

CHAPTER 19

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ARTICLE I

Cable Television

§19-101 Purpose. An Ordinance providing for the granting of non-exclusive franchises for the operation of community antenna television systems within Chatham County, Georgia, including the right to erect, construct, operate and maintain transmission and distribution facilities, including coaxial cables. In, under, over and along, across and upon the roads, streets, avenues, sidewalks, alleys, bridges and other public places in Chatham County (excluding areas within the corporate limits of all municipalities located in said county) for the purpose of transmitting and distributing television and other signals by cable for sale to the inhabitants of said county (excluding inhabitants of municipalities located in said county), for a period of fifteen years; and regulating the same; providing for compensation to the county; and for other purposes.

§19-102 Television Defined. Wherever used in this chapter, the word "television" shall mean a system for transmission of audio signals or visual images by means of electrical impulses or cable, wire or any other appropriate means.

§19-103 NON-EXCLUSIVE RIGHT OF FRANCHISEES TO INSTALL SYSTEM. In consideration of the faithful performance and observance of the conditions and reservations which are hereinafter specified, the non-exclusive right is hereby granted to such person, firms or corporations which comply with the terms hereof, hereinafter referred to as franchisees (and intending thereby to refer either singularly to any individual franchisees if there are more than one) and to such franchisees successors, assigns or designees to erect, maintain and operate towers, poles, lines, cables, necessary wiring and other apparatus and additions thereto, in, under, over, along, across and upon the present and future streets, lanes, avenues, sidewalks, alleys, bridges and other public places in the unincorporated area of the County, for the purpose of transmission and distribution of audio, visual, electronic and electric impulses and television energy, through cables or wires, commonly called a community antenna television system, in accordance with the laws and regulations of the United States of America, the State and the Ordinances and Regulations of the County.

§19-104 APPLICATION FOR NEW FRANCHISE FEES, GRANT OR DENIAL, ETC.

(a) APPLICATION FOR NEW FRANCHISE.

Before any person, firm, corporation or other entity shall be allowed to proceed with the installation and operation of a community antenna television ("cable") system in the unincorporated areas of the County, an application for a franchise thereunto relating first shall be filed with the County Clerk, as hereinafter more fully provided.

Each application for a new franchise to construct, operate or maintain any cable system in the unincorporated areas of the County shall be filed with the County Clerk and shall be on forms prescribed or approved by the County. Said forms shall require, but shall not be limited to, the following information:

- (1) applicant's name, address, telephone number and federal employer identification number or social security number; copy of applicant's corporate charter or partnership agreement as applicable; and any trade names (and registrations) used or intended to be used by applicant;
- (2) a detailed statement of the corporation or business entity organization of the applicant, including but not limited to the following:
 - (A) the names and the residence and business addresses of all officers and directors of the applicant;
 - (B) the names, and the residence and business addresses of all persons and entities having any share of the ownership of the applicant and the respective ownership share of each person or entity;
 - (C) the name and address of any parent, subsidiary or affiliate of the applicant, namely, any other business entity owning or controlling applicant in whole or in part or owned or controlled in whole or in part by the applicant or otherwise affiliated with the applicant, and a statement describing the

nature of any such parent, subsidiary or affiliate, including but not limited to cable systems owned or controlled by the applicant, its parent, subsidiary or affiliate, and the areas served thereby;

- (D) (i) a detailed and complete financial statement of the applicant, certified by an independent certified public accountant, for the three (3) fiscal years immediately preceding the date of the application hereunder, and (ii) if the applicant intends to use borrowed funds or venture capital to construct and/or operate its cable system, a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the County Commission, setting forth a clear statement of its commitment and all particulars with respect to borrowed funds or venture capital to be provided to applicant to construct and operate the proposed cable system in the unincorporated areas of the County;
 - (E) a detailed financial plan (pro forma) describing for each year of the franchise, projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements and a sources and uses of funds statement, and
 - (F) a statement identifying, by place and date, any other cable system franchise(s) awarded to or managed by the applicant, its parents, subsidiaries, affiliates or management; the status of said franchise(s) with respect to completion thereof; the total cost of completion of such franchised cable system(s); and the amount of applicant's and its parent's subsidiary's affiliate's, or management's resources committed to the completion thereof;
- (3) a detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to, the following:

