

MAR 22 2011

ORDINANCE NO. 141A-15

BOARD OF SUPERVISORS  
JAMES CITY COUNTY

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 5, CABLE COMMUNICATIONS, OF THE CODE OF JAMES CITY COUNTY, VIRGINIA, BY AMENDING ARTICLE II, DEFINITIONS, SECTION 5-3, DEFINITIONS; ARTICLE III, GRANT OF AUTHORITY, SECTION 5-5, INTERPRETATION OF FRANCHISE TERMS; SECTION 5-6, FRANCHISE APPLICATIONS; ARTICLE IV, CABLE COMMUNICATIONS ADMINISTRATOR AND CITIZENS COMMITTEE, SECTION 5-7, CABLE COMMUNICATIONS ADMINISTRATOR'S POWER AND RESPONSIBILITIES; BY DELETING SECTION 5-8, CABLE COMMUNICATIONS COMMITTEE'S POWERS AND RESPONSIBILITIES; BY AMENDING ARTICLE V, FRANCHISE CONDITIONS, SECTION 5-9, FRANCHISE TERMS; SECTION 5-12, FRANCHISE RENEWAL; SECTION 5-12.1, FORFEITURE AND TERMINATION; BY DELETING SECTION 5-13, FRANCHISE FEE; BY AMENDING SECTION 5-14, INSURANCE; BONDS; INDEMNITY; BY AMENDING ARTICLE VI, SUBSCRIBER FEES AND RECORDS, SECTION 5-16, SUBSCRIBER FEES; SECTION 5-17, BOOKS AND RECORDS; SECTION 5-18, PRIVACY PROTECTION; BY AMENDING ARTICLE VII, SYSTEM OPERATIONS, SECTION 5-19, FRANCHISE TERRITORY; SECTION 5-20, SYSTEM DESCRIPTION AND SERVICE; SECTION 5-23, COMPLAINT PROCEDURE; BY AMENDING ARTICLE VIII, GENERAL PROVISIONS, SECTION 5-27, DISCRIMINATORY PRACTICES PROHIBITED; BY DELETING SECTION 5-29, LIQUIDATED DAMAGES; AND BY AMENDING SECTION 5-30, OBTAINING OR ATTEMPTING TO OBTAIN CABLE COMMUNICATIONS SERVICE WITHOUT PAYMENT; PENALTY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 5, Cable Communications, is hereby amended and reordained by amending Article II, Definitions, Section 5-3, Definitions; Article III, Grant of Authority, Section 5-5, Interpretation of franchise terms; Section 5-6, Franchise applications; Article IV, Cable Communications Administrator, Section 5-7, Cable communications administrator's power and responsibilities; by deleting Section 5-8, Cable communications committee's powers and responsibilities; by amending Article V, Franchise Conditions, Section 5-9, Franchise terms; Section 5-12, Franchise renewal; Section 5-12.1, Forfeiture and termination; by deleting Section 5-13, Franchise fee; by amending Section 5-14, Insurance; bonds; indemnity; by amending Article VI, Subscriber Fees and Records, Section 5-16, Subscriber fees; Section 5-17, Books and records; Section 5-18, Privacy protection; by amending Article VII, System Operations, Section 5-19, Franchise territory; Section 5-20, System description and service; Section 5-23, Complaint procedure; by amending Article VIII, General Provisions, Section 5-27, Discriminatory practices prohibited; by deleting Section 5-29, Liquidated damages; and by amending Section 5-30, Obtaining or attempting to obtain cable communications service without payment; penalty.

Chapter 5. Cable Communications

Article I. Title, Intent and Purposes

**Sec. 5-1. Title.**

This chapter shall be known and may be cited as the "James City County Cable Communications Ordinance."

**Sec. 5-2. Intent and purposes.**

It is the intent of the county to:

- (1) Promote the public health, safety and general welfare by providing for the grant of one or more franchises for the construction and operation of a cable system;
- (2) Provide for the regulation of each cable system by the county;
- (3) Provide for the payment of fees and other valuable consideration by a franchisee to the county for the privilege of using the public right-of-ways for constructing and operating a cable system;
- (4) Promote the widespread availability of cable service to county residents wherever economically feasible;
- (5) Encourage the development of cable as a means of communication between and among the members of the public institutions; and,
- (6) Encourage the provisions of diverse information to the community over cable.

Article II. Definitions

**Sec. 5-3. Definitions.**

For the purpose of this chapter, the following words and their derivations have the meanings defined below. Words not defined are given their meaning in *the Cable Act* ~~Section 602 of the Cable Act, 47 USC Section 552,~~ and if none, their common and ordinary meaning. 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. The word "shall" is mandatory and the word "may" is permissive.

*Access channel* shall mean any channel reserved for the transmission of non-commercial Public, Educational, or Governmental access programming as directed by James City County. ~~set aside for non-commercial Public, Educational, Government programming as directed by James City County, without a charge by the grantee for channel usage.~~

*Administrator* shall mean the cable communication administrator for James City County.

*Application* shall mean a proposal to construct and operate a cable system within the county, transfer a franchise, renew a franchise or modify a franchise. An application includes the initial proposal plus all subsequent amendments or supplements to the proposal, relevant correspondence and any testimony taken in connection with the application.

*Board* shall mean the James City County Board of Supervisors.

*Cable Act* shall mean *the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 (47 U.S.C. 521, et seq.), as amended.* ~~the Cable Communications Policy Act of 1984, 47 USC Section 521 et seq.~~

*Cable casting* shall mean programming carried on a cable system, exclusive of broadcast signals, whether originated by the cable operator or any other party.

*Cable Service shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning the one-way transmission to Subscribers of (i) Video Programming or (ii) other programming service, and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service. Cable Service does not include any Video Programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d). shall mean the one-way transmission of video or other programming service to subscribers, together with any subscriber interaction provided in connection with such service.*

*Committee shall mean the James City County Cable Communications Committee.*

*Control of a grantee or applicant shall mean the legal or practical ability to direct the affairs of the grantee or applicant either directly or indirectly, whether by contractual agreement or majority ownership of an economic interest.*

*Construction shall mean the physical building or installation of a cable communications system, including attaching or laying cable, the building of head-end building or studio, or necessary towers to receive and distribute audio, video or other electrical signals.*

*County shall mean the County of James City, Virginia.*

*FCC shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.*

*Franchise shall mean and include any authorization granted by the county in terms of franchise, right, privilege or authority to construct, operate and maintain a system.*

*Franchise certificate shall mean the contract entered into in accordance with the provisions of this chapter between the county and a grantee that sets forth the terms and conditions under which the franchise shall be exercised. A copy of any franchise certificate that has been issued may be found in the office of the county attorney administrator.*

*Grantee* shall mean the person, firm or corporation to whom or to which a franchise, as herein defined, is granted by the board under this chapter, or any one who succeeds the person, firm or corporation in accordance with the provisions of a franchise.

