

Chapter 7 - CABLE COMMUNICATIONS

*State law reference—Regulation of open video systems, Code of Virginia, § 15.2-2108.1.

ARTICLE I. - IN GENERAL

Sec. 7-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Access, PEG access, or PEG use refers to the availability of capacity on a cable system for public, education or government use (including institutional network use) by various agencies, institutions, organizations, groups, and individuals, including the county and its designated access providers, to acquire, create, and distribute programming not under a franchisee's editorial control.

Affiliate, in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

Cable operator means any person or group of persons that:

- (1) Provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or
- (2) Otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

Cable service.

- (1) The term "cable service" means the one-way transmission to subscribers of:
 - a. Video programming; or
 - b. Other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (2) The term "cable service" does not include any video programming provided by a commercial mobile service provider defined in 47 USC 332(d).

Cable system or system means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within the county, except that such definition shall not include:

- (1) A system that serves fewer than 20 subscribers;
- (2) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (3) A facility that serves only subscribers without using any public right-of-way;
- (4) A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934 (47 USC 201 et seq.), except that such facility shall be considered a cable system 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;
- (5) Any facilities of an electric utility used solely for operating its electric systems;
- (6) Any portion of a system that serves fewer than 50 subscribers in any locality, where such portion

is part of a larger system franchised in an adjacent locality; or

(7) An open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended (47 USC 573).

Converter means an interface device which may be furnished to subscribers in order that nonstandard television channels carried on a cable system may be received on a conventional home television receiver or to prevent interference from strong broadcast signals. The device may be used on top of the television set ("set-top"), attached to the back of the television set or installed at a remote location.

County manager means the present or succeeding chief executive officer of the county who is appointed by the board of supervisors, or any person designated by the county manager to act in his behalf for the purpose of fulfilling the responsibilities imposed by this chapter.

Director of finance means the person designated as the director of finance by the county manager, or any person designated by the director of finance to act in his behalf for the purpose of fulfilling the responsibilities imposed by this chapter.

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 of supervisors elects to exercise its option, but with no value allocated to the franchise itself.

Federal Communications Commission or FCC means that federal agency as presently constituted by the Communications Act of 1934 (47 USC 201 et seq.), as amended, or any successor agency.

Franchise means the nonexclusive right, whether an initial authorization or a renewal thereof, to construct and operate a cable system along the public rights-of-way in the county or within specified areas in the county. It is not intended to include any license or permit required for the privilege of transacting and carrying on a business within the county as may be required by other ordinances and laws of the county.

Franchisee means a natural person, partnership, domestic and foreign corporation, association, joint venture or organization of any kind granted a franchise by the board of supervisors under this chapter, and its lawful successor, transferee or assignee.

Gross revenue.

(1) The term "gross revenue" means all revenue, as determined in accordance with generally accepted accounting principles, that is actually received by a cable operator and derived from the operation of the cable system to provide cable service in the franchise area.

(2) The term "gross revenue" shall not include:

- a.** Refunds or rebates made to subscribers or other third parties;
- b.** Any revenue which is received from the sale of merchandise over home shopping channels carried on the cable system, but not including revenue received from home shopping channels for the use of the cable service to sell merchandise;
- c.** Any tax, fee, or charge collected by the cable operator and remitted to a governmental entity or its agent or designee, including without limitation a local public access or education group;
- d.** Program launch fees;
- e.** Directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing;
- f.** A sale of cable service for resale or for use as a component part of or for the integration into cable service to be resold in the ordinary course of business, when the reseller is required to pay

or collect franchise fees or similar fees on the resale of the cable service;

g. Revenues received by any affiliate or any other person in exchange for supplying goods or services used by the cable operator to provide cable service; and

h. Revenue derived from services classified as noncable service under federal law, including, without limitation, revenue derived from telecommunications services and information services, and any other revenues attributed by the cable operator to noncable service in accordance with rules, regulations, standards, or orders of the Federal Communications Commission.

Net profit means the amount remaining after deducting from gross revenue all of the actual direct and indirect expenses associated with operating a cable system, including the franchise fee, interest, depreciation and federal or state income taxes.

Noncable service means all services offered over a cable system other than cable service.

PEG means public, educational, and governmental.

Public rights-of-way means the surface, the airspace above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, or drive, including public utility easements or rights-of-way, and any temporary or permanent fixtures or improvements located thereon, now or hereafter held by the county which shall entitle the county and a franchisee to the use thereof for the purpose of installing and maintaining a franchisee's cable system.

Regular subscriber service means the distribution to subscribers of signals over a cable system on all channels except leased access channels, those services for which a per-program or per-channel charge is made, two-way services and those services intended for reception by equipment other than a television broadcast receiver.

School means any school operated by the school board of the county.

State of the art means production facilities, technical performance, capacity, equipment, components and service equal to those that are generally accepted and used in the cable industry for comparable areas of equivalent population.

Subscriber means the county or any person who is lawfully receiving, for any purpose or reason, any service via a cable system, whether or not a fee is paid for such service.

Transfer.

(1) The term "transfer" means any transaction in which:

a. An ownership or other interest in a cable operator is transferred, directly or indirectly, from one person or group of persons to another person or group of persons, so that majority control of the cable operator is transferred; or

b. The rights and obligations held by the cable operator under the cable franchise granted under this article are transferred or assigned to another person or group of persons.

(2) Notwithstanding subsection (1) of this definition, a transfer of the cable franchise shall not include:

a. Transfer of an ownership or other interest in the cable operator to the parent of the cable operator or to another affiliate of the cable operator;

b. Transfer of an interest in the cable franchise granted under this article or the rights held by the cable operator under the cable franchise granted under this article to the parent of the cable operator or to another affiliate of the cable operator;

c. Any action that is the result of a merger of the parent of the cable operator;

- d. Any action that is the result of a merger of another affiliate of the cable operator; or
- e. A transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the cable operator in the cable franchise or the system used to provide cable in order to secure indebtedness.

(Code 1995, § 7-1; Ord. No. 1086, §§ 1—3, 5-9-2006)

Cross reference—Definitions and rules of construction, § 1-2.

State law reference—Cable television definitions, Code of Virginia, § 15.2-2108.2.

Sec. 7-2. - Franchise required to operate cable system.

A nonexclusive franchise to construct, operate and maintain a cable system within all or any portion of the county is required of anyone desiring to provide cable service in the county. A franchise may be granted by the board of supervisors to any person, whether operating under an existing franchise or not, who offers to furnish and provide such cable system under and pursuant to the terms and provisions of this chapter and a franchise agreement acceptable to the board of supervisors.

(Code 1995, § 7-2; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-3. - Limits on franchisee's recourse.

(a) Except as expressly provided in this chapter and a franchise, a franchisee shall have no financial recourse against the county for any loss, expense or damage resulting from the terms and conditions of this chapter or the franchise agreement or because of the county's enforcement thereof or for the county's failure to have the authority to grant the franchise. A franchisee shall agree that upon its acceptance of a franchise it does so relying upon its own investigation and understanding of the power and authority of the county to grant the franchise.

