

HANOVER COUNTY, VIRGINIA

ORDINANCE

FRANCHISING AND REGULATION

OF

CABLE TELEVISION SYSTEMS

October 22, 1997

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ORDINANCE NO. 97-24

AN ORDINANCE ESTABLISHING REGULATIONS GENERALLY GOVERNING THE FRANCHISING AND OPERATION OF CABLE TELEVISION SYSTEMS AND SERVICE.

WHEREAS, the Hanover County Board of Supervisors has determined that it is in the public's best interest and consistent with the convenience and necessity of the County to establish procedures for the granting of franchises to one or more providers of cable television services, and to establish regulations applicable to any such franchises; and

WHEREAS, the Hanover County Board of Supervisors has identified the purpose of this Ordinance to be as follows:

1. To provide procedures for the granting, renewal and transfer, by the County of Hanover, of nonexclusive franchises for providing Cable Services in the County;
2. To regulate the erection, construction, reconstruction, installation, operation, maintenance, dismantling, testing, repair and use of Cable Systems in, upon, along, across, above, over or under or in any manner connected with the streets, public ways or public places within the jurisdiction of Hanover County as now or in the future may exist;
3. To protect the County's exercise of its police powers to promote the safety and welfare of its citizens with respect to the construction, operation and maintenance of Cable Systems using the streets and other Public Rights-Of-Way;
4. To provide for compensation to the County for the use of public property by Cable Operators to conduct for-profit businesses through the payment of certain Franchise Fees and other valuable consideration to the County which, among other purposes, may be used to pay for the rental and use of Public Rights-Of-Way and to regulate the construction, reconstruction and operation, use and development of such a system within the County;
5. To provide conditions under which such Franchised systems will serve present and future needs of government, public institutions, commercial enterprises, public and private organizations, and the citizens and general public of the County; and
6. To provide remedies and prescribe penalties and liquidated damages for any violation of this Ordinance and/or the terms and conditions of franchises granted pursuant to this Ordinance.

NOW THEREFORE BE IT ORDAINED, by the Board of Supervisors of Hanover County, Virginia, in order to establish a procedure for the granting of cable television franchises and renewals and to establish rules and regulations governing the operation of such systems, that Ordinance No. 83-16 is repealed, and Ordinance No. 97-24 is adopted, and shall read in its entirety as follows :

Section 1 **Definitions**

For the purpose of this Ordinance and any cable television Franchise Agreement, the following terms, phrases, words and their derivations shall have the meaning set out below. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. Words not defined in this Section shall be given the meaning contained in the Communications Act of 1934 (as defined below), or, if not defined there, the common and ordinary meaning.

a. “Access Channel” means any channel of a Cable System that is dedicated for non-commercial community, educational or governmental use.

b. “Applicable Law” means all lawfully enacted and applicable federal, state, and County laws, ordinances, codes, rules, regulations, and orders including future amendments .

c. “Basic Service Tier.” A Basic Service Tier shall, at a minimum, consist of the following: All signals carried in fulfillment of the requirements of Sections 614 [47 U.S.C.534] and 615 [47 U.S.C.535] of the Communications Act of 1934, as amended. Each such tier shall also include any public, educational and governmental access programming required by the Franchise of the Cable System to be provided to Subscribers; and any signal of any television broadcast station that is provided by the cable operator to any Subscribers, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station plus any additional video programming signals the cable operator desires to be added to the basic tier.

d. “Cable Service” means (A) the one-way transmission to Subscribers of (i)video programming, or (ii) other programming service, (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, and(C) cable delivered High Speed Data services, including but not limited to Internet access services.

e. “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service and Non-Cable Service, which includes video programming and which is provided to multiple Subscribers within Hanover County. Such term shall not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a

facility that serves Subscribers without using any Public Rights-Of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act of 1934, except that such facility shall be considered a Cable System (other than for purposes of Section 621 (c)) of the Communications Act to the extent such facility is used in the transmission of video programming directly to Subscribers unless the extent of such use is solely to provide interactive on demand services; (D) an open video system that complies with the requirements of Section 653 of the Telecommunications Act of 1996; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

This definition of “Cable System” shall not be deemed to circumscribe or limit the valid authority of the County to regulate or franchise other services and the activities of any other telecommunications system or provider of telecommunications services to the full extent permitted by law. Any Franchise Agreement shall define the services any Franchisee is authorized to provide.

This definition of “Cable System” shall not include telephony service. Neither of the parties waives any rights relating to the provision and regulation of telephony service granted pursuant to federal, State and local laws.

f. “Cable System Operator” means any person, group of persons, firm or corporation (A) who provides Cable Service over a cable system and directly or through one or more affiliates owns a significant interest in such Cable System, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such Cable System.

g. “Channel” means a unit of Cable Service identified and selected by a channel number or similar designation.

h. “County” means Hanover County, organized and existing under the laws of the Commonwealth of Virginia and the area within its territorial limits, excluding the Town of Ashland.

i. “County Administrator” means the present or succeeding chief executive officer of the County (or his or her designee) who is appointed by the Board of Supervisors.

j. “County Board of Supervisors” or “Board of Supervisors.” Wherever the words “Board”, “Board of Supervisors” or “County Board of Supervisors” are used, they shall be construed to mean the County Board of Supervisors of Hanover County, Virginia.

k. “Communications Act of 1934” means the Federal Communications Act of 1934, as amended (47 U.S.C. 151 et seq.), and shall include future amendments.

l. “Fair Market Value” means the price that a willing buyer would pay to a willing seller for a going concern based on the system valuation and sale multiples prevailing in the industry at the time at which the Board elects to exercise its options.

m. "Federal Communications Commission" or "FCC" is that federal agency as presently constituted by the Communications Act of 1934, as amended, or any successor agency.

n. "Franchise" means a non-exclusive revocable authorization granted in accordance with this Ordinance and exercised in accordance with a Franchise Agreement to install cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the construction, operation, and maintenance of a Cable System along the Public Rights-of-Way within all or a portion of the County. Any such authorization, in whatever form granted, shall not mean or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the County required by the ordinances and laws of the County; (ii) any permit, agreement, or authorization required in connection with operations on public streets or property including, without limitation, permits and agreements for placing devices on or in poles, conduits 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; or (iii) express or implicit authorization to provide Cable Service to, or install a Cable System on, private property without owner consent (except for use of compatible easements pursuant to Section 621 (a) (2) of the Cable Act, 47 U.S.C. Section 541 (a) (2)).

o. "Franchise Area" means the area of the County that a Grantee is authorized to serve by its franchise agreement.

p. "Franchise Agreement" means a contract entered into in accordance with the provisions of this Ordinance between the County and a Grantee that sets forth, subject to this Ordinance, the terms and conditions under which a Franchise will be exercised.

q. "Grantee" means a natural person, partnership, domestic and or foreign corporation or entity, association, joint venture or organization of any kind granted a Franchise by the Hanover County Board of Supervisors under this Ordinance and its lawful successor, transferee or assignee.

r. "Gross Revenues" means all amounts which are charged and/or received, directly or indirectly, by a Grantee from or in connection with the operation of the Cable System including, without limitation:

Any revenue received from Subscribers, including but not limited to revenue for basic service, expanded basic service, other tier services, additional outlets, FM service, commercial service, premium channel service, pay-per-view service and related per-event services, or for the distribution of any other Cable Service and Non-Cable Service over the system or the provision of any service-related activity in connection with the operation of the system.

Revenue received from Subscribers for installation, change in service and reconnection charges and similar fees.

Revenue received from Subscribers for converters, remote controls or other equipment leased or rented to Subscribers in connection with the delivery of Non-Cable and Cable Services to such Subscribers.

Revenue received from Subscribers for service charges and late fees attributable to delinquent accounts.

Revenue received from third parties, including advertising revenue, home shopping commissions, guide commissions, leased access payments, and studio and other facilities or equipment rentals.

Revenue shall include any payment or consideration (including franchise fees, but excluding any utility users tax or new sales tax imposed by County or the state or federal government) collected for direct payment to a third party. Franchise fees paid to the County are not deemed to be taxes and are not to be deducted from the total gross revenue figure on which franchise fees are paid.

Revenue received by the Grantee from the delivery of other communications services over its Cable System, including without limitation data transmission, interactive services and other broadband information services, to the extent that the inclusion of such revenue is not prohibited by law.

Gross Revenue shall also include the gross revenue of any other person which is derived directly or indirectly from or in connection with the operation of a system to the extent that said revenue is derived, through a means which has the effect of avoiding the payment of franchise fees to the County that would otherwise be paid.

There shall be deducted from Gross Revenue:

- Bad debts written off by Grantee in the normal course of its business, provided, however, that bad debt recoveries shall be included in gross revenue.
- Refunds made to Subscribers or other third parties.

