

**COUNTY COMMISSIONERS OF QUEEN ANNE'S COUNTY, MARYLAND  
COUNTY ORDINANCE 03 - 20**

**CABLE TELEVISION FRANCHISING**

AN ACT concerning

Title 29 of the Code of Public Local Laws  
of Queen Anne's County, Maryland

**Cable Television Franchising**

FOR THE PURPOSE of setting forth regulations, terms and conditions under which cable television operators may use and occupy the public rights-of-way of Queen Anne's County, Maryland; establishing a framework under which cable television systems shall be constructed, operated, maintained and regulated when utilizing the public rights-of-way; authorizing the granting of one or more non-exclusive franchises for cable services within Queen Anne's County; establishing operational and customer services standards for cable television system operators; providing procedures for cable television franchise application, modification and renewal; establishing a cable television system franchise fee and application fee; providing that the title of this legislative bill shall be deemed a fair summary; and generally relating to the construction, regulation, operation and maintenance of cable television systems in Queen Anne's County.

WHEREAS, the County Commissioners of Queen Anne's County (the "County" or the "County Commissioners") finds that the development of Cable Television Systems within Queen Anne's County has the potential of having great benefit and impact upon the residents of Queen Anne's County; and

WHEREAS, because of the complex and rapidly changing technology associated with cable television and related services, the County Commissioners further find that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the County or such persons as the County shall designate; and

WHEREAS, the County owns and maintains a system of streets and public rights-of-way throughout Queen Anne's County, and the County has the authority to regulate the occupation and use of such streets and public rights-of-way to the maximum extent permitted under applicable law, including, but not limited to, the Federal Telecommunications Act of 1996; and

WHEREAS, the County desires to structure and implement a fair and orderly process for the grant of Franchises (and renewals of such franchises) to occupy and use the public rights-of-way to provide cable television services in Queen Anne's County, including the negotiation of franchise provisions to protect the public interest; and

WHEREAS, the County has determined that the grant of franchises to use and occupy the public rights-of-way for the provision of cable services would promote the health, safety and welfare of the public, stimulate commerce and otherwise serve the public interest; and

WHEREAS, the County has determined that it is in the best interest of and consistent with convenience and necessity of Queen Anne's County to grant franchises to persons desiring to use the public rights-of-way and provide cable services through a cable system within the territorial boundaries of Queen Anne's County subject to the terms and conditions herein, and as may be further provided for in a franchise agreement for cable services; and

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the County Commissioners of Queen Anne's County, Maryland that:

SECTION 1. A new Title 29 of the Code of Public Local Laws of Queen Anne's County be adopted and added, as follows:

## **Title 29. CABLE TELEVISION**

### **Subtitle 1. Title and Purpose**

#### **29-101. Title and Purpose.**

This Title shall be known and may be cited as the "Queen Anne's County Cable Television Franchise Act" (hereinafter "Title"). The purposes of this Title are (i) to establish the terms and conditions under which a cable television or open video system occupying the Public Rights-of-Way must operate within Queen Anne's County, Maryland (which may hereinafter be referred to as "County", "Franchising Authority", or "Grantor"); (ii) to provide for the payment of a franchise fee to the County for use of Public Rights-of-Way and the costs associated with administering and regulating the system; and (iii) to enhance the County's authority to grant a Cable Television System Franchise while managing the Public Rights-of-Way.

### **Subtitle 2. Definitions**

#### **29-201. Definitions.**

For the purpose of this Title and any Franchise Agreement entered into hereunder, the following terms, phrases, words and their derivations shall have the meaning given herein. 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. All capitalized terms used in the definition of any other term shall have their meaning as otherwise defined in this 29-201. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(a) "Access Manager" means any entity, including a non-profit community access corporation, designated by the County to perform any or all of the following functions:

- (1) Manage any necessary scheduling or allocation of any PEG or institutional network Channel capacity; and/or
- (2) Program any PEG Channel on the County's behalf.

(b) "Affiliate" means each Person who falls into one or more of the following categories:

- (1) Each Person having a Controlling Interest in a Grantee;
- (2) Each Person in which a Grantee has a Controlling Interest; or
- (3) Each Person, directly or indirectly, Controlling, Controlled by, or under common Control with, a Grantee; provided that "Affiliate" shall in no event mean any creditor or a Grantee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a Controlling Interest in, being owned by, or being under common ownership, common management, or common control with, a Grantee.

(c) "Agreement" or "Franchise Agreement" means a binding contract granting a Franchise pursuant to this Title, and any amendments, exhibits or appendices thereto, containing the specific provisions of the Franchise granted, including references, specifications, requirements and other related matters.

(d) "Basic Service" or "Basic Cable Television Service" means any service tier, which includes the retransmission or delivery of local television broadcast signals, origination channels and public, educational and governmental access Channels, covered by a regular monthly charge paid by all Subscribers to a particular service tier. In the event that the definition of Basic Cable Television Service is amended by an act of the United States Congress, under the Cable Act or otherwise, or by the FCC, then the definition under this section shall be amended to conform thereto.

(e) "Cable Act" means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and as may be amended from time to time.

(f) "Cable Television System" or "Cable System" or "System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception, transmission and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple Subscribers within Queen Anne's County, but such term does not include:

- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) A facility that serves Subscribers without using any Public Rights-of-Way;
- (3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a Cable System if 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; or
- (4) Any facilities of any electric utility used solely for operating its electric utility system.

A reference to a Cable System in this Title refers to any part of such System, including, without limitation, Converters. The foregoing definition of "Cable System" shall not be deemed to circumscribe or limit the authority of the County to regulate or Franchise the activities of any other communications system or provider of communications services to the full extent permitted by law.

(g) **"Cable Service"** means:

- (1) The one-way transmission to Subscribers of video programming or other programming services; and
- (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(h) **"Channel"** or **"Cable Channel"** means a portion of the electromagnetic frequency spectrum that is used in a Cable System and which is capable of delivering a television Channel (as defined by the FCC).

(i) **"Control"** and/or **"Controlling Interest"** shall mean actual working control or ownership of a System in whatever manner exercised. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person or entity (except underwriters during the period in which they are offering securities to the public) of twenty-five percent or more of a Cable System or a Franchise under which the System is operated. A change in the Control or Controlling Interest of any entity which has Control or a Controlling Interest in a Grantee shall constitute a change in the Control or Controlling Interest of the System under the same criteria. Control or Controlling Interest as used herein may be held simultaneously by more than one Person or entity

(j) **"Converter"** means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber,

and by an appropriate Channel selector also permits a Subscriber to view more than twelve (12) Channels delivered by a System at designated Converter dial locations.

(k) "**County Administrator**" means the administrative head of the County, or his designee.

(1) "**County**" means the County Commissioners of Queen Anne's County, Maryland, and any agency or department thereof. The County may also be referenced as "**Franchising Authority**" or "**Grantor**".

(m) "**Franchise**" means a non-exclusive authorization, or renewal thereof, evidenced by a written Franchise Agreement, granted pursuant to this Title and applicable law, to construct, operate and maintain a Cable System within the Public Rights-of-Way to provide Cable Service within all or a specified area of Queen Anne's County. The term "**Franchise**" includes the Franchise Agreement. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within Queen Anne's County as required by State or local law, ordinances, or regulations, or for attaching devices to poles or other structures, whether owned by the County or a private entity, or for excavating or performing other work in or along the Public Rights-of-Way.

(n) "**Franchise Area**" means the geographic area within Queen Anne's County that a Grantee is authorized to serve by its Franchise.

(o) "**Franchise Fee**" means the fee imposed by the County pursuant to 29-311 of this Title. The term "**Franchise Fee**" does not include:

(1) any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators);

(2) capital costs that are required by a Franchise Agreement to be incurred by the cable operator for public, educational or governmental access facilities, or

(3) requirements or charges incidental to the awarding or enforcing of a Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages.

(p) "**FCC**" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

(q) "**Grantee**" means a Person or entity to whom or which a Franchise is granted by the County pursuant to this Title, along with the lawful successors or assigns of such Person or entity.

(r) **"Gross Revenue"** means any and all revenues or consideration of any kind or nature that constitutes revenue within generally accepted accounting principles (including without limitation, cash, and credits,) actually received by a Grantee or by any other operator that is an operator of a Cable System, from the provision of Cable Service over the Cable System within the Franchise Area. Gross Revenues include, by way of illustration and not limitation, monthly fees charged to Subscribers for any basic, optional, premium, per-Channel, per-program service, or other Cable Service; Installation, disconnection, reconnection and change-in-service fees; leased access Channel fees; late fees; revenues from rentals or sales of Converters or other equipment; advertising revenues; and revenues from home shopping. Gross Revenues shall include revenues received by an entity other than a Grantee that operates the Cable System where necessary to prevent evasion or avoidance of the obligation under this Title or a Franchise to pay the Franchise Fee. Gross Revenues shall not include:

(1) To the extent consistent with generally accepted accounting principles, actual bad-debt write-offs; or

(2) Any taxes on services furnished by a Grantee which are imposed directly on any Subscriber or User by the State of Maryland, the County or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. A Franchise Fee is not such a tax.