(b) A franchisee, by accepting a franchise, shall acknowledge that it has not been induced to accept the franchise by any promise, oral or written, by or on behalf of the county or by any third person regarding any term or condition of this chapter or the franchise agreement not expressed therein. A franchisee further shall pledge that no promise or inducement, oral or written, has been made to any county employee or official regarding receipt of a cable franchise.

(c) A franchisee shall further acknowledge by acceptance of a franchise that it has carefully read the terms and conditions of this chapter and the franchise agreement and accepts without reservation the obligations imposed by the terms and conditions in this chapter, regardless of whether these obligations are contained in the franchise documents. Such acceptance shall not prevent the franchisee from raising a later challenge to such an obligation based on a change in the law occurring after the effective date of the franchise agreement.

(d) A franchisee shall not apply for any waivers, exceptions or rulings from the Federal Communications Commission or any other federal or state regulatory agency affecting the county or the system in the county without promptly informing the county manager and providing, or making available online, copies of all documentation.

(Code 1995, § 7-3; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-4. - Right of county to grant license or easement to traverse franchise area.

The county reserves the right to issue a license, easement or other permit to anyone other than a franchisee to permit that person to traverse any portion of a franchisee's franchise area within the county in order to provide service outside the county. Such license or easement, absent a grant of a franchise in accordance with this chapter, shall not authorize or permit such person to provide cable service of any

nature to any home or place of business within the county or to render any service or connect any subscriber within the county to a franchisee's cable system.

(Code 1995, § 7-4; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-5. - Acceptance of terms and conditions by franchisee.

A franchisee agrees by the acceptance of a franchise to accept the validity of the terms and conditions of this chapter and the franchise agreement in their entirety and that it will not, at any time, proceed against the county in any claim or proceeding challenging any term or provision of this chapter or the franchise agreement as unreasonable, arbitrary or void, or claiming that the county did not have the authority to impose such term or condition, based on the law in effect as of the effective date of the franchise agreement.

(Code 1995, § 7-5; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-6. - Failure of county to enforce compliance not to excuse noncompliance.

A franchisee shall not be excused from complying with any of the terms and conditions of this chapter or a franchise by any failure of the county, upon any one or more occasions, to insist upon the franchisee's performance or to seek the franchisee's compliance with any one or more of such terms or conditions.

(Code 1995, § 7-6; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-7. - Rights reserved to county.

- (a) The county hereby expressly reserves the right to:
- (1) Exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the county.
 - (2) Adopt, in addition to the provisions contained in this chapter and in a franchise and in any existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power. Such power shall include the absolute right of the county to maintain control over its streets and public rights-of-way, and to adopt such reasonable regulations relating to streets and public rights-of-way as the county or its departments shall hereafter provide.
- (b) The powers of the county may be exercised through amendment of this chapter as well as through enactment of separate ordinances and regulations.

(Code 1995, § 7-7; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-8. - Franchisee's employment practices.

A franchisee shall not refuse to hire any person, nor discharge any person from employment, nor discriminate against any person regarding compensation, terms, conditions or privileges of employment, because of age, sex, race, color, creed or national origin. A franchisee shall take affirmative action to ensure that employees are treated, during employment, without regard to their age, sex, race, color, creed or national origin. This condition includes but is not limited to recruitment advertising, employment interviews, employment, rates of pay, upgrading, transfer, demotion, layoff and termination.

(Code 1995, § 7-8; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-9. - Time deemed essence of agreement.

Whenever this chapter or a franchise sets forth any time for any act to be performed by or on the behalf of a franchisee, such time shall be deemed of the essence, and the franchisee's failure to perform

within the time allotted, in all cases, shall be sufficient grounds for the county to invoke the remedies available under the terms and conditions of this chapter and the franchise agreement.

(Code 1995, § 7-9; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-10. - Unlawful acts.

- (a) It shall be unlawful for any cable operator to provide cable service in the county unless a franchise therefor has first been obtained pursuant to the provisions of this chapter and unless such franchise is in full force and effect.
- (b) It shall be unlawful for any person to construct, install or maintain within any public rights-of-way in the county, or within any other public property of the county, or within any privately owned area within the county which has not yet become a public right-of-way but is designated or delineated as a proposed public right-of-way on any tentative subdivision map approved by the county, any equipment or facilities for a cable system, unless a franchise authorizing such use of such street or property or area has first been obtained pursuant to the provisions of this chapter and unless such franchise is in full force and effect.
- (c) 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 others to receive any television signal, radio signal, picture, program or sound without payment to the owner of the cable system.
- (d) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound.
- (e) It shall be unlawful for any person, without the consent of the subscriber, to permit the transmission of any signal, aural, visual or digital, including polling the channel selection from any subscriber's premises, or to permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from the subscriber's premises of two-way services utilizing aural, visual or digital signals. This subsection is not intended to prohibit the use of transmission of signals useful only for the control or measurement of system performance by a franchisee.
- (f) Any person violating any subsection of this section shall be punished as provided in section 1-13.
- (Code 1995, § 7-10; Ord. No. 1086, §§ 1—3, 5-9-2006)*

Secs. 7-11—7-30. - Reserved.

ARTICLE II. - APPLICATIONS AND REQUIRED SERVICES

Sec. 7-31. - Authority to grant franchises; criteria for granting.

- (a) The board of supervisors is authorized, after a full hearing affording due process, to grant nonexclusive franchises conveying the right to construct and operate a cable system within the public rights-of-way of the county.
- (b) No provision in this chapter shall be deemed or construed to require the board of supervisors to grant a franchise following receipt of any franchise application.
- (Code 1995, § 7-31; Ord. No. 1086, §§ 1—3, 5-9-2006)*

Sec. 7-32. - Application form and contents; application fee.

The application for an initial cable franchise shall be submitted to the board of supervisors, or its designee. Applications shall be accompanied by a nonrefundable application fee of \$5,000.00 to the order of the "County of Henrico," 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.

(Code 1995, § 7-32; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-33. - Required facilities.

A franchise application or proposal for renewal shall include a description of the applicant's or franchisee's cable system capabilities, a description of services and facilities proposed for local origination programming, and services and facilities offered or to be offered to various community institutions.

(Code 1995, § 7-33; Ord. No. 1086, §§ 1—3, 5-9-2006)

Secs. 7-34—7-50. - Reserved.

ARTICLE III. - FRANCHISE CONDITIONS

Sec. 7-51. - Term.

The term of a franchise shall be not more than 15 years from the date the franchise is accepted by the franchisee by written agreement with the county except that the franchise term can be extended for a reasonable period of time to allow the county and the franchisee to complete applicable renewal procedures.

(Code 1995, § 7-51; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-52. - Notice of meetings involving action on franchise.

The board of supervisors shall not hold any meeting involving the review, renewal, revocation or termination of a franchisee's franchise unless the county manager has provided notice to the franchisee in writing, at least 30 days prior to such meeting, unless otherwise provided, as to its time, place and purpose; provided, however, that the franchisee may waive the notice required by this section.

(Code 1995, § 7-52; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-53. - Reserved.

Sec. 7-54. - Renewal of franchise.

(a) The renewal of any cable franchise shall be conducted in a manner consistent with applicable federal and state law.