In computing Gross Revenue other than that from a Grantee's subscribers or from sources directly attributable to a specific jurisdiction, including without limitation, revenue derived from the sale of advertising, home shopping services, guide sales, the lease of channel capacity on its Cable System, or any other such revenues derived from the operation of the Cable System, the amount of such revenues allocated to Grantee in accordance with generally accepted accounting principles, for the purpose of determining Gross Revenues, shall be the aggregate revenue received by Grantee from such other sources during the period in question multiplied by a fraction, the numerator of which shall be the number of Grantee's subscribers in the County as of the last day of such period and the denominator of which shall be the number of subscribers

within all areas served by Grantee's area-wide Cable System (if any) as of the last day of such period.

s. "Maintenance" or "maintain" means and includes all functions and provision of all services necessary for continued operation of a system, including repair and replacement.

t. "Non-Cable Service" means any Service which is distributed or offered over the Cable System, other than a Cable Service, but not telephony service.

u. "Person" means 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.

v. "Public Rights-of-Way" or "Public Way" means the surface, the air space above the surface, and the area below the surface of any public street, road, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkway, waterway, easement dedicated for compatible purposes, or similar property in which the County now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining, a Cable System. 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 Grantee 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.

w. "Serviceable Area" means the area served on the date of execution of this Agreement and any extensions made during the term of this Agreement.

x. "State of the Art" means a Cable System with production facilities, technical performance, capacity, equipment, components and service equal to that which has been developed and demonstrated to be generally accepted and used in the cable television industry.

y. "Subscriber" means any person who legally receives any service delivered over a Cable System.

z. "Total Number of Subscribers" means the number of Subscribers determined as follows: In the event a single fee is paid for service to a multiple dwelling unit the number of equivalent Subscribers shall be determined by dividing such fee by the then prevailing Basic Service Tier Rate and rounding the resulting quotient to the nearest whole number. To this number shall be added the number of all other Subscribers.

The definitions contained in this Ordinance shall be construed in accordance with the Communications Act of 1934 (47 U.S.C. Section 521 et seq.), including future amendments.

Any ambiguity shall be resolved by reference to the federal statutes, regulations and applicable judicial and administrative decisions.

Section 2 General Provisions

a. Scope of County's Authority

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

b. Franchise Required

A Franchise is required of any Person desiring to construct, operate and maintain a Cable System within all or any portion of the County. A Franchise may be granted by the Hanover County Board of Supervisors to any Person, whether operating under an existing Franchise or not, who or which offers to furnish and provide such Cable System under and pursuant to the terms and provisions of this Ordinance and a Franchise Agreement acceptable to the Board of Supervisors, in accordance with subsection (d.) below. Insofar as it is not inconsistent with or otherwise preempted by federal or state regulations, a Franchise may also grant the right and privilege to the Grantee to provide Non-Cable Service. The Board shall retain all authority to regulate Non-Cable Service to the extent necessary to protect the public interest and to ensure compliance with all provisions of this Ordinance.

c. Franchise Fees

The franchise fee shall be payable quarterly to the County Treasurer not later than sixty (60) days after the end of each calendar quarter. A Grantee shall file a complete, accurate, and verified statement listing each and every type of revenue included in the Gross Revenue collected as a result of its doing business within the County during the period for which the quarterly payment is made.

The County may examine all applicable records of a Grantee to determine the accuracy of amounts payable to the County.

The County shall have the right to audit and to re-compute any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within twelve (12) months following the close of each of a Grantee's fiscal years. Any additional amount due to the County as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the County. Any such notice shall include a copy of the audit report.

In the event that any franchise fee payment or re-computed amount is not made on or before the applicable dates, and following notice by the County to a Grantee, interest shall be charged daily from such date at the annual rate equivalent to the interest rate for delinquent real estate taxes of the County plus 2%.

d. Rights Reserved to County

The County hereby expressly reserves the following rights:

To exercise its governmental powers to the full extent that such powers may be vested in or granted to the County.

To adopt and promulgate ordinances as it shall find reasonably necessary in the exercise of its lawful police power. Such power shall include all rights the County may have under applicable federal law and the right, subject to federal law, of the County to manage the Public Rights-of-Way and to adopt such regulations relating to the management of the Public Rights-of-Way as the County and/or its departments shall provide. Nothing in a Franchise Agreement shall be deemed to waive the requirements of the various codes and ordinances of the County regarding permits, fees to be paid, or manner of construction.

To award additional non-exclusive cable television franchises to serve the County in accordance with the provisions of this Ordinance and Applicable Law. No overlapping Franchise shall be granted on terms or conditions more favorable or less burdensome than those in any existing Franchise. These prohibitions shall not apply when the area in which the overlapping Franchise is being sought is not actually being served by an existing Grantee holding a Franchise for the area. As used in this section the term "actually being served" means that cable service is actually available to Subscribers to such extent that the only act remaining in order to provide cable service is the physical connection to the individual subscriber location as of fifteen (15) days prior to any subsequent application for a Franchise.

To issue a license, easement or other permit to a Person other than a Grantee to permit use of the Public Rights-of-Way. Such license, easement or other permit, absent a grant or a Franchise in accordance with this Ordinance, does not authorize or permit such a Person to provide a cable television service of any nature to a home or place of business in the County or to render any service or connect a subscriber in the County to the Grantee's cable television system.

To amend this Ordinance as well as enact separate ordinances and regulations that become necessary under the County's police powers to protect the health, safety and welfare of its citizens.

e. Unlawful Acts; Penalties

It shall be unlawful for any Person to establish, operate or carry on the business of distributing to any persons in the County any television signals or radio signals by means of a Cable System unless a Franchise has first been obtained pursuant to the provisions of this Ordinance, and unless such Franchise is in full force and effect.

It shall be unlawful for any Person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a Franchised Cable System within the County for the purpose of enabling himself or herself or others to receive any television signal, radio signal, picture, program or sound, without payment to the owner of the Cable System.

It shall be unlawful for any Person without the consent of a Grantee, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound.

Any violation of this subsection of the Ordinance shall be a Class 1 misdemeanor and shall be punished by confinement in jail for not more than twelve (12) months and a fine of not more than Two Thousand, Five Hundred Dollars (\$2,500.00), either or both.

f. Failure of County to Enforce Compliance

A Grantee shall not be excused from complying with any of the provisions of this Ordinance or the terms and conditions of a Franchise Agreement by any failure of the County, upon any one or more occasions, to insist upon the Grantee's performance or to seek Grantee's compliance with any of the provisions of the Ordinance or terms or conditions of a Franchise Agreement.

Section 3 Requirements for Issuing New Cable Television Franchises

a. Application-Non Refundable Fee

An application for a new cable television Franchise (not a Franchise renewal) shall be submitted to the County Administrator, or its designee, in accordance with the procedures established by the County Administrator. The application will contain facts and information the County Administrator deems appropriate. Applications shall be accompanied by a nonrefundable application fee of ten thousand dollars (\$10,000.00) payable to the order of the "County of Hanover" which amount shall be used by the County to offset direct expenses incurred in the franchising and evaluation procedures, including, but not limited to staff time and consulting assistance.

b. Grantee to Pay Costs of Granting Franchise

An applicant to whom the Board of Supervisors grants a nonexclusive Franchise, in addition to the nonrefundable fee specified herein above, shall pay to the County, within thirty (30) days of receipt of notice of the amount, an amount set by the Board of Supervisors, or its designee, which shall represent the costs incurred by the County, in granting the Franchise and not defrayed by the applicant fee.

c. Procedure Required by County to Process an Application and/or Require a Request for Proposals

1. Upon receipt of an Application, the County may either: (i) evaluate the Application pursuant to Section 3 c 4 and conduct such investigations as it deems necessary; or (ii) issue a request for proposals after conducting, if necessary, a proceeding to identify the future cable related needs and interests of the community. Any such request for proposals shall be provided to the Person applying for an initial Franchise and made available to any other interested party.
2. An applicant shall respond to a request for proposals by filing an application within the stated response period, containing the information and material set forth in Section 3d, Application Requirements. The procedures, instructions, and requirements set forth in the request for proposals shall be followed by each applicant. Any applicant which has already filed an application need not re-file the same materials with its response to the request for proposals, but must supplement its application to include any additional or different information or material required of the request for proposals. The County or its designee may seek additional information from any applicant and establish deadlines for the submission of such information.
3. A Person may apply for an initial Franchise by submitting an unsolicited Application containing the information required and requesting an evaluation of that application. Prior to evaluating such an application, the County may conduct such investigations as are necessary to determine whether the application satisfies the standards set forth in Section 3c 4. The County may also seek additional applications.
4. In evaluating an application for a Franchise, the County shall consider, among other things, the following factors:
 - (1) Whether the Applicant has the financial, technical, and legal qualifications to provide Cable Service;

- (2) Whether the application satisfies any minimum requirements established by the County and otherwise to meet the future needs and interests of the community, taking into account the cost of meeting such needs and interests;
- (3) Whether the Applicant will provide adequate Community, Educational, and Governmental Access Channel capacity, facilities, or financial support;
- (4) Whether issuance of a Franchise is in the public interest considering the immediate and future effect on the Public Rights-of-Way and private property that would be affected 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 the existing Franchisee, if any, to meet the cable related needs and interests of the community; and the comparative superiority or inferiority of competing applications; and
- (5) What effects a grant of a Franchise may have on competition in the delivery of Cable Service in the County.