~~*Gross annual revenues* shall mean all revenue derived directly or indirectly by the grantee, its affiliates, subsidiaries, parent, and any person in which the grantee has a financial interest, from or in connection with the operation of a system in the county; provided, however, that all revenues shall include, but not be limited to, basic subscriber service monthly fees; pay cable fees; installation, disconnection and reconnection fees; leased channel fees; rentals of converters, remotes and other equipment; studio rental; production equipment and personnel fees; fees received from programmers; fees from shopping channels; and advertising revenues, and this shall not include any taxes on services furnished by the grantee herein imposed directly upon any subscriber or user by the state, county or other governmental unit and collected by the grantee on behalf of said governmental unit nor shall this include subscriber deposits.~~

~~*Primary service area* shall mean the area of the county that will receive cable communications service at a fixed rate not including any line extension charges.~~

*Public way* shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive or other public rights-of-way, including public utility easements or rights-of-way, and any temporary or permanent fixtures or improvements located thereon now or hereafter.

*Subscriber* shall mean any person, firm, corporation, association, joint venture or other entity legally receiving for any purpose cable service.

*System shall be defined herein as it is defined under Title 15.2 of the Code of Virginia, Chapter 21, Article 1.2, Section 15.2-2108.19, meaning franchisee's 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 Service Area, except that such term shall not include (i) a system that serves fewer than 20 Subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only*

*Subscribers without using any Public Rights-of-Way; (iv) 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, as amended, 47 U.S.C. § 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; (v) any facilities of any electric utility used solely for operating its electric system; (vi) any portion of a system that serves fewer than 50 Subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality; or (vii) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573. shall mean a cable communications system consisting of antennas, cables, wires, lines, fiber, towers, wave guides, laser beams or any other conductors, converters, electronics, equipment or facilities, designed and constructed for the purpose of producing, receiving, amplifying and distributing by audio, video and other forms of electronic or electrical signals to and from subscribers and locations within the county.*

*Transfer of a franchise shall mean any transaction in which control of more than 50 percent of the right of control of an ownership or a grantee is acquired by a person or group of persons acting in concert, none of whom already own or control 50 percent or more of the right of control of the grantee, or the rights held by the grantee under a franchise certificate are transferred or assigned to another person or group of persons.*

*Two-way capability shall mean the two-way circuits shall be capable of transmitting effectively commercial broadcast audio video TV-quality programming in either of two directions (both outgoing from and incoming to all points of program origination throughout the system); and further means that the subscriber or any other location shall have the capability to choose whether to respond immediately, or by sequential delay by utilizing any type of terminal equipment whatever, by push-button code, dial code, meter, voice, video signal, or by any other means, to any type of electronic, including, but not limited to, audio and video, electrical or mechanical produced signal, display and/or interrogation.*

*User shall mean a person or organization utilizing a system channel for purposes of production and/or transmission of material, as contrasted with receipt thereof, in a subscriber capacity.*

*VDOT shall mean the Virginia Department of Transportation.*

Article III. Grant of Authority

**Sec. 5-4. Requirements of a franchise.**

(a) No person, firm, company, corporation or association shall construct, install, maintain or operate a system within the county unless a franchise has been obtained pursuant to the provisions of this chapter, and unless such franchise is in full force and effect.

(b) A franchise authorizes use of the public right-of-ways for installing cables, wires, lines and other facilities to operate a cable system within a specified district.

(c) A franchise is nonexclusive and will not expressly or implicitly preclude the issuance of other franchises to operate cable systems within the county or affect the county's right to authorize the use of public right-of-ways to other persons as it determines appropriate.

(d) The nonexclusive franchise shall be in effect upon acceptance by signature and notarization of the franchise certificate by the grantee. A franchise certificate constitutes a contract between the grantee and the county once it is accepted by the grantee. A grantee contractually commits itself to comply with the terms, conditions and provisions of the franchise certificate and with all applicable laws, ordinances, codes, rules, regulations and orders.

(e) A franchise conveys no property right to the grantee or right to renewal other than as may be required by law.

(f) A grantee is subject to and shall comply with all applicable county, state and federal laws, ordinances, codes, rules, regulations and orders. A grantee is also subject to the county's police power.

(g) A grantee or other person shall not be excused from complying with any of the terms and conditions of this chapter or a franchise certificate by any failure of the county upon one or more occasions to require compliance or performance.

**Sec. 5-5. Interpretation of franchise terms.**

(a) The provisions of this chapter shall apply to a franchise certificate as if fully set forth in the franchise certificate. *Unless otherwise provided in a franchise certificate, the* ~~The~~ express terms of this chapter shall prevail over conflicting or inconsistent provisions in a franchise certificate.

(b) The provisions of a franchise certificate shall be liberally construed in order to effectuate its purposes and objectives consistent with the chapter and the public interest.

(c) A franchise certificate shall be governed by and construed in accordance with the laws of the ~~State~~ *Commonwealth of Virginia*.

**Sec. 5-6. Franchise applications.**

(a) After receiving applications for a franchise *or franchise renewal*, the board, after considering the legal, financial, technical and character qualifications of the applicants, may, by franchise certificate, grant a nonexclusive franchise creating a right to construct and operate a system within the county. A franchise may be granted to the applicant which in the board's judgment may 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 chapter and incorporated into a franchise certificate awarded to the grantee. However, no provision of this chapter shall be deemed or construed as to require the board to grant a franchise. The board may award additional licenses, franchises or certificates of public convenience as it deems appropriate if the board finds that the public welfare will be enhanced by such awards after a public hearing at which testimony is heard concerning the economic consideration, the impact on private property rights, the impact on public convenience, the public need and potential benefit and such other factors as are relevant.

(b) An application for a cable communications franchise *or renewal of a franchise* shall be submitted to the board, or its designee, or a written application form furnished by the county, and in accordance with procedures and schedules to be established and published by the county. The application of the grantee shall be incorporated into the franchise certificate by reference. An application form may request facts and information the county deems appropriate. Applications shall be accompanied by a nonrefundable application fee of



\$1,000.00 payable to the order of the "County of James City," 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.

(c) A grantee receiving a franchise shall, in addition to the nonrefundable application fee, pay to the county at the time the grantee files the franchise certificate an amount, not to exceed \$15,000.00, which shall be prescribed by the board. Said payment shall be nonrefundable, shall be made to the order of the "County of James City," and shall be used to offset any direct costs incurred by the county in granting the franchise not defrayed by fees forthcoming from the provisions of paragraph (b) of this section and fund the cable administration functions listed in Article IV.

#### Article IV. Cable Communications Administrator ~~And Citizens Committee~~

##### **Sec. 5-7. Cable communications administrator's power and responsibilities.**

(a) Day-to-day administration of cable television operations within the county may be assigned to a cable communications administrator. The administrator shall be designated by the county administrator ~~and shall report directly to the county administrator.~~ The administrator's powers and responsibilities shall include, but not be limited to, the following functions:

- (1) ~~Preparation~~ *Assisting in the preparation, criteria, and reviewing applications of the application form to be submitted by an applicant for a cable communications franchise; if required, making recommendations to the board.*
- (2) ~~Assisting in the preparation of invitations to bid for a franchise; establishing criteria for review and ranking of franchise applications; reviewing and screening applications for franchises and selection recommendations to the board.~~
- (3)(2) Monitoring the timely performance of a grantee in making application for and obtaining all certificates, permits and agreements as provided in this chapter.

