liability of any nature that may arise from or be occasioned by a Franchisee's negligent operation of a Cable System, including any communication over the Cable System (excepting programming on Access Channels required under its Franchise Agreement), \$2,000,000.

10(b): INSURANCE, SURETY, AND INDEMNIFICATION

(2) The County may review these amounts and may require reasonable adjustments to them consistent with the public interest.

(b) *Qualifications of Sureties:* All insurance policies shall be with sureties qualified to do business in Maryland and in a form approved by the County Attorney. The Commissioners may require in a Franchise Agreement coverage and amounts in excess of the above minimums. The County shall be named as an additional insured party in all such insurance policies. No such policies shall be cancelled without a minimum of 30 days' prior written notice to the County.

(c) *Policies Available for Review:* All insurance policies shall be available for review by the County, and the Franchisee shall keep on file with the County certificates of insurance.

(d) *Indemnification*

(1) A Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the County, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its Cable System; copyright infringements or a failure by the Franchisee to secure consents from the owners or authorized distributors of programs to be delivered by the Cable System; the conduct of the Franchisee's business in the County; or in any way arising out of the Franchisee's enjoyment or exercise of the Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by the Cable Ordinance or this Agreement. The Franchisee shall be promptly provided with notice of any such claim and full opportunity to defend.

(2) Specifically, a Franchisee shall fully indemnify, defend, and hold harmless the County, and in its capacity as such, the officers, agents, contractors, and employees thereof, from and against any and all claims, suits, actions, liability, and judgments for damages or

10(e): PERFORMANCE GUARANTEES AND PENALTIES

otherwise subject to 47 U.S.C. § 558, arising out of or alleged to arise out of the Installation, construction, operation, or maintenance of the System, including but not limited to any claim against the Franchisee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any Person, firm, or corporation. This indemnity does not apply to programming carried on any channel set aside for PEG use, or channels leased pursuant to 47 U.S.C. § 532, unless the 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.

(3) The indemnity provision includes, but is not limited to, the County's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding.

(4) The fact that a Franchisee carries out activities under the Franchise through independent contractors does not constitute an avoidance of or defense to its duty of indemnification under this section.

(e) No Limit of Liability: 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 under the Franchise.

11. **PERFORMANCE GUARANTEES AND PENALTIES**

(a) Liquidated Damages

(1) A Franchisee's violation of any provision of this Ordinance or of its franchise agreement, as they may from time to time be amended, shall be a breach of its

11(a): PERFORMANCE GUARANTEES AND PENALTIES

franchise agreement that will cause injury to the County. Unless otherwise specified in section 11(b) below, each day and each violation is a separate breach.

(2) Because it would be difficult for the County to calculate the extent of such injury, the County and each Franchisee shall agree to the amount of liquidated damages for each such violation, taking into account the County's best estimate of its damages, which is listed in each case in section 11(b). Such liquidated damages shall be applied in each violation, unless the County can show actual damages in a particular case. Such liquidated damages shall not be a substitute for actual performance by the Franchisee, but shall be in addition to any monetary payment due or other obligation or cost to be incurred in satisfying the requirement in question, and in addition to any interest due for late payments.

(3) Any amounts for liquidated damages specified in section 11(b) are in 2002 dollars and shall be increased each year by the increase in Inflation.

(4) The County Administrator, or a duly appointed designee, shall have the authority to waive or reduce the liquidated damage amounts herein for good cause, based on the totality of the circumstances in a particular case. Where a violation can be cured, the cure periods listed in section 11(b) shall begin to run at the time the Franchisee is notified in writing of a violation by the County, or otherwise becomes aware of the violation, unless otherwise specified in section 11(b). A violation cannot be cured where it represents a harm that cannot be reversed by later action (for example, failure to meet telephone answering standards *for a specified period* in the past), as opposed to a harm that can be fully reversed by later action (for example, a missed payment can be made up with interest).