- (A) a detailed map indicating all areas proposed to be served and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served,
 - (B) a statement or schedule setting forth all proposed classifications of rates and charges to be made against subscribers and all rates and charges as to each of said classifications, including installation charges,
 - (C) a detailed, informative and referenced statement describing the actual equipment and operational standards proposed by the applicant,
 - (D) a copy of the form of any agreement, undertaking or other instrument proposed to be entered into between the applicant and any subscriber, and
 - (E) a detailed statement setting forth the names, addresses and qualifications of those persons who will be in charge of applicant's day-to-day management;
- (4) a copy of any agreement between the applicant and any utility providing for the use of any facilities of the utility including, but not limited to poles, lines or conduits; and
 - (5) any other details, statements, supplementary information or references pertinent to such application which shall be required or requested by the County or by any other provision of applicable law.
- (b) APPLICATION FEES FOR NEW FRANCHISE.
- (1) Payment of Application Fees Required. No application for a new franchise shall be considered without payment by the applicant of application fees as provided in subsections (b)(3) and (b)(4) of this section. If a franchise is granted, application fees will not be deemed a credit

towards any other fees or sums due by the franchisee.

- (2) Purpose of Application Fees. The application fees provided by this section will serve to cover the direct and indirect costs incurred by the County in processing the application, evaluating the applicant, and shall include but not be limited to administrative, engineering, publication, legal and consultant's expenses.
- (3) Base Application Fee. Notwithstanding any other requirement of this Ordinance, each applicant for a new franchise must furnish with its proposal a non-refundable application fee in the amount of Ten Thousand Dollars (\$10,000) by certified check or cashier's check made payable to the County.
- (4) Deposit for Additional Application Fee. In addition to the base application fee, each applicant for a new franchise shall furnish a deposit as determined by the County Commission not to exceed the amount of Fifty Thousand Dollars (\$50,000) by certified check or cashier's check made payable to the County. In the event that expenses incurred by the County exceed the base application fee collected under subsection (b)(3) of this section, the documented amount of such excess costs shall be deemed an additional application fee and shall be taken from the deposit. The County shall refund the balance of the deposit to the applicant within 60 days after final action to grant or deny a franchise. The total amount of base and additional application fees charged to any applicant shall not exceed \$60,000.

(c) CONSIDERATION OF APPLICATION.

- (1) Property of County. The application received by the County from an applicant for a new franchise shall become the sole property of the County, shall become public record, and shall not be returned to the applicant.
- (2) Applicant Responsibility. Before submitting an application, each applicant for a new franchise

shall be solely responsible for and must: (i) be familiar with local conditions which may in any manner affect performance under the franchise, including, but in no event limited to, community and institutional telecommunication needs, relevant demographics, topographics, pole attachment policies of appropriate utility authorities, undergrounding and subscriber desires; and (ii) be familiar with all applicable federal, state and local laws, ordinances, rules and regulations affecting performance under the franchise.

- (3) Evaluation and Recommendation to County Commission. The County Manager shall carefully evaluate any application for a new franchise and shall prepare a report to the County, including recommendations with respect thereto. Such recommendations shall include the amount of a performance/construction bond (in acceptable form and substance and with acceptable sureties) in favor of the County, which performance/construction bond shall be required in all cases, to ensure the franchisee's faithful compliance with its obligations under this Ordinance.
- (4) Investigations. In any investigation which the County may conduct to determine the ability of an applicant to perform under a franchise, the applicant shall provide the County with reasonable access to its facilities and equipment and shall furnish to the County all such information and data as the County may request.
- (5) Approval or Rejection. An application for a new franchise to construct and operate a cable system in the unincorporated areas of the County must be approved by the County Commission before such a franchise shall be issued under this Ordinance. The County reserves the right to reject any such application if the evidence submitted by the applicant or if investigation of such applicant fails to satisfy the County that such applicant is properly qualified to comply with the provisions of this Ordinance or to satisfactorily construct and operate a cable system in the unincorporated areas of the County.