(b) If the county decides not to renew the franchise, it shall have the right, on the expiration date of the franchise, either to purchase the assets of the franchisee's cable system at its then fair market value or, consistent with the provisions of section 7-78, select a new franchisee, after a full public proceeding, and cause such new franchisee to take the assets at fair market value. The provisions of this subsection, however, shall apply only to the extent that a franchisee's use of the public rights-of-way is authorized by its cable franchise. To the extent that a franchisee can show that the maintenance and operation in the public rights-of-way of any portions of its cable system or associated plant not used for cable service are not authorized by its cable franchise, and that it has full legal authority independent of its cable franchise to use the county's public rights-of-way to maintain and operate such portions of its cable system or associated plant, such portions shall not be affected by the provisions of this paragraph, but shall instead be governed by any terms and conditions that may apply to such independent authority.

(Code 1995, § 7-54; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-55. - Revocation procedures.

- (a) Whenever a franchisee shall fail to construct, operate or maintain its cable system in accordance with the terms of this chapter and its franchise, or to comply with the conditions of occupancy of any public rights-of-way, or to make required extensions of service, or willfully or knowingly makes false statements on or in connection with its franchise application or proposal for renewal, or in any other way violates the terms and conditions of this chapter, its franchise, or any rule or regulation adopted thereunder, or substantially violates any provision of the Virginia Consumer Protection Act of 1977, as amended, then, as may otherwise be permitted by law, the franchise may be revoked.
- (b) To apply the procedures of this section, the county manager shall notify a franchisee, in writing, setting forth the nature and extent of such noncompliance. If, within 30 days following such written notification by the county manager, the franchisee has not furnished proof that corrective action has been taken or is being actively and expeditiously pursued, or evidence that the alleged violations did not occur, or that the alleged violations were beyond the franchisee's control, the county manager may thereupon refer the matter to the board of supervisors.
- (c) The board of supervisors may revoke a franchise pursuant to subsection (a) of this section by ordinance.
- (d) The board of supervisors shall not adopt an ordinance pursuant to subsection (c) of this section until it has given written notice to the franchisee that the board of supervisors proposes to adopt such an ordinance and the grounds therefor. The board of supervisors shall not adopt such an ordinance until the franchisee has had a reasonable opportunity to be heard before the board of supervisors and show that the proposed grounds for revocation did not or do not exist, as the case may be.
- (e) The franchisee shall not be subject to the sanctions of this section for any action or omission beyond the franchisee's control. An act or omission shall not be deemed to be beyond a franchisee's control if committed, omitted or caused by an affiliate of the franchisee, whether directly or indirectly. The inability of the franchisee to obtain financing, for whatever reason, shall not be an act or omission which is beyond the franchisee's control.
- (f) If a franchise has been revoked by the board of supervisors, the board of supervisors may acquire the assets of the franchisee's cable system at an equitable price or permit a successor franchisee to do so, subject to the provisions of section 7-73(b). Before the board of supervisors exercises either of these options, the board of supervisors shall give the franchisee written notice of its intent to do so. A franchisee agrees by acceptance of a franchise to enter into good-faith negotiations within seven days of receipt of such notice with the county for the purpose of consummating the transaction at the earliest possible moment.
- (g) The termination of a franchisee's rights under a franchise shall in no way affect any other rights the county may have under the franchise or under any provision of law.

(Code 1995, § 7-55; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-56. - Effect of arbitrary and capricious discontinuation of service by franchisee.

If a franchisee arbitrarily or capriciously discontinues service to all of its subscribers, the franchisee shall forfeit its rights of notice and a hearing as provided for in this chapter, and the board of supervisors shall declare the franchisee's franchise immediately terminated and the county may forthwith seek appropriate judicial injunctive relief and shall proceed to exercise its rights and powers as provided for in this chapter.

(Code 1995, § 7-56; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-57. - Determination of fair market price by court.

If the county elects to purchase a franchisee's cable system and its fair market value or equitable price cannot be agreed upon, the final price shall be determined by a court of competent jurisdiction.

(Code 1995, § 7-57; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-58. - Transfer of ownership to county.

Upon payment of the purchase price, a franchisee shall immediately transfer to the county possession and title to all facilities and property, real and personal, related to its cable system, free from any and all liens and encumbrances that the county does not agree to assume in lieu of some portion of the purchase price.

(Code 1995, § 7-58; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-59. - Right of county to assign purchase rights.

The county shall have the right and power to assign its purchase rights to a successor franchisee selected by the county in a manner not inconsistent with the provisions of this chapter.

(Code 1995, § 7-59; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-60. - Operation of system pending transfer of assets to county or new franchisee.

Until such time as a franchisee transfers to the county or a new franchisee possession and title to all assets, real and personal, related to its cable system, the franchisee shall continue to operate the cable system under the terms and conditions of this chapter and its franchise and continue to provide the regular subscriber service and any and all of the services that may be provided at that time. During such interim period, the franchisee shall not sell any of the system assets, nor shall the franchisee make any physical, material, administrative or operational change that would tend to degrade the quality of service to the subscribers, decrease gross revenue or cable service other than through promotions, discounts or bundles ordinarily offered in the due course of business, or materially increase expenses without the express permission, in writing, of the county or its assignee. The county shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

(Code 1995, § 7-60; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-61. - Reserved.

Sec. 7-62. - Franchise fees.

(a) A franchisee shall pay to the county director of finance, in consideration of the granting of a franchise to use the public rights-of-way for the operation of a cable system, five percent of its gross revenue during the period of its operation under the franchise.

(b) A franchisee shall file with the county, within 30 days after the expiration of each of the franchisee's fiscal quarters, a financial statement clearly showing by category of revenue the gross revenue received by the franchisee during the preceding quarter. The franchise fee for each fiscal quarter shall be payable to the county at the time such statement is filed. The franchisee also shall file within 120 days following the conclusion of the franchisee's fiscal year an annual report certified as to its accuracy by a certified public accountant acceptable to the county clearly showing the franchisee's total gross revenue and stating that the franchise fees paid were correctly calculated.

(c) The county shall have the right, consistent with the provisions of section 7-113(b), to inspect a franchisee's income records, and the right of audit and the recomputation of any amounts determined to be payable under this chapter; provided that such audit shall take place within three years following the payment of those amounts. Any additional amount due the county as a result of the audit shall be paid within 30 days following written notice to the franchisee by the county, which notice shall include a copy of

the audit report. The cost of such audit shall be borne by the franchisee if it is properly determined that the franchisee's annual payment to the county for the preceding year is increased thereby by more than five percent.

(d) If any franchise payment or recomputed amount is not made on or before the applicable dates specified in this section the franchisee shall pay three-tenths of one percent of the unpaid amount for each day the violation continues, in addition to any monetary payment due.

(e) If the franchise is terminated, the franchisee shall file with the county, within 30 days after such termination, a financial statement clearly showing the gross revenue received by the franchisee since the end of the previous fiscal quarter. The franchisee shall pay the franchise fee due at the time such statement is filed.

