

1 **ARTICLE 3.**

2 **Franchises.**

3 **Section 9.1-3-1. Requirement of a Franchise.**

4 No Person shall construct, install, maintain or operate a Cable system or part of a Cable  
5 system on, over, through, or within a public way in the County, or on, over, through, or within  
6 any other public property of the County, unless that Person has been granted a Franchise by the  
7 Board and its Franchise agreement is in full force and effect.

8 **Section 9.1-3-2. Grant of Franchise.**

9 (a) The Board may grant one or more non-exclusive cable franchises, and each such  
10 Franchise shall be awarded by ordinance in accordance with and subject to the provisions of this  
11 Chapter.

12 (b) This Chapter may be amended from time to time, and in no event shall this  
13 Chapter be considered a contract between the County and a Grantee such that the County would  
14 be prohibited from amending any provision hereof.

15 (c) A Franchise agreement may only be amended by mutual written consent of the  
16 Board and Grantee.

17 **Section 9.1-3-3. Acts at Grantee's expense.**

18 Any act that a Grantee is or may be required to perform under this Chapter, a Franchise  
19 agreement or applicable law shall be performed at the Grantee's expense, unless expressly  
20 provided to the contrary in this Chapter, a Franchise agreement, or applicable law.

21 **Section 9.1-3-4. Eminent Domain.**

22 Nothing in this Chapter shall be deemed or construed to impair or affect, in any way or to  
23 any extent, the County's rights of eminent domain.

1 **Section 9.1-3-5. Application for grant of an initial Franchise.**

2 (a) An application for a cable Franchise shall be submitted to the Communications  
3 Administrator in writing. Applications for one or more Franchise areas shall be accompanied by  
4 a non-refundable application fee of Six Thousand Dollars payable to the order of the "County of  
5 Fairfax," which amount may be used by the County to offset, in whole or in part, direct expenses  
6 incurred in the franchising and evaluation procedures, including but not limited to staff time and  
7 consulting assistance. Payments made by an applicant under this Section are not franchise fees.  
8 To be acceptable for filing, a signed original of the application shall be submitted together with  
9 twelve copies. The application must conform to any applicable request for proposals, and  
10 contain all required information. All applications shall include the names and addresses of  
11 Persons authorized to act on behalf of all applicants with respect to the application, in accordance  
12 with this Chapter.

13 (b) At the time of filing an application for a Franchise area or areas pursuant to this  
14 Section, an applicant shall obtain, pay all premiums for, and deliver to the County written  
15 evidence of payment of premiums and originals of a bond or bonds running to the County with  
16 good and sufficient surety in the amount of Five Hundred Thousand Dollars.

17 (1) Such bond(s) shall be in a form acceptable to the County and shall protect  
18 the County from all damages or losses arising from the failure of the Grantee to accept  
19 the Franchise awarded in conformity with this Chapter, or to strictly adhere to the  
20 substance of its Franchise proposal.

21 (2) Such bond or bonds shall be maintained for a period of two years from the  
22 time of a Grantee's acceptance of a Franchise.

1 (c) The application for a grant of an initial Franchise shall provide, at a minimum, the  
2 following information:

3 (1) The name and address of the applicant and an identification of the  
4 ownership and control of the applicant, including: the names and addresses of the ten largest  
5 holders of an ownership interest in the applicant and affiliates of the applicant, and all Persons  
6 with five percent or more ownership interest in the applicant and its affiliates; the Persons who  
7 control the applicant and its affiliates; all officers and directors of the applicant and its affiliates;  
8 and any other business affiliation and cable system ownership interest of each named Person.

9 (2) A demonstration of the applicant's technical ability to construct and/or  
10 operate the proposed Cable system, including identification of key personnel.

