

1 **ARTICLE 2.**

2 **Definitions.**

3 **Section 9.1-2-1. Definitions.**

4 The following words and phrases when used in this Chapter shall, for the purpose of this  
5 Chapter, have the meanings respectively ascribed to them in this Section except in those  
6 instances where the context clearly indicates a different meaning:

7 *Access channel* means any channel on a Cable system set aside by a Grantee for public,  
8 educational, or governmental use.

9 *Affiliate* means any Person who owns or controls, is owned or controlled by, or is under  
10 common ownership or control with a Grantee. For purposes of this definition, “owns” means an  
11 ownership interest of more than five percent.

12 *Basic service* means (i) any service tier that includes the retransmission of local television  
13 broadcast signals; (ii) any public, educational, and governmental access programming required  
14 by a Franchise agreement to be provided to Subscribers as basic service; and (iii) any additional  
15 video programming signals or services added to basic service by a Grantee.

16 *Board* means the Board of Supervisors of the County of Fairfax, Virginia.

17 *Cable Act* means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et  
18 seq., as amended from time to time.

19 *Cable service* means: (i) the one-way transmission to Subscribers of video programming  
20 or other programming services; and (ii) Subscriber interaction, if any, which is required for the  
21 selection or use of such video programming or other programming service.

22 *Cable system or system* means a facility, consisting of a set of closed transmission paths  
23 and associated signal generation, reception and control equipment that is designed to provide

1 Cable service which includes video programming and which is provided to multiple Subscribers  
2 within the County, except that such definition shall not include: (i) a system which serves fewer  
3 than twenty Subscribers; (ii) a facility that serves only to retransmit the television signals of one  
4 or more television broadcast stations; (iii) a facility which serves Subscribers without using any  
5 public ways; (iv) a facility of a common carrier which is subject, in whole or in part, to the  
6 provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201, et seq., except that  
7 such facility shall be considered a Cable system (other than for purposes of 47 U.S.C. § 541(c))  
8 to the extent such facility is used in the transmission of video programming directly to  
9 Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v)  
10 an open video system that complies with 47 U.S.C. § 573; (vi) any facilities of any electric utility  
11 used solely for operating its electric systems; or (vii) any portion of a system that serves fewer  
12 than fifty Subscribers in the County where such portion is a part of a larger system franchised in  
13 an adjacent county, city or town. The foregoing definition of “cable system” shall not be deemed  
14 to circumscribe or limit the valid authority of the County to regulate or franchise the activities of  
15 any other communications system or provider of communications services to the full extent  
16 permitted by law.

17 *Channel* means a portion of the electromagnetic frequency spectrum that is used in a  
18 Grantee’s Cable system and that is capable of delivering a video signal as that term is defined by  
19 the Federal Communications Commission.

20 *Communications Administrator* means the present or succeeding employee of Fairfax  
21 County designated as the Cable Television Administrator or as the Communications  
22 Administrator who shall have the duties prescribed in this Chapter and otherwise prescribed by  
23 the Board.

1            *County* means the County of Fairfax, Virginia, excluding the Towns of Clifton, Herndon,  
2 and Vienna.

3            *Customer* means “Subscriber” or "former Subscriber".

4            *Educational Access Channel or Educational Channel* means any Channel required by a  
5 Franchise agreement to be provided by a Grantee on its Basic service tier to the County for  
6 educational use.

7            *Equitable Price* means fair market value adjusted downward for the harm to the County  
8 or Subscribers, if any, resulting from a Grantee’s breach of its Franchise agreement or violation  
9 of this Chapter, and as further adjusted to account for other equitable factors that may be  
10 considered consistent with 47 U.S.C. § 547.

11           *Fair market value* means the price which property will bring when it is offered for sale by  
12 one who desires, but is not obligated, to sell it, and is bought by one who is under no necessity of  
13 having it.

14           *Federal Communications Commission or FCC* means that Federal agency as presently  
15 constituted by the Communications Act of 1934, as amended, its designee, or any successor  
16 agency.

17           *Force Majeure* means, notwithstanding any other provision of this Chapter or a Franchise  
18 agreement, that a Grantee shall not be liable for delay in performance of, or failure to perform, in  
19 whole or in part, its obligations pursuant to this Chapter or a Franchise agreement due, directly or  
20 indirectly, to severe or unusual weather conditions, strike, labor disturbance, lockout, war or act  
21 of war (whether an actual declaration of war is made or not), insurrection, riot, act of public  
22 enemy, action or inaction of any government instrumentality or public utility including  
23 condemnation, accidents for which a Grantee is not primarily responsible, fire, flood or other act

1 of God, sabotage or other events to the extent that such causes or other events are beyond the  
2 reasonable control of a Grantee. In the event that any such delay in performance or failure to  
3 perform affects only part of a Grantee's capacity to perform, a Grantee shall perform to the  
4 maximum extent it is able to perform and shall take all reasonable steps within its power to  
5 correct such cause(s) in as expeditious a manner as possible.

