

ORDINANCE NO. 141

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ORDINANCE NO. 141

AN ORDINANCE TO AMEND THE CODE OF THE COUNTY OF JAMES CITY BY ADDING A NEW CHAPTER, CHAPTER 4-86.1, ENTITLED, CABLE COMMUNICATIONS.

BE IT ORDAINED, by the Board of Supervisors, that the Code of the County of James City be and the same is, hereby, amended to add a new chapter, Chapter 4-86.1, entitled, Cable Communications.

CHAPTER 4-86.1

CABLE COMMUNICATIONS

Article I. Title and Purposes of the Ordinance

Section 4-86.1.1. Title

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

Section 4-86.1.2. Purposes

The purposes of this ordinance are to:

(a) Provide for the franchising and regulation of a cable communications system within the County of James City pursuant to Section 15.1-23.1 of the Code of Virginia, and to

(b) Provide for the payment of a fee and other valuable consideration to the County for the construction and operation of a cable communications system, and to

(c) Provide for the development of a cable communications system as a means to improve communication between and among members of the public and public institutions of the County.

## Article II. Definitions

### Section 4-86.1.3. Definitions

For the purpose of this ordinance, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein.

(a) "Board" shall mean the James City County Board of Supervisors

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

(c) "Cable Communications System" shall mean a system of antennas, cables, wires, lines, towers, waveguides, laser beams, or any other conductors, converters, 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 of James City.

(d) "County" shall mean the County of James City, Virginia

(e) "FCC" shall mean the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

(f) "Franchise" shall mean and include any authorization granted hereunder in terms of franchise, right, privilege, and exclusive communications authority to construct, operate and maintain a cable communications system in the County of James City.

(g) "Franchise Certificate" shall mean the contract based upon this ordinance and including additional provisions which grants the franchise to a grantee.

(h) "Grantee" shall mean the person, firm, or corporation to whom or to which a franchise, as herein defined is granted by the Board of Supervisors under this ordinance, or any one who succeeds the person, firm, or corporation in accordance with the provisions of this franchise.

(i) "Gross annual revenues" shall mean any and all compensation and other consideration collected or received or in any manner gained or derived by Grantee from the provision of all cable services in the County.

(j) "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 surcharges.

(k) "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 right-of-way, including public utility easements or rights-of-ways, and any temporary or permanent fixtures or improvements located thereon now or hereafter.

(l) "Subscriber" shall mean any person, firm, corporation or other entity legally receiving for any purpose the service of the Grantee herein.

(m) "Two way capability" means that the two way circuits shall be capable of transmitting effectively commercial broadcast audio/video T.V. 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 or not to respond immediately, or by sequential delay by utilizing any type of terminal equipment whatever, by pushbutton 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 mechanically produced signal, display and/or interrogation.

(n) "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.

(o) "VDHT" shall mean the Virginia Department of Highways and Transportation.

### Article III. Grant of Authority

#### Section 4-86.1.4. Requirements of a Franchise

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

(b) The non-exclusive franchise will be in effect upon acceptance by signature and notarization of the Franchise Certificate by the Grantee. In its acceptance, the Grantee shall declare that it has carefully read the terms and conditions of this ordinance and accepts all of the terms and conditions imposed by this ordinance and agrees to abide by same.

(c) The Grantee shall, at all times during the operation of this franchise, be subject to all lawful exercise of the police power as may be hereafter provided by the franchising authority.

#### Section 4-86.1.5. Franchise Applications

(a) After receiving applications for a franchise, the Board, after considering the legal, financial, technical and character qualifications of the applicants, may, by Franchise Certificate, grant a non-exclusive franchise creating a right to construct and operate a cable communications system within the County. A franchise will 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 ordinance and incorporated into a Franchise Certificate awarded to the Grantee. However, no provision of this ordinance shall be deemed or construed as to require the Board to grant a franchise.

(b) An application for a cable communications franchise shall be submitted to the Board, or its designee, on 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 will be incorporated into the ordinance by reference. An application form may request facts and information the County deems appropriate. Applications shall be accompanied by a non-refundable application fee of One Thousand Dollars 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) The Grantee receiving the franchise shall, in addition to the non-refundable application fee, pay to the County at the time the Grantee files the Franchise Certificate an amount, not to exceed Fifteen Thousand Dollars, which shall be prescribed by the Board. Said payment shall be non-refundable, shall be made to the order of the "County of James City" and shall be used to (1) 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 (2) fund the Cable Administration functions listed in Article 4.