- (4) (3) Monitoring the performance of a grantee in meeting the construction timetable as provided in this chapter.
- (5) (4) Advising and making recommendations to the board on technical, *and* engineering ~~and police power~~ regulations for cable operations within the county.
- (6) (5) Cooperating with other systems, cable communications system operators and governmental units in the development of and in the supervision of the interconnection of systems *and access channels*.
- (7) (6) Reviewing all franchise records and reports as required by this chapter, ~~as well as all franchise reports filed with the FCC, and, at the county administrator's discretion, requiring the preparation and filing of information in addition to that required therein, as may reasonably be required to accomplish the purposes of this chapter.~~
- (8) (7) Monitoring performance of a grantee under any other terms of the franchise certificate and this chapter and making recommendations to the board to ensure such compliance.
- (9) ~~Making an annual report to the board which shall include: an account of franchise fees received, the total number of hours of utilization of public channels with hourly subtotals for various programming categories, and a review of any plans submitted during the year by a grantee for development of new services.~~
- (10) ~~Conducting evaluations of the system at least every three years, and pursuant thereto making recommendations to the board for amendments to this chapter or to franchise certificates.~~
- (11) (8) Receiving and investigating complaints against a grantee by any person or upon direction of the board.
- (12) (9) Seeking recovery, if necessary, of liquidated damages in accordance with this chapter.
- (13) (10) Advising a grantee of the receipt of subscriber complaints affecting the grantee's system.

~~Sec. 5-8. Cable communications committee's powers and responsibilities.~~

~~(a) There shall be established a citizen's board entitled the "James City County Cable Communications Committee." The committee shall consist of seven members. Members shall be appointed and serve at the pleasure of the board for terms of four years. No member shall be appointed as a member of the committee for more than two consecutive terms. Terms for committee members shall be staggered so that beginning in April 2005, four members shall be appointed and in April 2007, three members shall be appointed. A like number shall be appointed to serve every four years thereafter. Appointments to fill vacancies shall be only for the unexpired portion of a term, which shall not constitute a term for the two consecutive term limit. A member whose term expires shall continue to serve until his successor is appointed. The administration shall provide staff support to the committee.~~

~~(b) The committee shall adopt bylaws governing its procedures and actions on matters coming before it which shall include provisions for selection and tenure of the committee chairman.~~

~~(c) Responsibilities of the committee shall include, but not be limited to, the following:~~

~~(1) The committee shall adopt regulations governing the operation and use of the public access and educational access channels of cable television and any institutional networks that may be developed.~~

~~(2) Enforce its public access guidelines and procedures, if and from the time the franchise certificate vests management of a grantee's public access channel(s) in the committee.~~

~~(3) Develop policies and procedures regulating use, services, and programming of the public access channel.~~

~~(4) Review with the administrator required system performance evaluations every three years.~~

~~(5) Advise the board of objectives to be obtained in the county's system based upon its continued evaluation of a franchise and continued assessment of cable technology.~~

- ~~(6) Review the annual report to the board prepared by the administrator and make recommendations to the administrator as may be appropriate.~~
- ~~(7) Work with staff to perform research, conduct surveys, and make recommendations on all aspects of the county's system which shall be reported to the board through the administrator's report.~~
- ~~(8) Serve as a liaison between the county, the grantee(s) and the community.~~
- ~~(9) Cooperate with the county and grantee(s) in fulfilling its responsibilities herein.~~

#### Article V. Franchise Conditions

##### **Sec. 5-9. Franchise terms.**

~~The term of an original franchise or any renewal shall be 15 years from the date the franchise is accepted by the grantee. The term of a renewed franchise shall be no more than 15 years.~~

##### **Sec. 5-10. Notice to grantee.**

The board shall not take final action at any meeting involving the review, renewal or revocation of the grantee's franchise unless the county has given the grantee at least 21 days' written notice of such meeting. The notice shall advise the grantee of the meeting's time, place and proposed action affecting the grantee.

##### **Sec. 5-11. Franchise review.**

It shall be the policy of the county to amend a franchise upon application of the grantee, the recommendation of the administrator, or upon the board's own motion when necessary or advisable to enable the grantee to take advantage of advancements in the state-of-the-art which will afford it an opportunity to more effectively, efficiently or economically serve its subscribers or the county; provided, that this Section shall not be construed to require the county to make any amendment for such purpose.

**Sec. 5-12. Franchise renewal.**

(a) *Review by public hearing.* The board may set the time and place of a public hearing, the purpose of which shall be to review a grantee's performance during the term of its franchise; to consider the adequacy of the franchise from the standpoint of the county, the grantee, and the ~~Federal Communications Commission~~ FCC' Rules for cable communications; and to determine the advisability of renewing the grantee's franchise.

(b) *Determination of compliance.* The board shall hear interested persons at the public hearing and shall determine whether the grantee reasonably complied with the terms and conditions imposed by this chapter and the franchise certificate.

(c) *Renewal.* If the board determines that the grantee has been in reasonable compliance with the terms and conditions imposed by this chapter and the franchise certificate, the board may, by ordinance, renew the grantee's franchise certificate, with any modifications it deems desirable, for a period of time not inconsistent with the provisions of this chapter. The board may require a grantee to pay the county, as a condition of renewal of the franchise, an amount which the board determines will compensate the county for those direct expenses above normal administrative costs incurred in connection with the renewal of the franchise.

(d) *Right not to renew; acquisition.* Notwithstanding the fact that the board may determine that the grantee has been in reasonable compliance with the terms and conditions imposed by this chapter and the franchise certificate, it shall have the right not to renew the franchise. If the board does not renew the franchise, the board shall have an option to the extent then permitted by existing law, to acquire the assets of the grantee's cable television system or the option to permit a succeeding grantee to acquire such assets. ~~The amount paid for such assets shall be the fair market value of the system as of the expiration date of the franchise and shall be determined by using a hypothetical assumption that the cable system is a going concern with an existing franchise which will expire ten years from the aforesaid expiration date.~~ The board's option to acquire the assets of the grantee or to permit a succeeding grantee to acquire such assets must be exercised within one year from the date of expiration.

(e) *Service continuity.*

(1) If, pursuant to the terms and conditions of Section 5-12 and Section 5-12.1 of this chapter, the county exercises its right not to renew the grantee's franchise, the grantee shall, at the county's request, continue to operate the system pursuant to the terms and conditions of its franchise for a period not to exceed one year from the expiration date of the franchise. If the county chooses to have the grantee operate the system beyond the expiration date, the county shall notify the grantee no less than 90 days prior to said expiration date. Furthermore, if the county chooses to have the grantee terminate its operation prior to the first anniversary following the expiration date of the franchise, the county shall notify the grantee at least 90 days prior to the date on which service is to terminate.