Gross Revenue includes an allocated portion of all revenue derived by Grantee from local advertising, home shopping, or other similar services. The allocation shall be based on the number of Subscribers in the Franchise Area divided by the total number of Subscribers on the System. Gross Revenues shall include any revenue received by Grantee through any means which has the effect of avoiding the payment of Franchise Fees to the Franchise Authority which it is lawfully entitled to receive under the terms of this Title.

(s) **"Initial Grantee"** means a Grantee who has not previously been granted a Franchise by the County.

(t) **"Initial Service Area"** means all areas in Queen Anne's County that will receive Cable Service initially, as set forth in any Franchise Agreement.

(u) **"Installation"** means the connection of the System to Subscribers' terminals, and the provision of Cable Service.

(v) **"Normal Business Hours"**, as applied to a Grantee, shall mean those hours during which similar businesses in Queen Anne's County are open to serve customers. In all cases, Normal Business Hours shall include some evening hours at least one (1) night per week, and some weekend hours.

(w) **"Normal Operating Conditions"** shall mean those service conditions which are within the control of a Grantee. Those conditions which are not within

the control of a Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

(x) "**Outage**" shall mean the complete loss of picture, sound or both on multiple Channels from a common problem which affects multiple customers on the System.

(y) "**PEG**" or "**Public, Educational or Government Access Facilities**" means:

(1) Channel capacity designated for public, educational or governmental use; and

(2) Facilities and equipment for the use of such Channel capacity.

(z) "**Person**" shall mean any natural person or any partnership, association, joint stock company, joint venture, domestic or foreign corporation, stock or non-stock corporation, limited liability company, professional limited liability company, or organization of any kind, or any lawful successor thereto or transferee thereof. Such term does not include the County.

(aa) "**Public Rights-of-Way**" or "**Street**" means the surface of and all rights-of-way and the space above and below any public Street, road highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the County for the purpose of public travel and shall include other similar easements or rights-of-way as shall be now held or hereafter held by the County which shall, within their proper use and meaning, entitle a Grantee to the use thereof for the purposes of installing poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a Cable System.

(bb) "**Service Interruption**" shall mean the loss of either picture or sound or both, on one or more Channels, affecting at least one (1) Subscriber on the System.

(cc) "**State**" means the State of Maryland.

(dd) "**Subscriber**" shall mean any Person lawfully receiving Cable Service provided by a Grantee by means of or in connection with the Cable System and who pays the charges therefore, except such Persons or entities authorized to received Cable Service without charge as provided for in a Franchise Agreement.

(ee) "User" means a Person utilizing a Cable Television System Channel for purposes of production or transmission of material to Subscribers, as contrasted with receipt thereof in a Subscriber capacity.

### **Subtitle 3. Franchise Required**

#### **29-301. Cable Television Franchise Required.**

It shall be unlawful for any Person to construct, install or operate a Cable Television System in Queen Anne's County within any Public Right-of-Way without a properly granted Franchise issued pursuant to the provisions of this Title.

#### **29-302. Rights and Privileges of Grantee.**

Any Franchise granted by the County shall grant to a Grantee the non-exclusive right and privilege to erect, construct, operate and maintain in, upon, and along, across, above, over and under the Public Rights-of-Way, now in existence and as may be created or established during a Franchise term; any poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation of a Cable System to provide Cable Service within a Franchise Area. A Franchise granted by the County does not expressly or implicitly authorize a Grantee to provide service to, or install a Cable System on, private property without the owner's consent (except for use of compatible easements pursuant to the Cable Act, or to use publicly or privately owned conduits or any other public property without a separate agreement with the owners thereof).

#### **29-303. Agreement and Incorporation of Application by Reference.**

(a) Upon adoption of any Franchise Agreement and execution thereof by a Grantee, the Grantee agrees to be bound by all the terms and conditions contained in this Title and any amendments thereto, unless otherwise provided in the Franchise Agreement.

(b) Any Grantee also agrees to provide all services specifically set forth in its application, if any, and to provide Cable Service within the confines of its Franchise Area; and by its acceptance of a Franchise, a Grantee specifically grants and agrees that its application is thereby incorporated by reference and made a part of the Franchise. In the event of a conflict between the application and the provisions of this Title, that provision which provides the greatest benefit to the County, in the opinion of the County, shall prevail.

#### **29-304. Franchise Area.**

Any Franchise to provide Cable Service shall be valid within all the unincorporated territorial limits of Queen Anne's County, Maryland, unless otherwise specified in the Franchise Agreement.

### **29-305. Duration and Acceptance of Franchise.**

(a) A Franchise and the rights, privileges and authority granted shall take effect and be in force as set forth in the Franchise Agreement and shall continue in force and effect for a term of no longer than ten (10) years. Such Franchise shall be non-exclusive and revocable.

(b) Within fifteen (15) days after the County's decision to grant a Franchise the intended Grantee shall file with the County its unconditional acceptance of the Franchise and its promise to comply with and abide by all its provisions, terms and conditions.

### **29-306. Franchise Renewal.**

Franchise renewals shall be conducted in accordance with applicable law including, but not necessarily limited to, the Cable Act, as amended. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the Franchise.

### **29-307. Police Powers.**

(a) In accepting a Franchise, a Grantee shall acknowledge that its rights there under are subject to the police powers of the County to adopt and enforce general public local laws pursuant to applicable law and necessary to the health, safety and welfare of the public. Grantee shall agree to comply with all applicable laws, ordinances, policies, codes, rules and regulations enacted or adopted by the County pursuant to such power.

(b) Any conflict between the provisions of this Title and any other present or future lawful exercise of the County's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in Queen Anne's County, or applies exclusively to the Grantee or Cable Television Systems, which contain provisions inconsistent with the Grantee's Franchise Agreement, shall prevail only if upon such exercise the County finds an emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law.

(c) In the event that the State or federal government discontinues preemption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, the County may, if it so elects, adopt rules and regulations in these areas to the extent permitted by law.

### **29-308. County Use of Grantee Facilities.**

The County shall have the right, during the term of a Franchise, to install and maintain free of charge upon the poles of a Grantee any wire or pole fixtures that do not unreasonably interfere with the Cable Television System operations of the Grantee. The

County shall indemnify and hold harmless, to the extent permitted by law, the Grantee from any claim that might arise due to or as a result of such usage.

**29-309. Initial Grantee Costs.**

Costs to be borne by an Initial Grantee shall include, but shall not be limited to, any reasonable charges incidental to the awarding or enforcing of an Initial Grantee's Franchise, all costs of publications of notices prior to any public meeting provided for pursuant to this Title, and any costs not covered by application fees but incurred by the County in its study, preparation of proposal documents, evaluation of all applications, and examinations of the applicants' qualifications. Any payments made to the County pursuant to this section shall not be considered Franchise Fees.

**29-310. Franchise Application, Application Fee and Review Process.**

(a) Any Person desiring (i) an initial Franchise for a Cable Television System, (ii) the renewal of a Franchise, or (iii) a modification of a Franchise shall file a written application with the County. The application shall be in such form, and under such terms and conditions, as determined by the County.

(b) To be acceptable for filing, a signed original of the application shall be submitted together with ten (10) copies. The application must be accompanied by any required application filing fee, conform to any applicable request for proposals ("RFP"), and contain all required information. All applications shall include the names and addresses of Persons authorized to act on behalf of all applicants with respect to the application.

(c) All applications accepted for filing shall be made available by the County for public inspection.

(d) A Person may apply for an initial Franchise or a Franchise renewal by submitting an application containing the information required in 29-310(e). Upon receipt of such an application, the County may either: evaluate the application pursuant to 29-310(d)(3), conducting such investigations as it deems necessary; or issue a request for proposals ("RFP"), after conducting, if necessary, a proceeding to identify the future Cable-related needs and interests of the community. Any such RFP shall be mailed to the Person requesting its issuance and made available to any other interested Person. The RFP may contain a proposed Franchise Agreement.

(1) An applicant shall respond to a RFP by filing an application within the time directed by the County, providing the information and material set forth in 29-310(e). Each applicant shall follow the procedures, instructions, and requirements set forth in the RFP. Any applicant that has already filed materials pursuant to 29-310(d)(2) herein need not re-file the same materials with its RFP response, but must amplify its applications to include any additional or different materials required by the RFP. The County or its designee may seek additional

information from any applicant and establish deadlines for the submission of such information.

