

ARTICLE 9

General Provisions.

Section 9.1-9-1. Limits on Grantee's recourse.

Except as expressly provided in this Chapter or a Franchise agreement, a Grantee shall have no recourse against the County for any loss, expense or damage resulting from the terms and conditions of this Chapter or the Franchise or because of the County's enforcement thereof nor the County's failure to have the authority to grant the Franchise. A Grantee expressly agrees upon its acceptance of a Franchise that it does so relying upon its own investigation and understanding of the power and authority of the County to grant said Franchise.

Section 9.1-9-2. Special license.

The County reserves the right to issue a license, easement or other permit to anyone other than a Grantee to permit that Person to traverse any portion of a Grantee's Franchise area within the County in order to provide service outside the County. Such license or easement, absent a grant of a Franchise in accordance with this Chapter, shall not authorize or permit said Person to use the County's public ways to provide Cable service of any nature to any home or place of business within the County, or to render any service or connect any Subscriber within the County to the Grantee's Cable system.

Section 9.1-9-3. Franchise validity.

A Grantee agrees, by its acceptance of a Franchise, to accept the validity of the terms and conditions of this Chapter and its Franchise 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 its Franchise as unreasonable, arbitrary or void, or that the County did not have the authority to impose such term or condition.

1 **Section 9.1-9-4. Failure to enforce Franchise.**

2 A Grantee shall not be excused from complying with any of the terms and conditions of
3 this Chapter or its Franchise by any failure of the County, upon any one or more occasions, to
4 insist upon a Grantee's performance or to seek a Grantee's compliance with any one or more of
5 such terms or conditions.

6 **Section 9.1-9-5. Rights reserved to the County.**

7 The County hereby expressly reserves the following rights:

8 1. To exercise its governmental powers, now or hereafter, to the full extent that such
9 powers may be vested in or granted to the County.

10 2. To adopt, in addition to the provisions contained herein, in a Franchise agreement
11 and in ordinances, such additional regulations as it shall find necessary in the exercise of its
12 police power.

13 3. The right to amend this Chapter.

14 **Section 9.1-9-6. Employment requirement.**

15 A Grantee shall adhere to the Equal Employment Opportunity regulations of the FCC and
16 to all federal, Virginia and local laws and executive orders pertaining to discrimination, equal
17 employment opportunity and affirmative action that are applicable to a Grantee.

18 **Section 9.1-9-7. Time of essence.**

19 Whenever this Chapter or a Franchise agreement sets forth any time for any act to be
20 performed by or on the behalf of a Grantee, such time shall be deemed of the essence and the
21 Grantee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for
22 the County to invoke the remedies available under the terms and conditions of this Chapter and
23 its Franchise agreement.

1 **Section 9.1-9-8. Acceptance.**

2 (a) An applicant or Grantee to whom the Board grants one or more non-exclusive
3 Franchises shall, in addition to the non-refundable application fee specified herein, pay to the
4 County at the time the Grantee files its Franchise agreement acceptance, Seventy-five Thousand
5 Dollars per Franchise area. The payment shall be non-refundable, shall be made payable to the
6 order of the "County of Fairfax" and may be used to offset in whole or in part any direct costs
7 incurred by the County in granting the Franchise.

8 (b) A Grantee acknowledges by its acceptance of a Franchise that it has not been
9 induced to accept the same by any promise, oral or written, by or on behalf of the County or by
10 any third Person regarding any term or condition of this Chapter or a Franchise agreement which
11 is not expressed therein, and that no promise or inducement, oral or written, has been made to
12 any County employee or official regarding receipt of a cable Franchise.

13 (c) A Grantee acknowledges by its acceptance of a Franchise that it has carefully read
14 the terms and conditions of this Chapter and the Franchise agreement and accepts all of the terms
15 and conditions imposed by this Chapter and the Franchise agreement and agrees to abide by the
16 same.

17 (d) A Franchise and all of its terms and conditions shall be accepted by a Grantee by
18 written instrument filed with the County Executive within thirty calendar days after the granting
19 of the Franchise.

20 **Section 9.1-9-9. Financial penalties.**

21 (a) For violation of this Chapter or a Franchise agreement entered into pursuant to
22 this Chapter, penalties shall be assessable against a Grantee. Such penalties shall: (i) be
23 chargeable to the Grantee, its performance bond, or any other security fund of the Grantee, in

1 any amount up to the limits specified below, at the County’s discretion; (ii) be subject to cure
2 periods, to the extent listed below, that begin to run at the time the Grantee is notified in writing
3 of a penalty by the County; and, (iii) not be deemed cured without written evidence from a
4 Grantee and acceptance thereof by the County for those violations that are subject to a cure
5 period. The County may waive the penalties specified in this Section for good cause shown.

