

#81

Ordinance #1-97

An Ordinance for the  
Purpose of Granting the  
Cable Television Franchise  
For the Town of  
Leonardtwn to American  
Cable TV of St. Mary's

**TOWN OF LEONARDTOWN**

**CABLE TELEVISION FRANCHISE ORDINANCE**

An ordinance for the purpose of granting the Cable Television Franchise for the Town of Leonardtown to American Cable TV of St. Mary's County, including methods for modification, renewal, transfer and revocation of the franchise.

The franchise is hereby granted until May 31, 2,012.

Be it enacted and ordained by the Town Council of Leonardtown, Maryland, that on February 10, 1997, the following Ordinance is hereby adopted:

of subscribers in connection with its evaluation of services, a franchisee shall distribute the Town's questionnaire to its subscribers. Any meetings between the Town and the franchisee for purposes of evaluation shall be open to the public.

(B) If evaluation indicates the need for modification to the franchise agreement, the Commissioners shall negotiate the necessary changes.

(C) The Commissioners may hold a public hearing on any performance evaluation reports. Any franchise agreement modifications shall be approved by the Commissioners and the franchisee before they become effective.

SECTION THIRTY: SEVERABILITY

If any part of this Ordinance is held invalid, the invalidity shall not affect the other parts.

  
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J. Harry Norris III, Mayor

  
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Ruth W. Proffitt, Vice President

  
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Bernard Y. Delahay, Council Member

  
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Susan H. Erichsen, Council Member

  
\_\_\_\_\_  
Daniel W. Muchow, Council Member

  
\_\_\_\_\_  
Walter Wise, Council Member



## **CABLE TELEVISION SYSTEM FRANCHISE ORDINANCE**

This Ordinance shall be known and may be cited as the Cable Television Franchise Ordinance.

### **SECTION ONE: INTENTS AND PURPOSES**

It is the intent of the Town to promote the public health, safety, and general welfare by providing for the grant of one or more franchises for the construction and operation of a cable system; to provide for the regulation of each cable system by the Town; to provide for the payment of fees and other valuable consideration by a franchisee to the Town for the privilege of using the public rights-of-way for constructing and operating a cable system; to promote widespread availability of cable service to Town residents wherever economically feasible, including to those who reside in multifamily buildings; to encourage the development of cable as a means of communication between and among the members of the public and public institutions; and to encourage the provision of diverse information to the community over cable.

### **SECTION TWO: DEFINITIONS**

For purposes of this Ordinance the following words and their derivations have the meanings defined below. Words not defined below are given their meaning in Section 602 of the Cable Act, 47 U.S.C. SEC. 522, and, if none, their common and ordinary meaning. When not inconsistent with the context, 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. The word "shall" is mandatory and the word 'may' is permissive.

(A) Access channel means any channel set aside for public use, educational use, or governmental use without a charge by the franchisee for such channel usage.

(B) Application means a proposal to construct and operate a cable system within the Town, transfer a franchise, renew a franchise or modify a franchise. An application includes the initial proposal plus all subsequent amendments or supplements to the proposal and relevant correspondence.

(C) Cable Act means the Cable Communications Policy Act of 1984, 47 U.S.C. Sec. 521 Et Seq.

(D) Committee means the Town Council of Leonardtown.

(E) Cable service means the one-way transmission of any video or other programming service to subscribers together with any subscriber interaction provided in connection with such service.

(F) Cable system means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable service which includes video programming and which is provided to multiple subscribers within the Town. Such term does not include:

(1) A facility that serves only to retransmit the television signals of one or more local (i.e., Baltimore/Washington Area) television

broadcast stations ;

(2) A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility uses or crosses (whether above, on or below ground) any public street, road, way, easement or right-of-way

(3) A facility of a common carrier that in subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. Sec. 201 et seq., except that such facility will be considered a cable system to the extent it is used in the transmission of video programming directly to subscribers; or

(4) Any facilities of any electric utility used solely for operating its electric utility systems.

(G) Control of a franchises or applicant means the legal or practical ability to direct the affairs of the franchisee or applicant either directly or indirectly, whether by contractual agreement or majority ownership of an economic interest.