- (6) Public Comment. If, upon receiving the County Manager's report, the County Commission shall determine to further consider any application for a new franchise, it shall schedule a public hearing for consideration of the application, fixing and setting forth a day, hour, and place certain when and where any persons having any interest therein may file written comments and appear before the County Commission and be heard, and directing the County Clerk to notify the applicant and publish notice of said hearing at least once within ten days of scheduling the hearing in a newspaper of general circulation within the County.
- (7) Consideration. In making any determination hereunder as to any application for a new franchise, the County Commission may consider factors including, but not limited to, (i) quality of the cable service proposed, (ii) subscriber rates, (iii) income to the County, (iv) experience, character, background, financial responsibility of the applicant and its management and owners, (v) technical and performance quality of equipment, (vi) willingness and ability to meet construction and physical requirements, to meet all requirements set forth in this Ordinance, and to abide by all policy conditions, franchise limitations and requirements, (vii) and all other matters deemed pertinent by the County for safeguarding the interests of the County and the public.
- (8) Determination. At the time of the hearing, the County Commission shall hear all interested parties. Thereafter, the County Commission shall make one of the following determinations:
- (A) that the applicant's application for a new franchise be granted and the terms and conditions thereof, including the amount of the required performance/construction bond; or
- (B) that such application be denied. No provision of this Ordinance shall be deemed or construed so as to require the granting of a franchise when, in the opinion of the County Commission, it is in the public interest to restrict the number of franchisees to one or more.

- (9) Additional Information. The County Commission may at any time during the application and review process demand such supplementary, additional or other information as the County may deem reasonably necessary to determine whether the requested franchise should be granted.
- (10) County Commission Decisions Shall be Final. Any decision of the County Commission concerning award or denial of a new franchise pursuant to this Ordinance shall be final.
- (11) No Reapplication Within One Year. No applicant who is denied a new franchise may submit a new application until after one year from the date of denial.

§19-105 COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. The Franchisee shall, at all times during the life of this Ordinance, be subject to all lawful exercise of the police power by the County and to such reasonable regulations as the County shall hereafter provide. The Franchisee shall comply with all laws, statutes, codes, ordinances, rules or regulations applicable to its business including those of the Federal Communication Commission, and will comply with the Equal Employment Opportunity Act.

§19-106 SAME-TERM. The term for each franchise is granted as provided herein shall be for a period of fifteen (15) years.

§19-107 WHEN INSTALLATION, ETC., TO BE COMMENCED. Franchisee shall proceed as soon as possible and with due diligence to obtain all necessary permits and authorizations which may be required in the conduct of its business, including utilities, joint use attachment agreements and microwave carrier licenses to be granted by duly constituted regulatory agencies.

Further, Franchisee shall commence the installation of such system with due diligence and within a reasonable time subsequent to the obtaining of all the aforementioned necessary permits and authorizations, and shall proceed with all due diligence to render service to subscribers following the commencement of installation of the system. Installation shall be maintained so as not to interfere with television reception already in existence.

§19-108 REQUIREMENTS FOR INSTALLATION AND MAINTENANCE OF SYSTEM.

Each franchisee shall install an "all-band" community antenna television system capable of distributing up to thirty-five television channels, or their equivalent, such system to be installed and maintained in accordance with the best accepted standards of the community antenna television industry, and shall transmit standard color signals.

Each franchisee agrees to install signal distribution facilities subject to satisfactory pole clearance and pole rental arrangements to all residents of the county where there are thirty homes or more per mile of system requesting service.

§19-109 REQUIREMENTS FOR POLES, WIRES, ETC. Franchisee's

transmission and distribution system poles, wires and appurtenances shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with new improvements the County may deem proper to make, or to hinder unnecessarily or obstruct the free use of the streets, alleys, bridges or other public property; removal of poles to avoid such interference shall be done promptly upon receiving written request to do so from the County, or its designated official, and will be at Franchisee's expense.

Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and such applicable Ordinances and Regulations of the County, affecting electrical installations, which may be presently in effect, or changed by future Ordinances.

All installations of equipment shall be of permanent nature, durable and installed in accordance with good engineering practices and of sufficient height to comply with all existing County Regulations, Ordinances and State laws so as not to interfere in any manner with the right of the public or individual property owner and shall not interfere with the travel and use of public places by the public and during the construction, repair and removal thereof, and shall not obstruct or impede traffic. Further, such construction shall be subject to inspection by and approval by the County.