(f) If cable service subject to a franchise fee is provided to subscribers in conjunction with other services: the fee shall be applied only to the value of this cable service, as reflected on the books and records of the cable operator in accordance with rules, regulations, standards, or orders of the Federal Communications Commission or the state corporation commission, or generally accepted accounting principles. Any discounts resulting from purchasing the services as a bundle shall be reasonably allocated between the respective services that constitute the bundled transaction.

(g) If a franchisee proposes to change its methodology for calculating or paying the franchise fee, itemizing the fee, or passing any amounts through to subscribers (where applicable), the franchisee shall first provide written notice to the county manager explaining the nature of the change, the reason for the change, and the effect of the change on the franchise fee amounts paid to the county.

(Code 1995, § 7-62; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-63. - Insurance; indemnification of county.

(a) Upon the granting of a franchise and at all times during the term of the franchise, including the time for removal of facilities as provided for in this article, a franchisee shall obtain, maintain, pay all premiums for and file with the county's risk manager written evidence in the form of a certificate of insurance, of the following insurance coverage:

Commercial general liability insurance and, if necessary, commercial umbrella insurance with a limit of not less than \$5,000,000.00 per occurrence covering liability for injury to or death of persons and property damage occasioned by the operations of a franchisee under a franchise granted under this chapter or alleged to have been so caused or occurred. Insurance shall cover liability arising from premises, operation, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract. The county, its officers, boards, commissions, agents and employees shall be added as additional insureds under this insurance. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the county. There shall be no endorsement or modifications of the commercial general liability insurance to make it excess over other available insurance; alternatively, if the commercial general liability insurance states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured.

(b) The insurance policies called for in this section shall be in a form satisfactory to the county attorney and shall require 30 days' written notice of any reduction in coverage or cancellation to both the county and the franchisee. A franchisee shall, in the event of any such reduction or cancellation notice, obtain replacement coverage and pay all premiums for and file with the county's risk manager written evidence of any such replacement coverage, in the form of a certificate of insurance, within 30 days following receipt by the county or the franchisee of any notice of reduction or cancellation.

(c) A franchisee shall waive all rights against the county, its officers, boards, commissions, agents and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to subsection (a) of this section.

(d) A franchisee shall, at its sole cost and expense, defend, indemnify and hold harmless the county, 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 construction, maintenance, or operation of its cable system; copyright infringements or a failure by the franchisee to secure consents from the owners or authorized distributors of programs to be delivered by the cable system; the conduct of the franchisee's business in the county; or in any way arising out of the franchisee's enjoyment or exercise of the franchise. These damages shall include but not be limited to penalties arising out of copyright infringements and damages arising out of any failure by the franchisee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the franchisee's cable system, whether or not any act or omission complained of is authorized, allowed or prohibited by the franchise. Indemnified expenses shall include but not be limited to all out-of-pocket expenses, such as attorneys' fees, and shall also include the reasonable value of any services rendered by the county attorney or his assistants or any employees of the county.

(e) The indemnity provided for in subsection (d) of this section is conditioned upon the county's giving a franchisee prompt notice of the commencement or making of any suit or action covered by the terms of this section. Nothing in this section shall be deemed to prevent the county from cooperating with a franchisee and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the county of any sum by reason of the letter of credit required in section 7-82 shall be any limitation upon the liability of a franchisee to the county under the terms of this chapter, except that any sums so received by the county shall be deducted from any recovery which the county shall establish against the franchisee under the terms of this chapter.

(Code 1995, § 7-63; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-64. - Letter of credit.

(a) Within 30 days after the award or renewal of a franchise, a franchisee shall deposit with the county an irrevocable letter of credit in a form satisfactory to the county attorney in the amount specified in its franchise agreement issued by a federally insured commercial lending institution acceptable to the county. The letter of credit shall be used:

- (1) To ensure the franchisee's compliance with the terms and conditions of this chapter and its franchise; and
- (2) To ensure the franchisee's payment of any liabilities arising out of the construction, operation or maintenance of the cable system, including the cost of removal or abandonment of any property of the franchisee.

(b) The letter of credit shall contain the following endorsement:

"At least 60 days' prior written notice shall be given to the county by the financial institution of any intention to cancel, replace, fail to renew, or materially alter this letter of credit. Such notice shall be given by certified or registered mail to the county attorney."

(c) The letter of credit may be drawn upon by the county by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the county manager certifying that a franchisee has failed to comply with this chapter, its franchise or any other order, permit or direction of the county relating to this chapter or the franchise agreement, stating the specific reasons therefor and stating the basis for the amount being drawn. Examples of a basis for drawing upon the letter of credit include but are not limited to the following:

- (1) Failure of a franchisee to pay to the county any fees and taxes after ten days' written notice of delinquency.
- (2) Failure of a franchisee to pay to the county, after ten days' written notice, any amounts due and owing to the county by reason of the indemnity provisions of section 7-81.
- (3) Failure of a franchisee to pay to the county any liquidated damages due and owing to the county pursuant to section 7-83.

(d) A franchisee shall agree to structure the letter of credit in such a manner so that, if the county draws upon the letter of credit, the franchisee shall restore the letter of credit to the total amount specified no later than 30 days after notification to the franchisee of the withdrawal from the letter of credit.

(e) The rights reserved to the county with respect to the letter of credit are in addition to all other rights of the county, whether reserved by this chapter or a franchise agreement, or otherwise authorized by law, and no action, proceeding or right with respect to the letter of credit shall affect any other right the county has or may have.

(Code 1995, § 7-64; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-65. - Remedies and procedures.

(a) Notwithstanding any other remedy provided for in this chapter or the franchise agreement or otherwise available under law, the county shall have the power to recover monetary amounts from a franchisee under certain conditions, such monetary amounts being in the nature of liquidated damages, provided the county first complies with the notice requirements of subsection (c) of this section.

(b) By acceptance of a franchise, a franchisee understands and agrees that failure to comply with any time and performance requirements as stipulated in this chapter and the franchise agreement will result in damage to the county, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance. The franchisee further agrees to enter into a franchise agreement which shall include provisions for liquidated damages to be paid by the franchisee in amounts set forth in that agreement and chargeable to the letter of credit.

(c) If the county manager, determines that a franchisee has failed to perform any obligation under the franchise or applicable law or has failed to perform in a timely manner, the county may make a written demand on the franchisee that it remedy the violation. If the violation is not remedied or in the process of being remedied to the satisfaction of the county within a reasonable time period specified in the written demand, the county may:

- (1) Assess against the franchisee liquidated damages as provided in the franchise agreement;
- (2) Request revocation of the franchise as provided herein; or
- (3) Pursue any legal or equitable remedy available under the franchise or any applicable law.

(d) To assess liquidated damages, the county shall inform the franchisee that liquidated damages will be assessed from the date of the notice unless the assessment notice is appealed for hearing before the board of supervisors and the board of supervisors rules that the violation has been corrected or that an extension of time or other relief should be granted. A franchisee desiring a hearing before the board of supervisors shall send a written notice of appeal by registered or certified mail to the county manager within ten days of the date of the notice of assessment of liquidated damages. The board shall hear the franchisee's appeal within 30 days of the date of the notice of assessment of liquidated damages. After the hearing, if the board of supervisors sustains in whole or in part the county manager's assessment of liquidated damages, the county manager may at any time thereafter draw upon the letter of credit required by section 7-82. Unless the board of supervisors indicates to the contrary, the liquidated damages shall be assessed beginning on the date of the notice of assessment and continuing thereafter until such time as the violation ceases, as determined by the county manager in his sole discretion.