6 *Franchise* means a nonexclusive initial authorization, or renewal thereof, issued by the  
7 County which authorizes the construction, maintenance or operation of a Cable system along the  
8 public ways within one or more specified Franchise areas of the County with boundaries as  
9 described in Section 9.1-7-1. A Franchise shall not be construed to include any general license  
10 required for the privilege of transacting and carrying on a business within the County as may be  
11 required by other ordinances and laws of the County, or for attaching devices to poles or  
12 structures, whether owned by the County or a private entity, or for excavating or performing  
13 other work in or along public ways, unless otherwise provided in a Grantee's Franchise  
14 agreement.

15 *Franchise agreement* means a contract entered into pursuant to this Chapter between the  
16 County and a Grantee that sets forth, subject to this Chapter, the terms and conditions under  
17 which a Franchise will be granted and exercised.

18 *Franchise area* means each of the North County, South County, or Reston Franchise  
19 areas of the County, with boundaries as more fully described in Section 9.1-7-1, that a Grantee is  
20 authorized to serve by its Franchise agreement.

21 *Governmental Access Channel or Government Channel* means any Channel required by a  
22 Franchise agreement to be provided by a Grantee on its Basic service tier to the County for  
23 government use.

1            *Grantee* means a natural Person, domestic or foreign corporation, partnership, limited  
2 liability company, association, joint venture or organization of any kind granted a Franchise by  
3 the Board under this ordinance, and any lawful successor thereto, or transferee or assignee  
4 thereof.

5            *Gross revenues* means any and all cash, credits, property or consideration of any kind or  
6 nature from the operation of the Cable system to provide Cable services as specified in a  
7 Franchise agreement arising from, attributable to, or in any way derived directly or indirectly by  
8 a Grantee, its affiliates, or any Person in which a Grantee has a financial interest, or by any other  
9 entity that is a cable operator of the system. Gross revenues shall not include any taxes on  
10 services furnished by a Grantee which are imposed directly on any Subscriber or user by the  
11 Commonwealth of Virginia, the County, or other governmental unit and which are collected by a  
12 Grantee on behalf of said governmental unit or as specified in a Franchise agreement. A  
13 franchise fee is not such a tax. Gross revenues shall not include any revenues specifically  
14 excluded in a Grantee's Franchise agreement.

15            *Leased access channel* means any channel on a Cable system designated or dedicated for  
16 use by a Person unaffiliated with a Grantee pursuant to 47 U.S.C. § 532.

17            *Normal operating conditions* means those conditions that are within the control of the  
18 Grantee. Conditions that are not within the control of the Grantee include, but are not limited to,  
19 natural disasters, civil disturbances, power outages, telephone network outages, weather or traffic  
20 conditions impairing construction or normal operation activities, vandalism, accidents for which  
21 Grantee is not primarily responsible, sabotage, and the action or inaction of any governmental  
22 unit. Consistent with the foregoing, conditions that are within the control of Grantee include, but  
23 are not limited to, special promotions, pay-per-view events, rate increases, regular or reasonably

1 anticipatable peak or seasonal demand periods, and construction, maintenance or upgrade of  
2 Grantee's Cable system.

3 *PEG* means public, educational, and governmental.

4 *Person* means an individual, partnership, association, joint stock company, organization,  
5 corporation, joint venture, limited liability company, or any lawful successor thereto or  
6 transferee thereof, but such term does not include the County.

7 *Public access channel* means any Channel required by a Franchise agreement to be  
8 provided by a Grantee on its Basic service tier to the County or set aside by a Grantee for use by  
9 the general public, including groups and individuals, and which is available for such use on a  
10 non-discriminatory basis.

11 *Public way or Public Rights-of-Way* means the surface, the air space above the surface,  
12 and area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard,  
13 drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, public  
14 water or public easements, or other public way within the County, which, consistent with the  
15 purposes for which it was dedicated, may be used for the purpose of installing and maintaining a  
16 Cable system.

17 *Rate regulated services* means all services, including related equipment and installation  
18 fees, subject to rate regulation by the County pursuant to applicable federal and Virginia law.

19 *Regular subscriber service* means the distribution to Subscribers of signals over a Cable  
20 system on all channels except those for which a per-program or per-channel charge is made, two-  
21 way services, and those services intended for reception by equipment other than a television  
22 receiver.

23 *Service interruption* means the loss of picture or sound on one or more cable channels.

1            *Service tier* means a category of Cable service or other services provided by a Grantee  
2 and for which a separate rate is charged by the Grantee.

3            *Subscriber* means any Person who legally receives or contracts with a Grantee to receive  
4 Cable service(s) and does not further distribute such Cable service(s).

5            *User* means any Person or organization using a PEG or leased access channel or  
6 equipment and facilities for purposes of producing or transmitting material, as contrasted with  
7 the receipt thereof in the capacity of a Subscriber.

8            *Video programming* means programming provided by, or generally considered  
9 comparable to programming provided by, a television broadcast station.

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