#### Article IV. Cable Communications Administrator

##### Section 4-86.1.6. Cable Communications Administrator's Powers and Responsibilities.

Day-to-day administration of cable television operations within the County may be assigned to a Cable Communications Administrator. The Cable

Communications Administrator shall be designated by the County Administrator and shall report directly to the County Administrator. The Cable Communications Administrator's powers and responsibilities shall include, but not be limited to, the following functions:

(a) 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 making selection recommendations to the Board of Supervisors through the County Administrator.

(b) Monitoring the timely performance of the Grantee in making application for and obtaining all certificates, permits and agreements as provided for in this chapter.

(c) Monitoring the performance of the Grantee in meeting the construction timetable as provided for in this chapter.

(d) Advising and making recommendations to the Board of Supervisors, through the County Administrator on technical, engineering, and police power regulations of Cable operations within the County.

(e) Cooperating with other systems, cable communications system operators, and governmental units in the development of and in the supervision of the interconnection of systems.

(f) Reviewing all franchise records, including the financial records as indicated in Article 6, Section 4-86.1.15-b, 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.

(g) Monitoring performance of the Grantee under any other terms of the franchise agreements and this chapter and making recommendations to the Board of Supervisors, through the County Administrator, to ensure such compliance.

(h) Making an annual report to the Board of Supervisors, through the County Administrator, 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 the Grantee for development of new services.

(i) Conducting evaluations of the system at least every three (3) years, and pursuant thereto, making recommendations to the Board of Supervisors, through the County Administrator, for amendments to this chapter or to the franchise agreement.

(j) Receiving and investigating complaints against Grantee by any person or upon direction of the Board of Supervisors.

(k) Seeking recovery, with the assistance or through appropriate legal counsel, if necessary, of liquidated damages in accordance with this chapter.

(i) Advising Grantee of the receipt of subscriber complaints affecting the Grantee's system.

#### Article V. Franchise Conditions

##### Section 4-86.1.7. Franchise Term

The term of an original franchise shall be fifteen (15) years from the date the franchise is accepted by the Grantee. The term of a renewed franchise shall be no more than fifteen (15) years.

##### Section 4-86.1.8. Notice to Grantee

The Board shall not take final action at any meeting of the Board involving the review, renewal, or revocation of the Grantee's franchise unless the County has given the Grantee at least twenty-one (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.

##### Section 4-86.1.9. Franchise Review

It shall be the policy of the County to amend a franchise, upon application of the Grantee, the recommendation of the Cable Communications 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 purposes.

Section 4-86.1.10. Franchise Renewal

(a) The Board may adopt a resolution setting forth the time and place of a Board meeting to be publicly announced, the purpose of which will be to review the Grantee's performance during the entire term of its franchise, to consider the adequacy of the franchise from the standpoint of the County, the Grantee, and the Federal Communications Commission Rules for Cable Communications, and to determine the advisability of renewing the Grantee's franchise.

(b) The Board may hear interested persons during said Board meeting and may determine whether the Grantee did reasonably comply with the terms and conditions imposed by this ordinance and the franchise.

(c) If the Board determines that the Grantee has been in reasonable compliance with the terms and conditions imposed by this ordinance and the franchise, the Board may, by ordinance, renew the Grantee's franchise, with any modifications it deems desirable, for a period of time not inconsistent with the provisions of this ordinance. 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) Notwithstanding the fact that the Board may determine that the Grantee has been in reasonable compliance with the terms and conditions imposed by this ordinance and the franchise, 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 (10) 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 (1) year from the date of expiration.

Section 4-86.1.11. Franchise Fee

In consideration of the grants contained herein, the Grantee agrees to pay annually to the County of James City a sum equal to three percent of the gross annual revenues. In the event that it is determined that the FCC lacks jurisdiction to impose franchise fee limitations, or that the limit is raised, then the franchise fee will be subject to renegotiation. Grantee agrees to provide a statement of the gross annual revenues within 60 days of the end of each calendar year (or Grantee's fiscal year) which should be certified under oath by an officer of the Grantee.