(Code 1995, § 7-65; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-66. - Transfer of franchise.

(a) A franchise granted under this chapter shall be a privilege to be held in personal trust by a franchisee. It shall not be transferred, in whole or in part, as that term is defined in section 7-1, by voluntary sale, merger, consolidation or otherwise or by forced or involuntary sale without prior consent of the board of supervisors expressed by ordinance, and then only on such conditions as may therein be prescribed. The county is hereby empowered to take legal or equitable action to set aside, annul, revoke or cancel the

franchise or the transfer of the franchise, if such transfer is not made according to the procedures set forth in this chapter.

(b) The board of supervisors shall not withhold, delay or condition its consent to a transfer unreasonably; provided that the proposed assignee agrees to comply with all provisions of this chapter, the franchise agreement and the transfer ordinance, and is able to provide proof that it is legally, technically and financially qualified to operate the cable system and satisfy all franchise obligations.

(c) At least 120 calendar days prior to the contemplated effective date of a transfer, a franchisee shall submit to the county a written application for approval of a transfer. Such an application shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the transferee. At a minimum, the following information must be included in the application, unless these requirements are waived, reduced, or modified in writing by the county:

(1) All information and forms required under federal law;

(2) Any shareholder reports or filings with the Securities and Exchange Commission that pertain to the transfer;

(3) Other information necessary to provide a complete and accurate understanding of the financial position of the franchisee's cable system before and after the proposed transfer;

(4) Complete information regarding any potential impact of the proposed transaction on subscriber rates and service;

(5) Any contracts that relate to the proposed transaction and, upon request by the county, all documents and information that are related or referred to therein and which are necessary to understand the proposed transaction. Should the franchisee believe that the requested information is confidential, then it must provide the following documentation to the county:

a. Specific identification of the information;

b. A statement attesting the reasons the franchisee believes the information is confidential; and

c. A statement that the documents are available at the franchisee's offices for inspection by the county.

(d) The consent of the board of supervisors to any transfer shall not constitute a waiver or release of any of the rights of the county under this chapter or any franchise.

(Code 1995, § 7-66; Ord. No. 1086, §§ 1—3, 5-9-2006)

Secs. 7-67—7-90. - Reserved.

ARTICLE IV. - SUBSCRIBER FEES; RECORDS AND REPORTS

Sec. 7-91. - Subscriber fees.

(a) *Rights of county.* By accepting a franchise granted pursuant to the terms and conditions imposed by this chapter a franchisee agrees that the board of supervisors shall have the authority and right to regulate the franchisee's subscriber rates to the maximum extent consistent with federal and state law.

(b) *Notification of fees.* A franchisee shall be required to explain adequately to each potential subscriber all applicable fees and charges for the cable service that the potential subscriber orders. Such oral notification shall be in addition to a schedule of fees and charges which the franchisee shall set forth in a written subscriber contract.

(c) *Discrimination prohibited; special agreements.* A franchisee shall not, with regard to fees, discriminate or grant any preference or advantage to any person, except as provided in federal law, 47 USC 543. Fees may be negotiated between the franchisee and the owners, or a committee acting on their behalf, for regular subscriber service provided to ten or more dwelling units within an apartment building, condominium, garden apartment or townhouse complex under common ownership, or to ten or more room units within hotels, motels, hospitals or convalescent or extended care facilities, or to any commercial establishments.

(d) *Special promotions.* A franchisee may, at its own discretion, waive, reduce or suspend connection or monthly service fees for specified periods for promotional purposes.

(Code 1995, § 7-91; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-92. - Records to be furnished to county; inspection of records.

(a) The books and records of a franchisee's operation within the county shall be made available, during normal business hours, at the franchisee's place of business in the county, for inspection and audit by the county manager within such time as the county manager may reasonably specify.

(b) Access to records under subsection (a) of this section shall not be denied by the franchisee on the basis that they contain proprietary or confidential information, unless such access would violate 47 USC 551. Any confidential information received by the county shall remain confidential insofar as permitted by state and federal law.

(Code 1995, § 7-92; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-93. - Financial reports.

A franchisee shall file annually with the office of the county manager, no later than 120 days after the end of the franchisee's fiscal year, a copy of a financial report applicable to the cable system serving the county, including a detailed income and expense statement applicable to its operation during the preceding 12-month period. Included in this report shall be the following information specific to the county: number of homes passed, number of cable plant miles, number of subscribers for each type of cable service offered and the gross revenue from each revenue source attributable to the operations of the franchisee from within the county. These reports shall be certified as being correct and prepared by a responsible officer of the company and there shall be submitted along with them such other information as the board of supervisors shall reasonably request. All proprietary information submitted pursuant to this section shall be treated as confidential to the extent permitted by law.

(Code 1995, § 7-93; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-94. - Customer service reports.

Unless this requirement is waived in whole or in part by the county no later than 45 days after the end of each calendar quarter, a franchisee shall submit a written report to the county, in a form subject to the county's approval, which shall include statistics showing the franchisee's actual performance during that quarter with respect to each of the customer service requirements specified in article VI, with an explanation briefly indicating how each figure was obtained and what events were and were not included in that figure.

(Code 1995, § 7-94; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-95. - Reports generally.

(a) The county may, at its discretion, waive in writing the requirement of any particular report specified in this article.

(b) No franchisee shall, in any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading.

(c) No franchisee shall, in any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material

factual statement is correct and not misleading.

(Code 1995, § 7-95; Ord. No. 1086, §§ 1—3, 5-9-2006)

Secs. 7-96—7-120. - Reserved.

ARTICLE V. - SYSTEM OPERATIONS

Sec. 7-121. - Initial franchise area; amendments to franchise area.

(a) A franchisee shall furnish to the county as a part of its initial franchise application a map of suitable scale showing all streets and public buildings indicating the initial franchise area to be served. The map also shall list the names of all neighborhoods, developments and communities served.

(b) The initial franchise area shall be subject to approval by the county and may be amended at any time, either by the county on its own motion or upon petition to the franchisee by 50 percent of the residents within the area to which the proposed amendment applies. Amendments shall encompass only areas in which the total number of occupied dwelling units divided by the total number of miles of paved and unpaved public streets and roads (exclusive of limited access highways) within the extended area exceeds 30.

(c) A franchisee and the public shall be afforded a reasonable opportunity to be heard and to submit documented comments or evidence either supporting or opposing the initial franchise area delineated by the franchisee, or amendments thereto, prior to consideration and adoption or rejection by the board of supervisors.

(Code 1995, § 7-121; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-122. - Extension of service outside initial franchise area.

(a) A franchisee shall extend its full service outside the initial franchise area to any location within the county boundaries upon written request by five or more applicants living within 1,000 yards of each other.

(b) A franchisee shall be entitled to recover from the applicants requesting such service extensions the actual direct cost of that portion of the combined trunk and feeder line extension which exceeds an average of 150 feet per subscriber, measured along the most practicable route from the nearest technically feasible point on the franchisee's system, not including the length of service drops.