(2) During such period beyond the franchise expiration date as the grantee may be required to continue service, the grantee may charge for its service such rates as had been in effect during the month immediately preceding the expiration date.

~~(3) If the grantee fails to comply with the requirements set forth above, the grantee shall be subject to such remedies provide elsewhere in this chapter, including, but not limited to, liquidated damages as established in Section 5-29(5) herein.~~

(f) *System removal.* Upon expiration of its franchise, or upon its termination or cancellation, or at such later date as may be set by the county pursuant to paragraph (a) above, a grantee shall, if requested, at its own expense, remove its system from all streets, roads and any public and private property upon which the system had been placed. If the grantee fails to completely remove its system within 120 days following the franchise expiration date, the county may, at its option, have grantee's system removed at grantee's cost and without liability to the county for damage caused to grantee's system during such removal.

Paragraphs (a) through (d) above shall apply to the extent not preempted by federal law.

**Sec. 5-12.1. Forfeiture and termination.**

(a) In addition to all other rights and powers retained by the county under this chapter or otherwise, the county reserves the right to forfeit and terminate a franchise and all rights and privileges of the grantee in the

event of a *an uncured* breach of ~~the~~ *a material term* or ~~terms and~~ conditions, including, but not limited to, the following.

- (1) Violation by grantee of ~~any~~ *a material* provision of the franchise or any rule, order, regulation or determination of the county made pursuant to the franchise *and failure to cure said violation after notice and an opportunity to cure as provided in this chapter or the franchise certificate*;
- (2) *A finding by a court that a grantee has attempted* ~~Attempt by grantee~~ to evade any material provision of the franchise or practice any fraud or deceit upon the county or its subscribers or customers;
- (3) Failure by grantee to begin or complete system construction or system extension as provided under the franchise;
- (4) Failure by grantee to restore service after 96 consecutive hours of interrupted service, except when approval of such interruption is obtained from the county; such approval shall not be unreasonably withheld; or
- (5) Any misrepresentation by grantee of *a material* fact in the application for ~~or negotiation of the~~ franchise.

(b) A grantee shall not be responsible for any failure to meet all or any part of the terms and conditions under this chapter or its franchise certificate due to regulation, act of God, riot or other civil disturbance, and, without limiting the foregoing, by any other cause, contingency or circumstance not subject to its control which prevents or hinders the grantee from operating and maintaining a system as described herein. Grantee shall not be excused by mere economic hardship ~~nor~~ *or* by misfeasance or malfeasance of its directors, officers or employees.

(c) If, in the opinion of the county administrator, a breach has occurred, then the administrator shall make a written demand that the grantee comply with any such provision, rule, order, or determination under or pursuant to this chapter or the franchise certificate within a period of seven calendar days. If the violation by the grantee continues for a period of ten days following the period set forth for correcting the violation, the

county administrator shall submit the matter to the board. The county administrator shall notify in writing by certified or registered letter to the grantee at least ten days prior to the date of such a board meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the board is to consider.

(d) The board shall hear and consider the issue and shall hear any person interested therein and shall determine in its direction whether any violation by the grantee has occurred.

(c) All or any portion of a franchise granted under this chapter may be terminated or suspended by the board for failure to comply with any provisions of this chapter or the franchise certificate; provided, the county shall first notify in writing, by certified mail, the grantee of any failure to comply with the provisions of this chapter or the franchise certificate. The grantee shall have ten days after the receipt of such notice to correct the violation or to appeal the proposed termination or suspension to the board in writing. The board shall afford the grantee a hearing within 30 days of the receipt of such appeal. The effective dates of the suspension or termination shall begin ten days after the notice of suspension, if not appealed, or upon written notice from the board that the appeal has been denied.

**~~Sec. 5-13. Franchise fee.~~**

~~(a) In consideration of the grants contained herein, a grantee shall pay quarterly to the county a franchise fee in an amount equal to five percent of the gross quarterly revenues. Such payment shall be made to the treasurer (payable to James City County) on or before the 30th day of each of the months of April, July, October, and January for the quarters ending March 31, June 30, September 30, and December 31. The quarterly franchise fee shall be in addition to any other payment, charge, permit fee or bond owed to the county by the grantee and shall not be construed as payment in lieu of personal or real property taxes levied by the state, county or local authorities. Grantee agrees to provide for review by the Commissioner of the Revenue a statement of the gross monthly revenues by the 30th day of the calendar month following each quarter, which should be certified under oath by an officer of the grantee.~~

~~(b) In the event that any payment is not made on or before the required date, the county shall assess a penalty of ten percent of the amount due plus interest on such payments from the due date at the annual rate of~~



~~18 percent. Should legal action be required to correct such fee(s), penalties and interest, the county also shall be entitled to attorney's fees equal to 25 percent of the total amount due.~~

~~State law reference—Authority of county to license cable television systems. Code of Va., § 15.2-967.~~

**Sec. 5-14. Insurance; bonds; indemnity.**

(a) *Unless otherwise provided in a franchise certificate, At* at the time of filling an application for a franchise, the applicant shall obtain, pay all premiums for, and deliver to the county written evidence of payment of premiums and originals of bid bond or bonds running to the county with good and sufficient sureties in the amount of \$50,000.00, and in a form acceptable to the county to protect the county from all damages or losses arising from the failure of the applicant, if selected as a grantee, to accept the franchise in conformity with this chapter and the substance of the proposal as submitted by the applicant.

(b) *Unless otherwise provided in a franchise certificate, Upon* upon the granting of a franchise and within 30 days following the filing of the franchise certificate, and at all times during the term of the franchise, including the time for removal of facilities or management as a trustee as provided for herein, a grantee shall obtain, pay all premiums for, and deliver to the county written evidence of payment of premiums and originals of the following:

- (1) A general comprehensive public liability policy or policies indemnifying, defending and saving harmless the county, its officers, boards, commissions, agents or employees from any and all claims by any person whatsoever (including the costs, defenses, attorney fees and interest arising therefrom) on account of injury to or death of a person or persons occasioned by the operations of the grantee under the franchise herein granted pursuant to this chapter or alleged to have been so caused or occurred, with a minimum liability of \$1,000,000.00 per personal injury or death of any one person and \$2,000,000.00 per personal injury or death of any two or more persons in any one occurrence.
- (2) A property damage insurance policy or policies indemnifying, defending and saving harmless the county, its officials, boards, commissions, officers, agents, and employees from and against all claims by any person whatsoever (including the costs, defenses, attorney fees and interest arising therefrom)

for property damage occasioned by the operation of the grantee under the franchise herein granted pursuant to this chapter, or alleged to have been so caused or occurred, with a minimum liability of \$500,000.00 for property damage to the property of any one person and \$1,000,000.00 for property damage to the property of two or more persons in any one occurrence.