(2) Notwithstanding the provisions of this section, a Person may apply for an initial Franchise by submitting an unsolicited application containing the information required in 29-310(E) and requesting an evaluation of that application pursuant to 29-310(d)(3). Prior to evaluating that application, the County may conduct such investigations as are necessary to determine whether the application satisfies the standards set forth in 29-310(d)(3) and may seek additional applications.

(3) In evaluating an application for a Franchise or a renewal thereof, the County shall consider, among other things, the following factors:

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

(ii) Whether the quality of the applicant's service under any existing Franchise in Queen Anne's County, including signal quality, response to customer complaints, billing practices, but without regard to the mix and quality of Cable Services or other services provided over the System, has been reasonable in light of the needs and interests of the communities served;

(iii) Whether the applicant has the financial, technical, and legal qualifications to provide Cable Service;

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

(v) Whether, to the extent not considered under 29-310(d)(3)(iv), the applicant will provide adequate PEG access Channel capacity, facilities, or financial support.

(vi) Whether issuance of a Franchise is warranted in the public interest considering the immediate and future effect on the Public Rights-of-Way and private property that would be used by the Cable System, including the extent to which Installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the Public Rights-of-Way; the effect of granting a Franchise on the ability of Cable to meet the Cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications;

(vii) What effects a grant of the Franchise may have on competition in the delivery of Cable Service in Queen Anne's County.

(4) If the County finds that it is in the public interest to issue or renew a Franchise considering the factors set forth in this section, and subject to the applicant's entry into an appropriate Franchise Agreement, it shall proceed with the grant or renewal of Franchise. If the County denies a Franchise or renewal thereof after consideration of the factors set forth in this section, it will issue a written decision explaining the denial. The County also may grant or deny a request for a Franchise or renewal thereof based on its review of an application without further proceedings and may reject any application that is incomplete or fails to respond to an RFP. This Title is not intended and shall not be interpreted to grant any applicant or existing Franchisee standing to challenge the issuance of a Franchise to another Person.

(5) Prior to rendering a final decision whether or not to issue or renew a Franchise pursuant to this section, (i) the County shall provide public notice of the Franchise application; (ii) the County may hold one or more public hearings or implement other procedures under which comments from the public and/or the applicant on an application may be received; and (iii) in the event of a renewal application where the Franchise may not be renewed, the County shall provide a preliminary assessment to the Franchisee seeking renewal and shall afford that applicant an opportunity to respond to the preliminary assessment.

(e) An RFP for the grant of an initial Franchise shall require, and any such application shall contain, at a minimum, the following information:

(1) Name and address of the applicant and identification of the ownership and Control of the applicant, including: the names and addresses of the ten (10) largest holders of an ownership interest in the applicant and Affiliates of the applicant, and all Persons with five (5) percent or more ownership interest in the applicant and its Affiliates; the Persons who Control the applicant and its Affiliates; and all officers and directors of the applicant and its Affiliates.

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

(3) A demonstration of the applicant's legal qualifications to construct and/or operate the proposed Cable System.

(4) A statement prepared by a certified public accountant regarding the applicant's financial ability to complete the construction and operation of the Cable System proposed.

(5) A description of the applicant's prior experience in Cable System ownership, construction, and operation, and identification of communities in

which the applicant or any of its principals have, or have had, a Cable Franchise or any interest therein.

(6) Identification of the area of Queen Anne's County to be served by the proposed Cable System, including a description of the proposed Franchise Area's boundaries.

(7) A detailed description of the physical facilities proposed, including Channel capacity, technical design, performance characteristics, headend, and access facilities.

(8) Where applicable, a description of the construction of the proposed system, including an estimate of plant mileage and its location; the proposed construction schedule; a description, where appropriate, of how services will be converted from existing facilities to new facilities; and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities.

(9) The proposed rate structure, including projected charges for each service, Installation, Converters, and all other proposed equipment or service.

(10) A demonstration of how the applicant will reasonably meet the future Cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any recent community needs assessment conducted by or for the County, and how the applicant will provide adequate PEG access Channel capacity, facilities, or financial support to meet the community's needs and interests.

(11) Pro forma financial projection for the proposed Franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules.

(12) If the applicant proposes to provide Cable Service to an area already served by an existing Cable Franchisee, the identification of the area where the overbuild would occur and the ability of the Public Rights-of-Way and other property that would be used by the applicant to accommodate an additional system.

(13) Any other information that may be reasonably necessary to demonstrate compliance with the requirements of this Title.

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

(15) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all federal and State law requirements.

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

(f) An application for modification of a Franchise Agreement shall include, at minimum, the following information:

(1) The specific modification requested;

(2) The justification for the requested modification, including the impact of the requested modification on Subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, *inter alia*, submission of financial pro formas;

(3) A statement whether the modification is sought pursuant to 9625 of the Cable Act, and, if so, a demonstration that the requested modification meets the standards set forth therein;

(4) Any other information that the applicant believes is necessary for the County to make an informed determination on the application for modification; and

(5) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and State law requirements.

(g) An applicant shall be notified of any public hearings held in connection with the evaluation of its application and shall be given an opportunity to be heard.

(h) Filing Fees. A nonrefundable application fee of Three-Thousand Dollars (\$3,000) shall accompany any initial Franchise application. A nonrefundable application fee of One-Thousand Dollars (\$1,000) shall accompany any renewal application or modification application, unless otherwise stipulated by the County. In addition, the County may require an applicant to reimburse the County for its reasonable out-of-pocket expenses in considering the application, including consultants' fees. Payments made by a Grantee hereunder shall not be deemed to be Franchise Fees within the meaning of the Cable Act, and such payment shall not be deemed to be involuntary payment chargeable against, or part of, the compensation to be paid to the County by Grantee pursuant to 29-311 of this Title and applicable provisions of a Franchise Agreement. The purpose of the application fees is to cover costs incidental to processing and evaluating the application or enforcement of the Franchise.

### **29-311. Franchise Fee.**

(a) For the reason that the Streets and Public Rights-of-Way of the County to be used by a Grantee in the operation of its Cable System within the boundaries of Queen Anne's County are valuable public properties acquired and maintained by the County at great expense to its taxpayers, and that the grant of a Franchise to a Grantee is a valuable right without which a Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee shall pay to the County an amount equal to five percent (5%) of the Grantee's Gross Revenue, unless otherwise provided for in the Franchise Agreement. If the statutory five percent (5%) limitation on Franchise fees is raised or the federal statute deletes the Franchise Fee limitation entirely, then the Franchise fee may be subject to renegotiation.

(b) This payment shall be in addition to any other tax, fee or assessment of general applicability or payment owed to the County by a Grantee.

(c) The Franchise Fee and any other costs or penalties assessed shall be payable quarterly on a calendar year basis to the County and a Grantee shall file a complete and accurate verified statement of all Gross Revenues within forty-five (45) days after the quarter as established between the County and the Grantee.

(d) The County shall have the right, no more frequently than biannually, to inspect a Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this Title upon thirty (30) days prior notice to the Grantee. Any additional amount due to the County as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the County, which notice shall include a copy of the audit report. Unless required by law, the County shall not disclose to any third party (other than its financial advisors in their capacity as such) any financial information or other information that would reasonably be regarded as confidential that the County gains access to in connection with the provisions of this subsection. A Grantee's income records, when made available to the County, shall not include Subscriber specific information.

(e) If any Franchise Fee payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such date at the legal maximum rate charged by the United States Internal Revenue Service for late tax payments and a Grantee shall reimburse the County for any reasonable additional expenses and costs incurred by the County by reason of the delinquent payment(s).

### **Subtitle 4. Notices**

#### **29-401. Notices.**

All notices from a Grantee to the County pursuant to this Title shall be to the County Administrator's office. Every Grantee shall maintain with the County, throughout the term of a Franchise, an address for service of notices by mail. A Grantee shall maintain a central office to address any issues relating to operating under this Title.

#### **29-402. Public Notice.**

Minimum public notice of any public meeting relating to a Franchise shall be made as prescribed by the County.

### **Subtitle 5. Sureties and Insurance**

#### **29-501. Letter of Credit/Security Deposit.**

(a) Within fifteen (15) days after the award of a Franchise, a Grantee shall deposit with the County an irrevocable letter of credit from a financial institution, a security deposit, or a surety bond, in form and amounts as set forth in the Franchise Agreement. The County Attorney shall approve the form and content of such letter of credit, security deposit, or surety bond. These instruments shall be used to insure the faithful performance of a Grantee of all provisions of this Title and the Franchise; and compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the County having jurisdiction over its acts or defaults under this Title and the Franchise, and the payment by a Grantee of any claims, liens, and taxes due the County which arise by reason of the construction, operation or maintenance of a Cable System.