(5) A pattern of repeated particular violations of this Ordinance, other applicable law, or a franchise agreement may constitute a material violation or breach thereof,

11(b): PERFORMANCE GUARANTEES AND PENALTIES

depending on the circumstances and the gravity of the violations. A Franchisee shall be on notice of such a pattern of violations if notice is given as to the individual violations. In such a case the eventual cure of each individual violation shall not constitute a cure of the pattern as a whole.

(b) *Amount of Liquidated Damages*

(1) The County's best estimate of its damages for the violations specified below are as follows:

<u>Violation</u>	<u>Liquidated damages</u>
Failure to construct the I-Net pursuant to the construction schedule set forth in a franchise agreement	\$1,000 per week, without a cure period.
Failure to obtain permits required for construction	\$50 per occurrence, in addition to any normal cost of permits. If a standard for the failure generally applicable to users of the rights-of-way is specified elsewhere in the code, the general standard applies in place of the amount set forth here.
Obtaining permits or constructing facilities on behalf of another entity	\$1,000 per occurrence, without a cure period, in addition to any normal cost of permits. If a standard for the failure generally applicable to users of the rights-of-way is specified elsewhere in the code, the general standard shall apply in place of the amount set forth here.
Violation of construction standards, other than safety standards	\$200 per week, after a thirty-day cure period.

11(b): PERFORMANCE GUARANTEES AND PENALTIES

<u>Violation</u>	<u>Liquidated damages</u>
Violation of safety standards	\$200 per day, after a forty-eight-hour cure period.
Violation of standards regarding general notices to subscribers	\$0.025 times total subscribership, per week, after a one-week cure period.
Violation of customer service standards measured on a quarterly basis	See section 11(b)(2).
Violation of other customer service standards	\$100 per day or per occurrence, as applicable, after a ten-day cure period.
Failure to comply with PEG access requirements	\$125 per day, in addition to any monetary payment due, after a fourteen-day cure period.
Failure to Meet I-Net Technical Performance Standards	\$500 per day, after the response period specified in a franchise agreement.
Failure to Meet Requirements for Response to I-Net Outages	\$250 per occurrence, without a cure period.
Failure to supply information, reports, or filings lawfully required	\$200 per day after a thirty-day cure period, which shall begin to run on the due date of any regularly scheduled report and on the date of a deadline reasonably set by the County for any report or information request not regularly scheduled, unless the Franchisee shows that it was not in fact aware of the requirement in question, in which case the thirty-day cure period shall begin to run upon written notice of such requirement by the County to the Franchisee.

11(b): PERFORMANCE GUARANTEES AND PENALTIES

<u>Violation</u>	<u>Liquidated damages</u>
Failure to render payments due to the county, such as Franchise fees or liquidated damages	\$100 per day, in addition to any monetary payment due and any audit costs that may be required in a franchise agreement, after a seven-day cure period.
Failure to file, obtain, or maintain a bond or letter of credit in a timely fashion	\$50 per day, without a cure period.
Violation of technical standards of the FCC	\$100 per day, after a thirty-day cure period.
Any other violations of this Ordinance, a Franchise Agreement, or other applicable state or federal laws that apply to cable as such rather than being of general applicability	up to \$200 per day for each violation for each day the violation continues, after any cure period specified in such law or agreement.

(2) Unless otherwise specified in section 11(b)(1), cure periods stated in that section shall begin to run at the time a Franchisee is notified in writing of a violation by the County, or otherwise becomes aware (or reasonably should have become aware) of such violation, whichever is earliest.

(3) The following procedure shall apply, in place of the amount specified in Section 11(b)(1) above for violation of customer service standards, in assessing penalties for customer service standards that are measured on a quarterly basis:

(A) If the Franchisee does not meet the prescribed standard in a given calendar quarter (a "noncompliant quarter"), it will thereby be on notice and subject to liquidated damages if it fails to meet the prescribed standard (for example, the 90% standard for telephone

11(c): PERFORMANCE GUARANTEES AND PENALTIES

answering) for subsequent quarters until it once again meets the standard for a quarter.