- (3) A performance bond or bonds running to the county with good and sufficient surety approved by the county *attorney* conditioned upon the faithful performance and discharge of the obligations imposed by this chapter and the franchise certificate from the date of the franchise certificate, including, but not limited to, faithful compliance with the construction timetable proposed by the grantee in its application as incorporated into the franchise certificate. The bond shall be in the amount determined necessary by the county, based upon review of the grantee and its application, and shall be set forth in the franchise certificate. The amount of the bond may be reduced by 50 percent when regular subscriber service is available to more than 50 percent of the occupied dwelling units with the primary service areas specified in the franchise certificate as certified by the cable communications administrator to the board; and may be further reduced by an additional 80 percent when regular subscriber service is available to more than 90 percent of the occupied dwelling units within the primary service areas specified in the franchise certificate as certified by the administrator to the board. The county's right to recover under the bond shall be in addition to any other rights retained by the county under this chapter and other applicable law.

(c) *Unless otherwise provided in a franchise certificate, the* The bonds and all insurance policies called for herein shall be in a form satisfactory to the county attorney. Cancellation provisions, where permitted, shall require 30 days written notice of any cancellation to both the county and the grantee. The grantee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the county original replacement bonds or policies within 15 days following receipt by the county or the grantee of any notice of cancellation.

(d) The county may require in a franchise certificate coverage and amounts in excess of the above minimums where reasonably necessary in view of the grantee's greater exposure to liability. The county may, from time-to-time, require that insurance coverage be broadened or increased if it is reasonably determined by

the county that such adjustments to coverage are necessary to reflect inflation or changing circumstances relative to liabilities.

(e) A grantee shall, at its sole cost and expense, indemnify and hold harmless the county, its officials, boards, commissions, officers, 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 communications system under 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 a grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the grantee's cable communications system whether 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 costs and attorney's fees, and shall also include the reasonable value of any service rendered by the county attorney or his assistants or any employees of the county.

(f) No grantee shall permit any policy or bond to expire or approach less than 30 days prior to expiration without securing and delivering to the county a substitute, renewal or replacement policy or bond in conforming with the provisions of this chapter.

(g) The county may require bonds and insurance policies described in this section to run to the benefit of both the county and other governmental units located and/or operating within the county

**Sec. 5-15. Transfer of franchise.**

(a) No transfer of ownership or control of a franchise shall take place, whether by force or voluntary sale, lease, mortgage, assignment, encumbrance, or any other form of disposition, without prior notice to and approval by the board.

(b) 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 shall exceed 75 percent of the fair market value of the property used by the grantee in the operation of its system. Prior consent of the board,

expressed by resolution, shall be required for such transfer and said consent shall not be withheld unreasonably.

(c) Prior approval of the board of the transfer of a franchise shall be required. By its acceptance of a franchise certificate, a grantee specifically grants and agrees that any such transfer occurring without prior approval of the board shall constitute a violation of its franchise by the grantee.

#### Article VI. Subscriber Fees and Records

##### **Sec. 5-16. Subscriber fees.**

- (a) If a grantee is subject to rate regulation pursuant to federal law:
  - (1) Subscriber rates during the first four years of the franchise shall be specified in the franchise certificate. The rates so specified shall not, except as otherwise provided herein, be increased without the consent of the board.
  - (2) After the first four years of the franchise, subscriber rates shall, subject to the provisions of this chapter, become unregulated.
  - (3) The board, at any time, may adopt an ordinance, to be effective at any time following the aforementioned four-year period, regulating subscriber rate.
  - (4) Except as may be otherwise provided in the franchise certificate, a subscriber shall have the right to have its service disconnected without charge; such disconnection shall be made as soon as practicable and in no case later than 30 days following notice to the grantee of same. No grantee shall enter into any agreement with a subscriber which imposes any charge following disconnection of service, except for reimbursement for converters not returned and reconnection and subsequently monthly or periodic charges which shall be no greater than charges for new customers.

(b) All charges to subscribers shall be consistent with a schedule of fees for all services offered by a grantee. Changes in the fee schedule shall not take effect until at least ~~60~~ 30 days after notification of same is delivered to the administrator.

~~(c) The grantee shall notify in writing each subscriber of all applicable fees and charges for providing cable communications service prior to executing a contract of service with such subscriber or installing any equipment to serve such subscriber. The grantee may require a deposit for materials and services according to its rate schedule.~~

~~(d) If the grantee fails to remedy a loss of service attributable to the system within 48 hours after a written notice of such a failure, the grantee shall be required to rebate one thirtieth of the regular monthly charge to each subscriber for each 24 hours or fraction thereof following the first 48 hours after a loss of service except to the extent that restoration of service is prevented by strike, injunction, act of God, or other cause beyond the grantee's control. Loss of service shall be defined as the loss of audio or video service on four or more channels of the cable system.~~

(e) ~~(c)~~ This section shall not prevent a grantee from refusing service to any person because the grantee's prior account with that person remains due and owing.

**Sec. 5-17. Books and records.**

(a) *Unless otherwise provided in a franchise certificate, a* ~~A~~ grantee shall, within 30 days following the acceptance of a franchise, and within 30 days of the change of ownership of three percent or more of the outstanding stock or equivalent ownership interest of a grantee, furnish the county a list showing the names and addresses of persons owning three percent or more of the outstanding stock or equivalent ownership interest of grantee. Such a list shall include a roster of the grantee's officers and directors (or equivalent managerial personnel) and their addresses.

(b) *Unless otherwise provided in a franchise certificate, a* ~~A~~ grantee shall file annually with the commissioner of the revenue, no later than 90 days after the end of the grantee's fiscal year, a copy of a complete financial report applicable to the James City County Cable operation, including an income statement

applicable to its operations during the preceding twelve-month period, a balance sheet, and a statement of its properties devoted to cable system operations, by categories, giving its investment in such properties on the basis of original cost, less applicable depreciation. This report shall be certified as correct by an authorized officer of the grantee and there shall be submitted along with it such other reasonable information as the county shall request with respect to the grantee's properties and expenses related to the system within the county. The county shall have access to records of financial transactions for the purpose of verifying burden rates or other indirect costs prorated to the system. The grantee's accounting records shall include sufficient detail as may be necessary to provide the county with the information needed to make accurate determinations as to the financial condition of the system.

(c) A grantee shall retain such books and records, in any reasonable form, for a period ~~up to~~ ~~of not less than~~ five years. The county shall have the right to extend the retention period through the term of any renewed franchise.

(d) An annual independently audited financial statement may be requested by the administrator to be received by the county no later than 120 days after requested. The expense of the audit shall be borne by the grantee. Such audited financial statements must be requested at least 60 days prior to the end of the grantee's fiscal year.

(e) Copies of all petitions, applications, communications and reports submitted by a grantee to the FCC, Securities and Exchange Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable communications operations authorized pursuant to the franchise shall be provided ~~simultaneously~~ to the county *upon request*.