No poles are to be erected upon the public streets, alleys, avenues and public grounds and no excavation of any type shall

be done or caused to be done unless permission in writing is first obtained from the County Engineer.

Franchisee agrees that if any of its cables or wires are installed on existing above-ground systems which are placed underground at any future date, the franchisees will likewise place their cables or wires underground.

In the event that a change is made in the grade, width or location of public streets, alleys, avenues and grounds by authority of the County, which shall necessitate the removal of any poles, wires, transmission and distribution lines to conform to the change of grade, Franchisee shall make the necessary changes in its lines, at its own expense, upon due notice from the County.

In the maintenance and operation of their television transmission and distribution system in the streets, alleys and other public places, and in the course of any new construction or addition to its facilities, Franchisee shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the streets or other public places made by franchisees in the course of their operations shall be made only after having obtained prior written permission from the County to do so, and shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings, the bounds of which, during periods of dusk and darkness, shall be clearly designated by red warning lights.

All work in any way necessitated by the business of franchisees which may involve the opening, breaking-up or tearing up of a portion of a street, sidewalk or other part of any County-owned or controlled property, shall be done and repaired in a manner approved by the County, and shall, at the option of the County, be done by the County at the expense of Franchisee. Franchisee shall save the County harmless against all loss or damage to any person or property caused by the construction, laying, maintenance or operation of any of its lines or other undertakings under the authority of this chapter. Nothing herein shall be construed as a requirement that the County conduct an excavation or repair on behalf of or as agents for franchisees.

Franchisee shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place or remove from the street, alley or public place,

any property of Franchisee when required by the County by reason of traffic conditions, public safety, street excavation, freeway and bridge construction, change or establishments of street grade, installation of sewers, drains, waterpipes, power lines, signal lines and tracks or any other types of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity or other structures of public improvement; provided, however, that Franchisee shall in all such cases have the privileges and be subject to the obligations to abandon any property of Franchisee in place as provided in Section 9.

In the event of the failure of Franchisee to commence construction of the system within 365 days after the enactment of this Ordinance, the County Commissioners shall have the right, on reasonable notice to Franchisee, to declare the rights and license granted hereunder forfeited; provided, failure to comply with these terms by reason of circumstances beyond the reasonable control of franchisees, which could not be anticipated at the time of the acceptance of its terms by Franchisee, shall not be sufficient grounds to declare a forfeiture.

§19-110 FAILURE OF FRANCHISEE TO COMPLETE REQUIRED STREET WORK.

Upon failure of Franchisee to complete any work required by law or by the provisions of this ordinance to be done in any street, within the time prescribed, and to the satisfaction of the County, the County may cause such work to be done and franchisees shall pay the County the cost thereof in the itemized amount reported to Franchisee within thirty days after receipt of such itemized report.

§19-111 ABANDONMENT OF PROPERTY BY FRANCHISEE.

In the event that the use of any part of the system should cease for any reason for a continuous period of twelve months, or in the event such system or property has been installed in any street or public place without complying with the requirements of this Ordinance, or the rights granted hereunder have been terminated, cancelled or have expired, Franchisee shall promptly remove from the streets and public places all such property and poles of such system, other than any which the County may permit to be abandoned in place. In the event of such removal, Franchisee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the County Department of Public Works.

Any property of Franchisee to be abandoned in place shall be abandoned in such manner as the County may prescribe. Upon permanent abandonment of such property of Franchisee in place, Franchisee shall submit to the County an instrument to be approved by the County, transferring to the County the ownership of such property.

§9-112 FRANCHISEE SUBJECT TO ORDINANCES, ETC., REGULATION STREET WORK, ETC.. Franchisee is subject to all requirements of the County Ordinances, rules, regulations and specifications including, but not limited to, those concerning street work, street excavation, use, removal and relocation of property within a street and other street work.

§19-113 RATES. All rates and charges exacted by franchisees shall be fair, reasonable, just and shall be subject to the rules and regulations of any state or federal authority which now or subsequently may, by due process of law, acquire jurisdiction over this type of industry or enterprise.

Subject to applicable Federal law, Franchisee may raise its rates or impose a rate increase upon subscribers, approval of such increase shall first be obtained from the County. A demonstration of justification for a rate increase must be shown and the County, upon such a showing, shall not unreasonably withhold its approval. A request for a rate increase must be made to the County Commission at least sixty (60) days before the proposed effective date.