(H) Town means Leonardtown, Maryland.

(I) Commissioners means the Leonardtown Commissioners.

(J) Department means the Public Works personnel of Leonardtown, Maryland.

(K) District means the geographic area within the Town designated by the franchise agreement in which the franchisee is authorized to construct and operate a cable system.

(L) FCC means the Federal Communications Commission.

(M) Franchise means the right granted by the Town to a franchisee to construct, maintain and operate a cable system over or under all streets, roads and other public ways, easements and rights-of-ways within all or specified areas of the Town. The term does not include any license or permit that may be required by this subtitle or other laws, ordinances, or regulations of the Town for the privilege of transacting and carrying on a business within the Town or for disturbing the surface of any street or public thoroughfare.

(N) Franchise Agreement means a contract entered into in accordance with the provisions of this Ordinance between the Town and a franchisee that sets forth the terms and conditions under which the franchise will be exercised.

(O) Franchisee means any person granted a franchise pursuant to this Ordinance.

(P) Gross revenues means all revenues derived by a franchisee from the operation of its cable system within those areas of the Town governed by this Ordinance, including, but not limited to, revenues therein derived from cable service, home shopping channels, institutional services, rental or lease of equipment, installation fees or ancillary services. Gross revenues shall not include bad debt (i.e., revenues not received by a franchisee), or taxes or other assessments collected by a franchises for or on behalf of any governmental entity.

(Q) Leased access channel means a channel designated in accordance with Section 6 12 of the Cable Act, 47 U.S.C. Sec. 532, for commercial use by persons unaffiliated with the franchisee.

(R) Overbuild means a cable system constructed to serve subscribers in

a district or part of a district served by an existing cable system, including those parts of an existing system that will be constructed within six (6) months pursuant to plans filed with the Town.

(S) Person means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

(T) Subscriber means any person who legally receives any one of the services provided by the cable system.

(U) System malfunction means an equipment or facility failure that results in the loss of satisfactory service on one or more channels. A malfunction is major if it affects 100 or more subscribers.

(V) Transfer of a franchise means any transaction in which  
(1) an ownership or other interest in a franchise is transferred from one person or group of persons to another person or group of persons so that control of the franchise is transferred or  
(2) the rights held by the franchisee under a franchise agreement are transferred or assigned to another person or group of persons.

### SECTION THREE: GRANT OF AUTHORITY; FRANCHISE REQUIRED

The Town may grant one or more franchises in accordance with this subtitle. No person may construct or operate a cable system in the Town without a franchise granted by the Town.

### SECTION FOUR: FRANCHISE CHARACTERISTICS

(A) A franchise authorizes use of the public rights-of-way for installing cables, wires, lines and other facilities to operate a cable system within a specified district, but does not expressly or implicitly authorize the franchisee to provide service to, or install cables, wires, lines or any other equipment or facilities upon private property without owner consent (except for use of compatible easements pursuant to 47 U.S.C. Sec. 541(A)(2)), or to use publicly or privately owned utility poles or conduits without a separate agreement with the owners.

(B) A franchise is nonexclusive, and will not expressly or implicitly preclude the issuance of other franchises to operate cable systems within the Town or affect the Town's right to authorize use of public rights-of-way to other persons as it deems appropriate.

(C) A franchise conveys no automatic right of renewal thereof but shall be subject to the renewal terms of this ordinance and the Cable Act.

(D) A franchise agreement constitutes a contract between the franchisee and the Town once it is accepted by the franchisee and the Town. A franchisee contractually commits itself to comply with the terms, conditions and provisions of the franchise agreement and with all applicable laws.

### SECTION FIVE: FRANCHISEE SUBJECT TO OTHER LAWS; POLICE POWER

(A) A franchisee is subject to and shall comply with all applicable local, county, state and federal laws, ordinances, codes, rules, regulations and orders.

(B) Any other provision in the Leonardtown Code concerning the grant of franchises which is inconsistent with the provisions or intent of this Ordinance shall not apply to the grant of franchises for the construction and operation of cable systems.

(C) A franchisee or other person may not be excused from complying with any of the terms and conditions of this ordinance or a franchise agreement by any failure of the Town upon one or more occasions, to require compliance or performance.