Section 4-86.1.12. Insurance - Bonds - indemnity

(a) At the time of filing 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 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 the Grantee, to accept the franchise in conformity with this ordinance and the substance of the proposal as submitted by the applicant.

(b) Upon the granting of a franchise and within thirty (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, the 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, or alleged to have been so caused or occurred, with a minimum liability of One Million Dollars (\$1,000,000) per personal injury or death of any one person and Two Million Dollars (\$2,000,000) for 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 offices, boards, commissions, agents, and employees from and against all claims by any person whatsoever (including the costs, defenses, attorney fees and interest arising therefrom) for

when regular subscriber service is available to more than ninety percent (90%) of the occupied dwelling units within the primary service areas specified in the Franchise Certificate as certified by the Cable Communications 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 ordinance and other applicable law.

(c) 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 thirty (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 fifteen (15) days following receipt by the County or the Grantee of any notice of cancellation.

(d) The Grantee shall, at its sole cost and expense, 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 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 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 costs and attorney 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.

(e) No Grantee shall permit any policy or bond to expire or approach less than thirty (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 ordinance.

(f) 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.

Section 4-86.1.13. Transfer of Franchise

No transfer of control of the cable system 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 of Supervisors.

Article VI. Subscriber Fees and Records

Section 4-86.1.14. Subscriber Fees

(a) Subscriber rates during the first four (4) 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.

(b) After the first four (4) years of the franchise, subscriber rates shall, subject to the provisions of this ordinance, become unregulated.

(c) The Board, at any time, may adopt an ordinance, to be effective at any time following the aforementioned four (4) year period, regulating subscriber rates.

(d) All charges to subscribers shall be consistent with a schedule of fees for all services offered by a Grantee. Charges in the fee schedule shall not take effect until at least sixty (60) days after notification of same is delivered to the Cable Communications Administrator.

(e) 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.

(f) 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 thirty (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 (1) Reimbursement for converters not returned and (2) Reconnection and subsequently monthly or periodic charges which shall be no greater than charges for new customers. This Section shall not prevent the Grantee from refusing service to any person because the Grantee's prior account with that person remain due and owing.



Section 4-86.1.15. Books and Records

(a) The Grantee shall, (1) within thirty (30) days following the acceptance of a franchise, and (2) at least yearly thereafter, and (3) within thirty (30) days of the change of ownership of three percent (3%) 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 (3%) 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) The Grantee shall file annually with the County, 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 (12) 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 Cable 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 James City County 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) The Grantee shall retain such books and records, in any reasonable form, for a period of not less than fifteen (15) 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 Cable Administrator to be received by the County 120 days after requested. The expense of the audit shall be borne by the Grantee.

(e) Copies of all petitions, applications, communications and reports submitted by the Grantee to the Federal Communications Commission, 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.

Section 4-86.1.16. Privacy Protection

(a) No data shall be collected over the cable communications 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 at any time without penalty or cost, and shall not be a condition for receiving cable services. Landlords may not give authorization for their tenants. The subscriber shall have the right to access information about him kept by the Grantee or disseminated to others.

(b) The Grantee shall observe the rights of a subscriber to privacy of their persons. The 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 the Grantee shall not reveal individual subscriber preferences or opinions.

(c) Interception by a third party of data and/or cablecasting transmitted through the cable system shall be prohibited.

## Article VII. System Operations

### Section 4-86.1.17. Franchise Territory

(a) The franchise is for the territorial limits of the County. The 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, be incorporated into the Franchise Certificate. The map shall clearly delineate the following:

1. The primary service areas within the franchise territory where the cable system will be available and the construction schedule for making such service available. Any differential rates within the primary service areas shall be specified as required by Article 6, Section 4-86.1.14-a.

2. Areas within the franchise territory but outside the primary service area where extension of the cable 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 cable system past occupied dwelling units equivalent to a density of forty (40) homes per mile of cable contiguous to the activated system.

2. In areas not meeting the conditions in Article VII, Section 4-86.1.17-b-1 above, the Grantee shall provide upon the request of ten (10) 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 subscribers according to the rate schedule. 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.