11 (3) A demonstration of the applicant's legal qualifications to construct and/or  
12 operate the proposed Cable system, including but not limited to a demonstration that the  
13 applicant meets the following criteria:

14 (A) The applicant shall have the necessary authority under Virginia  
15 law to operate a Cable system;

16 (B) The applicant shall have the necessary authority under federal law  
17 to hold the Franchise and to operate a Cable system. An applicant must have, or show that it is  
18 qualified to obtain, any necessary federal licenses or authorizations required to operate the  
19 system proposed;

20 (C) The applicant shall report if, at any time during the ten years  
21 preceding the submission of the application, the applicant was convicted of any act or omission  
22 of such character that the applicant cannot be relied upon to deal truthfully with the County and  
23 the Subscribers of the Cable system, or to substantially comply with its lawful obligations under

1 applicable law, including obligations under consumer protection laws and laws prohibiting  
2 anticompetitive acts, fraud, racketeering, or other similar conduct. This same criterion shall be  
3 applied to each party owning an interest of five percent or more in the applicant;

4 (4) A demonstration of the financial qualifications of the applicant, including  
5 at least the following:

6 (A) The applicant's proposed rate structure, including projected  
7 charges for each service tier, installation, converters and other proposed equipment or services;

8 (B) A statement prepared by a certified public accountant regarding the  
9 applicant's financial ability to complete the construction proposed, to meet the time frame  
10 proposed, and to operate the Cable system proposed; and

11 (C) Pro forma financial projections for the proposed franchise term,  
12 including a statement of projected income, and a schedule of planned capital expenditures, with  
13 all significant assumptions explained in notes or supporting schedules.

14 (5) A description of the applicant's prior experience in Cable system  
15 ownership, construction, and operation, and a listing of communities in which the applicant has a  
16 cable franchise. For each community identified pursuant to this provision, the applicant shall  
17 provide the name, address and telephone number of the local franchising authority.

18 (6) A detailed description of the physical facilities proposed, which shall  
19 include at least the following:

20 (A) A description of the proposed system's channel capacity, technical  
21 design, performance characteristics, headend, and access (and institutional network) facilities  
22 and equipment;

1 (B) The description of the proposed system and system design,  
2 including a description of the miles of plant to be installed, and a description of the size of  
3 equipment cabinets, shielding and electronics that will be installed along the plant route, the  
4 power sources that will be used and a description of the noise, exhaust, and pollutants, if any,  
5 that will be generated by the operation of the same;

6 (C) A general description of the construction techniques that the  
7 operator proposes to use in installing the system above-ground and underground, a schedule for  
8 construction of the system that describes where and when construction will begin, how it will  
9 proceed, and when it will be completed, and the expected effect on right-of-way usage, including  
10 information on the ability of the public ways to accommodate the proposed system; and

11 (D) A description, where appropriate, of how services will be  
12 converted from existing facilities to new facilities, and what will be done with existing facilities.

13 (7) Information on the availability of space in conduits including, where  
14 appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.

15 (8) A demonstration of how the applicant will reasonably meet the future  
16 cable-related needs and interests of the community, including descriptions of how the applicant  
17 will meet the needs described in any community needs assessment conducted by or for the  
18 County, and how the applicant will provide adequate PEG or other access channel capacity,  
19 facilities, or financial support to meet the community's needs and interests as authorized by 47  
20 U.S.C. § 531, and will provide leased access channels as required by 47 U.S.C. § 532.

21 (9) A demonstration to support the findings required by Virginia Code § 15.2-  
22 2108(B), as amended.

1           (10) A proposed Franchise agreement with supporting analysis that  
2 demonstrates that the terms and conditions of the proposed Franchise agreement are not more  
3 favorable or less burdensome than those in any existing Franchise agreement within the  
4 Franchise area.

5           (11) Any other information that may be reasonably necessary to demonstrate  
6 compliance with the requirements of this Chapter.

7           (12) Any additional information that the County may request of the applicant  
8 that is relevant to the County's consideration of the application.

9           (13) An affidavit or declaration of the applicant or authorized officer certifying  
10 the truth and accuracy of the information in the application.

11           (14) The County may, at its discretion and upon request of an applicant, waive  
12 in writing the provision of any of the information required by this Section.

13           (d) All Franchise applications for a Franchise area or areas described in this Chapter  
14 shall include a map of suitable scale showing all federal, state, and County roads that identifies  
15 the schedule pursuant to which the applicant proposes to construct its Cable system, which shall  
16 be incorporated into a Franchise granted pursuant to this Chapter.