If the County finds that it is in the public interest to issue a Franchise after considering the factors set forth above, and subject to the applicant's entry into a franchise agreement, it shall issue a Franchise. Prior to deciding whether or not to issue a Franchise, the County will hold one or more public hearings or implement other procedures under which comments from the public on an application may be received. The County may reject any application that is incomplete or fails to respond to a request for proposals. This Ordinance is not intended and shall not be interpreted to grant any applicant standing to challenge the denial of its application or the issuance of a Franchise to another.

d. Application Requirements

Ten copies of the application shall be filed with the County Administrator and shall contain such information as the County Administrator may require, including but not limited to:

1. A general description of the applicant's proposed operation;
2. A statement detailing its business or corporate organization; including but not limited to the identification of any person, persons, or entity holding a 5% or greater interest in the applicant's business and a statement disclosing 5% or greater interests that the applicant has in any other business, corporation or partnership and a statement describing all intra-company relationships of the applicant, including parent, subsidiary or affiliated companies;

3. A written commitment to timely service and restoration of property;
4. A schedule of proposed charges;
5. A statement setting forth the channels to be allocated for public, educational, and governmental use as contemplated by 47 U.S.C. § 531, and for leased access as required by 47 U.S.C. § 532; a description of the production facilities and equipment to be made available by the applicant for access; and a statement establishing any additional revenues to be designated for programming or programming assistance for the access channels;
6. If applicant is a corporation, audited financial statements for the five (5) previous fiscal years. If applicant is a partnership, copies of the "U.S. Partnership Return of Income" (IRS Form 1065) for the five (5) previous fiscal years. If applicant is a sole proprietorship, copies of personal financial statements for the five (5) previous fiscal years;
7. An estimated five (5) year operations pro-forma which shall include the initial and continuing plant investment, annual profit and loss statements detailing income and expenses, annual balance sheets, and annual levels of Subscriber penetration. The pro-forma shall also state the average return on investment anticipated by the applicant for the five (5) year operations period and shall state the method of computation thereof. Costs anticipated for voluntary services or contributions shall, if presented, be incorporated in the pro-forma as required in this article, but shall be separately identified in the pro-forma;
8. A list of existing franchises held by the applicant indicating when the franchises were issued and when the systems were constructed in each respective governmental unit, together with the name and address and phone number of a responsible governmental official knowledgeable of the applicant;
9. A statement detailing the applicant's prior operational experience in cable television systems and/or microwave service, including that of its officers, management and any staff to be associated with the proposed operation;
10. A general statement of the applicant's ability and intent to incorporate technological improvements and advancements in the cable television system as such improvements or advancements are generally available in the industry; and
11. Any other reasonable and applicable information which the Hanover County Board of Supervisors or its designee may request.

12. A demonstration of the applicant's technical ability to construct and/or operate the proposed Cable System, including identification of key personnel and their qualifications.
13. 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 not have had an Application for an initial or renewal franchise in the County lawfully denied within the three (3) years preceding the date of its current Application was submitted;
 - (b) The Applicant must not have had any cable television franchise lawfully revoked by any franchising authority within three (3) years preceding the submission of the Application;
 - (c) The Applicant must have the necessary authority under Virginia law to operate a Cable System;
 - (d) 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 licenses or waivers required to operate the System proposed;
 - (e) The Applicant shall not have been convicted, at any time during the ten (10) years preceding the submission of the Application, of any act or omission of such character that the Applicant cannot be relied upon to deal truthfully with the County and the Subscribers, or to substantially comply with its lawful obligations under Applicable Law, including obligations under consumer protection laws and laws prohibiting anti-competitive acts, fraud, racketeering, or other similar conduct;
 - (f) The Applicant shall not have filed materially misleading information in its Application or have intentionally withheld information that the Applicant lawfully is required to provide; and
14. 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;
15. If the Applicant proposes to provide Cable Service to an area already served by an existing 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 Cable System; and

16. An affidavit or declaration of an authorized officer of the Applicant certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all federal and state law requirements.

e. Request for Proposals, Public Comment Periods, Evaluating Applications, Public Hearing

Upon filing, any Franchise application and related documents are public records open to inspection by the public during normal County office hours.

Following reasonable notice to the public, any Franchise application shall be available for inspection for a period of at least twenty days prior to the County Board of Supervisors taking action on the same. Any citizen of the County shall have the right to comment in writing, filed in advance, or orally at a public hearing held by the Board of Supervisors and advertised in accordance with the requirement for ordinance adoption.

Before approving any Franchise Agreement, the County Board of Supervisors shall review the applicant's legal, financial and technical qualifications and the adequacy and feasibility of the applicant's qualifications to operate a cable television system within the County based upon information provided to the County Board of Supervisors by the applicant and by other sources in writing or at any public hearing or meeting of the County Board of Supervisors, and shall conduct a public hearing thereon with at least seven days advertised notice prior to said public hearing.

f. Awarding a Franchise

After examining all applications submitted pursuant to procedures to be established by the County Administrator designed to assure the legal, financial and technical qualifications of an applicant to provide Cable Service, the Board of Supervisors is authorized, after a public hearing, to grant a nonexclusive Franchise conveying the right to construct and operate a Cable System within the public ways of the County. A Franchise may be awarded to the applicant which in the Board of Supervisors' judgment will best serve the public interest and whose construction and financial plans and arrangements are both feasible and adequate to fulfill the conditions set forth in this Ordinance and incorporated into any Franchise granted.

No provision in this Ordinance shall be deemed or construed to require the Board of Supervisors to grant a Franchise following receipt of any Franchise application.

g. Franchise Term

The term of a Franchise shall be for the number of years negotiated in the Franchise Agreement with the County unless terminated earlier in accordance with this Ordinance.

h. State of the Art Modifications

The Board of Supervisors shall have the authority to order a public hearing on the provision of additional channel capacity by a Grantee or on the inclusion in a Grantee's Cable System of "State of the Art" technology or upgraded facilities. Notice of such hearing shall be provided to the Grantee and the public not later than twenty (20) days prior to such hearing.

If, after such hearing, the Board of Supervisors determines that (1) there exists a reasonable need and demand for additional channel capacity and/or "State of the Art" technology or upgraded facilities, and (2) provisions have been made or will be made for adequate rates which will not preclude a Grantee from achieving a positive net present value on its investment in the County over the term of the Franchise and will allow a Grantee a fair rate of return on its total investment (including the investment required to provide the additional channels and/or the "State of the Art" technology or upgraded facilities), and (3) the additional channel capacity and/or "State of the Art" technology or upgraded facilities will not result in economic waste for the Grantee, the Board of Supervisors may order the Grantee to provide a specified number of additional channels and/or specified "State of the Art" technology or upgraded facilities. In considering the economic feasibility of required Cable System improvements, the County may consider whether to extend the term of the Franchise to permit the recovery of the costs of the improvements.

i. Grantee to be Bound by Terms and Conditions of Cable Ordinance and Franchise Agreement. Procedure if Conflict.

No Franchise shall be valid until Grantee enters into a Franchise Agreement having terms and conditions acceptable to the County.

In the event of a conflict between the Franchise Agreement and the provisions of this Ordinance, the provisions of this Ordinance shall prevail. Failure to provide services required by Grantee's Franchise may be deemed a breach of this Ordinance to which the provisions of Section 14 and Section 15 of this Ordinance shall apply.

Section 4 Transfers and Assignments.

a. Prior Written Consent of County in the Form of a Resolution Required Before any Change of Control, Sale, Assignment, or Transfer of a Franchise

A Franchise granted under this Ordinance is a privilege to be held by the Grantee. Change of control or ownership is prohibited without the consent of the Board of Supervisors. A Franchise shall not be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise, or by forced or involuntary sale, without the prior consent of the Board of Supervisors expressed by resolution and then only on such conditions as may therein be prescribed.

The word “control” shall mean majority (over fifty percent) voting control of the Grantee. The word “transfer” shall mean a transaction in which the control of the Grantee is transferred from one Person to another Person. For purposes of this Section, a transfer or assignment of this Franchise or control thereof between commonly controlled entities, between affiliated companies or between parent and subsidiary corporations shall not constitute a transfer or assignment. An affiliated company is one that directly or indirectly or through one or more intermediaries controls, is controlled by or is under common control with another person or entity.

b. No Consent Required for Securing an Indebtedness if the Indebtedness does not Exceed 75% of the Fair Market Value of the Cable System

No such consent shall be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness, except when such hypothecation exceeds seventy-five (75%) of the fair market value of the property used by the Grantee in the operation of its cable television system. Prior consent of the Board, expressed by resolution, shall be required for such transfer where hypothecation exceeds seventy-five percent of fair market value, and such consent shall not be withheld unreasonably.

c. Grantee to Submit Application Documenting Information Required by the County.

A Grantee shall promptly notify the County of any action or proposed action requiring consent of the County pursuant to this Ordinance.

A Grantee shall submit to the County an original application and four copies, unless otherwise directed, in accordance with regulations and procedures established/prescribed by the County Administrator. The application shall fully describe the terms and conditions of the action or proposed action subject to this Section and clearly state the basis on which the

application should be approved. The application shall also contain all documentation to support the showings required by this Ordinance.

At any time during the review process, the County reserves the right to require additional supporting documentation from a Grantee or any other person involved in the action or proposed action to support the showing required of Grantee by Section 4. A Grantee shall provide all requested assistance to the County in connection with any such inquiry and, as appropriate, shall secure the cooperation and assistance of all other persons involved in such action. However, the County's request for additional supporting documentation, beyond that required in the Ordinance or Agreement, shall not toll the running of the 120 day limit on franchise authority consideration of transfer requests.