(f) *Unless otherwise provided in a franchise certificate, a* grantee shall have available for public inspection maps, plats and permanent records of the location and character of all facilities constructed, including underground facilities. Such maps, plats and permanent records shall be updated within 90 days of any construction by the grantee. All record maps shall be at a scale of one inch equals two hundred feet (1" = 200'). A grantee shall join the Miss Utility of Virginia Association. The construction, extension and modernization of plan shall be available for public inspection during normal business hours at the local business office of the grantee.

**Sec. 5-18. Privacy protection.**

*A grantee shall comply with all applicable federal and state privacy laws, rules, and regulations.*

~~(a) No data shall be collected over a system from an individual subscriber unless the subscriber has given prior written authorization. Such authorization shall be limited to a one-year period, shall be revokable *revocable* at any time without penalty or cost, and shall not be a condition for ~~deceiving~~ *receiving* cable services. Landlords may not give authorization for their tenants. The subscriber shall have the right to access information about him kept by a grantee or disseminated to others.~~

~~(b) A grantee shall observe the rights of a subscriber to privacy of their persons. A grantee may release information concerning the number of subscribers viewing particular television channels, the number of subscribers expressing preferences by poll, or the number of subscribers purchasing any of the services contained herein, and may keep records of services by individual subscribers as are necessary for billing for such services. All other data collected, maintained or tabulated by a grantee shall not reveal individual subscriber preferences or opinions.~~

~~(c) Intereception by a third party of data and/or cable casting *programming* transmitted through a system, exclusive of *broadcast signals*, shall be prohibited.~~

Article VII. System Operations

**Sec. 5-19. Franchise territory.**

(a) A franchise is for the territorial limits of the county. A grantee shall furnish to the county as part of its formal application for a franchise a map of suitable scale showing all highways and public buildings. The map shall indicate the primary service areas to be served and, upon approval by the county, shall be incorporated into the franchise certificate. The map shall clearly delineate *areas where the system is available and areas where expansion of the system is planned.* ~~the following:~~

~~(1) The primary service areas within the franchise territory where the system will be available and the construction schedule for making such service available. Any differential rate within the primary service areas shall be specified as required by Section 5-15(a).~~

~~(2) Areas within the franchise territory but outside the primary service area where extension of the system cannot reasonably be expected to be made available due to lack of present or planned development, or other similar reasons, but which would receive service according to the grantee's line extension policy incorporated into the franchise certificate.~~

~~(b) Extension of the system into any areas outside the primary service area shall be required if any of the following conditions are met:~~

~~(1) When potential subscribers can be served by extension of the system past occupied dwellings units equivalent to a density of 40 homes per mile or greater of cable contiguous to the activated system. Provided, where it is necessary to extend the grantee's trunk and feeder lines more than 300 feet solely to provide service to subscriber(s) not required to be served by the grantee, the direct cost for such extension in excess of 300 feet shall be paid in advance by the potential subscriber(s).~~

~~(2) In areas not meeting the conditions in subSection(b)(1) above, the grantee shall provide, upon the request of ten or more potential subscribers desiring service, an estimate of the costs required to extend service to said subscribers. If the potential subscribers then wish service, the grantee shall extend service upon request of said potential according to the estimate. The grantee may require advance payment. The amount paid for special extension shall be nonrefundable, and in the event the area subsequently reaches the density required for mandatory extension, such payments shall be treated as consideration for special extension.~~

~~(e) (b) Within 30 days of the effective date of its franchise, grantee shall diligently pursue all efforts to obtain all necessary certificates, permits and agreements which are required to construct and operate a system in the county. Within 90 days of receipt of such certificates, permits and agreements, a grantee shall commence construction of the system. Thereafter, construction shall proceed at such rate so as to make service available to all members of the public desiring such service at the earliest possible time. The construction program shall follow the schedule set forth in the franchise certificate. If construction does not begin within 12 months of the effective date of the franchise, the franchise certificate shall be canceled.~~



~~(d)~~ (c) A grantee shall notify the county in writing 15 days prior to the date on which *initial construction of its system* will commence. Thereafter, a grantee shall file quarterly written reports with the county within 30 days after the end of each calendar quarter, informing the county of the grantee's construction progress. Such reports shall indicate the number of miles of system and include maps setting forth areas made operational during the current quarter and any potential delays which the grantee is aware of which could prevent the completion of the system within the required period.

~~(e)~~ (d) Nothing in this section shall prevent a grantee from constructing the system earlier than planned. However, any delay in the system construction beyond the times specified in the plan timetable shall require, if so requested in writing by the administrator, application to and consent by the board. The county may not unreasonably withhold consent when a grantee has shown good cause for the delay, but the county may attach reasonable conditions to ensure performance. The schedule and maps shall be updated whenever substantial changes become necessary.

~~(f)~~ (e) A grantee shall not be responsible for any failure to meet all or any part of the construction schedule deadlines due to act of God, riot or other civil disturbance, and, without limiting the foregoing, by any other cause, contingency or circumstance not subject to its control which prevents or hinders the construction of the system described herein. If construction is delayed or prevented by any of the circumstances set forth hereinabove, a grantee shall notify the county in writing within ten days after the occurrence of any act or ten days after the termination of any continuous act and request that the time of completion of the project be extended for a stated period. If the board agrees, an extension shall be granted in whole or in part. Refusal of the board to agree to an extension shall be final.

~~(g)~~ (f) A grantee shall interconnect origination and access channels of the cable system with any or all other cable systems in the adjacent areas upon the directive of the county. The grantee shall cooperate with any interconnection corporation, regional interconnection authority or city, county, state or federal regulatory agency which may be hereafter established for the purposes of regulating, financing or otherwise providing for the interconnection of cable systems beyond the boundaries of the county. A grantee may be excused from interconnecting if the operator of the cable facility to be interconnected or the franchising authorities in other

jurisdictions refuse to reach a reasonable agreement regarding such interconnection. *Grantee may charge a third party for the cost of such interconnection.*

(h) (g) Upon the direction of the county, a grantee shall upgrade its cable communications system if necessary to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests, the technical reliability of the existing system, the unamortized investment in the existing system, and whether the upgrade would present an unreasonable financial burden to either the grantee or its subscribers.