§19-114 PROTECTION OF COUNTY AGAINST LIABILITY.

(a) INDEMNIFICATION.

Except in the event of the County's gross negligence or willful misconduct, a franchisee shall indemnify and hold harmless the County, its officers, boards, commissions, agents and employees against and from any and all claims, demands, actions, suits, liabilities and judgments of every kind and nature and regardless of the merit of the same, arising out of or related to the exercise or enjoyment of any cable system franchise granted pursuant to the provisions of this Ordinance, regardless of any claimed or actual contributory negligence or conduct of any such indemnitee, and including, without affecting the scope of the foregoing, and not limited to claims, demands, actions, suits, liabilities and judgments based upon unfair competition, any infringement or violation,

or alleged infringement or violation of any copyright, whether common law or statutory, or failure of the Franchisee to secure consents from owners, authorizing distributors or licensees of programs to be delivered by the Franchisee's cable system; and the Franchisee shall reimburse the County and any other such indemnitee for any reasonable costs and expenses incurred by them in defending against any such claim or demand or action, including attorney fees, accountant fees, expert or other witness or consultant fees, court and court reporters costs, per diem expenses, travel and living expenses; and the Franchisee shall upon demand of the County or any other such indemnitee appear in and defend any and all suits, actions or other legal proceedings whether judicial, quasi-judicial, administrative or otherwise brought by third persons or duly constituted authorities against or affecting the County, its officers, boards, commissions, agents or employees arising out of or related to the exercise or enjoyment of such franchise or the granting thereof by the County. The foregoing obligation shall exist and continue without reference to or limitation by the amount of any bond, police of insurance, deposit, undertaking or other security required hereunder; provided that neither the franchisee nor County shall make or enter into any compromise or settlement of any claim, demand, action or suit without first giving the other ten (10) days prior written notice of its intention to do so.

(b) COMPREHENSIVE LIABILITY INSURANCE.

Franchisee shall during the entire term of its franchise hereunder maintain in full force and effect, at its own expense, a general comprehensive liability insurance policy or policies which shall insure the franchisee and provide primary coverage for the County, its officers, boards, commissions, agents and employees, as additional insured, against liability for loss or liability for personal injury, death, property damage (both automobile and no-automobile caused) or other damages. Such policy or policies shall include insurance against damages from unfair competition, copyright infringement (common law or statutory) and a failure of the Franchisee to secure consents occasioned by any activity or operation of the Franchisee under such franchise, and regardless of any claimed or actual activities of County, its officers, boards, commissions, agents and employees. The County

shall waive the requirement for insurance from one or more perils mentioned in the last preceding sentence upon a finding that such insurance cannot be procured or cannot be procured at a reasonable cost, and in connection therewith may reduce the otherwise required limits on coverage hereafter set forth. Such policy shall contain a contractual obligations endorsement or coverage for the preceding indemnification obligations. Such policy or policies shall be issued by a company approved by the County Attorney, with minimum combined single limits of liability coverage in the amount of One Million Dollars (\$1,000,000). The policy or policies shall name the County, its officers, boards, commissions, agents and employees as additional insureds and shall contain a provision that a written notice of any cancellation, modification or reduction in coverage shall be delivered to the County Clerk thirty (30) days in advance of the effective date thereof. Any substitute policy or policies shall be subject to the same approvals and shall comply with all of the provisions of this subsection.

§19-115 ANNUAL FRANCHISE FEES.

1. In consideration of permission to use the streets and public ways of the County for the construction, operation, maintenance and reconstruction of a cable system within the unincorporated areas of the County, each Franchisee shall pay to the County annually, within sixty (60) days following the end of such Franchisee's fiscal year, an amount equal to five percent (5%) of such Franchisee's gross revenues attributable to its cable system operations in the unincorporated areas of the County during the preceding fiscal year. As used in the preceding sentence, "gross revenues" shall mean all consideration received directly or indirectly by a Franchisee arising from or attributable to the sale or exchange of cable system services within the unincorporated areas of the County or in any way derived from the operation of its cable system within the unincorporated areas of the County, including, but not limited to, basic service monthly fees, tiered service monthly fees, pay TV, pay-per-view, leased channel fees, equipment rentals or sales, studio rental and advertising receipts. Gross revenues shall not include, however, equipment deposits, bad debts, taxes collected by the franchisee on behalf of any governmental unit, franchise fees under this Ordinance properly billed to and collected from

subscribers, refunds to subscribers, or items excluded by local, state or federal law.