(b) The letter of credit, security deposit, or surety bond shall be maintained at the amount set forth in the Franchise Agreement for the entire term of a Franchise, even if amounts have to be withdrawn pursuant to this Title or the Franchise Agreement.

(c) If a Grantee fails to pay to the County any compensation within the time fixed under this Title or in the Franchise Agreement; or fails to repay the County within thirty (30) days, any damages, costs or expenses which the County is compelled to pay by reason of any act or default of the Grantee in connection with this Title or a Franchise, or fails, after thirty (30) days notice of such failure by the County to comply with any material provision of this Title or the Franchise which the County reasonably determines can be remedied by demand on the letter of credit, security deposit, or surety bond, the County may immediately request payment of the amount thereof, with interest and any penalties, from the letter of credit, surety bond or security deposit. Upon such request for payment, the County shall notify the Grantee of the amount and date thereof.

(d) The rights reserved to the County with respect to the letter of credit, security deposit or surety bond are in addition to all other rights of the County, whether reserved by this Title or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit, surety bond or security deposit shall affect any other right the County may have.

(e) A letter of credit shall contain the following endorsement: "It is hereby understood and agreed that this letter of credit, security deposit or surety bond may not be canceled by the surety, nor the intention not to renew be stated by the surety, until thirty (30) days after receipt by the County Commissioners of Queen Anne's County, by registered mail, of a written notice of such intention to cancel or not to renew." Upon receipt of the thirty (30) day notice, this shall be construed as a default granting the County the right to call on the surety for either the security deposit, letter of credit or surety bond, unless a Grantee obtains a substitute letter of credit, security deposit or surety bond.

(f) The County may at any time during the term of the Franchise, waive their requirement that the Grantee maintain a letter of credit, surety bond or security deposit. The invitation to waive the requirement can be initiated by the County or a Grantee.

### **29-502. Performance Bond.**

(a) Within thirty (30) days after the award of a Franchise to an Initial Grantee, such Grantee shall file with the County a performance bond in the amount of not less than fifty (50) percent of costs to install the System contained in the new application in favor of the County. This bond shall be maintained throughout the construction period and until such time as determined by the County, unless otherwise specified in a Franchise Agreement.

(b) If a Grantee fails to comply with any law, ordinance or resolution governing a Franchise, or fails to well and truly observe, fulfill and perform each term and condition of the Franchise, as it relates to the conditions relative to the construction or upgrade of a Cable System, there shall be recoverable jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the County as a result including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Grantee plus a reasonable allowance for attorneys' fees, including the County's legal staff, and costs, up to the full amount of the bond.

(c) The County shall upon completion of construction of the Initial Service Area, waive or reduce the requirement of a Grantee to maintain the bond. However, the County may require a performance bond to be posted by the Grantee for any construction subsequent to the completion of the Initial Service Areas, in a reasonable amount and upon such terms as determined jointly by the County and Grantee.

(d) The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety, nor the intention not to renew be stated by the surety, until thirty (30) days after receipt by the County Commissioners of Queen Anne's County, by registered mail, of a written notice of such intent to cancel and not to renew." Upon receipt of a thirty (30) day notice, this shall be construed as default granting the County the right to call in the bond.

(e) The County may, at any time during the term of a Franchise, Waive the requirement that the Grantee maintain a performance bond. The invitation to Waive the requirement can be initiated by the County or Grantee.

**29-503. Insurance.**

A Grantee shall carry insurance in such forms and in such companies as specified in the Franchise Agreement.

**29-504. Hold Harmless.**

(a) The County shall not at any time be liable for injury or damage occurring to any Person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition or dismantling of a Grantee's Cable System or due, in whole or in part, to the act or omission of any Person other than the County or those Persons for which the County is legally liable as a matter of law.

(b) Grantee, under any Franchise operated pursuant to this Title, shall agree to indemnify, hold harmless, release and defend the County, its officers, boards, commissions, agents and employees from and against any and all lawsuits, claims, causes of action, actions, liability, demands, damages, disability, losses, expenses, including reasonable attorneys' fees and costs or liabilities of any nature that may be asserted by any Person resulting or in any manner arising from the action or inaction of the Grantee in constructing, operating, maintaining, repairing or removing the Cable System, in carrying on Grantee's business or operations in the County or in exercising or failing to exercise any right or privilege granted by the Franchise. This indemnity shall apply, without limitation, to any action or cause of action for invasion of privacy, defamation, antitrust, errors and omissions, theft, fire, violation or infringement of any copyright, trademark, trade names, service mark or patent, or any other right of any Person, firm or corporation, whether or not any act or omission complained of is authorized, allowed or prohibited by this Title or any Franchise Agreement, but shall not include any claim or action arising, in whole or in part, out of the actions or omissions of County officers, employees or agents or related to any County programming or other access programming for which the Grantee is not legally responsible.

(c) The County shall promptly notify Grantee of any claims subject to indemnification by Grantee and shall cooperate with all reasonable requests by Grantee for information, documents, testimony or other assistance appropriate to a resolution of such claims. Grantee shall have full responsibility for and control of any action or undertaking directed at the resolution of such claims.

**Subtitle 6. Service**

**29-601. Rights of Individuals.**

(a) A Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel Users, or general citizens on the basis of race, color, religion, national origin, disability or gender. A Grantee shall comply at all times with all other applicable federal, State and local laws and regulations and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this Title by reference.

(b) A Grantee shall strictly adhere to the equal employment opportunity requirements of the FCC, and State and local regulations, as amended from time to time.

(c) A Grantee shall, at all times, comply with the privacy requirements of State and federal law.

(d) A Grantee is required to make all Cable Television System services available to all residential dwellings throughout the Franchise Area which meet the minimum housing density requirements set forth herein and/or in the Franchise Agreement.

#### **29-602. Service Availability and Record Request.**

A Grantee shall provide Cable Service throughout its entire Franchise Area pursuant to the provisions of this Title and its Franchise Agreement, and shall keep a record for at least three (3) years of all requests for service received by the Grantee. Upon reasonable notice, this record shall be available for inspection by the County at the local office of the Grantee during Normal Business Hours.

### **Subtitle 7. Construction and Operation**

#### **29-701. System Construction.**

(a) New Construction Timetable. The System construction timetable in an Initial Service Area shall be established in the Franchise Agreement.

(b) Line Extensions. Unless otherwise provided for in the Franchise Agreement:

(1) In areas of the Franchise not included in the Initial Service Areas, a Grantee shall be required to extend its System pursuant to the following requirements:

(i) No customer shall be refused service arbitrarily. Grantee is hereby authorized to extend the Cable System as necessary within the County. To expedite the process of extending the Cable System into a new subdivision, the County will forward to a Grantee an approved engineering plan of each project. Subject to the density requirements (twenty-five dwelling units per Street mile as measured from the existing System and twenty-five dwelling units per Street mile within the new subdivision), the Grantee shall commence the design and construction

process upon receipt of the final engineering plan. Upon notification from the County that the first home in the project has been approved for a building permit, a Grantee shall have a maximum of three (3) months to complete the construction/activation process within the project phase; provided, however, that the three (3) month period shall be reasonably extended to accommodate delays caused by circumstances beyond the control of the Grantee.

(ii) A Grantee must extend and make Cable Service available to every dwelling unit in all unserved, developing areas having at least twenty-five (25) dwelling units per street mile, as measured from the existing System, and shall extend its System following established utility easements.

(iii) A Grantee must extend and make Cable Service available to any isolated resident outside the Initial Service Area requesting connection at the standard connection charge, if the connection from the existing cable plant to the isolated resident would require no more than a standard one hundred fifty (150) foot drop line, unless an alternative standard is provided for in the Franchise Agreement.

(2) Early Extension. In areas not meeting the requirements for mandatory extension of service, a Grantee shall provide, upon the request of a potential Subscriber desiring service, an estimate of the costs required to extend service to the Subscriber. The Grantee shall then extend service upon request of the potential Subscriber. A Grantee may require advance payment. The amount paid by Subscribers for early extensions may be non-refundable.

(3) New Development Underground. In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give a Grantee reasonable notice, but not less than thirty (30) days' notice, of such construction or development, and of the particular date on which open trenching will be available for the Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at the Grantee's expense. A Grantee may 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 (5) 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 (5) day period, the cost of new trenching is to be borne by the Grantee.

(c) Special Agreements. Nothing herein shall be construed to prevent a Grantee from serving areas not covered under this section upon agreement with developers, property owners, or residents provided that Franchise Fees are paid to the County on those Gross Revenues.

(1) A Grantee, in its application, may propose a line extension policy which will result in serving more residents of Queen Anne's County than as required in this section, in which case the Grantee's "Line Extension Policy" shall be incorporated into a Franchise Agreement, and will be binding on the Grantee.