**Sec. 5-20. System description and service.**

(a) Application for a franchise may include proposals for the provision of public education, local government, and leased access channels limited not only to video but also including audio, FM and data channels. Such proposals by a grantee may be incorporated into the franchise certificate granted and, to the extent so incorporated, shall subject the grantee to the following minimum requirements. *Unless otherwise provided in any applicable franchise certificate or amendment thereto, a grantee shall have no control over the content of access cable cast programs.*

~~(1) Unless otherwise provided in any applicable franchise certificate or amendment thereto, a grantee shall have no control over the content of access cable cast programs; however, this limitation shall not prevent taking appropriate steps to ensure compliance with the operating rules described herein.~~

~~(2) The public access channel(s) shall be made available to provided programming of a local, regional or national nature to county residents as determined by the cable communications committee. The grantee shall adopt operating rules for the public access channel(s), to be filed with the cable communications administrator prior to the activation of the channel(s), designed to prohibit the presentation of any advertising material designed to provide the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information; and defamatory, obscene or indecent matter, and rules permitting public inspection of a complete record of the names and addresses of all persons or groups requesting access time. Such a record shall be retained for a period of two years. If the franchise certificate vests management of a grantee's public access~~

~~channel(s) in the committee, at the time the committee assumes such management, the grantee shall have no further responsibility for public access operating rules.~~

~~(3) The education access channel(s) shall be made available for the use of local public educational authorities and private nonprofit educational telecommunication entities free of charge. A grantee shall adopt operating rules for the education access channel(s), to be filed with the administrator prior to activation of the channel(s), designed to prohibit the presentation of any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); lottery information and defamatory, obscene or indecent matter as well as a rule permitting public inspection of a complete record of the names and addresses of all persons or groups requesting access time. Such a record shall be retained for a period of two years.~~

~~(4) The local government access channel(s) shall be made available for the use of local government authorities free of charge.~~

~~(5) The leased access channel(s) shall be made available to leased users. Priority shall be given part time users on at least one channel. A grantee shall adopt operating rules, which are consistent with federal law, for the channel(s) to be filed with the administrator prior to activation of the channel(s), designed to prohibit the presentation of lottery information, obscene or indecent matter and shall establish rules to this effect, and other rules requiring nondiscriminatory access, sponsorship identification, specifying an appropriate rate schedule and permitting public inspection of a complete record of the names and addresses of all persons or groups requesting time. Such a record shall be retained for a period of two years.~~

~~(b) The committee shall promulgate rules under which channel capacity dedicated to public government and educational access may be used by the grantee when it is not being used for access purposes.~~

~~(e) (b) Unless otherwise provided in a franchise certificate, a A grantee shall provide without charge one service outlet activated for regular subscriber service to each fire station, public school, police station, public library, and such buildings used for public purposes as may be designated by the county; provided, that if it is necessary to extend a grantee's trunk or feeder lines more than 300 feet solely to provide service to any such~~

school or public building, the county shall have the option either of paying grantee's direct costs for such extension in excess of 300 feet or of releasing the grantee from the obligation to provide service to such building. Furthermore, a grantee shall be permitted to recover from any public building owner entitled to free service the grantee's actual cost for any additional converters required and direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than 250 feet of drop cable: provided, however, that a grantee shall not charge for the provision of regular subscriber service to the additional service outlets so installed in public schools, police stations, fire stations, public libraries, and county government offices in addition to any such other facilities as are specified in the grantee's franchise certificate.

~~(d)~~ (c) A system shall be capable of two-way communications, as defined by Section 5-3(l), on at least four channels.

~~(e)~~ (d) A grantee shall comply with the Federal Emergency Alert System regulations, 47 C.F.R. Sec. 76, Part 1, as amended. In the event of a state or local emergency, the Emergency Alert System shall be remotely activated as set forth in the Virginia Emergency Alert System plan. ~~incorporate into its system the capability which will permit the county, in times of emergency, to override the audio portion of all channels simultaneously. A grantee shall designate a channel which will be used for emergency broadcasts of both audio and video. A grantee shall cooperate with the county in the use and operation of the emergency broadcasts of both audio and video. A grantee shall cooperate with the county in the use and operation of the emergency alert override system.~~

**Sec. 5-21. Construction standards.**

(a) In the maintenance and operation of a system in the county and in the course of construction or additions to its facilities, a grantee shall proceed so as to cause the least possible inconvenience to the general public. Any opening or obstruction in the streets or other public places made by a grantee in the course of its operations or in the operations of its successors or assigns shall be approved by permit by VDOT and shall be guarded and protected at all times by the placement of adequate barriers, fencings or boardings, the bounds of which during period of dusk and darkness shall be designated by warning lights of approved types.

(b) Whenever a grantee shall take up or disturb any pavement, sidewalk or other improvement of any street, avenue, alley, highway, or other public place, the same shall be replaced and the surface restored in as good condition as before entry within 48 hours after completion of the grantee's work. Upon failure of a grantee to make such restoration within such time, or to begin such restoration within such time, if the restoration cannot be made within such time, or upon the grantee's delay of more than 24 hours in the continuation of a restoration begun, the county or VDOT may serve upon the grantee notice of intent to cause restoration to be made, and unless the grantee, within 24 hours after receipt of such notice, begins or resumes the proper restoration, the county or VDOT may cause the proper restoration to be made, including the removal of excess debris, and the reasonable expense of same, as itemized, shall be paid by the grantee upon demand by the county or VDOT.

(c) A grantee's transmission and distribution system, poles, wires and appurtenances, and underground conduit installations, shall be located, constructed and maintained so as not to endanger or interfere with the lives of persons or interfere with any improvements or additions the county or VDOT may deem proper to make from time to time, or to unnecessarily hinder or obstruct the free use of the streets, alleys, bridges or other public property; removal or relocation of any part of a grantee's transmission and distribution to avoid such interference shall be at the grantee's expense.

(d) A grantee shall have the right, insofar as the county's title or rights allow it to grant said rights, to use the public ways in the county in order to construct, install and maintain any poles, conduits, cables or other facilities necessary to provide cable communications services. The rights of use granted are limited to use which does not unreasonably interfere with either the county's or the public's use of said right-of-way or with the use of public utility easements.

(e) In all locations of the county where any of the cables, wires, or other like facilities of public utilities are placed underground, a grantee shall place its cables, wires or other like facilities underground. In case of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the grantee(s) reasonable notice of such construction or development and of the particular date on which open trenching will be available for grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at grantee's expense. Grantee(s) shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the

developer or property owner; except that if a grantee fails to install its conduit, pedestals and/or vaults and laterals within five working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching shall be borne by that grantee.

(f) A grantee 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 regulation, supervision and/or direction of the county.

(g) A grantee shall, on the request of any person holding a building moving permit or a permit to move an oversized load issued by VDOT, temporary raise or lower its wires to permit the moving of buildings or oversized load. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and a grantee shall have the authority to require such payment in advance. A grantee shall be given not less than 48 hours' advance notice to arrange for such temporary wire changes.

**Sec. 5-22. Operational requirements and records.**

(a) A grantee shall construct, operate and maintain the cable television system subject to full compliance with the rules and regulations, including applicable amendments, of the FCC and all other applicable federal, state or county laws and regulations. The system and all its parts shall be subject to inspection by the county and the county reserves the right to review a grantee's construction plans prior to construction.

(b) A grantee shall exercise its best effort to design, construct, operate and maintain the 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).

**Sec. 5-23. Complaint procedure.**

(a) The administrator is designated by the county as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.

(b) A grantee shall ~~have maintain an office in the county, which shall be open at least during all usual business hours (9:00 a.m. to 5:00 p.m.), having a publicly listed local telephone, and shall be so operated~~ that complaints and requests for repairs or adjustments may be received on a 24-hour basis each day of the year.