- (B) If the Franchisee fails to meet the standard for the quarter following the noncompliant quarter, the Franchisee shall pay liquidated damages in the amount of \$1,500 for the first noncompliant quarter; \$2,500 for the second consecutive noncompliant quarter; and \$5,000 for any subsequent consecutive noncompliant quarters, not counting the noncompliant quarter that triggers such monthly reporting, for which no such payment shall be made. The same test shall be applied for subsequent quarters until a quarter occurs in which the Franchisee meets the standard.

(4) The Franchisee shall pay any liquidated damages assessed in accordance with this Ordinance within thirty days after receipt of notice from the County.

(5) 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 Ordinance or its Franchise Agreement unless a stay is obtained. Failure of the Franchisee to perform such obligations because of pending litigation or petition, in the absence of a stay issued by a forum of competent jurisdiction, may result in forfeiture or revocation pursuant to the provisions of this Ordinance and/or its Franchise Agreement.

(c) Termination On Account of Certain Assignments or Appointments

(1) Any Franchise shall be deemed revoked 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 a Franchisee, whether in a receivership, reorganization,

11(c): PERFORMANCE GUARANTEES AND PENALTIES

bankruptcy assignment for the benefit of creditors, or other action or proceeding. Provided, however, that a Franchise may be reinstated *at the County's sole and absolute discretion* if, within that one hundred twenty-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 Ordinance and the applicable Franchise Agreement 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 Ordinance and the applicable Franchise Agreement, and such other conditions as may be established or as are required by applicable law.

(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 County may revoke the Franchise, following a public hearing before the Board of County Commissioners, 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 calendar days after serving such notice, unless:

- (A) The County 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 Franchise Agreement and this Ordinance, and such other

11(d): PERFORMANCE GUARANTEES AND PENALTIES

conditions as may be established or as are required pursuant to this Ordinance or a Franchise Agreement.

(d) *Remedies Cumulative.* All remedies under this Ordinance and the Franchise Agreement are cumulative unless otherwise expressly stated. The exercise of a remedy or the payment of liquidated damages or penalties shall not relieve a Franchisee of its obligations to comply with its Franchise or applicable law.

(e) *Procedure For Remediating Franchise Violations.* If the County determines that a Franchisee has failed to perform any obligation under the Franchise or has failed to perform in a timely manner, the County may make a written demand on the Franchisee that it remedy the violation. If the violation is not remedied or in the process of being remedied to the reasonable satisfaction of the County within a reasonable time period (given the nature of the violation) following the demand, the County may:

- (1) assess against the Franchisee monetary damages as provided in Section 11(a) of this Ordinance;
- (2) request revocation of the Franchise as provided in the Franchise Agreement; or
- (3) pursue any legal or equitable remedy available under the Franchise or any applicable law.

If no cure is applicable for a particular violation pursuant to Section 11(a)(4), the County need not wait for the violation to be remedied before taking the above steps.

(f) *Relation to Insurance and Indemnity Requirements*

Recovery by the County of any amounts under insurance, the Security Fund, the performance bond, or letter of credit, or otherwise does not limit a Franchisee's duty to indemnify the County

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.

12. **TRANSFERS**

(a) County 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) Except as provided in the Franchise Agreement, no Transfer of a Franchise, Franchisee, or Cable System (including, but not limited to, Transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made by the Franchisee to the County and the County's prior written consent is obtained, pursuant to this Ordinance and the Franchise Agreement, and only then upon such terms and conditions as the County deems necessary and proper. Any such Transfer without the prior written consent of the County 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.

(b) Application

(1) A Franchisee shall promptly notify the County of any proposed Transfer.

(2) At least one hundred twenty (120) calendar days prior to the contemplated effective date of a Transfer, a Franchisee shall submit to the County a written application for approval of a 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 must be included in the application, unless these requirements are waived, reduced, or modified by the County:

- (A) a complete and unredacted copy of the agreement(s) to carry out the proposed transaction(s) and of all schedules, exhibits, and other documents attached thereto or referred to therein that are not otherwise publicly available, with any sections that the Franchisee alleges are confidential or proprietary clearly marked as such;
- (B) information sufficient to demonstrate the legal, financial, technical, and other qualifications of the proposed transferee;
- (C) information sufficient to demonstrate whether the proposed transaction will have any adverse financial impact on the Franchisee or the System, including but not limited to projected income statements and cash flow statements, including capital investments, covering at least the remainder of the Franchise term and clearly explaining all assumptions made therein;
- (D) complete information regarding any potential impact of the proposed transaction on Subscriber rates and service.