6 (1) For failure to submit any required plans indicating expected dates of
7 installation of various parts of the system: a penalty of \$400 per day for each day the plans are
8 not submitted beyond a seven day cure period;

9 (2) For failure to commence operations in accordance with the requirements
10 of a Franchise agreement: penalty of \$1,000 per day for each day commencement of operations
11 in accordance with such requirements is delayed beyond a thirty day cure period;

12 (3) For failure to substantially complete construction and installation of a
13 system in accordance with this Chapter and/or a Franchise agreement: a penalty of \$2,000 per
14 day for each day the construction or installation is delayed beyond a thirty day cure period;

15 (4) For a transfer without approval: a penalty of \$2,000 per day for each day
16 the transfer remains in effect without the County’s approval;

17 (5) For failure to comply with requirements for PEG use of the system: a
18 penalty of \$1,000 per day for each day compliance is delayed beyond a fourteen day cure period;

19 (6) For failure to provide complete and accurate information, reports, or
20 filings lawfully required under a Franchise agreement or applicable law or by the County: a
21 penalty of \$200 per day for each day that each such filing is delayed beyond a thirty day cure
22 period;

1 (7) For violation of a customer service standard as set forth in Section 9.1-7-6:
2 a penalty of \$200 per violation, treating each failure to comply as a separate violation;

3 (8) For failure to render payment for reimbursement of any franchise
4 expenses, or failure to pay franchise fees or liquidated damages: a penalty of \$100 for each day
5 each such payment is delayed;

6 (9) For failure to file, obtain or maintain any required performance bond or
7 other security fund in a timely fashion: a penalty of \$200 per day for each day compliance is
8 delayed;

9 (10) For failure to restore damaged property: a penalty of \$50 per day for each
10 day such property is not replaced beyond a ten day cure period, in addition to the cost of the
11 restoration as required in this Chapter or a Franchise agreement;

12 (11) For violation of technical standards pursuant to federal law: a penalty of
13 \$100 per day for each day the violation is not remedied beyond a seven day cure period;

14 (12) For rate regulation violations or failure to conform to County orders or
15 resolutions, for each day that the same violation occurs or continues: a penalty of \$200 for each
16 day the violation is not remedied;

17 (13) For violation of federal, Virginia, or local privacy requirements: a penalty
18 of \$1,000 per incident; and

19 (14) For any other violations of this Chapter, a Franchise agreement or other
20 applicable law: a penalty of \$200 per day for each violation for each day the violation is not
21 remedied beyond a seven day cure period.

1 (b) To the extent that financial penalties are applied to a Grantee under this Section,
2 the Grantee shall not be subject to liquidated damages established in a Franchise agreement for
3 the same violation.

4 (c) Violation of this Chapter shall be subject to such other remedies and penalties as
5 shall be prescribed by law or ordinance.

6 **Section 9.1-9-10. Severability.**

7 If any section of this Chapter or a Franchise agreement, or any portion thereof, is held
8 invalid or unconstitutional by any court of competent jurisdiction or administrative agency, such
9 decision shall not affect the validity of the remaining portions.

10 **Section 9.1-9-11. Preemption.**

11 In the event that federal or state laws, rules or regulations preempt a provision or limit the
12 enforceability of a provision of this Chapter, then the provision shall be read to be preempted to
13 the extent and for the time, but only to the extent and for the time, required by law. In the event
14 such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or
15 otherwise changed so that the provision herein that had been preempted is no longer preempted,
16 such provision shall thereupon return to full force and effect, and shall thereafter be binding on
17 all Grantees, without the requirement of further action on the part of the County.

18 **Section 9.1-9-12. Connections to the Cable system; Use of Antennas.**

19 To the extent consistent with federal law, Subscribers shall have the right to attach
20 devices to a Grantee's Cable system to allow them to transmit signals or service to video cassette
21 recorders, receivers and other terminal equipment, and to use their own remote control devices
22 and converters, and other similar equipment, so long as such devices do not interfere with the
23 operation of a Grantee's Cable system, or the reception of any cable Subscriber, nor serve to

1 circumvent a Grantee's security procedures, nor for any purpose to obtain services illegally. A
2 Grantee shall provide information to consumers that will allow them to adjust such devices so
3 that they may be used with a Grantee's Cable system.

4
5 2. That Chapter 9 of the Fairfax County Code is repealed.

6
7 3. That any person providing cable service within the County on the effective date of this
8 ordinance pursuant to a cable Franchise previously granted by the Board, who was in full
9 compliance with Fairfax County Code Section 9-5-12 and that cable Franchise prior to the
10 effective date of this ordinance and who continues to meet the requirements established therein,
11 shall be deemed to be in compliance with Fairfax County Code Section 9.1-5-9 while that cable
12 Franchise remains in force and effect.

13
14 4. That the provisions of this ordinance are severable, and if any provision of this ordinance
15 or any application thereof is held invalid, that invalidity shall not affect the other provisions or
16 applications of this ordinance which can be given effect without the invalid provision or
17 application.

18
19 5. That this ordinance shall become effective on adoption.