Such fees paid by Franchisees to the County shall be in lieu of any occupation tax, license tax or similar levy, and shall be paid within sixty days after the expiration of any fiscal year. Nothing herein contained, however, shall in any way relieve Franchisee or its assigns or successors from the obligation of paying any property taxes to the County or any other governmental subdivision of the state or any other taxes lawfully levied by the state on the operation of Franchisee. The County reserves the right to renegotiate franchise fees payable to the County under this Ordinance should applicable federal law, regulation or regulatory authority either increase the maximum percentage of the gross a County can charge or if the maximum amount is removed entirely.

2. Franchisee shall file with the County Clerk within thirty days after the expiration of any fiscal year during the term of the license granted hereunder, a statement prepared by a certified public accountant showing the gross receipts as defined herein. Failure to begin operation of the system authorized hereby for a period of twelve months, or failure to operate for any consecutive period of twelve months after operation has begun, shall serve automatically to terminate the license granted pursuant to this chapter.
3. Subject to applicable Federal law, the County expressly reserves the right to raise or lower the rate of payment as provided in this section for any renewed franchise.

§19-116 RIGHT OF FRANCHISEES TO USE POLES, ETC., OF PUBLIC UTILITIES. There is hereby granted the further non-exclusive right, privilege and authority to Franchisee, as defined herein, to lease, rent or in any other manner obtain the use of towers, poles, lines, cables and other equipment and facilities from any and all holders of public licenses and franchisees within the unincorporated area of the County including but not limited to the Southern Bell Telephone and Telegraph Company and the Savannah Electric and Power Company, and to use such towers, poles, lines, cables and other equipment and facilities, subject to all existing and future Ordinances and Regulations of the County. The poles used by Franchisee's distribution system shall be those erected and maintained by existing public utility systems, when and where practicable; providing, mutually satisfactory agreements can be entered into with such companies.

Franchisee shall provide and keep current a map of the County showing the exact type, style and location of any and all lines, poles and other fixtures of franchisees within the unincorporated area.

Franchisee shall have the right to erect and maintain its own poles, as may be necessary for the proper construction and maintenance of the television distribution system; provided, written prior approval is obtained in such instances from the Board of Commissioners of the County.

Such contracts for the use of poles shall specify that they are non-exclusive, and franchisees shall make copies of such contracts available for public inspection upon request.

§19-117 JOINT USE OF POLES TO BE GRANTED COUNTY. Franchisee shall grant to the County, free of expense, joint use of any and all poles owned by Franchisee for any proper County purpose, insofar as it may be done without interfering with the free use and enjoyment of Franchisee's own wires and fixtures. Proper regard shall be given to all existing safety rules covering construction and maintenance in effect at the time of construction. If, in accommodating the County's joint use of its poles, Franchisee is required to change or replace poles or install new poles. The County shall compensate Franchisee for such additional expense.

§19-118 PROHIBITED ACTS OF FRANCHISEES. Neither Franchisee, its subsidiaries, nor its employees, shall engage in the business of selling, renting or leasing television sets or other receivers which make use of signals transmitted by its system, nor shall Franchisee, its subsidiaries or its employees, engage in servicing of television sets or other home receivers owned or leased by its subscribers, or the sale of parts for the same.

Franchisee shall not delete the commercial advertising portion of a signal which it is carrying from a Federal Communications Commission licensed television station and substitute therefor other commercial advertising over such signal.

§19-119 RIGHTS GRANTED TO FRANCHISEE TO BE NON-TRANSFERRABLE, ETC. The Company may not sell or transfer its rights under this Ordinance to another, other than a parent company or a wholly owned subsidiary of a parent company, except as a security for monies borrowed, without County approval. Such County approval shall not be unreasonably withheld.