(c) A franchisee shall make every reasonable effort to cooperate with cable franchise holders in contiguous communities in order to provide cable service in areas within the county but outside the franchisee's initial franchise area.

(d) The county shall make every reasonable effort to cooperate with the franchising authorities in contiguous communities and with a franchisee in order to provide cable service in areas outside the county.

(Code 1995, § 7-122; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-123. - Interconnections.

A franchisee may be required to interconnect its cable system with other cable systems or other broadband communications facilities located in the county or in contiguous communities. The franchisee shall cause required interconnections to be made within 180 days of a request made by the county. If cable operators do not agree to an interconnection agreement within 180 days of a request to interconnect, then the county shall have the authority to determine an interconnection point.

(Code 1995, § 7-123; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-124. - Compliance with FCC rules.

The cable system to be installed by a franchisee shall comply in all respects with the capacity, capability and technical performance requirements set forth in the FCC's rules for cable television.

(Code 1995, § 7-124; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-125. - General operating requirements.

(a) Compliance with applicable regulations. A franchisee shall construct, operate and maintain its cable system subject to the supervision of the county and in full compliance with the rules and regulations, including applicable amendments, of the Federal Communications Commission and all other applicable federal, state or county laws and regulations, including the latest editions of the National Electrical Safety Code and the National Electrical Code of the National Fire Protection Association. The cable system and all its parts shall be subject to inspection by the county, provided that electrical tests shall be limited to those set forth in section 7-151.

(b) Quality of signals. A franchisee shall exercise its best effort to design, construct, operate and maintain its system at all times so that signals carried are delivered to subscribers without material degradation in quality, within the limitations imposed by the technical state of the art of the system.

(c) Emergency use of system. In the case of any emergency or disaster, a franchisee, upon request of the county manager, shall make available its facilities to the county for emergency use during the emergency or disaster period.

(Code 1995, § 7-125; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-126. - Tests and performance monitoring.

(a) Not later than 90 days after any new or substantially rebuilt portion of the system is made available for service to subscribers, and at least annually thereafter, technical performance tests shall be conducted by a franchisee to demonstrate full compliance with the technical standards of the Federal Communications Commission and section 7-150(b). Such tests shall be performed by or under the supervision of a qualified registered professional engineer or an engineer with proper training and experience. A copy of the report shall be submitted to the county, describing test results, instrumentation, calibration, test procedures and the qualifications of the engineer responsible for the tests.

(b) System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line, at or near trunk line extremities, at not fewer than eight widely scattered locations. At least once each month, the following data shall be obtained and recorded for each monitor test point, made available for county inspection and retained in a franchisee's files until the relevant portion of the system has been either substantially rebuilt or replaced:

(1) Visual and aural carrier level on each active channel.

(2) Carrier-to-noise ratio on at least four frequencies distributed across the pass band. To avoid interrupting service, these measurements may be approximate and will be used only to detect significant changes.

(3) Visual inspection of picture quality on all active channels to detect degradation in quality attributable to the system.

(c) At any time after commencement of service to subscribers, the county may require additional tests, full or partial repeat tests, different test procedures or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests will be limited to the particular matter in controversy. The county will endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to a franchisee or subscribers.

(d) A franchisee shall continue, through the term of its franchise, to maintain the applicable technical, operational and maintenance standards. Should the county find, by resolution, that the franchisee has failed to maintain these standards, and should it, by resolution, specifically enumerate improvements to be made, the franchisee shall make such improvements. Failure to make such improvements within 90 days of adoption of such resolution will constitute a breach of the franchise agreement and a violation of this chapter, for which the remedies of sections 7-83 and 7-74 are applicable.

(e) The county shall have the right to employ qualified consultants if necessary or desirable to assist in the administration of this or any other section of this chapter, and, by acceptance of a franchise, a franchisee agrees to pay one-half of all reasonably incurred costs associated therewith.

(Code 1995, § 7-126; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-127. - Performance evaluation sessions.

(a) The county and a franchisee may, at the county's discretion, hold scheduled performance evaluation sessions every three years from the anniversary date of a franchisee's award of a franchise and as may be required by federal and state law.

(b) Special evaluation sessions may be held at any time during the term of a franchise at the request of the county or a franchisee and upon 90 days' written notice.

(c) All evaluation sessions shall be open to the public and shall be advertised in a newspaper of general circulation at least ten days prior to each session. A franchisee shall notify its subscribers of all evaluation sessions by announcement displayed prominently on its cable system during prime time for five consecutive days preceding each session.

(d) Topics which may be discussed at any scheduled or special evaluation session may include but shall not be limited to service rate structures, franchise fee, liquidated damages, free or discounted services, application of new technologies, system performance, services provided, programming offered, customer complaints, privacy, amendments to this chapter, judicial and FCC rulings, line extension policies, and county or franchisee rules.

(Code 1995, § 7-127; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-128. - Service, adjustment and complaint procedures.

(a) Except for circumstances beyond a franchisee's control, such as acts of God, weather, wars, riots and civil disturbances, a franchisee shall establish a maintenance service capable of locating and correcting system malfunctions promptly.

(b) If a subscriber does not obtain a satisfactory response or resolution to a request for service or an adjustment within a reasonable period of time, he may advise the county manager or other designated employee in writing of his dissatisfaction, and the county manager or other designated employee shall investigate the matter and keep records with respect to all such complaints for the remaining life of the franchise or three years, whichever amount of time is of longer duration.

(c) A franchisee 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 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.

(Code 1995, § 7-128; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-129. - Street occupancy.

(a) A franchisee shall utilize existing poles, conduits and other facilities whenever possible and shall not construct or install any new, different or additional poles, conduits or other facilities, whether on public

property or on privately owned property, until the written approval of the county is obtained. Such approval shall not be unreasonably withheld. However, no location of any pole or wire-holding structure of the franchisee shall be a vested interest, and such poles or structures shall be removed or modified by the franchisee at its own expense whenever the board of supervisors determines that the public convenience would be enhanced thereby.

(b) Where the county or a public utility serving the county desires to make use of the poles or other wire-holding structures of a franchisee but agreement therefor with the franchisee cannot be reached, the board of supervisors may require the franchisee to permit such use for such consideration and upon such terms as the board of supervisors shall determine to be just and reasonable if the board of supervisors determines that the use would enhance the public convenience and would not unduly interfere with the franchisee's operation. The board of supervisors shall consider in its determination of just and reasonable terms and consideration any amount charged the franchisee for similar use of facilities.

(c) All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and appearance and reasonable convenience of property owners who adjoin on any street, and at all times shall be kept and maintained in a safe, adequate and substantial condition and in good order and repair. A franchisee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public right-of-way by a franchisee shall be placed in such a manner as not to interfere with the usual travel on such public way.

(d) A franchisee shall remove, replace or modify, at its own expense, the installation of any of its facilities as may be deemed necessary by the county to meet its proper responsibilities.