SECTION SIX: INTERPRETATION OF FRANCHISE TERMS

(A) The provisions of this Ordinance will apply to a franchise agreement as if fully set forth in the franchise agreement. The express terms of this Ordinance will prevail over conflicting or inconsistent provisions in a franchise agreement.

(B) The provisions of a franchise agreement will be liberally construed in order to effectuate its purposes and objectives consistent with this Ordinance and the public interest.

(C) A franchise agreement will be governed by and construed in accordance with the laws of the State of Maryland.

SECTION SEVEN: APPLICATIONS FOR GRANT, RENEWAL, MODIFICATION OR TRANSFER

(A) An application shall be filed with the Commissioners for the grant of new franchise or the renewal of a franchise, under either the formal or informal procedures in accordance with Section 626 of the Cable Act, 47 U.S.C. Sec. 546, Modification of a Franchise Agreement or a Transfer of a Franchise. An applicant has the burden to demonstrate substantial compliance with all material requirements of this Ordinance and of federal law.

(B) To be acceptable for filing, an application shall:  
(1) be submitted in the number of copies required by the Commissioners;  
(2) be accompanied by the application filing fee where required;  
(3) conform to any applicable request for proposals; and (iv) contain all required information. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

(C) All applications accepted for filing shall be made available by the Commissioners for public inspection. The Commissioners shall advertise the receipt of all accepted applications for two (2) successive weeks in a newspaper of general circulation in the county, which advertisement shall identify the location at which such applications may be inspected and copied.

(D) An application for the grant of a new franchise may be filed pursuant to a request for proposals issued by the Town or on an unsolicited basis. The Town, upon receipt of an unsolicited application, may issue a request for proposals. If the Town elects to issue a request for proposals upon receipt of an unsolicited application, the applicant may submit an amended application in response to the request for proposals, may inform the Commissioners that its unsolicited application should be considered in response to the request for proposals, or may withdraw its unsolicited application. An application which does not conform to the requirements of a request for proposals may be considered non-responsive.

(E) An application for the grant of a new franchise shall contain, at

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 all persons with 5% or more ownership interest; the persons who control the applicant; all officers and directors of the applicant; and any other cable system ownership interest of each named person;
- (2) An indication of whether the applicant, any person controlling the applicant, or any officer, director or holders of more than 5% ownership interest of the applicant has been adjudged bankrupt, had a cable franchise revoked, or been found guilty by any court or administrative agency of a violation of a security or antitrust law, a felony, or any crime involving moral turpitude; and if so, identification of any such persons and a full explanation of the circumstances;
- (3) A demonstration of the applicant's technical, legal and financial ability to operate the proposed cable facility, including identification of key personnel;
- (4) A complete description of applicant's prior experience in cable operations and identification of communities in which applicant or its principals have, or had, a cable franchise or an interest therein, including the identification of any past or pending disciplinary actions or litigation involving any such franchisees and their franchising authorities;
- (5) Identification of the district to be served by the cable system, including a description of the districts boundaries;
- (6) A detailed description of the physical facility proposed, including channel capacity, technical design, performance characteristics, headend and access facilities to be provided to satisfy the requirements of Section 27 hereof.
- (7) A description of the construction of the proposed system, including an estimate of aerial and under-ground 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 on poles and conduits including, where appropriate, an estimate of the cost of rearrangement facilities to accommodate such use;
- (8) A description of the services to be provided initially, including all broadcast and non-broadcast signals to be carried and all, non-television services; and, if services will be offered by tiers, identification of the signals and/or services to be included on each tier;
- (9) The proposed rate structure for the first five (5) years of operation, including proposed charges for each service tier, installation, converters and other equipment or services;
- (10) A demonstration of how the proposal will reasonably meet the future cable-related needs and interests of the community, for at least a five-year period, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted for the Town;
- (11) Pro forma financial projections for the first five (5) years of the franchise term, including statement of income, balance sheet, sources and uses of funds, and schedule of capital additions, with all significant assumptions explained in notes or supporting schedules;
- (12) An affidavit 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 proposal meets all federal, state and county requirements;
- (13) If an 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, the potential subscriber



information an necessary for the Town to make its determination pursuant to section 8(C); and

(14) Any other information necessary to demonstrate compliance with the requirements of this ordinance and information that the Town may reasonably request of the applicant.