§19-120 RIGHTS RESERVED TO COUNTY. There is hereby reserved to the County every right and power which is required to be herein reserved or provided by any state statute or Ordinance of the County, and Franchisee, by its acceptance of the license granted hereunder, agrees to be bound thereby, and to comply with any action or requirement of the County in its exercise of any such right or power. Further, the rights granted hereunder shall not preclude the County from granting to any other person a right to provide similar services in the unincorporated area.

In the case of an emergency or a disaster, the Franchisee shall, upon request of the County, make available its facilities to the County for emergency use during the emergency or disaster period.

If such an emergency or disaster should occur, (e.g., tornado warning, hurricane warning, hazardous waste release), the Franchisee shall have the equipment in place in its principal head-end and shall allow the County to use an audio override message to be cablecast and transmitted over the cable system. Such grant of authority to the County, which shall be exercised by the County in conjunction with any other local governmental authority having similar rights, shall periodically preempt, to the maximum extent legally permitted, all regular audio transmission programming until said emergency or disaster shall have passed.

§19-121 ANNUAL SERVICE REVIEW HEARING. Each year the Company shall be required to hold hearings to obtain information as to the quality of its service to the franchise area for the preceding year. The Company shall cause to be published in a newspaper of general circulation three notices of such hearing for a period of three consecutive weeks prior to the hearing date. Information from these hearings shall be used to consider what, if any changes should be made in future agreements.

§19-122 COMPLAINT PROCEDURE.

- (a) Franchisee shall maintain a local business office or agent which subscribers may telephone during regular business hours without incurring added message or toll charges so that CATV maintenance service shall be promptly available.

- (b) If a subscriber has an unresolved complaint regarding the quality of cable television service, equipment malfunctions or similar matters, the subscriber may file his complaint with the County Clerk who has primary responsibility for the continuing administration of the franchise and the procedures for resolving complaints, and thereafter may meet jointly with a representative of this Commission and a representative of Franchisee within thirty (30) days to full discuss and resolve such matters.
- (c) Franchisee shall notify each subscriber at the time of initial subscription to the service of Franchisee of the procedures for reporting and resolving such complaints.
- (d) Franchisee shall abide by all regulations set forth in the Cable Television Consumer Protection and Competition Act of 1992 relative to complaint procedures.

§19-123 LOCAL ORIGINATION PROGRAMMING. The Franchisee shall provide for adequate local origination channel capacity available in part for users with prior reservation on a nondiscriminatory basis, first come first-served, for any person residing within the franchise area.

§19-124 LIMITATION ON RIGHTS, ETC., GRANTED. No privilege, right or exemption shall be granted or conferred under this chapter except those specifically prescribed herein.

§19-125 MISCELLANEOUS PROVISIONS.

- (a) CITIZENS ADVISORY COUNCIL.

The County may cause a Citizens Advisory Council to be formed, consisting of no fewer than five (5) nor more than seven (7) members to serve for a period of two (2) years. The Citizens Advisory Council shall function under such rules, regulations and guidelines as the County Commission shall promulgate from time to time. At least two (2) of the members of the Citizens Advisory Council shall be appointed from names supplied by the franchisee under this Ordinance paying the County, at the time of such appointment, the largest amount of revenue over the immediately preceding five (5) years.

- (b) EXTENSION.

A franchise granted under this Ordinance may be extended by the County Commission for any period not to exceed ten (10) years provided that after giving effect to such extension, the remaining term of such franchise shall not exceed fifteen (15) years. Such an extension shall be granted only with the written approval of the franchisee involved.

(c) FAIRNESS TO ALL FRANCHISEES.

Any provision of this Ordinance to the contrary notwithstanding, the County will not grant a cable system franchise to any person, firm, corporation or other entity under terms and conditions that will give such person, firm, corporation or other entity a competitive advantage over any existing cable system franchise holder.

(d) BINDING CONTRACT.

The acceptance by any Franchisee of a franchise under this Ordinance shall constitute a legally binding agreement between Franchisee and the County. No such acceptance, however, shall constitute a waiver by Franchisee of any rights, privileges or immunities granted such franchise under applicable federal law, all of which shall control over any conflicting provision(s) of this Ordinance.

§19-126 RENEWAL OF FRANCHISE. A franchise granted under this Ordinance may be renewed by the County upon written application of Franchisee pursuant to the procedure established in this section and in accordance with applicable local, state and federal law.