(3) To the extent consistent with applicable law, the County may waive in writing any such requirement that information be submitted as part of the initial application, which waiver shall not be unreasonably withheld or delayed, without thereby waiving any rights the County may have to request such information after the initial application is filed.

(4) 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 in considering the matters described in Section 12(c)(1). The Franchisee and any prospective transferees shall assist the County in any such inquiry.

(5) Any Transfer review period established by federal law will not begin until all documents and information required by Section 12(b)(2), without exception, have been provided to the County, unless the County and the Franchisee have expressly agreed in writing, before the Transfer application is filed with the County, that specified documents or parts of documents may be redacted, excluded, or reviewed through special arrangements. It shall be the responsibility of the Franchisee in any Transfer to make any arrangements with the County with regard to redaction, exclusion, or confidentiality, including without limitation the execution of any confidentiality agreements that may be appropriate, prior to the filing of any FCC Form 394 or Transfer application. By accepting its Franchise, a Franchisee agrees that any Transfer application inconsistent with this requirement is void.

(c) Determination by County

(1) In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer, the County may consider, without limitation, the legal, financial, and technical qualifications of the transferee to operate its System; any potential impact of the Transfer on Subscriber rates or services; whether the incumbent Cable Operator is in compliance with its Franchise Agreement, this Ordinance, and applicable law, and, if not, whether the proposed transferee will cure any noncompliance; whether operation by the

transferee would eliminate or reduce competition in the delivery of Cable Service in the County; and any other matters that it is required or permitted to consider under applicable law.

(2) Any Transfer without the County's prior written approval shall be ineffective, and shall make this Franchise subject to cancellation at the County's sole discretion, and to any other remedies available under the Franchise Agreement, this Ordinance, or other applicable law. Any such Transfer shall be deemed to cause irreparable harm to the City.

(3) Any mortgage, pledge or lease shall be subject and subordinate to the rights of the County under the Franchise Agreement, this Ordinance, and other applicable law.

(d) *Transferee's Agreement:* No application for a Transfer shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of the Franchise Agreement and this Ordinance, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee for all purposes, including renewal, unless the County, in its sole discretion, expressly waives this requirement in whole or in part.

(e) *Closing:* The Franchisee shall notify the County of the closing and make available, upon the County's request, an executed copy of the complete closing documents, within thirty (30) days after any Transfer.

(f) *Approval Does Not Constitute Waiver:* Approval by the County of a Transfer does not constitute a waiver or release of any of the rights of the County under this Ordinance or a Franchise Agreement, whether arising before or after the date of the Transfer.

13. OPEN VIDEO SYSTEMS

(a) *Applicability of Ordinance*

(1) This Ordinance 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: § 4 (Franchise applications), § 5(a) (construction schedule), § 7 (rate regulation).

(2) In applying this Ordinance to an open video system, "Franchisee" shall be taken to refer to the open video system operator, "Cable System" to the open video system, "Franchise" to any authorization granted by the County to the open video system operator, and similar terms shall apply similarly.

(b) Application for Open Video System Authorization

(1) A Person proposing to use Public Rights-of-Way to install devices for the operation of an open video system shall first obtain authorization from the County for such use.

Such a Person may apply for such authorization by submitting an application containing:

- (A) The name and address of the applicant and an identification of the ownership and control of the applicant, including: the names and addresses of the ten largest holders of an ownership interest in the applicant and Affiliates of the applicant, and all Persons with three percent or more ownership interest in the applicant and its Affiliates; the Persons who control the applicant and its Affiliates; all officers and directors of the applicant and its Affiliates; and any other business affiliation and Cable System ownership interest of each named Person.
- (B) A detailed description of the physical facilities the applicant proposes to place in public ways.
- (C) Any information that may be reasonably necessary to demonstrate compliance with the requirements of federal law and with this Section 13.
- (D) 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 meets all federal and state law requirements.