(P) An application for modification of a franchise shall include, a 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) the and the applicant, and the Impact on the applicant if the modification is not approved;

(3) A statement whether the modifications sought pursuant to Section 625 of the Cable Act, 47 U.S.C. Sec. 545, and, if so, a demonstration that the requested modification meets the legal standards of 47 U.S.C. Sec. 545; and (4) Any other information reasonably necessary for the Town to make a determination.

(G) An application for renewal of a franchise shall comply with the requirements of Section 20, hereof.

(H) An application for approval of a transfer of a franchise shall comply with the requirements of Section 21.

(I) To be acceptable for filing, an application shall be accompanied by a filing fee In the following amount, as appropriate:

For a new franchise:	\$5,000
For renewal of a franchise:	2,500
For a transfer of a franchises	1,500
For a modification of a franchise (except expansion of a district):	2,500

(J) Where a cable system operator who has provided service in the Town for at least six months prior to the adoption of this ordinance enters into a Franchise Agreement subject to the terms hereof, no initial franchise application fee shall be charged.

#### SECTION EIGHT: GRANT OF FRANCHISE

(A) A franchise may be granted for a period not to exceed twenty (20) years to serve the Town.

(B) The grant of a franchise may be conditioned upon the completion of construction within prescribed time or upon the performance of other specific obligations, specifying that, except for causes beyond the control of franchises, failure to timely comply with the condition will cause the franchise to become null and void without further action by the Town unless Town at its discretion and for good cause shown, grants an extension of time. In such an event the revocation procedures specified in Section 22 hereof shall not be applicable.

(C) In evaluating an application for a new franchise, the Town shall consider the applicants character; the applicant's technical, financial and legal qualifications to construct and operate the proposed system; the nature of the proposed facilities, equipment and service of the applicants record in other communities, if any; and whether the proposal will meet anticipated community needs and serve the public interest. Where an applicant proposes an Overbuild of an existing cable system, the Town may also consider the economic feasibility of multiple cable operators, and whether any adverse consequences to the public interest will result if the application is granted.

(D) Based upon the application, the written and oral testimony and other material presented at a public hearing before the Commissioners and any other information relevant to the application, this Commissioners shall decide whether to grant or deny a franchise application.

(E) If the Commissioners grant a franchise application, the Commissioners and the applicant shall agree on the terms of a franchise agreement within ninety (90) calendar days from the date of the resolution making the grant. This period may be extended for good cause by the Commissioners. If agreement is not reached with the Commissioners within ninety (90) calendar days or within any extension period granted by the Commissioners, because of some act or inaction on the part of the franchisee, the Commissioners shall have the right to declare the franchise application to be null and void.

(F) The Commissioners shall make the text of a proposed franchise agreement available to the public and shall advertise it once in a newspaper of general circulation in the County. Such advertisement shall state the general terms of the Agreement, giving the date and time of a public hearing or other opportunity for comments and objections to the proposed Agreement.

(G) After complying with the requirements of Subsections (C) - (F) above, the Commissioners shall, following a public hearing, approve or disapprove the proposed franchise agreement by resolution.

(H) The grant of an initial franchise or a renewed franchise may be subject to a franchise acceptance fee in an amount not to exceed the out-of-pocket costs in considering the application, less the amount of the filing fee. Within thirty (30) calendar days of the date of the Town Commissioners' resolution approving the franchise agreement, they shall notify the approved applicant of the amount of any franchise acceptance fee and its method of calculation. If the franchise acceptance fee is not paid within sixty (60) calendar days of the date of the Commissioners' resolution approving the franchise agreement, the franchise shall be null and void. Prior to the franchise becoming effective, the approved applicant shall demonstrate compliance with the surety, insurance and similar provisions of the franchise agreement.