(2) A violation of this section shall be considered a breach of the terms of this Title for which the provisions of 29-909 or 29-914 shall apply, as determined by the County.

#### **29-702. Construction and Technical Standards.**

(a) Compliance with construction and technical standards. A Grantee shall construct, install, operate and maintain its System in a manner consistent with all laws, ordinances, construction standards, governmental requirements, and FCC technical standards, as the same may be amended from time to time. In addition, a Grantee shall provide the County, upon request, with a written report of the results of the Grantee's periodic proof of performance tests conducted pursuant to FCC standards and requirements.

(b) Additional Specifications:

(1) Construction, Installation and maintenance of a Cable Television System shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

(2) A Grantee shall at all times comply with applicable provisions of the following:

(i) National Electrical Safety Code (National Bureau of Standards); National Electric Code (National Bureau of Fire Underwriters); Bell System Code of Pole Line Construction; and

(ii) FCC or other federal, State and local regulations.

(3) In any event, a System shall not endanger or interfere with the safety of persons or property in a Franchise Area or other areas where a Grantee may have equipment located.

(4) Any antenna structure used in the System shall comply with construction, marking, and lighting of antenna structure, required by the United States Department of Transportation.

(5) All working facilities and conditions used during construction, Installation and maintenance of the Cable Television System shall comply with the applicable standards of the Occupational Safety and Health Administration.

(6) RF leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC rules and regulations shall govern.

(7) A Grantee shall maintain equipment capable of providing standby power for headend and transport System for a minimum of two (2) hours, unless otherwise provided for in the Franchise Agreement.

(8) In all areas of Queen Anne's County where the cables, wires, and other like facilities of public utilities are placed underground, a Grantee shall place its cables, wires, or other like facilities underground. When all other public utilities relocate their facilities from pole to underground, a Grantee must concurrently do so.

(c) Repeated and verified failure to maintain specified technical standards shall constitute a material Franchise violation.

### **29-703. Use of Public Rights-of-Way.**

(a) For the purpose of operating and maintaining a Cable System in the Franchise Area, the Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets and public ways within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary to the operation of the Cable System; provided, however, that the Grantee complies with all design, construction, safety, and performance provisions contained in this Title, the Franchise Agreement, and other applicable local ordinances.

(b) Interference with Persons and Improvements. A Grantee's System, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons or interfere with the rights or reasonable convenience of property owners who adjoin any of the Streets and public ways, or interfere with any improvements the County may deem proper to make, or unnecessarily hinder or obstruct the free use of the Streets, alleys, bridges, easements or public property.

(c) Before commencing construction in, above, over, under, across, through or in any way connected with the Streets, public ways or public places of Queen Anne's County (other than such public areas not under the County's control), the Grantee shall obtain all required permits which Grantee reasonably can foresee to be necessary in the

reasonable future (at the fees regularly charged therefore), including but not limited to the written approval of the County, which approval shall not be unreasonably withheld or delayed. The County may designate the location, manner and time of any construction within the roads and rights-of-way over which the County has jurisdiction.

(d) Restoration to Prior Condition. In case of any disturbance of pavement, sidewalk, landscaping, driveway or other surfacing, including the surface of Streets and alleys, caused by Grantee or any Person acting on its behalf, a Grantee shall, at its own cost and expense and in a manner and within a timeframe approved by the County, replace and restore all paving, sidewalk, driveway, landscaping, or surface disturbed, to a condition comparable to that before the work was commenced and in accordance with standards for such work set by the County.

(e) Grantee or any other Person acting on its behalf shall not open or otherwise disturb the surface of any Street, sidewalk, driveway, public way or other public place for any purpose whatsoever without (i) obtaining approval to do so in the manner prescribed in paragraphs (C) and (D) of this section, and (ii) obtaining all required Street opening or other permits. Grantee shall be fully responsible for the actions and activities of its agents, employees and sub-contractors. Grantee shall immediately respond to and rectify any complaint resulting from an activity of any sub-contractor, agent, or employee.

(f) A Grantee shall restore any Street it has disturbed, and shall, at its own cost and expense, restore and replace any other property disturbed, damaged or in any way injured by or on account of its activities, to a condition comparable to the condition that said property was in immediately prior to the disturbance, damage or injury.

(g) A Grantee shall, at its own cost and expense, protect, support, temporarily disconnect, relocate in the same Street or other public place, or remove from said Street or other public place, any of its property when required to do so by the County because of: Street or other public excavation; construction; repair; regarding or grading; traffic conditions; installation of sewers, drains, or water pipes; County-owned power or signal lines; tracks; vacation or relocation of Streets or any other type of structure or improvement of a public agency; or any other type of improvement necessary for the public health, safety or welfare.

(h) Grantee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wire and facilities, subject to the direction of the County or other appropriate governmental authority.

(i) Erection, Removal and Common Uses of Poles:

(1) No poles or other wire-holding structures shall be erected by a Grantee without prior approval of the County with regard to location, height, types, and any other pertinent aspect. However, no location of any pole or wire-holding structure of a Grantee shall be a vested interest and such poles or structures shall

be removed or modified by the Grantee at its own expense whenever the County determines that the public convenience would be enhanced thereby.

(2) Where poles or other wire-holding structures already existing for use in serving the County are available for use by a Grantee, but Grantee does not make arrangements for such use or an agreement thereof cannot be reached, the County may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby, the use of such poles and structures is technically feasible; and the terms of the use available to the Grantee are just and reasonable.

(3) In the absence of any governing federal or State statute, where a public utility serving the County desires to make use of the poles or other wire-holding structures of a Grantee, but agreement thereof with the Grantee cannot be reached, the County may require the Grantee to permit such use for such consideration and upon such terms as the County shall determine to be just and reasonable, if the County determines that the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

G) Relocation of the Facilities. If at any time during the term of a Franchise the County shall lawfully elect to alter or change the grade of any Street, alley or other public ways and shall require all of the respective public utilities impacted by such alteration to remove or relocate their facilities, a Grantee, upon reasonable notice by the County, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense unless the utilities are compensated, in which case the Grantee shall be similarly compensated.

(k) Cooperation with Building Movers. A Grantee shall, on the request of any Person holding a building or moving permit issued by the County, temporarily raise or lower its wires to permit the moving of buildings. The Person making the request shall pay the expense of such temporary removal, raising or lowering of wires, and a Grantee shall have the authority to require such payment in advance. A Grantee shall be given not less than seven (7) days advance notice to arrange for such temporary wire changes.

(1) The operations and activities of a Grantee that impact Streets, sidewalks and other public ways are further subject to the provisions of Title 23 of the County Code, and any conflict between the provisions of this Title and Title 23 shall be resolved in favor of the best interests of the County.

#### **29-704. Operational Standards.**

(a) A Grantee shall put, keep and maintain all parts of a Cable System in good condition throughout the term of a Franchise.

(b) Upon the reasonable request for service by any Person located within a Grantee's Franchise Area, the Grantee shall, within sixty (60) days, furnish the requested service to such person within the terms of the Line Extension Policy. A request for service shall be unreasonable for the purpose of this subsection if no trunk line installation capable of servicing that Person's block has as yet been installed.

(c) A Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum System use.

(d) A Grantee shall not allow its Cable System or other operations to interfere with television reception of Subscribers or Persons not served by the Grantee, nor shall a System interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of Queen Anne's County, nor shall other utilities interfere with a Grantee's System.

(e) A Grantee shall have knowledgeable, qualified Grantee representatives available to respond to customer telephone inquiries twenty-four (24) hours per day and seven (7) days per week. A staffed answering service, or an automated response system, shall be considered a qualified Grantee representative during evening and weekend hours.

(f) Under Normal Operating Conditions, telephone answer time, including wait time and the time required to transfer the call, shall not exceed thirty (30) seconds. This standard shall be met no less than ninety percent (90%) of the time as measured on a quarterly basis.

(g) Under Normal Operating Conditions, a customer will receive a busy signal less than three percent (3%) of the total time that the Grantee's office is open for business. This standard shall be met no less than ninety percent (90%) of the time as measured on a quarterly basis.

(h) Standard Installations will be performed within seven (7) business days after an order has been placed. A standard Installation is one that is within one hundred fifty (150) feet of an existing System.

(i) Excluding those situations which are beyond its control, a Grantee will respond to any Service Interruption promptly and in no event later than twenty-four (24) hours from the time the interruption becomes known. All other regular service requests will be responded to the next business day after notification of the service problem. The appointment window alternatives for Installations, service calls and other Installation activities will be: "morning;" or "afternoon;" not to exceed a four (4) hour "window" during Normal Business Hours for a System, or at a time that is mutually acceptable to a Grantee and a customer. A Grantee will schedule supplemental hours during which appointments can be scheduled based on the needs of the community. If at any time an

installer or technician is running late, an attempt to contact the customer will be made and the appointment rescheduled as necessary at a time that is convenient to the customer.