(e) Wherever all electrical and telephone utility distribution wiring is located underground, either at the time of initial construction or subsequently, at the direction of the county, the television cable shall also be located underground, at a franchisee's own expense. If the distribution facilities of either the electric or the telephone utility are aerial, the cable facilities may be located underground at the request of a property owner, provided that the excess cost of the installation, labor and materials of underground over aerial location shall be paid by the property owner making the request to a franchisee.

(f) A franchisee shall, at its own expense and in a manner approved by the county, restore to county standards and specifications any damage or disturbance caused to the public right-of-way as a result of its operations or construction on its behalf. A franchisee shall guarantee and maintain such restoration for a period of one year against defective materials or workmanship except in instances involving acts of God.

(g) Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the county manager, the director of public safety, the fire chief or the chief of police to remove or damage any of a franchisee's facilities, no charge shall be made by the franchisee against the county for restoration and repair.

(h) At the request of any person holding a valid building moving permit issued by the county and upon at least 48 hours' notice, a franchisee shall temporarily raise, lower or cut its wires as may be necessary to facilitate such move. The direct expense of such temporary changes, including standby time, shall be paid by the permit holder, and a franchisee shall have the authority to require payment in advance.

(i) A franchisee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the supervision and direction of the county. Trimming trees on private property shall require the consent of the property owner.

(Code 1995, § 7-129; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-130. - Construction schedule and reports.

(a) Upon accepting an initial franchise, a franchisee shall within 60 days file the documents required to obtain all necessary federal, state and local licenses, permits and authorizations required for the conduct of

its business and shall submit monthly reports to the county manager on progress in this respect until all such documents are in hand.

(b) Within three months after accepting a franchise, a franchisee shall furnish the county a construction schedule and map setting forth target dates by areas for commencement of service to subscribers. The map shall be updated whenever substantial changes become necessary.

(c) A franchisee shall complete construction of the system in the initial franchise area and offer and deliver cable service, in full accordance with this chapter and any franchise granted under this chapter, to subscribers in not less than 25 percent of the occupied dwelling units within the initial franchise area within one year after receiving all necessary permits, authorizations and licenses, and to 100 percent within four years.

(d) Every three months after the start of construction, a franchisee shall furnish the county a report on progress of construction, until complete. The report shall include a map that clearly defines the areas wherein regular subscriber service is available.

(Code 1995, § 7-130; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-131. - Protection of subscriber privacy.

A franchisee shall comply with all applicable federal and state privacy laws, including 47 USC 551 and regulations adopted pursuant thereto.

(Code 1995, § 7-131; Ord. No. 1086, §§ 1—3, 5-9-2006)

Secs. 7-132—7-140. - Reserved.

ARTICLE VI. - CUSTOMER SERVICE

Sec. 7-141. - Purpose.

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

(b) The provisions of this article shall apply to all services provided by a franchisee over a cable system. For example, the requirement of clear and concise billing shall apply to billing for cable modem service, whether or not such service is considered a cable service under applicable law.

(c) Each franchisee shall maintain an office at a convenient location in the county that shall be open during normal business hours to allow subscribers to request service, pay bills, and conduct other business.

(Code 1995, § 7-141; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-142. - Telephone answering.

(a) A listed local telephone number connecting to a live customer service representative (not a recording) shall be made available to subscribers for service calls at any time of the day or night.

(b) A franchisee shall use its best efforts to comply with the following standards. A franchisee shall not be subject to liquidated damages for noncompliance with these standards if, under normal operating conditions, the standards are met at least 90 percent of the time, measured quarterly. For purposes of this calculation and all pertinent reports, a franchisee may not omit data for conditions other than normal operating conditions unless the franchisee has explained to the county the time period and the conditions involved, and the county has approved that classification.

(1) Telephone answering time shall not exceed 30 seconds, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional 30 seconds.

- (2) A customer will receive a busy signal less than three percent of the time.
- (c) A franchisee shall obtain and maintain sufficient telephone lines and staffing to meet the requirements of this article. A franchisee shall not block incoming calls or otherwise use equipment or procedures that would result in an inaccurate account of all calls made to the franchisee; any such practice shall constitute fraud and shall be an independent violation of the customer service standards.
- (d) At least one person in responsible charge of a franchisee's operations in the county shall be available by local telephone during such hours as the business office is closed, and the telephone number of such person shall be supplied in advance to the county manager and to the county police and fire divisions.
- (e) Any consolidation of customer service or call center functions shall not in any way interfere with a franchisee's compliance with applicable customer service requirements. A franchisee shall ensure that at all times, 24 hours a day, seven days a week, the call center or centers receiving calls from the county will be able if necessary to refer a subscriber call regarding technical service problems in the county to local personnel responsible for the system in the county, who will contact such subscriber within two hours from the time of the subscriber's call.

(Code 1995, § 7-142; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-143. - Installations and service calls.

- (a) A franchisee shall respond to service calls and complaints promptly. A franchisee shall use its best efforts to comply with the following standards. A franchisee shall not be subject to liquidated damages for noncompliance with these standards if, under normal operating conditions, the standards are met at least 95 percent of the time, measured quarterly.
- (1) A franchisee shall complete all installations located up to 200 feet from the franchisee's existing distribution system within seven business days after the order is placed.
 - (2) A franchisee shall complete all installations not located within 200 feet from the franchisee's existing distribution system within 30 calendar days after the order is placed.
 - (3) A franchisee shall commence repairs for service interruptions affecting more than 100 subscribers within two hours after the franchisee becomes aware of the interruption, including Saturdays, Sundays, and legal holidays.
 - (4) A franchisee shall commence repairs for all other service interruptions within 24 hours after the franchisee becomes aware of the interruption, including Saturdays, Sundays, and legal holidays.
 - (5) A franchisee shall commence work on all requests for service other than service interruptions by the next business day after it receives the request for service or otherwise becomes aware of the need for service.
- (b) All service for which a completion time is not otherwise specified in subsection (a) of this section must be completed within three days from the date of the initial request, unless, for reasons beyond the franchisee's control, the work could not be completed in those time periods even with the exercise of all due diligence, in which case the franchisee shall complete the work in the shortest time possible. The failure of a franchisee to hire sufficient staff or to properly train its staff shall not justify a franchisee's failure to comply with this provision.
- (c) Appropriate records shall be made of service calls, showing when and what corrective action was completed. Such records shall be available to the county during normal business hours and retained for not less than three years.
- (d) A franchisee shall perform service calls, installations, and disconnects at least from 8:00 a.m. to 6:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday. In addition, maintenance service capability enabling the prompt location and correction of major system malfunctions shall be available seven days a week, 24 hours a day, including Saturdays, Sundays, and holidays.
- (e) The appointment window for installations, service calls, and other installation activities shall be either a specific time or, at maximum, a four-hour time block during the time from 8:00 a.m. to 6:00 p.m. Monday

through Friday and 8:00 a.m. to 5:00 p.m. Saturday. Where a subscriber is unable to arrange for a service call or installation during that period, a franchisee shall also schedule service and installation calls at reasonable times outside that period.

(f) A franchisee may not cancel an appointment with a subscriber after 6:00 p.m. on the business day preceding the appointment, unless the appointment is for a Monday, in which case the franchisee may not cancel after 5:00 p.m. on Saturday. If a franchisee's representative is running late for an appointment with a subscriber and will not be able to keep the appointment as scheduled, the subscriber will be contacted, and the appointment rescheduled, as necessary, at a time which is reasonably convenient for the subscriber.