The County shall respond to any application requiring the County's consent within 120 days after the date of receipt of the completed FCC form 394, and all information required by the County under this Ordinance, the Grantee's Franchise Agreement, and Applicable Law in connection with the application. Such an application shall be deemed approved if the County should fail to render a final decision within 120 days following the Grantee's filing of the application and the County's receipt of all information reasonably required to accompany such an application under this Ordinance, Grantee's Franchise Agreement and Applicable Law, unless the Grantee and the County agree to an extension of time; provided, however, that the County may deny such an application on, among other grounds, a Grantee's failure to submit the information required by this Ordinance, Grantee's Franchise Agreement and Applicable Law.

d. Requirements of Proposed Assignee. Assignee Must Agree to Conditions Prescribed by County.

A proposed assignee or transferee must demonstrate that it possesses the legal, financial and technical qualifications necessary to perform all the terms, conditions and obligations under the Grantee's Franchise Agreement for the remaining term thereof, and such reasonable additional obligations required of the assignee or transferee by the County for the specific and limited purpose of assuring the performance by the assignee or transferee of all the terms, conditions and obligations of the Franchise Agreement, and, in connection with this purpose, a proposed assignee or transferee must provide the following information:

1. Customer Service. The assignee or transferee must submit to the County (i) a reasonably detailed narrative describing, or a representative manual (if such a manual exists) containing, assignee's or transferee's customer service procedures, (ii) copies of at least two representative annual customer notices provided by other systems owned or operated by assignee or transferee, (iii) a summary of assignee's or transferee's proposed billing procedures, (iv) a sample customer service bill which assignee or transferee proposes to use in Grantee's system, and (v) a copy of a sample customer service complaint log or form, printed out from

an electronic or computerized complaint recording system, which assignee or transferee proposes to use in Grantee's system.

2. Compliance with Franchise Agreement and Cable Ordinance. The proposed assignee or transferee must agree to comply with all provisions of the Grantee's Franchise Agreement and the Cable Ordinance and provide the documents required by the representations and warranties of the Franchise Agreement, as well as such reasonable additional terms and conditions as the County may require for the specific and limited purpose of assuring the proposed assignee's or transferee's compliance with such provisions, including without limitation such additional terms and conditions as the County may require to remedy or avoid the recurrence of any past violations of the terms of a Franchise or of federal, state or local laws in the operation of Grantee's, assignee's or transferee's Cable System or service.

e. Grantee and Assignee or Transferee to Assist County in its Inquiry of Prospective Transferee.

1. Grantee's Responsibility. A Grantee shall assist the County in its inquiry into an assignee's or transferee's capabilities.
2. Assignee's or Transferee's Responsibility. In seeking the County's consent to any change in ownership or control of a Franchise or of a Grantee, assignee or transferee shall have the responsibility to establish, to the satisfaction of County, that assignee or transferee has all of the legal, financial, and technical qualifications necessary to perform all of the terms, conditions and obligations of the Grantee under its Franchise Agreement for the remaining term thereof. Assignee or transferee shall provide to the County the terms and conditions of the sale, credit agreements, partnership agreements and any other information reasonably related to the assignee's or transferee's acquisition of the Grantee's Franchise which is needed to clarify the change in ownership. These documents shall be treated as confidential by the County to the extent permissible under State and Local law.

f. Consent of County to Transfer or Assignment shall not Constitute Waiver of County Rights.

The consent or approval of the County Board of Supervisors to any transfer or assignment of a Franchise or of ownership or control of a Franchise shall not constitute a waiver or release of any of the rights of the County unless the County specifically releases or waives such rights.

g. Successor-in-interest Must Become Signatory to an Agreement.

In no event shall an assignment of a Franchise or a transfer of ownership be approved without the successor-in-interest becoming a signatory to the existing Franchise Agreement.

h. Grantee Not to Enter Into Any Management Contract if it Results in a Change of Control.

A Grantee shall not enter into any management contract or other arrangement for the management of the system, to the extent that such contract or other arrangement would result in a significant change of operational control (as defined in Section 4a) of a Grantee or the System, without the prior consent of the County.

Section 5 Liability and Indemnification.

a. Indemnification of the County.

The Grantee shall, at its sole cost and expense, indemnify and hold harmless the County and its officials, boards, commissions, agents and employees against any and all claims, suits, causes of action, proceedings and judgments for damage arising out of the operation of the Cable System under a Franchise. These damages include, but are not limited to, bodily injury, property damage, penalties arising out of copyright infringements and antitrust violations and damages arising out of the failure by the Grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the Grantee's Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by the Franchise. Indemnified expenses include, but are not limited to, all out-of-pocket expenses, such as attorney fees, and the reasonable value of any services rendered by any employee of the County.

The indemnity set forth in this Section is conditioned upon the County's giving the Grantee prompt notice of the commencement of any suit or action. Nothing in this Section shall be deemed to prevent the County from cooperating with the Grantee and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the County of any sum by reason of the required letter of credit or bond shall be a limitation upon the liability of the Grantee to the County under this Ordinance, except that sums so received by the County shall be deducted from any recovery which the County establishes against the Grantee under this Ordinance.

b. Reimbursement of Costs.

A Grantee shall pay all expenses incurred by the County defending itself with regard to all damages and penalties mentioned in paragraph (a) above.

c. Public Liability Insurance.

A Grantee shall maintain throughout the term of the Franchise or any renewal or extension thereof, a commercial general liability insurance policy satisfactory to the County, in a company authorized to do business in the Commonwealth of Virginia naming as the additional insured the County, its officers, boards, commissions, agents and employees, protecting the County and all Persons from any and all claims by any Person whatsoever against liability for loss or damage for bodily injury, or property damage occasioned by the operations of the Grantee under any Franchise granted by this ordinance, with a minimum liability of (i) two million dollars (\$2,000,000) each occurrence for bodily injury, including death resulting therefrom, and property damage, including loss of use thereof. Such insurance shall include, but not be limited to, coverage for Grantees premises and operations, actions of independent contractors, products and completed operations, contractual liabilities, and liability arising out of the collapse and underground hazards. (ii) Libel, slander, defamation, invasion of privacy and copyright infringement insurance indemnifying, defending and saving harmless the County and its officers, boards, commissions, agents and employees from and against all claims of any person whatsoever for such liabilities occasioned by the operations of the Grantee under the Franchise granted under this Ordinance, or alleged to have been so caused or occurred, with a minimum limit of one million dollars (\$1,000,000) for each claim and aggregate.

d. Notice of Cancellation or Reduction of Coverage.

The insurance policies mentioned above shall state that the policies are extended to cover the liability assumed by the Grantee under the terms of any Franchise Agreement and shall contain the following endorsement:

“ This policy may not be canceled nor the amount of coverage reduced until thirty (30) days after receipt by the County by registered mail of written notice of intent to cancel or reduce the coverage ”

e. Evidence of Insurance Filed with the County.

All policies of insurance or certified copies and written evidence of payment of required premiums, shall be filed and maintained with the County during the term of this Franchise or any renewal.

f. No Waiver of Insurance, Performance Bond or Letter of Credit.

Recovery by the County of any amounts under insurance, the Performance Bond (Section 5g.) or Letter of Credit (Section 13), or otherwise does not limit a Grantee’s duty to indemnify the County in any way; nor shall such recovery relieve a Grantee 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.

g. Performance Bond.

Prior to any Cable System construction, upgrade, or other work in the Public Rights-of-Way, a Grantee shall provide the County with a performance bond with mandatory sixty-day notice of cancellation, in a form and in an amount specified by the County, to ensure the Grantee's faithful performance of the construction, upgrade, or other work, with surety provided by a surety company approved by the County.

In the event a Grantee fails to complete the Cable System construction, upgrade, or other work in the Public Rights-of-Way in a safe, timely, and competent manner in accord with the provisions of a franchise agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the County as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee, or the cost of completing or repairing the Cable System construction, upgrade, or other work in the Public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.

The obligations of the parties to the bond and the rights of the County with respect to the bond are additive to those of other applicable security documents shall not limit or preclude demand or recovery pursuant to other documents.

Upon completion of the Cable System construction, upgrade or other work in the Public Rights-of-Way to the satisfaction of the County, the County may eliminate the bond or reduce its amount. The County may require a new bond or an increase in the bond amount for any subsequent construction, upgrade, or other work in the Public Rights-of-Way.