(j) Unless otherwise provided for in the Franchise Agreement, a customer service center(s) and bill payment location(s) will be open for walk-in customer transactions a minimum of eight (8) hours a day Monday through Friday unless there is a need to modify those hours because of the location or customers served. A Grantee may, in its sole discretion, establish supplemental hours on weekdays and weekends if it would fit the needs of the community.

(k) In the event of an Outage of Subscriber Cable Service, the following shall apply after proper notification to Grantee:

(1) For Outages of over six (6) hours and up to seven (7) days, the Grantee shall provide, at a Subscriber's written request, a credit of one-thirtieth (1/30) of one month's fees for affected services for each twenty-four (24) hour period service is interrupted for six (6) or more hours for any single Subscriber, with the exception of Subscribers disconnected because of non-payment or excessive signal leakage or circumstances beyond Grantee's reasonable control. For Outages lasting six (6) hours or less, the credit extended to a Subscriber shall be prorated on an hour for hour basis.

(2) For Outages of seven (7) days or more in one month which have been properly reported to Grantee and which are within the reasonable control of Grantee, the Grantee shall provide, at a Subscriber's written request, a full month's credit for affected services for affected Subscribers.

(l) A Grantee will provide written information in each of the following areas at the time of Installation and at any future time upon the request of the customer:

- (1) Product and services offered.
- (2) Prices and Cable Service options.
- (3) Installation and service policies.
- (4) How to use the Cable Services.

(m) Bills will be clear, concise and understandable, with all services itemized consistent with the federal law.

(n) Credits will be issued promptly, but no later than a customer's next billing cycle following the resolution of the request and the return of equipment to a Grantee if service has been terminated.

(o) Unless otherwise specified by FCC regulations, customers and the County will be notified a minimum of thirty (30) days in advance of any rate or programming Channel change, provided that the change is within the control of a Grantee.

(p) A Grantee shall maintain and operate its Cable System in accordance with the rules and regulations as are incorporated herein or may be promulgated by the FCC, the United States Congress, or the State.

(q) A Grantee shall continue, through the term of a Franchise, to maintain the technical standards and quality of service specified in this Title. Should the County find, by resolution, that a Grantee has failed to maintain these technical standards and quality of service, Grantee shall be required to implement a plan for resolution.

(r) A Grantee shall keep a record of monthly service calls which will indicate the nature of each service complaint received in the last twenty-four (24) months, the date and time it was received, the disposition of said complaint, and the time and date thereof. Upon reasonable notice, such records shall be made available to the County for inspection.

(s) All personnel of a Grantee contacting Subscribers or potential Subscribers outside the office of Grantee must be clearly identified as associated with the Grantee.

(t) The provisions of 29-914 notwithstanding, in the event a Grantee fails to arrive for Installations and/or service calls within the scheduled four (4) hour time frame set forth in this Title under Normal Operating Conditions less than ninety percent (90%) of the time as measured on a quarterly basis, then the County may impose a monetary penalty upon the Grantee. The amount of such monetary penalty shall be established by resolution of the County Commissioners. Prior to imposition of the penalty, the County shall notify the Grantee in writing of the alleged default. Upon receipt of the notice, the Grantee shall have a sixty (60) day period in which to correct the default or it may elect to pay such penalty, in which event the act or omission giving rise to the penalty shall not be the basis for any other sanction by the County. In the alternative, a Grantee shall have the right to request a hearing affording due process before the Board of County Commissioners to determine whether the penalty should be imposed, and the imposition of any such penalty shall be stayed pending the final outcome of such proceeding.

(u) A Grantee shall not terminate residential service for non-payment of a delinquent account unless the Grantee provides initial notice of the delinquency and impending termination at least ten (10) days prior to the proposed termination. Such notice of delinquency shall be mailed, postage prepaid, to the Subscriber to whom the service is billed. This notice shall not be sent until the twenty-eighth (28th) day after the initial bill for service was mailed to the Subscriber. The notice of delinquency and impending termination may be part of a billing statement. This section does not apply to Subscribers disconnected due to NSF (Not Sufficient Funds) checks.

(v) Refund checks shall be issued by a Grantee within thirty (30) days following a Subscriber's valid request.

**29-705. Continuity of Service Mandatory.**

(a) It shall be the right of all Subscribers to continue receiving service insofar as their financial and other obligations to a Grantee are honored. If a Grantee elects to rebuild, modify or sell its System, or the County gives notice of intent to terminate or fails to renew a Franchise, the Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances.

(b) If there is a change of Franchise, or if a new operator acquires the System, a Grantee shall cooperate with the County, new franchisee or operator in maintaining continuity of service to all Subscribers. During this transition period, which shall not exceed twelve (12) months, a Grantee shall be entitled to the revenues for any period during which it operates the System, and shall be entitled to reasonable costs for its services until it no longer operates the System.

(c) Unless otherwise provided for in the Franchise Agreement, if a Grantee fails to operate a System for fourteen (14) consecutive days without prior approval of the County or without just cause, the County may, at its option, operate the System or designate an operator until such time as the Grantee restores service under conditions acceptable to the County or a permanent operator is selected. If the County is required to fulfill this obligation for a Grantee, the Grantee shall reimburse the County for all reasonable costs or damages in excess of revenues from the System received by the County that are the result of the Grantee's failure to perform.

**29-706. Required Services and Facilities.**

(a) A Cable Television System shall have facilities as set forth in the applicable Franchise Agreement.

(b) Such Cable System shall maintain a plant having the technical capacity for "Two-Way" communications, unless otherwise provided in the Franchise Agreement.

(c) At the County's request, a Grantee shall maintain the following:

(1) At least one specially designated, noncommercial public access channel available on a first-come, nondiscriminatory basis;

(2) At least one specially-designated Channel for use by local educational authorities; and

(3) At least one specially designated Channel for local government uses;

(4) Provided, however, that the uses specified in this section may be combined on one or more Channels until such time as the County demonstrates sufficient need for additional Channels pursuant to a demonstrable programming demand provided for in the Franchise Agreement. Financial and technical support, replacement and maintenance of equipment of this facility shall be separately incorporated into the Franchise Agreement.

(5) An institutional network (I-Net) of cable, optical, electrical, or electronic equipment, used for the purpose of transmitting two-way telecommunications, signals interconnecting designated entities if set forth in a Franchise Agreement and mutually agreed to by a Grantee and the County. The County and the Grantee may agree that such an institutional network may be provided by utilizing capacity on the Subscriber System.

(d) A Grantee shall incorporate into its Cable Television System sufficient capacity that will permit the County, in times of emergency, to override, by remote Control, the audio of all Channels simultaneously which the Grantee may lawfully override. A Grantee shall provide emergency alert capacity pursuant to FCC rules. A Grantee shall cooperate with the County in the use and operation of the emergency alert override system.

(e) A Grantee may be required to interconnect its System with other contiguous Cable Television Systems for the purpose of sharing PEG access programming. Such interconnection shall be made within a reasonable time limit to be established by the County.

(1) Interconnection Procedure: Upon receiving the directive of the County to interconnect, a Grantee shall immediately initiate negotiations with the other affected System or Systems in order to complete the interconnection link.

(2) Relief: A Grantee may be granted reasonable extensions of time to interconnect or the County may rescind its order to interconnect upon petition by the Grantee to the County. The County shall grant the request if it finds that the Grantee has negotiated in good faith and has failed to obtain an approval from the operator or franchising authority of the System to be interconnected, or the cost of the interconnection would cause an unreasonable or unacceptable increase in Subscriber rates.

(3) Cooperation Required: A Grantee shall cooperate with any interconnection corporation, regional interconnection authority or County, State and federal regulatory agency which may be hereafter established for the purpose of regulating, financing, or otherwise providing for the interconnection of Cable Systems beyond the boundaries of Queen Anne's County.

(4) The full cost of an interconnection link shall be borne by the County, if the interconnection is being made at the direction of the County. However, the

full cost of this link shall be borne by the participating Persons, in the event that the interconnection is being made for any reason other than at the direction of the County.

### **Subtitle 8. Complaints**

#### **29-801. Complaint Procedure.**

(a) The County Administrator, or his designee, is designated as having primary responsibility for the continuing administration of a Franchise and implementation of complaint procedures.

(b) Unless otherwise provided in the Franchise Agreement, a Grantee shall maintain, during the term of a Franchise and any renewal thereof, a central office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local, toll-free telephone call. A Grantee will use its good faith efforts to arrange for one or more payment locations in a central location where customers can pay bills or conduct other business activities.

(c) As Subscribers are connected or reconnected to a Grantee's Cable System, the Grantee shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the address and local telephone number of customer service.