17           (e) An applicant shall not be issued a Franchise if it files materially misleading  
18 information in its application or intentionally withholds material information that the applicant  
19 lawfully is required to provide. In evaluating an application for a Franchise, the County may  
20 consider, but not be limited to, the following factors:

21           (1) The extent to which the applicant has substantially complied with  
22 applicable law and the material terms of any existing cable Franchise for the County;

1           (2)     Whether the quality of the applicant's service under any existing Franchise  
2 in the County, including signal quality, response to customer complaints, billing practices, and  
3 the like, has been reasonable in light of the needs and interests of the communities served;

4           (3)     Whether the applicant has the financial, technical, and legal qualifications  
5 to provide Cable service;

6           (4)     Whether the application satisfies any minimum requirements established  
7 by the County and is otherwise reasonable to meet the future cable-related needs and interests of  
8 the community, taking into account the cost of meeting such needs and interests;

9           (5)     Whether the applicant will provide adequate PEG or other access channel  
10 capacity, facilities, and financial support and leased access; and,

11          (6)     Whether issuance of a Franchise is in the public interest.

12 **Section 9.1-3-6. Application for grant of renewal Franchise.**

13          (a)     If the provisions of 47 U.S.C. § 546(a)-(g) are properly invoked, the County shall  
14 issue a Request for Renewal Proposal ("RFRP") after conducting a proceeding to: (i) review the  
15 renewal applicant's past performance; and (ii) identify the County's future cable-related  
16 community needs and interests. The County shall establish deadlines and procedures for  
17 responding to the RFRP, may seek additional information from the applicant, and shall establish  
18 deadlines for the submission of that additional information. Following receipt of the application  
19 responding to the RFRP (and such additional information as may be provided in response to  
20 requests), the Board shall determine that the Franchise should be renewed or make a preliminary  
21 assessment that the Franchise should not be renewed. If the Board makes a preliminary  
22 assessment that the Franchise should not be renewed, and the applicant that submitted the  
23 renewal application notifies the County, either in its RFRP response or within ten working days

1 of the preliminary assessment, that it wishes to pursue any rights to an administrative proceeding  
2 it has under the Cable Act, then the County shall commence an administrative proceeding after  
3 providing prompt public notice thereof, in accordance with the Cable Act.

4 (b) If an administrative hearing is commenced pursuant to 47 U.S.C. § 546(c), the  
5 applicant's renewal application shall be evaluated pursuant to federal law.

6 (c) If the County decides to grant renewal, it shall prepare a final Franchise  
7 agreement that incorporates, as appropriate, the commitments made by the applicant in the  
8 renewal application. If the applicant accepts the Franchise agreement, the Franchise shall be  
9 renewed. If the Franchise agreement is not accepted within the time limits established by 47  
10 U.S.C. § 546(c)(1), renewal shall be deemed preliminarily denied, and an administrative  
11 proceeding commenced if the applicant that submitted the renewal application requests it within  
12 ten days of the expiration of the time limit established by 47 U.S.C. § 546(c)(1).

13 (d) Notwithstanding the preceding subsections, a cable operator may submit an  
14 application for renewal of a Franchise pursuant to 47 U.S.C. § 546(h). Such a proposal may be  
15 submitted at any time and the Board may, after affording the public adequate notice and  
16 opportunity for comment, grant or deny such proposal at any time. An informal renewal  
17 application may be denied for any reason. If an informal renewal application is granted, then the  
18 steps specified in this Subsection pursuant to 47 U.S.C. § 546(a)-(g) need not be taken.

19 (e) If a renewal of a Franchise is denied, the Board may acquire ownership of the  
20 Cable system or effect a transfer of ownership of the system to another Person. Any such  
21 acquisition or transfer shall be at fair market value of the system as of the expiration date of the  
22 Franchise valued as a going concern but with no value allocated to the Franchise itself.

1           (f)     Misrepresentation or fraud by the applicant shall be grounds for denial of an  
2 application.

3           (g)     The provisions of this Section shall be read and applied so that they are consistent  
4 with 47 U.S.C. §§ 546 and 547.

5 **Section 9.1-3-7. Applicant representatives.**

6           Any Person who files an initial or renewal Franchise application with the County shall  
7 forthwith, at all times, disclose to the County, in writing, the names, addresses and occupations  
8 of all Persons who are authorized to represent or act on behalf of the applicant in those matters  
9 pertaining to the application. The requirement to make the disclosure described in this Section  
10 shall continue until the County has granted or rejected an applicant's application, or until an  
11 applicant withdraws its application.