Section 6 Cable System Construction.

a. Map and Plan to be Provided

Unless modified by the Franchise Agreement, Grantee shall submit a construction or reconstruction plan not less than ninety (90) days prior to the date Grantee intends to commence construction or reconstruction of the Cable System, and that plan shall be incorporated by reference and made a part of the Grantee's Franchise Agreement. The plan shall include Cable System design details, equipment specifications, and design performance criteria. The plan shall also include a map of the entire Franchise Area which shall clearly delineate the following:

1. Areas within the Franchise Area where the Cable System will be available to Subscribers, including a time schedule of construction or reconstruction for each year that construction or reconstruction is proposed; and
2. Areas within the Franchise Area where the Cable System cannot reasonably be extended due to lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

b. Delay in System Construction or Reconstruction Requires Consent by County Board of Supervisors

Any delay in the Cable System construction or reconstruction beyond the times specified in the plan shall require application to and consent of the County Board of Supervisors. Any delay beyond the construction or reconstruction timetable set forth in the plan, unless approved by the County Board of Supervisors, will be considered a violation of the Franchise for which the provisions of Sections 5g and 14 shall apply. However, nothing in this Section shall prevent a Grantee from constructing or reconstructing the Cable System earlier than planned.

c. System Construction and Operation Specifications - National, State and Local Codes.

Grantee shall construct, install, operate and maintain the Cable System in an orderly and professional manner, using due diligence and materials of good and durable quality. All cables and wires shall be installed, where possible, parallel with and in the same manner as electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations. Underground installations shall be in conformance with all applicable codes.

A Grantee shall at all times comply with applicable Sections of the following, including future amendments, and with all other applicable local, State or federal laws and regulations.

1. National Electrical Safety Code (ANSI);
2. National Electrical Code (National Bureau of Fire Underwriters);
3. NCTA Recommended Practices for Measurements on Cable Television Systems, Second Edition, November 1989;
4. The Rules and Regulations of the Federal Communications Commission;
5. The Uniform State-wide Building Code;

6. County Subdivision Regulations;
7. The Virginia Department of Transportation Road Standards;
8. The County Road Standards.

A Grantee shall place its lines in each open joint trench within ten (10) working days of having been notified that the trench is available for installation of cables. A Grantee shall not endanger or interfere with the safety of persons or property in the Franchise area or other areas where a Grantee may have equipment located.

In addition, a Grantee shall provide the County with the opportunity to observe the conduct of, and receive a written report of the results of, Grantee's annual proof of performance tests. The County may at any time conduct independent measurements of the system. A Grantee shall pay the costs incurred by the County for any technical assistance deemed reasonably necessary by the County for obtaining independent verification of technical compliance with all standards.

d. Access to Grantee's Trenches by Other Utilities.

Grantee shall cooperate in the planning, locating and construction of its Cable System in utility joint trenches or common duct banks with other utilities and telecommunications providers. The County will provide advance notice to any Grantee when it plans to open a trench and each Grantee shall provide notice to the County when it plans to open a trench.

e. If County Determines Any Part of Facilities are Harmful to Health and Safety of Any Person, Grantee Shall Promptly Correct.

If, at any time, it is determined by the County that any part of the system facilities are endangering the public, including without limitation missing vault or pedestal covers, temporary drop cables that cross walkways, driveways or other areas, and low cables, riser problems or other conditions harmful to the health or safety of any person, then a Grantee shall correct all such conditions, at its own expense, within 24 hours of receipt of notice from the County. Until such conditions are corrected, Grantee shall post suitable warnings. The County may, at its option, cause such work to be done and the Grantee shall pay the cost to the County within ten (10) days after receipt of an itemized statement.

f. Grantee to Maintain System in Conformance with FCC Radiation Rules.

A Grantee shall construct, operate and maintain the system in conformance with FCC Signal Leakage requirements, 47 C.F.R. 76 subpart K, to prevent interference with the transmission or reception of over-the-air broadcast signals. A Grantee shall not interfere with the

ability of any Subscriber to utilize his or her television receiver for any lawful purpose. The connection of any cable input selector device or any converter to a Subscriber's terminal shall not be considered as interference with the Subscriber's ability to utilize his or her television receiver.

g. Grantee to Take All Necessary Steps to Prevent Accidents.

A Grantee shall, at its own cost and expense, take all necessary efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, and security personnel and, at night, suitable and sufficient lighting.

h. Notice of Cable Construction to Subscribers.

Grantee shall notify residents on affected streets of pending construction at least twenty-four (24) hours prior to commencement of such work. Notification shall be by leaving an appropriate notice at the residence (e.g. door hanger notice or by mail). In the event of a system extension or rebuild, possibly affecting general system reception, a Grantee shall notify all of its affected Subscribers stating the scope and duration of the construction and its impacts at least two (2) days prior to commencement of such work.

Section 7 Regulations Pertaining to Use of County Streets and Public Rights of Way.

a. The County Has the Right to Use of Poles and Conduits Owned By Grantee.

The County shall have the right to install and maintain free of charge upon any poles or in any conduit owned by a Grantee any wire and pole fixtures that do not unreasonably interfere with the Grantee's own use of the poles and conduits. In no event shall the County permit a third party to use the poles and/or conduits for purposes that compete against the Franchisee. The Grantee shall notify the County when it enters into an agreement for use of its poles and conduits. Copies of agreements for use of Grantee's conduits or poles in the Public Rights-of-Way or on other public property shall be available for review upon the County's request.

b. During Construction, Reconstruction or Maintenance of System, Grantee Shall Not Obstruct Public Ways Without Prior Consent of Authorities.

In connection with the construction, reconstruction, operation, maintenance, repair, or removal of the system, a Grantee shall give due regard to the aesthetics of the Franchise areas and shall not obstruct the Public Rights-of-Way, without prior consent of the appropriate County or State authorities. In addition:

1. All transmission and distribution structures, lines, and equipment erected by a Grantee within the County shall be so located as to cause minimum interference

with the rights and reasonable convenience of property owners who adjoin any streets or Public Rights-of-Way.

2. In case of any disturbance to any Public Rights-of-Way, a Grantee at its own cost and expense and in a manner and time period approved by the County and State, shall replace and restore such Public Rights-of-Way in as good condition as before the work involving such disturbance was done.

c. Permits Required to be Obtained Prior to Any Physical Work Being Performed in Public Rights-of-Way.

A Grantee or its authorized contractors must obtain permits, if required, from the Virginia Department of Transportation, County Administrator, Building and/or other appropriate departments prior to any physical work being performed in the Public Rights-of-Way, or on County-owned property. Permits will be issued to a Grantee or its contractors only for approved plans submitted with or prior to the request for the construction permit. All work will be done in accordance with the County's specifications and must comply with all applicable law.

A Grantee shall file detailed maps of the affected part of the Cable System showing materials of construction, amplifier, and power supply locations in the office of the County Administrator prior to the issuance of a County permit for construction or reconstruction.

d. Upon Undergrounding of Utility Lines, Grantee Shall Place Lines Underground in Conduits at Depth Approved by County Administrator.

Trunk, feeder and drop cable may be constructed overhead where poles now exist and electrical or telephone lines or both are now overhead, but where electrical or telephone lines are now underground, all trunk, feeder and drop cable shall be constructed underground at such depths and locations as shall be approved by the County Administrator . Whenever and wherever electrical lines and telephone lines are moved from overhead to underground placement in an area, all Cable System facilities and plant in that area shall be similarly and concurrently moved underground by the Grantee at the Grantee's sole cost and expense at such depths and locations as shall be approved by the County Administrator .

e. Grantee May Be Required to Move its Facilities to Accommodate Changes in Public Improvements.

A Grantee shall from time to time protect, support, temporarily dislocate, or temporarily or permanently, as may be required by the County Administrator, remove or relocate, without expense to the County or any other governmental entity, any facilities installed, used, or maintained under a Franchise, if and when made necessary by any lawful change of grade, alignment, or width of any public street by the County or any other governmental entity, or

made necessary by any other public improvement or alteration in, under, on, upon or about any public street or other public property, whether such public improvement or alteration is at the instance of the County or another governmental entity, and whether such improvement or alteration is for a governmental or proprietary function, or made necessary by traffic conditions, public safety, street vacation or any other public project or purpose of the County or any other governmental entity.

f. Grantee Shall Obtain Prior Approval Before Altering any County Facility; Alterations to be at Cost of Grantee.

In connection with the construction, operation, maintenance, repair, or removal of the system, a Grantee shall, at its own cost and expense, protect any and all existing structures belonging to the County or other entity. A Grantee shall obtain the prior approval of the County before altering any water main, sewage or drainage system, or any other County structure in any public way or street, because of the presence of the system in the public ways or streets. Any such alteration shall be made by a Grantee, at its sole cost and expense, and in a manner reasonably prescribed by the County. A Grantee shall also be liable, at its own cost and expense, to replace or repair and restore to as close to its prior condition as is reasonably possible and in a manner reasonably specified by the County, any public way, street or any structure involved in the construction of the system that may become disturbed or damaged as a result of any work by or on behalf of the Grantee.

g. Grantee Shall Temporarily Move its Wires to Permit Moving of Buildings.

Grantee shall, at the request of any Person holding a moving 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 to the Grantee by the Person requesting the same, and Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than seven days notice to arrange for such temporary wire changes.

h. Grantee Shall Repair and Restore Damage to County or Other Properties and Shall Maintain Restoration.

In the event that a Grantee during construction, installation, inspection or repair of its facilities causes damage to pavement, sidewalks, driveways, landscaping or other property, the Grantee or the authorized agent shall, at its own expense and in a manner approved by the County, replace and restore such places to the same condition which existed before said work was commenced. The Grantee shall further continue to maintain all such restoration in the condition approved by the County.

i. Failure by Grantee to Complete Required Work Can Result in County Causing Work to be Done at Expense of Grantee.