(c) A grantee shall maintain a repair and maintenance crew capable of responding to subscriber complaints or requests for service, excepting initial installation, within 24 hours after receipt of the complaint or request. No charge shall be made to the subscriber for this repair service.

(d) A grantee shall establish procedures for receiving, acting upon and resolving subscriber complaints to the satisfaction of the subscriber. A grantee shall furnish a notice of such procedures to each subscriber at the time of initial subscription to the system. In the event that a customer complaint is not resolved to the mutual satisfaction of the customer or the grantee, either the customer or the grantee may request that the matter be presented to the administrator for a hearing and resolution.

(e) A grantee shall keep a maintenance service log which shall indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint, and the time and date thereof. This log shall be maintained for two years and shall be made available for periodic inspection by the county.

**Sec. 5-24. Tests and performance monitoring.**

When there have been complaints made or when there exists other evidence which, in the judgment of the administrator, casts doubt on the reliability or quality of cable service, the county shall have the right and authority to compel a grantee to test, analyze and report on the performance of the system. Such report shall be delivered to the administrator no later than 14 days after the administrator formally notifies the grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested, the equipment used, and procedures employed in said testing; the results of such tests; and the method in which said complaints were resolved.

Article VIII. General Provisions

**Sec. 5-25. Franchise validity.**

A grantee shall agree, by the acceptance of the franchise, to accept the validity of the terms and conditions of this chapter and the franchise certificate 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 certificate as unreasonable, arbitrary or void, or that the county did not have the authority to impose such term or conditions.

**Sec. 5-26. Rights reserved to the county.**

The county hereby expressly reserves the following rights:

- (1) To exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the county.
- (2) To adopt, in addition to the provisions contained herein and in the franchise certificate and in any existing applicable ordinance, such additional regulations as it shall find necessary in the exercise of its police power.

**Sec. 5-27. Discriminatory practices prohibited.**

A grantee shall not, as to rates, charges, services, service facilities, rules, regulations, employment, or in any other respect, make or grant any undue preference or advantage to any party, nor subject any party to any prejudice or disadvantage. ~~This Section shall not prohibit the negotiation of rates with commercial establishments and apartment complexes having more than ten units.~~

**Sec. 5-28. Landlord-tenant relationship.**

- (a) No landlord shall:



- (1) Interfere with the installation of cable communications facilities upon his property or premises, except that a landlord may require:
    - a. That the installation of cable communications facilities conform to such reasonable conditions as are necessary to protect the safety, function and appearance of the premises, and the convenience and well-being of other tenants;
    - b. That the cable communications company or the tenant or a combination thereof bear the entire cost of the installation, operation or removal of such facilities; and
    - c. That the cable communications company and the tenant agree to indemnify the landlord for any damage caused by the installation, operation or removal of such facilities.
  - (2) Demand or accept payment from any tenant or any cable communications company in any form in exchange for permitting cable communications service on or within his property or premises.
  - (3) Discriminate in rental charges, or otherwise, between tenants who receive cable communications service and those who do not.
- (b) Rental agreements and leases executed prior to the effective date of this article may be enforced notwithstanding this section.
- (c) No cable communications company may enter into any agreement with the owners, lessees or persons controlling or managing buildings served by a cable communications company, or do or permit any act that would have the effect, directly or indirectly, of diminishing or interfering with existing rights of any tenant or other occupant of such building to use or avail himself of master or individual antenna equipment.

**~~Sec. 5-29. Liquidated damages.~~**

~~Notwithstanding any other remedy provided for in this chapter, or otherwise available under law, the county shall have the power to recover monetary amounts from a grantee under certain conditions, such monetary amounts being in the nature of liquidated damages. The conditions for and amounts of such damages are listed~~

~~below. By accepting a franchise, a grantee automatically agrees that the following conditions will cause damages to the county, and that the monetary amounts are established because it is difficult to ascertain the exact amount of the damages. The damages resulting to the county include, but are not limited to, loss of franchise fees that would have otherwise been paid to or would have become due the county and administrative costs incurred by the county. Damages shall be invoked upon the occurrence of any or all of the following:~~

- ~~(1) For failure to submit plans indicating expected dates of installation of various parts of the system—  
\$100.00 per day.~~
- ~~(2) For failure to commence operations in accordance with this chapter and/or the franchise certificate—  
\$200.00 per day.~~
- ~~(3) For failure to complete construction and installation of the system within the required time limits—  
\$300.00 per day.~~
- ~~(4) For failure to supply data requested by the county in accordance with the requirements of this franchise certificate and this chapter, such data pertaining to installation, construction, customers, finances or financial reports or rate review—\$50.00 per day.~~
- ~~(5) For failure to otherwise provide service to a subscriber in accordance with the requirements of this chapter—\$10.00 per day per subscriber affected, but not to exceed \$50.00 per subscriber per month, and further not to exceed \$1,000.00 per day in the aggregate. This amount shall be reduced by any refunds of subscriber fees made to subscribers affected by the failure, etc., to provide service.~~

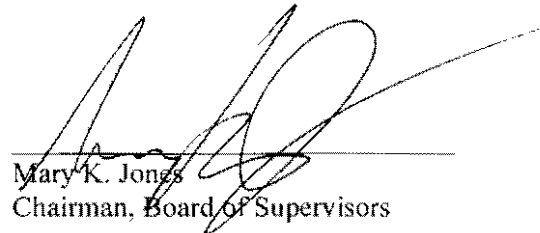
**Sec. 5-30. Obtaining or attempting to obtain cable communications service without payment; penalty.**

(a) It shall be unlawful and constitute a misdemeanor for any person to obtain or attempt to obtain, for himself or for another, cable communications service by the use of any false information or in any case where such service has been discontinued by the supplier and notice of disconnection has been given.

(b) It shall be unlawful for any person to obtain or attempt to obtain cable communication service by the use of any scheme, device, means or method, or by a false application for service with intent to avoid payment of lawful charges therefor.

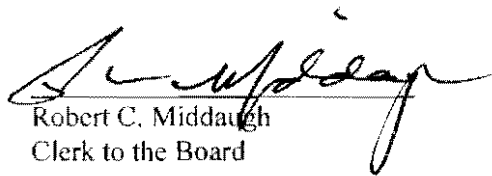
(c) The word "notice," as used in paragraph, (a) hereof, shall be notice given in writing to the person to whom the service was assigned. The sending of a notice in writing by a receipted delivery system, and the actual signing of the receipt for said notice by the addressee, shall be prima facie evidence that such notice was duly received.

(d) Any person who violates any provisions of this section, ~~if the value be less than \$100.00~~ shall be guilty of a Class 1 misdemeanor.



Mary K. Jones  
Chairman, Board of Supervisors

ATTEST:



Robert C. Middaugh  
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
KENNEDY	AYE
GOODSON	AYE
MCGLENNON	AYE
ICENHOUR	AYE
JONES	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 22nd day of March, 2011.