(c) Within thirty (30) days of the effective date of this franchise, the Grantee shall diligently pursue all efforts to obtain all necessary certificates, permits and agreements which are required to construct and operate a cable communications system in the County. Within ninety (90) days of receipt of such certificates, permits and agreements, the Grantee shall commence construction of the cable 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 Franchise Certificate. If construction does not begin within twelve (12) months of the date of this franchise, the franchise shall be cancelled.

(d) The 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 and 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. The 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.

Section 4-86.1.18. System Description and Service

(a) Applications 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:

1. The Grantee shall have available a studio and equipment located within the County for local production and presentation of cablecast programs other than automated services and permit its use for the production and presentation of public access programs. This studio and equipment shall be operational no later than six months after the first subscribers begin receiving cablecasting. The Grantee shall not enter into any contract, arrangement, or lease for use of its cablecast equipment which prevents or inhibits the use of such equipment for a substantial portion of time for public access programming.

2. The grantee shall have no control over the content of access cablecast programs; however, this limitation shall not prevent taking appropriate steps to insure compliance with the operating rules described herein.

3. The public access channel(s) shall be made available to residents of the County on a nondiscriminatory basis, free of charge. Charges for equipment, personnel, and production of public access programming shall be reasonable and consistent with the goal of affording users a low-cost means of television access. No charges shall be made for the production of live public access programs not exceeding five minutes in length, or for the replay of user-supplied tapes which are in a form compatible with the Grantee's playback facilities. 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 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

rules requiring nondiscriminatory access, 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.

4. The education access channel(s) shall be made available for the use of local public educational authorities and private non-profit educational telecommunication entities free of charge. The Grantee shall adopt operating rules for the education access channel(s), to be filed with the Cable Communications 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.

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

6. The leased access channel(s) shall be made available to leased users. Priority shall be given part-time users on at least one channel. The Grantee shall adopt operating rules for the channel(s), to be filed with the Cable Communications 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 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, however, that if it is necessary to extend a Grantee's trunk or feeder lines more than three hundred (300) feet solely to provide service to any such school or public building, the County shall have the option either of paying the Grantee's direct costs for such extension in excess of three hundred (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 the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than two hundred-fifty (250) feet of drop cable; provided, however, that the 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 offices in addition to any such other facilities as are specified in the Grantee's Franchise Certificate.

(c) The system shall be capable of two-way communication as defined by Article 2, Section 4-86.1.3-1 on at least four (4) channels.

(d) The Grantee shall incorporate into its cable communications system the capability which will permit the County in times of emergency to override the audio portion of all channels simultaneously. The Grantee shall designate a channel which will be used for emergency broadcasts of both audio and video. The Grantee shall cooperate with the County in the use and operation of the emergency alert override system.

Section 4-86.1.19. Construction Standards

(a) In the maintenance and operation of the communications transmission and distribution system in the County and in the course of construction or additions to its facilities, the 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 place made by the Grantee in the course of its operations or in the operations of its successors or assigns, shall be approved by permit by VDHT 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 the 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 forty-eight (48) hours after completion of the Grantee's work. Upon failure of the 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 twenty-four (24) hours in the continuation of a restoration begun, the Department of Public Works of James City County or VDHT may serve upon the Grantee notice of intent to cause restoration to be made, and unless the Grantee, within twenty-four (24) hours after receipt of such notice, begins or resumes the proper restoration, the Public Works Department or VDHT 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 Public Works Department or VDHT.



(c) The 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 VDHT 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 the Grantee's transmission and distribution to avoid such interference shall be at the Grantee's expense.

(d) The 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 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, the Grantee shall place its cables, wires or other like facilities underground. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give the Grantee 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 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 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 Grantee.

(f) At the expiration of the term for which the franchise is granted, or upon its termination and cancellation, as provided for herein, the County shall have the right to require the Grantee to remove at its own expense all portions of the system from all streets within the County.

(g) The 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.

Section 4-86.1.20. Operational Requirements and Records

(a) The Grantee shall construct, operate, and maintain the cable television system subject to 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. The cable communications 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 commencement of 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).

Section 4-86.1.21. Complaint Procedure

(a) The Cable Communications Administrator is designated by the County as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.

(b) The Grantee shall maintain an office in the County which shall be open at least during all usual business hours (9am-5pm) having a publicly listed local telephone, and be so operated that complaints and requests for repairs or adjustments may be received on a twenty-four (24) hour basis each day of the year.