Upon failure of the Grantee to complete any work required by law, or by the provisions of a Franchise, within ten (10) days following due notice and to the satisfaction of the County Administrator, the County may, at its option, cause such work to be done and the Grantee shall pay to the County the cost thereof in the itemized amounts reported by the County Administrator to the Grantee within ten (10) days after receipt of such itemized report. Or, at County's option, County may demand of Grantee the estimated cost of such work as estimated by the County Administrator, and such shall be paid by Grantee to County within ten (10) days of such demand; upon award of any contract or contracts for such work, Grantee shall pay to County within ten (10) days of demand any additional amount necessary to provide for cost of such work. Upon completion of such work, Grantee shall pay to County or County shall refund to Grantee such sums so that the total received and retained by County shall equal the cost of such work. "Cost" as used herein shall include fifteen percent (15%) for County's overhead expense.

j. County May Remove Grantee's Facilities as may be Required During Emergencies.

The County reserves the right to remove any portion of a Grantee's equipment and facilities as may be required in any emergency as determined by the County without liability for interruption of Cable Service and the County shall not be obligated to restore Cable Service or to pay the costs of restoring Cable Service.

k. Cost of Tree Trimming is to be at Expense of Grantee; County has Option to Decide Whether County or Grantee Does the Trimming.

If required by the County Administrator, a Grantee shall notify the County regarding the need to trim trees upon and overhanging Public Rights-of-Way so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee; at the option of the County, such trimming may be done by the County at the expense of the Grantee, or by the Grantee under the County's supervision and direction at the expense of the Grantee. When authorized, such trimming shall be limited to the area required for clear cable passage and shall not include major structural branches which materially alter the appearance and natural growth habits of the tree. If such trimming is not performed by the County, the Grantee shall be responsible for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed, or for damage to property or person caused by such trimming and removal of any tree.

l. Grantee Shall Remove System from any Public Street Following Revocation or Expiration of Franchise.

In the event that the use of a part of the Cable System is discontinued for any reason for a continuous period of twelve (12) months, or in the event such Cable System or property has been installed without complying with the requirements of the Franchise, or the Franchise has been terminated, revoked, canceled or has expired without renewal, a Grantee shall promptly, at its own expense, and upon being given ten (10) days notice from the County Administrator, remove all such property and poles of such Cable System other than any which the County Administrator may permit to be abandoned in place. In the event of such removal, a Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the County Administrator.

m. Abandonment in Place Shall be Done at Direction of the County: Ownership of Property Shall be Transferred to County.

Any property of a Grantee permitted to be abandoned in place shall be abandoned in such a manner as the County shall prescribe. Upon permanent abandonment of the property of a Grantee in place, the Grantee shall submit to the County a written instrument in a form, to be approved by the County Administrator transferring to the County the ownership of such property. If such an instrument is not received within thirty (30) days of the abandonment, the property shall automatically become that of the County.

Section 8 System Operation.

a. Type and Scope of System

A Grantee shall install and maintain the system as proposed and agreed upon in the Franchise Agreement.

b. Basic Service Tier

Each Grantee of a Cable System shall provide its Subscribers a separately available Basic Service Tier to which subscription is required for access to any other tier of service.

c. Access Channels

A Grantee shall provide and maintain the number and type of Access Channels as are set forth in the Franchise Agreement.

d. Supervision and Regulation of Franchises by County.

The County may do all things necessary and proper to supervise, inspect, and regulate the construction and operation of cable television systems Franchised under this Ordinance; implement complaint procedures; regulate rates as authorized by federal, state, and local laws; monitor and enforce compliance with this Ordinance and any cable television Franchise granted by the County.

e. Outage Log to be Maintained Showing Details of Service Failures.

A Grantee shall maintain an outage log showing the date, approximate time, location, duration, number of Subscribers affected, type and probable cause of all headend, trunk, or distribution line service failures due to causes other than routine testing or maintenance at reasonable times. A copy of such log showing the "availability criteria" below shall be filed with the County Administrator on an annual basis and shall be retained by a Grantee for a period of three (3) years.

The Grantee will design, procure, install and maintain its equipment with the objective of meeting a monthly system availability criteria of 99.5% measured as follows:

$$\frac{100-5}{100} \qquad \frac{\text{Power On} - \text{Outage Time}}{\text{Power On}}$$

f. Planned Service Interruption.

A Grantee shall interrupt system service after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible and, except in emergency situations, only after publishing notice of service interruption at least twenty-four (24) hours in advance of the service interruption. Service may be interrupted between 1:00 a.m. and 7:00 a.m. for routine testing, maintenance and repair without notification any night except Friday, Saturday, Sunday or the night preceding a holiday.

g. County Administrator Can Require Testing of System and Report on System Performance.

When there have been repeated complaints made or when there exists other evidence which, in the judgment of the County Administrator, casts doubt on the reliability or quality of Cable Service, the County Administrator shall have the right and authority to compel a Grantee to test, analyze, and report on the performance of the Cable System. Such report shall be delivered to the County Administrator no later than fourteen (14) days after formal notification of the Grantee and shall include the following information: the nature of the complaints which precipitated the special test; which Cable System component was tested; the equipment used, and

procedure employed in said testing; the results of such test and the methods in which said complaints were resolved.

h. Required Tests May be Done by Independent Qualified Engineer at Cost of Grantee.

The County Administrator may require that tests and analyses shall be supervised by a qualified engineer selected by the County Administrator who is not on the permanent staff of a Grantee. Said tests shall be paid for by the Grantee within twenty (20) days after the County Administrator submits the engineer's invoice to the Grantee. The engineer shall sign all records of the special tests and forward them to the County Administrator with a report interpreting the results of the tests and recommending actions to be taken by the County and a Grantee.

i. Protection of Privacy

A Grantee shall comply with federal laws pertaining to the protection of Subscriber privacy (Sec.631.[47 U.S.C.§551]) Communications Act of 1934, as amended.

Section 9 Customer Service Standards.

a. Definitions.

1. Normal business hours means ten (10) hours per day on week days and four (4) hours on Saturday, excluding holidays.
2. Normal operating conditions means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.
3. Service interruption means the loss of picture or sound on one or more cable channels.

b. Exceptions.

Nothing in this Ordinance is intended to prevent or prohibit:

1. The County and a Grantee from agreeing to customer service requirements that exceed the standards set forth in this Ordinance.
2. The County from enacting or enforcing any consumer protection law ; or
3. The establishment or enforcement of any ordinance 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.

c. Customer Service Standards

A Grantee is subject to the following customer service standards which are to be certified annually by the Grantee to the County.

1. The Grantee shall maintain local or toll-free telephone access lines which will be available to Subscribers 24 hours a day, seven days a week, including holidays. Use by the company of a telephone answering machine (except for an automated call handling and audio response unit) in connection with its customer service functions is prohibited. Use of an answering service shall be limited to no more than 14 hours per day, except on Sunday, when 24 hour coverage by an answering service is permitted.
2. When a trained company representative is not required, the telephone access lines shall be answered by a trained, qualified answering service or an automated response system. A trained company representative shall respond to inquiries received by the service or automated response system on the next business day.
3. Except in those cases where a menu-driven automatic response unit is being used to direct incoming messages, the company shall at least 90% of the time, connect a telephone caller to a service representative staff member or operator within thirty seconds, during normal business hours.
4. Under normal operating conditions, the customer shall receive a busy signal less than 3% of the time measured on an annual basis. A Grantee shall provide and

maintain equipment that can be used to continually monitor compliance with all telephone standards.

5. Customer service centers and/or bill payment locations will be open during Normal Business Hours and will be conveniently located.
6. A Grantee shall keep an emergency system maintenance and repair staff, capable of responding to and repairing system malfunctions or interruptions, on a 24 hour basis under normal operating conditions.
7. Standard installations shall be performed within seven (7) business days after an order has been placed. "Standard" installations are those located up to 150 feet from the existing distribution system. The installation completion objectives shall be met at least 95% of the time as measured on a quarterly basis.
8. Any service call request involving a problem other than an outage shall be scheduled at the customer's convenience within a four-hour window within two business days 95% of the time (defined as Monday through Saturday, exclusive of holidays). A Grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.
9. A Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a Grantee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer shall be contacted. The appointment shall be rescheduled, as necessary, at a time which is convenient for the customer.
10. Each report of an outage of multiple channels that is received prior to 11:00 p.m. shall be responded to immediately, regardless of the day of the week.
11. The business day following each service call report that is received and acted upon during the time an answering service is being used, a company staff member shall follow up to verify that the reported problem has been corrected.
12. Service calls and installations shall be scheduled in four-hour windows, at the customers' convenience, Monday through Saturday between the hours of 8:00 a.m. and 5:00 p.m.