(a) During the six-month period which begins with the 36th month before the franchise expiration, the County may on its own initiative, and shall at the written request of the franchisee, commence proceedings which afford the public appropriate notice and participation for the purpose of:

- (1) identifying the future cable-related community needs and interests; and
- (2) reviewing the performance of Franchisee under the franchise during the then current franchise term.

- (b) (1) Upon completion of a proceeding under subsection (a) of this section, the Franchisee seeking renewal of a franchise may, on its own initiative or at the request of the County, submit a written proposal for renewal.
- (2) Any such proposal shall contain such material as the County may require, including proposals for an upgrade of the cable system, but may not establish requirements for video programming or other information services.
- (3) The County may establish a date by which such proposal shall be submitted.
- (c) (1) Upon submittal by the Franchisee of a written proposal to the County for the renewal of the franchise, the County shall provide public notice published once in a newspaper of general circulation of the filing of such proposal and, during the 4-month period which begins on the completion of any proceeding under subsection (a) of this section, renew the franchise or issue a preliminary assessment that the franchise should not be renewed and, at the request of Franchisee or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with subsection (c)(2) of this section to consider whether:
 - (A) Franchisee has substantially complied with the material terms of the existing franchise and with applicable municipal, state and federal law, including regulations of the Federal Communications Commission;
 - (B) the quality of Franchisee's cable service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the cable system, has been reasonable in light of community needs;
 - (C) Franchisee has the financial, legal, and technical ability to provide the cable

services, facilities and equipment as set forth in the franchisee's proposal; and

- (D) Franchisee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

In connection with the foregoing, the County may consider the Franchisee's proposal for facilities, equipment and services including, but not limited to, channel capacity of the subscriber network, amount of channel capacity set aside for public, educational or governmental access use or the proposed terms and conditions of the franchise agreement failing to meet the identified community needs and interest. "Community needs and interest" shall not be deemed to mean the expressed needs of every person or group. The County must also take into account Franchisee's cost in making a determination of whether or not Franchisee's proposal for renewal is reasonable.

- (2) In any proceeding under subsection (c)(1) of this section, Franchisee shall be afforded notice and the franchisee and the County, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection (a) of this section, to require the production of evidence, and to questions witnesses. A transcript shall be made of any such proceeding.
 - (3) At the completion of a proceeding under this subsection, the County shall grant or deny the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the franchisee stating the reasons therefor.
- (d) Any denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors described in clauses (A) through (D) of subsection (c)(1) of this section, pursuant to the record of the proceeding under subsection (c) of this section.
 - (e) If Franchisee's proposal for renewal has been denied by a final decision of the County made pursuant to this section, or has been adversely affected by a failure of

the County to act in accordance with the procedural requirements of this section, the franchisee may appeal such final decision or failure pursuant to the provisions of applicable law.

- (f) Notwithstanding the provisions of subsections (a) through (e) of this section, the franchisee may submit a proposal for the renewal of its franchise pursuant to this subsection (f) at any time, and the County may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to subsections (a) through (e) of this section have begun). The provisions of subsections (a) through (e) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections (a) through (e) of this section.

In the event such a proposal is submitted, neither the County nor the Franchisee shall waive any rights to a formal renewal process as set forth in subsections (a) through (e) of this section. If an agreement to renew is reached pursuant to the provisions of this subsection (f), then the County shall present the renewal agreement at a public hearing advertised for such purpose and the renewal can thereafter be granted.

- (g) Franchisee shall pay all reasonable costs incurred by the County in considering and processing a proposal for franchise renewal under this section, such costs not to exceed one-half (1/2) of the application fees that would have to be paid in case of an application for a new franchise under this Ordinance.
- (h) Notwithstanding anything to the contrary contained in this section, the County reserves the right, subject to applicable law, to revoke any cable system franchise for cause at any time.

§19-127 SEPARABILITY-INVALIDITY. Should any section, clause, or provision of this Ordinance be declared invalid by a court of record, the same shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared invalid.

The foregoing "Television Franchises Ordinance" was adopted on the 17th day of December, 1993, and supersedes prior Ordinances enacted on September 26, 1969, June 25, 1982, and September 10, 1982.