(c) The 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) The grantee shall establish procedures for receiving, acting upon, and resolving subscriber complaints to the satisfaction of the subscriber. The 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 Cable Communications Administrator for a hearing and resolution.

(e) The Grantee shall keep a maintenance service log which will 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.

Section 4-86.1.22. Tests and Performance Monitoring

When there have been complaints made or when there exists other evidence, which in the judgment of the Cable Communications Administrator casts doubt on the reliability or quality of cable service, the County shall have the right and authority to compel the Grantee to test, analyze and report on the performance of the system. Such report shall be delivered to the Cable Communications Administrator no later than fourteen (14) days after the Cable Communications Administration 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

### Section 4-86.1.23. Franchise Validity

The Grantee shall agree, by the acceptance of the franchise, to accept the validity of the terms and conditions of this ordinance 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 ordinance or the Franchise Certificate as unreasonable, arbitrary or void, or that the County did not have the authority to impose such term or condition.

### Section 4-86.1.24. 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 ordinances, such additional regulations as it shall find necessary in the exercise of its police power.

### Section 4-86.1.25. Discriminatory Practices Prohibited

Grantee shall not, as to rates, charges, service, 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 (10) units.

Section 4-86.1.26. Landlord-tenant Relationship

I. No landlord shall: (a) interfere with the installation of cable communications facilities upon his property or premises, except that a landlord may require:

i. That the installation of cable communications facilities conform to such reasonable conditions as are necessary to protect the safety, functioning and appearance of the premises, and the convenience and well-being of other tenants;

ii. 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

iii. 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.

(b) Demand or accept payment from any tenant or any cable communications company in any form, in exchange for permitting cable communication service on or within his property or premises.

(c) Discriminate in rental charges, or otherwise, between tenants who receive cable communications service and those who do not.

2. Rental agreements and leases executed prior to the effective date of this article may be enforced notwithstanding this section.

3. No cable communications company may enter into any agreement with the owners, lessees or persons controlling or managing buildings served by a cable communications, 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.

Section 4-86.1.27. Liquidated Damages

Notwithstanding any other remedy provided for in this ordinance, 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 conditons for an 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: (1) loss of franchise fees that would have otherwise been paid to or would have become due the County; and (2) administrative costs incurred by the County. Damages shall be invoked upon the occurence of any or all of the following:

1. For failure to submit plans indicating expected dates of installation of various parts of the system--One Hundred Dollars (\$100) per day.

2. For failure to commence operations in accordance with this ordinance and/or the franchise--Two Hundred Dollars(\$200) per day.

3. For failure to complete construction and installation of the system within the required time limits--Three Hundred Dollars (\$300) per day.

4. For failure to supply data requested by the County in accordance with the requirements of the franchise and this ordinance, such data pertaining to installation, construction, customers, finances or financial reports, or rate review--Fifty Dollars (\$50) per day.

5. For failure to otherwise provide service to a subscriber in accordance with the requirements of this ordinance--Ten dollars (\$10) per day per subscriber affected, but not to exceed Fifty Dollars (\$50) per subscriber per month, and further not to exceed One Thousand Dollars (\$1,000) 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.

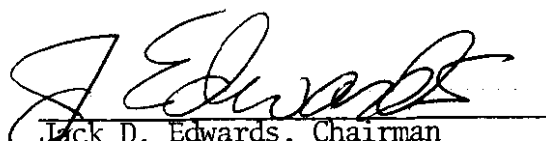
Section 4-86.1.28. Obtaining or Attempting to Obtain Cable Communications Service Without Payment; Penalty

(a) It shall be unlawful and constitute a misdemeanor 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 therefore.

(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 registered or certified mail in the United States mail, duly stamped and addressed to such person at his last known address, requiring delivery to the addressee only with return receipt requested, and the actual signing of the receipt for said mail by the addressee, shall be prima facie evidence that such notice was duly received.

(d) Any person who violates any provisions of this sections, if the value be less than one hundred dollars shall be guilty of a Class 1 misdemeanor.

  
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Jack D. Edwards, Chairman  
Board of Supervisors

ATTEST:

  
\_\_\_\_\_  
James B. Oliver, Jr.  
Clerk to the Board

Adopted by the Board of Supervisors, James City County, Virginia,  
this 28th day of July, 1980