13. Drop wires in underground service areas that are temporarily placed above ground shall be buried within ten days of the date and time of the temporary installation, except in those situations where weather conditions make trenching impractical.
14. A new customer may rescind a contract between the time the customer is signed up for service and the time service is installed.
15. The installation completion objectives shall be met at least 90% of the time as measured on a quarterly basis.
16. At least a \$20 rebate shall be given to subscribers when the company fails to meet the service appointment schedule; and no installation fee shall be charged when the company's installers miss their appointments.
17. The Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:
 - Products and services offered;
 - Prices and options for programming services and conditions of subscription to programming and other services, including credit and /or rebate for system outages.
 - Installation and service maintenance policies;
 - Instructions on how to use the Cable Services;
 - Channel positions of programming carried on the system; and
 - Billing and complaint procedures, including the business address and telephone number of the Grantee.
18. Customers will be notified of any changes in rates, programming services, or channel positions as soon as possible through announcements on the Cable System and in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by the preceding paragraph.

19. Bills shall be clear, concise, and understandable. Bills must be fully itemized with itemizations including, but not being limited to, basic and premium service charges and equipment charges. Bills shall clearly delineate all activity during the billing period, including operational charges, rebates, and credits. In case of a billing dispute, a Grantee must respond to a written complaint from a Subscriber within thirty (30) days.
20. Grantee shall provide a Subscriber with a credit or rebate for a service outage that has been caused by a failure of the Cable System. System failures caused by conditions which were not the fault of or under the control of the Grantee (see Section 9a2) are not subject to a rebate or credit by Grantee, except for any individual cable service outage lasting longer than twelve (12) hours.
21. Refund checks shall be issued promptly, but not later than :
 - The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or
 - Upon the return of the equipment supplied by the cable operator if service is terminated.
22. Credits will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

d. Grantee to Furnish Service to Each Person in Franchise Area Making Request for Service.

Grantee shall furnish and maintain Cable Service to each person within the Franchise area who makes a bona fide request to receive such service, in accordance with this Ordinance and the Franchise Agreement. Nothing in a Franchise Agreement shall limit the right of the Grantee to deny service to any Person which has a negative credit or service history with the Grantee, which may include non-payment of bills or theft or damage to the Grantee's equipment, or who has threatened or assaulted employees of the Grantee in the course of their employment.

e. Enforcement.

1. A Grantee shall file annually with the County a notarized statement signed by an officer or local system manager demonstrating and certifying compliance with these customer service standards.

2. When requested by the County, a Grantee in non-compliance shall, on a quarterly basis, file with the County a statement specifying areas of non-compliance along with a remedial plan. Failing to file a non-compliance statement and a remedial plan shall subject a Grantee to pay liquidated damages to the County of \$500 per day.
3. A Grantee shall comply with all procedures established by the County regarding the handling of all complaints received directly by the County from County residents regarding cable television service.

Section 10 Reports and Records of Cable TV Operation.

a. Annual Reports Required.

During the term of a Franchise, the Grantee shall file annually with the County Administrator not later than 120 days after the end of its fiscal year and, if the Franchise is terminated or expires prior to the end of a Grantee's fiscal year, 120 days after such revocation or expiration, two (2) copies of:

1. Annual financial report.
2. Annual operational report.
3. Annual customer service report.
4. Annual current map of service area.
5. Annual Ownership Report.

These reports shall be certified as being correct by a responsible officer of the company and there shall be submitted along with them such other reasonable information as the County Administrator shall request.

b. Correspondence.

The Grantee shall simultaneously file with the County Administrator a copy of each petition, application, report and communication specifically pertaining to the Cable System that are transmitted by the Grantee to, or received by the Grantee from, any federal, state or other regulatory commissions, agencies or courts that affect the local Cable System.

c. The County Administrator's Access to Records.

The County Administrator shall have access during all normal business hours to all Grantee's records required to be maintained by this Ordinance or any Franchise Agreement. Copies of all pertinent agreements or contracts relating to the operation of the Cable System including pole attachment agreements entered into by the Grantee during the prior fiscal year shall be made available for inspection at the offices of the Grantee upon reasonable written request.

Section 11 Rate Regulation.

a. County Reserves Right to Regulate Rates.

The County reserves the right to regulate the Grantee's rates for cable service to the extent permitted by applicable law.

b. Current Rate Schedule to be Filed With County: at Least 30 Days Notice Required Prior to Rate Change.

A Grantee shall provide the County with a complete schedule of all current basic service and enhanced service rates and charges, including pay TV and pay per view rates and charges, and shall give at least thirty (30) days prior notice from the effective date to the County and to all affected Subscribers of any pricing changes or additional charges, excluding temporary marketing and sales discounts or offers. At least thirty (30) days before any price changes or additional charges are to take effect, a Grantee shall provide the County with a copy of the proposed notification for Subscribers.

c. Basic Service Charges Must be Applied on Nondiscriminatory Basis.

All charges for basic service must be applied on a nondiscriminatory basis. A Grantee may, however, conduct promotional campaigns in which rates are discounted or waived, and may offer bulk rate discounts for multiple unit dwellings, hotels, motels, and similar institutions.

d. County Adopts Rate Regulation Procedures Consistent With FCC Rules.

The County hereby adopts by reference rules of the Federal Communications Commission set forth in Subpart N (Cable Rate Regulation) of Part 76 (Cable Television Service) of Chapter I of Title 47 of the Code of Federal Regulation regarding the regulation of cable television rates for basic service and associated equipment, as amended.

The County shall, in so far as permitted by state law, adopt by reference procedures set forth in 47 CFR Sec. 0.459 regarding confidential business information submitted by the Grantee in a rate regulation proceeding.

A Grantee which willfully or repeatedly fails to comply with a rate regulation or refund order directed specifically at the Grantee shall be subject to a monetary forfeiture as determined by the County Board of Supervisors.

Section 12 Franchise Renewal Process.

The Franchise renewal process of the County shall be in accordance with applicable federal, state and local laws and regulations.

Section 13 Letter of Credit.

a. Grantee is Required to File an Irrevocable Letter of Credit.

Within thirty days after the effective date of a franchise agreement the Grantee shall provide the County with an irrevocable letter of credit subject to automatic renewal from year to year, in the amount set forth in the Agreement in a form approved by the County, assuring performance by a Grantee of the requirements of the Franchise Agreement and the Cable Ordinance, issued by a financial institution approved by the County.

The letter of credit shall be maintained throughout the term of the agreement. If the amount available to the County is reduced by payment to the County, a substitute letter of credit shall be provided, or other arrangement made to maintain the availability of the full face amount of the letter of credit.

b. Letter of Credit May Be Drawn Upon By the County Administrator After Following Specified Procedure.

The Letter of Credit may be drawn upon by the County Administrator by presentation of written demand on the lending institution, accompanied by a written statement of the County Administrator that the Grantee has failed to comply with the Franchise Agreement and/or this Ordinance, stating the nature of the noncompliance, and stating the amount being drawn.

c. County's Rights with Respect to Letter of Credit Are in Addition to Other Rights.

The obligations of the parties to the Letter of Credit and the rights of the County with respect to the Letter of Credit are additive to those of other applicable security documents.

Demand or recovery by the County pursuant to one security document shall not limit or preclude demand or recovery pursuant to other documents.

Section 14 Liquidated Damages.

a. Parties Shall Agree to Specific Liquidated Damages to be Paid by Grantee for Certain Delays or Nonperformance.

A Grantee's failure to comply with any timing or performance requirements set forth in a Franchise Agreement will result in damage to the County, the amount of which will be impracticable to ascertain. Therefore, the County and the Grantee will negotiate the amount of liquidated damages to be set forth in a Franchise Agreement. Every Franchise Agreement shall provide that the County's recovery of such damages shall be without prejudice to any other remedy the County may have.

b. Procedures Established to Assure Grantee an Opportunity to Cure Problem Before Damages Assessed.

If the County Administrator, following prior reasonable notice to a Grantee to cure any problem that might result in liquidated damages, concludes that a Grantee is liable for liquidated damages pursuant to the Franchise Agreement, the Administrator shall issue to Grantee by certified mail a Notice of Intention to Assess Liquidated Damages. The Notice shall set forth the basis of the assessment, and shall inform the Grantee that liquidated damages will be assessed from the date of the Notice unless the Assessment Notice is appealed to the Board of Supervisors and the Board rules (a) that the violation has been corrected, or (b) that an extension of time or other relief should be granted, or (c) the Board disagrees with the findings of the County Administrator. If the Grantee desires a hearing before the Board of Supervisors, it shall send a written Notice of Appeal by certified mail to the County Administrator within ten (10) days of the date on which the County Administrator sent the Notice of Intention to Assess Liquidated Damages. After the hearing, if the Board sustains in whole or in part the County Administrator's Assessment of Liquidated Damages, the County Administrator may at any time thereafter draw upon the Letter of Credit required by Section 13. Unless the Board indicates to the contrary, liquidated damages shall be assessed beginning with the date on which the County Administrator sent the Notice of Intention to Assess Liquidated Damages and continuing until such time as the violation ceases, as determined by the County Administrator.

The Grantee shall notify the County Administrator in writing when a problem has been cured and any violation ceases. Within ten days of the receipt of the Grantee's notice, the County Administrator shall send the Grantee notice of any disagreement. The Grantee may within thirty (30) days of written notice of such disagreement send a written Notice of Appeal to the Board of Supervisors, and shall be granted a hearing at which to appeal the County

Administrator's action. The County Administrator shall not draw upon the Letter of Credit during the appeal process.

Section 15 Revocation.

a. Franchise May be Revoked.