(g) A franchisee shall afford subscribers a three-day right of rescission for ordering service over the cable system, except that such right of rescission shall end upon initiation of installation, whether physically or electronically, on the subscriber's premises or upon provision of service to the subscriber.

(h) Under normal operating conditions, billing inquiries and requests for service, repair, and maintenance not involving service interruptions must be acknowledged by a trained customer service representative within 24 hours, or prior to the end of the next business day, whichever is earlier. A franchisee shall respond to all other inquiries within five business days of the inquiry.

(i) Except as federal law may specifically require, no charge shall be made to the subscriber for repairs or maintenance of franchisee-owned equipment or facilities, except for the cost of repairs to the franchisee's equipment or facilities where it can be shown that the equipment or facility was damaged by a subscriber.

(j) With regard to mobility-limited subscribers, upon subscriber request, a franchisee shall arrange for pickup and/or replacement of converters or other franchisee equipment at the subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

(k) All personnel, agents and representatives of a franchisee, including subcontractors, that have occasion to deal directly with subscribers in the field shall carry photo identification badges, to be displayed upon request, when acting on behalf of the franchisee.

(l) A franchisee shall provide advance notice, in light of the circumstances, prior to entry whenever desiring to enter any private property within the county. Work performed in easements and rights-of-way during system outage periods is exempted.

(Code 1995, § 7-143; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-144. - Notice.

(a) When a subscriber is connected or reconnected to a cable system and at least once annually afterwards, and at any time upon request, the franchisee shall provide each subscriber with written information concerning the following. Copies of all such materials provided to subscribers shall also be provided to the county.

- (1)** A written description of products and services offered, including a schedule of rates and charges, a list of channel positions, and a description of programming services, options, and conditions;
- (2)** A written description of the franchisee's installation and service maintenance policies, delinquent subscriber disconnect and reconnect procedures, and any other of its policies applicable to its subscribers;
- (3)** Written instructions that clearly set forth procedures for placing a service call or requesting an adjustment, including the name, address and telephone number of the county manager or another designated county employee that the subscriber can call or write for information regarding terms and conditions of the franchisee's franchise;
- (4)** A written description of the franchisee's billing and complaint procedures, including the address and telephone number of the county office responsible for receiving subscriber complaints;
- (5)** Notice regarding subscribers' privacy rights pursuant to 47 USC 551;
- (6)** Notice regarding subscribers' rights relating to home wiring.

(b) The franchisee shall provide to all subscribers and to the county at least 30 days' written notice before the implementation of any change in rates, services, channel positions, business hours, or legal holidays. Such notice shall state the precise amount of any rate change and briefly explain in accurate and readily understandable fashion the cause of the rate change (e.g., inflation, changes in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified.

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

(Code 1995, § 7-144; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-145. - Billing.

(a) Bills shall be clear, concise, and understandable, and shall not be such as to mislead a reasonable subscriber as to any matter reflected on the bill. Bills must be fully itemized with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(b) If a franchisee chooses to itemize, as a separate line item on bills, franchise fees or other government-imposed fees, such fees must be shown in accordance with any applicable law. Amounts itemized pursuant to 47 USC 542(c) shall not be identified as separate costs over and above the amount the franchisee charges a subscriber for service. In specifying the portion of the bill attributable to franchise fees or other government-imposed fees, the description used in the bill to indicate such elements shall be correct, truthful, and not misleading. No franchisee may designate the franchise fee as a tax in any communication to a subscriber.

(c) Refund checks or credits to subscribers shall be issued promptly, but no later than the later of:

(1) The subscriber's next billing cycle, or 30 days, following resolution of the refund request, whichever is earlier; or

(2) The return of all equipment supplied by the franchisee, if service is terminated.

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

(e) Credits.

(1) The account of any subscriber shall be credited a prorated share of the monthly charge for service, upon the subscriber's reasonably prompt request, whenever:

a. The subscriber is without service for a period that exceeds 12 hours during any 24-hour period; or

b. Service is substantially impaired for any reason for a period that exceeds 12 hours during any 24-hour period.

(2) The credits required under subsection (e)(1) of this section shall not apply if:

a. It can be documented that a subscriber seeks a refund for an outage or impairment that the subscriber caused; or

b. A planned outage occurred between the hours of 12:00 midnight and 6:00 a.m.

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

(f) No charge may be made for any service or product that the subscriber has not affirmatively indicated it wishes to receive. Payment of the regular monthly bill does not in and of itself constitute such an

affirmative indication.

(Code 1995, § 7-145; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-146. - Disconnection.

(a) A franchisee shall promptly disconnect or downgrade any subscriber upon the subscriber's request. No period of notice prior to voluntary termination or downgrade of service may be required of subscribers by any franchisee. So long as the subscriber returns, or permits the franchisee to retrieve, any equipment necessary to receive a service within five business days of the disconnection, no charge may be imposed by any franchisee for any cable service delivered after the date of the disconnect request.

(b) Any security deposit and/or other funds due the subscriber shall be refunded on disconnected accounts after any customer premises equipment provided by the franchisee has been recovered by the franchisee. The refund must be made within 30 days or by the end of the next billing cycle, whichever is earlier, from the date disconnection was requested (or, if later, the date on which any customer premises equipment provided by the franchisee is returned).

(c) A franchisee shall provide at least five days' written notice prior to discontinuance of service due to nonpayment and shall not terminate for nonpayment where the payment relates to service not yet provided. Where a franchisee has improperly discontinued service, it shall provide free reconnection.

(d) A franchisee may immediately disconnect a subscriber if the subscriber is damaging or destroying the franchisee's cable system or equipment. After disconnection, the franchisee shall restore service after the subscriber provides adequate assurance that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and amounts owed the franchisee for damage to its cable system or equipment.

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

(Code 1995, § 7-146; Ord. No. 1086, §§ 1—3, 5-9-2006)

Sec. 7-147. - Blocking of channels.

(a) A franchisee shall make available to any subscribers, upon request, the option of blocking the video or audio portion of any channel or channels of programming entering the subscriber's home. The control option described herein shall be made available to all subscribers requesting it when any cable service is provided, or reasonably soon thereafter.

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

(Code 1995, § 7-147; Ord. No. 1086, §§ 1—3, 5-9-2006)

Secs. 7-148—7-150. - Reserved.

ARTICLE VII. - ACCESS CHANNELS

Sec. 7-151. - Required; use.

(a) Each cable system franchised by the county shall provide at least one government access channel dedicated to the county, one education access channel dedicated to all schools (public and private nonprofit) within the county, and one community access channel to be utilized by the public.

(b) Whenever any access channel, other than the basic access channels required in subsection (a) of this

section, is utilized less than four hours per day for six days per week for a continuous period of not less than 12 consecutive weeks, the county may permit different or additional interim uses for such channels. A franchisee may be permitted to utilize unused access channel capacity under rules and procedures established by the county.

(Code 1995, § 7-151; Ord. No. 1086, §§ 1—3, 5-9-2006)