(d) To the extent permitted by applicable law, the County shall have the right and authority to require a Grantee to test, analyze and report on the performance of its System, provided that the County shall not require a Grantee to test the System as a whole, or any specific part thereof, more than once during any calendar year, unless a test shows that the System or such a specific part fails to meet relevant performance specifications. A Grantee shall fully cooperate with the County in performing such testing and shall prepare results and a report, if requested, within forty-five (45) days after notice.

(1) Such report shall include the following information:

- (i) The nature of the complaint or problem which precipitated the tests;
- (ii) What System component was tested;
- (iii) The equipment used and procedures employed in testing;
- (iv) The method, if any, in which such complaint or problem was resolved; and

(v) Any other information pertinent to the tests and analysis which may be required.

(2) A Grantee's periodic proof of performance tests conducted pursuant to FCC standards and requirements may satisfy a test or report required by County under this subsection.

(3) The County may require an independent review of a performance test, with the independent reviewer selected by the County to review the Cable System in cooperation with the Grantee. Should such a test prove that the Grantee failed to meet a technical standard, the Grantee shall bear the cost of such independent observer. If the test should prove that the Grantee met the technical standards, the County shall bear the cost of such test.

### **Subtitle 9. Miscellaneous**

#### **29-901. Grantee Rules and Regulations.**

A Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under a Franchise, and to assure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this Title or applicable State and federal laws, rules and regulations.

#### **29-902. Transfer of Ownership or Control.**

(a) Except as may be provided in a Franchise Agreement, a Franchise or a franchised Cable System shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, or Control over such Franchise or System, pass to or vest in any Person without the prior written consent of the County. A Grantee may, however, transfer or assign a Franchise to any Affiliate (as defined in 29-201) or to a wholly owned subsidiary of the Grantee (or its parent corporation) and such subsidiary may transfer or assign the Franchise back to the Grantee without such consent, providing that such transfer or assignment is without any release of liability or responsibility of the Grantee for any purpose, including Franchise renewal. The proposed assignee must inter alia show financial responsibility as determined by the County and must agree to comply with all provisions of the Franchise. The County shall have one hundred twenty (120) days to act upon any request for approval of such a sale or transfer submitted in writing that contains or is accompanied by the information required by FCC regulations and the County. The County shall be deemed to have consented to a proposed transfer or assignment if its refusal to consent is not communicated in writing to the Grantee within one hundred twenty (120) days following receipt of written notice and aforementioned information, unless the requesting party and the County agree to an extension of time.

(b) A Grantee shall promptly notify the County of any actual or proposed change in, or transfer of, or acquisition by any other party of, Control of the Grantee. Every assignment or transfer of a Grantee as specified in 29-902(a) shall make a Franchise subject to revocation unless and until the County shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of Control, the County may inquire into the qualifications of the prospective Controlling party and such other legal, technical and financial matters as the County deems pertinent to its approval, and a Grantee shall assist the County in such inquiry.

(c) The consent or approval of the County to any transfer of a Grantee shall not constitute a waiver or release of the rights of the County in and to the Streets, and any transfer by its terms, shall be expressly subordinate to the terms and conditions of this Title and the Franchise Agreement.

(d) In the absence of extraordinary circumstances, the County shall have the discretion to disapprove any transfer or assignment of an initial Franchise prior to substantial completion of construction of the proposed System.

(e) In no event shall a transfer of ownership or Control be approved without the successor in interest becoming a signatory to the applicable Franchise Agreement.

### **29-903. Availability of Books and Records.**

(a) A Grantee shall fully cooperate in making available at reasonable times, and the County shall have the right to inspect, where reasonably necessary to the enforcement of a Franchise, books, records, maps, plans and other like materials of the Grantee applicable to the Cable System, at any time during Normal Business Hours; provided where volume and convenience necessitate, a Grantee may require inspection to take place on the Grantee's premises.

(b) The following records and/or reports are to be made available to the County upon thirty (30) days prior written request.

(1) An annual review or progress report submitted by a Grantee to the County;

(2) Periodic preventive maintenance reports;

(3) Any copies of FCC Form 396-C (or successor form) or any supplemental forms related to equal opportunity or fair contracting policies;

(4) Subscriber inquiry/complaint resolution date; and

(5) Periodic construction update reports, including where appropriate the submission of strand maps.

#### **29-904. Other Petitions and Applications.**

Copies of all petitions, applications, communications and reports either 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 Television operations authorized pursuant to the Franchise, or received from such agencies, shall be provided to the County upon request.

#### **29-905. Fiscal Reports.**

A Grantee shall file annually with the County, no later than one hundred twenty (120) days after the end of the Grantee's fiscal year, a copy of a Gross Revenues statement certified by an officer of the Grantee.

#### **29-906. Removal of Cable Television System.**

At the expiration of the term for which a Franchise is granted or if any renewal request is denied, or upon the termination of a Franchise as provided herein, a Grantee shall forthwith, upon reasonable notice by the County, remove at its own expense all designated portions of its Cable Television System from all Streets and public property within the County. If a Grantee fails to do so within twelve (12) months of notice, the County may perform the work at the Grantee's expense. Upon such notice of removal, a bond shall be furnished by a Grantee in an amount sufficient to cover this expense.

#### **29-907. Rules and Regulations.**

In addition to the inherent powers of the County to regulate and control a Cable Television Franchise, and those powers expressly reserved by the County or agreed to and provided for in a Franchise Agreement, the right and power is hereby reserved by the County to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and furtherance of the terms and conditions of this Title provided, however, that such rules, regulations, terms or conditions shall not be in conflict with any Franchise Agreement granted hereunder or applicable State and federal laws, rules and regulation.

#### **29-908. Performance Evaluation Sessions.**

(a) The County and a Grantee may hold scheduled performance evaluation sessions within thirty (30) days of the third (3rd) and sixth (6th) anniversary dates of the Grantee's award or renewal of the Franchise and as may be required by federal and State law. All such evaluation sessions shall be open to the public.

(b) Special evaluation sessions may be held at any time during the term of a Franchise at the request of the County or the Grantee.

(c) All scheduled performance evaluation sessions shall be open to the public and announced in a newspaper of general circulation in accordance with legal notice. A Grantee may be required by the County to notify its Subscribers of all such evaluation sessions by announcements on at least one (1) Channel of its System during a specified timeframe proceeding each session.

(d) Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, Franchise Fee, penalties; application of new technologies; System performance; customer complaints, privacy; amendments to this Title; judicial and FCC rulings; line extension policies; and Grantee or County rules.

(e) Members of the general public may add topics either by working through the County or the Grantee or by presenting a petition to the County Commissioners outlining the topic or topics sought to be discussed at the evaluation session.

### **29-909. Forfeiture and Termination.**

(a) In addition to all other rights and powers retained by the County under a Franchise or otherwise, the County reserves the right to forfeit and terminate a Franchise and all rights and privileges of a Grantee hereunder in the event of a substantial breach of the terms and conditions of this Title or a Franchise Agreement. A substantial breach by a Grantee shall include, but shall not be limited to, the following:

(1) Violation of any material provision of a Franchise or this Title, or any material rule, order, regulation or determination of the County made pursuant to a Franchise or this Title.

(2) Attempt to evade any material provision of a Franchise or practice any fraud or deceit upon the County or the Grantee's Subscribers or customers;

(3) Failure to begin or complete System construction or System extension as provided under 29-701;

(4) Failure to provide the services promised in the Grantee's application, if any, as incorporated in a Franchise Agreement;

(5) Failure to restore service after ninety-six (96) consecutive hours of an Outage or Service Interruption, except when approval of such Outage or Service Interruption is obtained from the County; or

(6) Material and intentional misrepresentation of fact in the application for or negotiation of a Franchise.

(b) The foregoing shall not constitute a major breach if the violation occurs but is without fault of a Grantee or occurs as a result of circumstances beyond its control. A

Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers or employees.

(c) The County shall make a written demand that a Grantee comply with any such provision, rule, order or determination under or pursuant to this Title or a Franchise Agreement. If the violation by a Grantee continues for a period of thirty (30) days following such written demand, without written or other proof acceptable to the County that the corrective action has been taken or is being actively and expeditiously pursued, the County may place the issue of termination of a Franchise before the Board of County Commissioners. The County shall cause to be served upon a Grantee, at least twenty (20) days prior to the date of such 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 the issue(s) which the Board of County Commissioners are to consider.

(d) The Board of County Commissioners shall hear and consider the issue(s) and shall hear any Person interested therein and shall determine in its discretion whether or not any violation by a Grantee has occurred.