Whenever a Grantee substantially fails to comply with or substantially violates the material provisions of this Ordinance, a Franchise Agreement, any order, regulation or determination of the County made pursuant to a Franchise, or any local, state or federal laws or regulations, or becomes insolvent or unable or unwilling to pay its debts, seeks or obtains relief under the bankruptcy laws, or practices fraud or deceit upon the County the Franchise may be revoked by the County.

b. Other Rights of the County.

Revocation of the Franchise shall in no way affect any other rights the County may have.

c. Procedures Outlined Leading to Possible Revocation of Franchise.

The County Administrator may make a written demand that a Grantee comply with any provision, rule, order, or determination under or pursuant to the Cable Ordinance or a Franchise Agreement. If the violation, breach, failure, refusal or neglect by a Grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the County Administrator may place the issue of revocation of a Franchise before the Board of Supervisors. The County Administrator shall cause to be served upon Grantee, at least twenty (20) days prior to the date of such Board meeting, a written notice of intent to request such revocation and the time and place of the meeting. Public notice shall be given of the meeting and the issue which the Board is to consider.

d. Board of Supervisors Shall Hear and Consider Issues and Determine if a Violation has Occurred.

The Board of Supervisors shall hold a public hearing, and shall determine, whether or not any violation by a Grantee has occurred. If, after considering the County Administrator's request for revocation of the Franchise and giving the Grantee an opportunity to respond, the Board determines that the noncompliance of the Grantee was with just cause, it shall direct the Grantee to comply within such time, in such manner and on such terms and conditions as are reasonable.

e. County Board of Supervisors May Declare Franchise Revoked.

If the Board of Supervisors shall determine the violation by a Grantee was without just cause and was the fault of the Grantee and within its control, the Board may by ordinance declare that the Franchise of the Grantee be revoked, and instruct the Grantee to promptly remove from the public way all of its cable television facilities in accordance with Section 7 of this Ordinance. The Board may seek legal and equitable relief in order to ensure compliance with this provision. In the alternative, the Board may adopt a resolution which invokes the County's right to purchase the assets of the Grantee's cable television system at an equitable price. Such purchase must be consummated one year from the date of the franchise revocation or entry of a final court order. The Board shall not adopt an ordinance pursuant to this subsection until it has given notice to the Grantee of its intention to adopt such an ordinance, and written grounds therefore, and affords the Grantee a reasonable opportunity to be heard by the Board to show that the grounds for revocation do not exist. Following such hearing, the Board shall make written findings of facts as to whether or not such grounds for revocation exist. The revocation of the Franchise shall in no way affect any of the rights of the County under the Franchise Agreement or any provision of law.

Section 16 Purchase of Cable System by County

a. Rights to Purchase.

In the event the Grantee forfeits or County revokes this Franchise for cause, or when the renewal of the Franchise has been denied, or at the normal expiration of the Franchise term, the County shall have the right, directly or as an intermediary to purchase the Cable System.

b. Franchise Valuation.

Under circumstances where the Grantee forfeits the Franchise, when renewal of the Franchise has been denied by the County, or at the normal expiration of the Franchise, the County may purchase the system for its Fair Market Value, determined on the basis of the system as a going concern, with no value allocated to the franchise itself.

Under circumstances where the Franchise has been revoked for cause by the County, the acquisition shall be at an equitable price in accordance with 47 U.S.C. § 547.

c. Date of Valuation.

The date of valuation shall be no earlier than the day following the date of expiration or revocation and no later than the date the County makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.

d. Transfer to County

Upon exercise of this option and the payment of the above sum by the County, the Grantee shall immediately transfer to the County possession and title to all facilities and property, real and personal, used or useful in the operation of the Cable System, free from any and all liens and encumbrances not agreed to be assumed by the County in lieu of some portion of the purchase price set forth above; and the Grantee shall execute such warranty deeds or other instruments of conveyance to the County as shall be necessary for this purpose.

e. Determination of Fair Market Price by Circuit Court.

In the event the County elects to purchase a Grantee's cable system and its Fair Market Value or equitable price cannot be agreed upon, the final price shall be determined by the Circuit Court of the County of Hanover.

f. County Assignment of Purchase Rights

The County may assign its purchase rights to a successor Grantee, selected by the County, in a manner not inconsistent with this Ordinance.

g. Grantee's Obligation as Trustee.

Until a Grantee transfers to the County or to a new Grantee possession and title to all assets, real and personal, related to its cable television system, the Grantee shall, as trustee for its successors in interest, continue to operate the cable television system under this Ordinance and the Franchise Agreement and to provide the regular subscriber service and any and all of the services that may be provided at that time. During such interim period, a Grantee shall not sell any of the system assets or make any physical, material, administrative or operational change that would tend to degrade the quality of service to the Subscribers, decrease income or materially increase expenses, without the express written permission of the County or its assignee. The County may seek legal and equitable relief to enforce the provisions of this subsection.

For its management services during such interim period, the Grantee is entitled to receive, as compensation, the net profit generated during the period between the date the Grantee received written notice from the County of its intent to purchase the Grantee's cable television system or the expiration date of the Franchise, whichever is earlier, and the payment of the purchase price. Such management services shall not be continued without the Grantee's consent for more than

twelve months. This section does not limit the County's right to forthwith terminate the Grantee's Franchise and have the system removed, pursuant to this Ordinance.

h. Franchise May Terminate 120 days After Appointment of Receivers.

Any Franchise granted shall, at the option of County, terminate one hundred twenty (120) days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy, or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Such receivers or trustees shall have within one hundred twenty (120) days, after their election or appointment fully complied with all the terms and provisions of this Ordinance and a Franchise granted pursuant hereto, and the receivers or trustees within said one hundred twenty (120) days shall have remedied all defaults under the Franchise; and,
2. Such receivers or trustees shall have within one hundred twenty (120) days executed an Agreement duly approved by the Court having jurisdiction, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise Agreement.

i. Procedure if a Foreclosure Occurs.

In the case of a foreclosure or other involuntary sale of the plant, property, and equipment of Grantee, or any part thereof, County may serve notice of revocation upon Grantee and to the purchaser at such sale, in which event the Franchise and rights and privileges of Grantee shall cease and terminate thirty (30) days after service of such notice unless:

1. County has approved the transfer of the Franchise, as and in the manner in this Ordinance provided; and
2. Such successful purchaser shall have covenanted and agreed with County to assume and be bound by all the terms and conditions of the Franchise Agreement.

Section 17 Waivers.

1. Any provision of this Ordinance may be waived for good cause shown, at the sole discretion of the County, by resolution of the Board of Supervisors.

2. A Grantee may submit a written request for a waiver to the Board of Supervisors at any time during the Franchise term. Such request for a waiver, at the sole discretion of the Board of Supervisors, may be set for a public hearing, and a decision shall be made within 120 days following the submission.
3. The Board of Supervisors may authorize the economic, technical, or legal evaluation of such waiver request, and the Grantee shall be required to reimburse the County for any expenditure incurred by the County in connection with such evaluation.
4. This Section is enacted solely for the convenience and benefit of the Grantor and shall not be construed in such a manner as to create any right or entitlement for the Grantee.

Section 18 **Miscellaneous Provisions.**

1. Notices required by this Ordinance or a Franchise Agreement shall be delivered in accordance with provisions of the Agreement.
2. All provisions of this Ordinance shall apply to a Grantee, its successors, and assignees, as may be approved by Board of Supervisors in accordance with this Ordinance.
3. It is not intended by the grant of a Franchise to abridge the exercise of the police power of the County. The grant of a Franchise is subject to all Ordinances and resolutions of, or agreements adopted by, the Board of Supervisors including future amendments in the lawful exercise of its police power.
4. 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.
5. A Grantee, upon its acceptance of a Franchise, shall be bound by the provisions of this Ordinance, all responses, statements, and all matters agreed upon in a Franchise Agreement.
6. A Grantee shall assume the cost of any publications required by law.
7. Grantee shall construct and maintain the System and shall co-ordinate its use of the Public Rights-of-Way so as not to interfere with other permitted uses.

8. 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 or remedies which the County may have with respect to the subject matter of this Ordinance. A waiver of any right or remedy by a party at one time shall not affect the exercise of said right or remedy or any other right or other remedy by such party at any other time. The failure of the County to take any action in the event of a material breach by the Grantee shall not be construed or otherwise be deemed to constitute a waiver of the right of the County to take such action at any other time in the event that said material breach has not been cured, or with respect to any other material breach by the Grantee.
9. The headings contained in this Ordinance and any Agreement are to facilitate reference only, do not form a part of this Ordinance or an Agreement, and shall not in any way affect the construction or interpretation hereof.

Section 19 Severability.

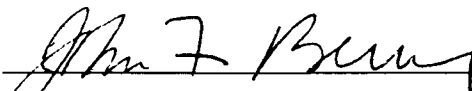
If any provision of this Ordinance should be determined by a court of competent jurisdiction to be invalid, such determination shall not affect the validity of the remaining provisions of this Ordinance.

Section 20 Effective Date.

This Ordinance shall be effective on the date of adoption.

Public Hearing: October 22, 1997

Adopted: October 22, 1997



John F. Berry, Clerk
Hanover County Board of Supervisors