13(c): RIGHTS OF INDIVIDUALS PROTECTED

(2) The County may, at its discretion and upon request of an applicant, waive in writing the provision of any of the information required by this Section 13(b).

(3) Upon the County's grant of open video system authorization, the applicant shall pay to the County \$5,000. This payment shall be non-refundable and shall be used to offset in whole or in part any costs incurred by the County in granting the authorization.

(c) *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 Section 8 of this Ordinance, pursuant to the procedures and conditions specified in Section 8 and generally herein.

(d) *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.

(e) *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.

14. **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, or age.

14(a): RIGHTS OF INDIVIDUALS PROTECTED

(2) A Franchisee shall not discriminate among Persons or take any retaliatory action against a Person because of that Person's exercise of any right it may have under federal, state, or local law, nor may the Franchisee require a Person to waive such rights as a condition of taking service.

(3) A Franchisee shall not deny access or levy different rates and charges on any group of potential residential cable Subscribers because of the income of the residents of the local area in which such group resides.

(4) Subject to applicable law and except to the extent the County may waive such a requirement, a Franchisee is prohibited from discriminating in its rates or charges or from granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; provided, however, that a Franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a 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 Ordinance or a Franchise Agreement, except those specifically designated as confidential by a Franchisee, subject to the County's review, pursuant to applicable law, is a public document, available for public inspection and copying at the requestor's expense, at the office of the Franchisee or the County during Normal Business Hours.

(b) *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) A Subscriber may at any time revoke any authorization to release information by delivering to the 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.

(3) A Franchisee shall not condition Subscriber service on the Subscriber's grant 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. A Subscriber may at any time revoke any permission previously given by delivering to the Franchisee a written statement of that intent.

15. ADMINISTRATION

(a) *Duties of the County Administrator.* The County Administrator, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this Ordinance and Franchise Agreements. The County Administrator shall be empowered to take all administrative actions on behalf of the County, except for those actions specified in this Ordinance that are reserved to the Board. Such actions that the County Administrator shall be empowered to take, either directly or through a duly appointed designee, shall include but are not limited to providing a Cable Operator with notice of and opportunity to cure any Franchise violation, failure to substantially comply with the material terms of a

Franchise, or failure to provide a quality of service that is reasonable in light of community needs, pursuant to 47 U.S.C. § 546(c)-(d), The County Administrator may recommend that the Board take certain actions with respect to a Franchise. The County Administrator shall keep the Board apprised of developments in cable and provide the Board with assistance, advice and recommendations as appropriate.

(b) *Duties of the Board.* The Board shall have the sole authority to regulate rates for Cable Service; grant Franchises, authorize the entering into of Franchise Agreements, modify Franchise Agreements, renew Franchises, revoke Franchises, and authorize the Transfer of a Franchise; and impose penalties pursuant to this Ordinance.

16. 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 its Franchise.

(b) *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 whatsoever against the County or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this Ordinance or because of the enforcement of this Ordinance or the County's exercise of its authority pursuant to this Ordinance, a Franchise Agreement, or other applicable law, unless the same shall be caused by criminal acts or by willful or gross negligence.

(c) *Rights and Remedies*

16(c): MISCELLANEOUS PROVISIONS

(1) The rights and remedies reserved to the County by this Ordinance are cumulative and shall be in addition to and not in derogation of any other rights and remedies which the County may have with respect to the subject matter of this Ordinance.

(2) The County hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this Ordinance or a Franchise Agreement.

(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 Ordinance or a Franchise Agreement by reason of any failure of the County to enforce prompt compliance. Nor shall any inaction by the County be deemed to waive or void any provision of this Ordinance or a Franchise Agreement.

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

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

(f) *Severability.* If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the County and shall thereafter be binding on the Franchisee and the County.