(e) If the Board of County Commissioners determines the violation by a Grantee was the fault of the Grantee and within its control, the Board of County Commissioners may, by resolution, declare that the Franchise of the Grantee be terminated unless there is compliance within such period as the Board of County Commissioners may fix, such period shall not be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

#### **29-910. Foreclosure.**

(a) A Franchise may be deemed revoked one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of a Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. Provided, however, that a Franchise may be reinstated at the County's sole discretion if, within that one hundred twenty (120) day period:

(1) Such assignment, receivership or trusteeship has been vacated; or

(2) Such assignee, receiver, or trustee has fully complied with the terms and conditions of this Title and the applicable Franchise Agreement and has executed an agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this Title and the applicable Franchise Agreement, and such other conditions as may be established or as are required by applicable law.

(b) Notwithstanding the foregoing, in the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a Franchisee, the County may revoke the Franchise, following a public hearing before the Board of County

Commissioners, by serving notice on the Grantee and the successful bidder, in which event the Franchise and all rights and privileges of the Franchise will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:

(1) The County has approved the transfer of the Franchise to the successful bidder; and

(2) The successful bidder has covenanted and agreed with the County to assume and be bound by the terms and conditions of the Franchise Agreement and this Title, and such other conditions as may be established or as are required pursuant to this Title or a Franchise Agreement.

#### **29-911. Right of Acquisition by the County.**

(a) Federal regulations pursuant to the Cable Act shall apply to the right of acquisition by the County. In the event that the relevant federal regulations are repealed, the guidelines specified in paragraph (B) of this section shall apply.

(b) Upon the expiration of the term of a Franchise and denial of any renewal or upon any other termination thereof as provided in this Title, the County at its election shall have the right to purchase and take over a System upon resolution by the County Commissioners. In such event, the System shall be purchased: (i) at a price equal to the fair market value, determined on the basis of the Cable System's value as a going concern but with no value allocated to the Franchise itself, or (ii) at a price determined in accordance with the Franchise Agreement if the Franchise Agreement contains provisions applicable to such an acquisition. The County must begin exercise of its option to purchase the System within sixty (60) days of the denial of Franchise renewal. Nothing shall prohibit a Grantee, in the event of the election of the County to purchase a System, from requesting a court of competent jurisdiction to set a reasonable bond of the County to secure the purchase price, which is to be immediately available funds at the time of purchase.

#### **29-912. Compliance with State and Federal Laws.**

(a) Notwithstanding any other provisions of this Title to the contrary, a Grantee shall at all times comply with all laws and regulations of the local, State and federal government or any administrative agencies thereof; provided, however, if any such State or federal law or regulation shall require the Grantee to perform any service, or shall permit a Grantee to perform any service, or shall prohibit the Grantee from performing any service, in conflict with the terms of this Title or of any law or regulation of the County, then as soon as possible following knowledge thereof, the Grantee shall notify the County of the point of conflict believed to exist between such regulation or law and the laws or regulations of the County or this Title.

(b) If the County determines that a material provision of this Title is affected by any subsequent action of the State or federal government, the County shall modify any of

the provisions herein to comply with such State or federal law or regulation to such reasonable extent as may be necessary to carry out the full intent and purpose of this Title and the Franchise Agreement, and to preserve the benefit of the bargain for each party.

### **29-913. Landlord/Tenant.**

(a) Interference with Cable Service is prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive Cable Service, Cable Installation or maintenance from a Grantee regulated by and lawfully operating under a valid and existing Franchise issued by the County.

(b) Gratuities and payments to permit service are prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall ask, demand or receive any payment, service or gratuity in any form as a condition for permitting or cooperating with the Installation of a Cable Service to the dwelling unit occupied by a tenant or resident requesting Cable Service.

(c) Penalties and charges to tenants for service are prohibited. Neither the owner of any multiple unit residential dwelling nor his agent or representative shall penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives Cable Service from a Grantee operating under a valid and existing Franchise issued by the County.

(d) Reselling service is prohibited. No Person shall resell, without the expressed, written consent of the County, any Cable Service, program or signal transmitted by a Grantee under a Franchise issued by the County.

(e) Protection of property is permitted. Nothing in this Title shall prohibit a Person or the County from requiring that Cable Television System facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

(f) Except as provided by State or federal law, nothing in this Title shall prohibit a Person from requesting a Grantee to indemnify the owner, or his agents or representatives for damages or from liability for damages caused by the Installation, operation, maintenance or removal of Cable System facilities.

### **29-914. Penalties.**

(a) In the event the County believes that a Grantee has not complied with the provisions of the Title or a Franchise Agreement, the County, by action of the County Administrator, shall notify the Grantee in writing by personal delivery or registered or certified mail, specifying the nature of the alleged noncompliance or default and demanding correction within a reasonable time.

(b) A Grantee shall have thirty (30) days from the receipt of the County's notice described in 29-914(a):

(1) To respond to the County, contesting the assertion of the noncompliance or default, or

(2) To cure such noncompliance or default, or

(3) In the event that, by nature of the noncompliance or default, such noncompliance or default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such noncompliance or default and notify the County of the steps being taken and the projected date that they will be completed.

(c) In the event Grantee (i) fails to respond to the County's notice described in paragraph (a) of this section, (ii) fails correct a violation within the time prescribed and diligently remedy such violation thereafter, or (iii) responds contesting the alleged noncompliance, the Grantee shall then be given a written notice of not less than twenty (20) days of a public hearing to be held before the Board of County Commissioners. Said notice shall specify the violation(s) alleged. At the public hearing, the Board of County Commissioners shall hear and consider all relevant evidence, and thereafter render findings and its decision.

(d) In the event the Board of County Commissioners finds that Grantee has corrected the, violation, or has diligently commenced correction of such violation after notice thereof from Grantor and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed. In determining whether a violation is material Grantor shall take into consideration the reliability of the evidence of the violation, the nature of the violation and the damage, if any, caused to the Grantor thereby, whether the violation was chronic, and any justifying or mitigating circumstances and such other matters as the Grantor may deem appropriate.

(e) If the County determines after the due process hearing prescribed in paragraph (c) that the Grantee is in noncompliance and that noncompliance is not cured within the times set forth in paragraph (b) of this section, or in the event that the alleged noncompliance or default is not remedied within the thirty (30) days or the date projected pursuant to paragraph (B) of this section, the violation shall be deemed a civil infraction and a penalty of up to Five Hundred Dollars (\$500.00) per day for each day that a violation occurs may be assessable by the County against a Grantee in addition to any amounts otherwise due, and may be chargeable to the Grantee's surety bond, letter of credit, performance bond or security deposit. In the alternative, the County may seek legal or equitable relief from any court of competent jurisdiction.

(f) Unless otherwise provided in this Title, a Grantee shall pay any penalty assessed in accordance with this Title within thirty (30) days after receipt of notice from the County of such penalty.

(g) To the extent that penalties are applied to a Grantee under this section, a Grantee shall not be subject to additional liquidated damages payable to the County for the same violation.

(h) Pending litigation or any appeal to any regulatory body or court having jurisdiction over a Grantee shall not excuse the Grantee from the performance of its obligations under this Title or its Franchise Agreement unless a stay is obtained. Failure of the Grantee to perform such obligations because of pending litigation or petition, in the absence of a stay issued by a forum of competent jurisdiction, may result in forfeiture or revocation pursuant to the provisions of this Title and/or its Franchise Agreement.

#### **29-915. Rate Regulation.**

The County reserves the right to regulate rates for Basic Cable Service and any other services offered over the Cable System, to the extent permitted by federal or State law. The Grantee shall be subject to the rate regulation provisions provided for herein, and those of the FCC. The County shall follow the rules relating to Cable rate regulation promulgated by the FCC.

#### **29-916. Severability.**

If any provision of this Title is held by any court or by any State or federal agency of competent jurisdiction to be invalid as conflicting with any federal or State law, rule or regulation now or hereinafter in effect, or is held by such court or agency to be modified in an way it) order to conform to the requirements of any such law, rule or regulation, such provision shall be considered a separate, distinct, and independent part of this Title, and such holding shall not affect the validity and enforceability of all other provisions hereof.

#### **29-917. County's Right of Intervention.**

A Grantee shall not oppose intervention by the County in any suit or proceeding to which the Grantee is a party in connection with a Franchise hereunder.

SECTION 2. The title of this legislative bill, or a condensed version thereof, shall be deemed to be, and is, a fair summary of this public local law for publication and all other purposes.

SECTION 3. The existing Queen Anne's County Cable Television Ordinance adopted August 24, 1982 be and is hereby REPEALED.

SECTION 4. This ordinance shall take effect forty-five (45) days after it is enacted.

ENACTED THIS DAY 11th OF November, 2003.

INTRODUCED BY: Commissioner Cassell

DATED: October 21, 2003

PUBLIC HEARING HELD: November 4, 2003 @ 7:30 p.m.

VOTE: 5 yea 0 nay

DATE: November 18, 2003