#### SECTION NINE: INSURANCE; SURETY; INDEMNIFICATION

(A) A franchise agreement shall require the following insurance coverage to be in force at all times during the franchise period:

(1) workmen's compensation insurance to meet all state requirements, and

(2) general comprehensive liability insurance with respect to the construction, operation and maintenance of a cable system, including the operation of motor vehicles, in the following minimum amounts:

(a) For bodily injury, including death, \$500,000 for any one person, and \$1,000,000 for any one accident;

(b) For property damage \$1,000,000; and

(c) For damages resulting from any liability of any nature that may arise from or be occasioned by franchisee's negligent operation of the cable system, including any communication over the cable system, excepting programming on access channels required under section 11(A)(2) herein, \$1,000,000.

(B) All insurance policies shall be with sureties qualified to do business in Maryland and in a form approved by the Town's Attorney. The Commissioners may require in a franchise agreement coverage and amounts in excess of the above minimum. The Town shall be named an additional insured party in all such insurance policies. No such policies shall be cancelled

without a minimum of 30 days prior written notice to the Town.

(C) A franchisee shall, at its sale cost and expense, indemnify, hold harmless and defend the Town, its officials, boards, commissions, agents and employees against any and all claims, suits, causes of action, proceedings and judgments for damages or equitable relief arising out of the construction, maintenance or operation of its cable system regardless of whether the act or omission complained of is authorized, allowed or prohibited by the franchise, including all reasonable attorney's fees, provided that the respective indemnitee shall not have been contributorily negligent in any respect. This provision includes, but is not limited to, claims arising out of copyright infringements or a failure by the franchisee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the cable system.

(D) The franchise agreement shall require the franchisee to have in force at all times a performance bond or an irrevocable letter of credit in an amount specified in the franchise agreement as necessary to ensure the faithful performance by the franchisee of its obligation under the franchise agreement. Such surety instruments shall be provided by an entity qualified to do business in the State of Maryland and in a form approved by the Town Attorney.

#### SECTION TEN: SECURITY FUND

(A) Prior to the franchise becoming effective, the franchisee shall post with the Town Treasurer a cash security deposit, an irrevocable letter of credit, or a security bond in an amount not to exceed \$10,000 or such other amount as may be specified in the franchise agreement to be used as a security fund to ensure the faithful performance of all provisions of this Ordinance and the franchise agreement, and compliance with all orders, permits, and directions of the Town, and the payment by the franchisee of any claims, liens or taxes due the Town which arise by reason of the construction, operation or maintenance of the system. Construction permit bonds will also be required by the Department of Public Works for work performed within the Town's rights-of-way.

(B) The Director of Finance shall place any cash security deposit in an interest-bearing account. The interest shall accrue to the benefit of the franchisee but may not be withdrawn; all interest will be added to and become part of the original security fund during the term of the franchise.

(C) In the event that a franchisee shall commit a material breach of any material provision of its franchise agreement and shall suffer or incur any damages (whether liquidated or otherwise), costs or expenses on account thereof, then the Director of Finance may, upon at least ten (10) business days prior written notice to both the Town and the franchisee, notify the Town and the franchisee that the Town Treasurer intends to withdraw from the security claimed damages, costs and withdraw from the security fund a sum equal to the amount of the Town's claimed damages, costs and expenses, which shall be itemized in such notice together with a summary of the claimed breach.

(D) Within ten (10) calendar days after the franchisee's receipt of such notice from the Town Treasurer, the Town may (upon its own initiative), and shall (upon the written request of the franchisee transmitted to the within ten (10) days after the franchisee's receipt of the foregoing notice from the Director of Finance), conduct a hearing which shall:

(1) be commenced by the issuance of a formal order of the which order shall mandate a hearing upon the matters set forth in the respective notice transmitted by the Town Treasurer (which notice shall be incorporated within such order in its entirety) and shall

designate a presiding officer to preside over such hearing;

- (2) be presided over by the foregoing, duly appointed presiding officer and be transcribed by a duly qualified court stenographer;
- (3) afford the franchisee full rights of timely discovery (by written interrogatory, deposition and production of documents);
- (4) afford the franchisee full rights to be heard, to present testimony and evidence and to cross examine witnesses;
- (5) be concluded within thirty (30) days after the commencement thereof unless the town and the franchisee shall agree otherwise; and
- (6) be concluded by a written decision of the Town, which decision shall set forth the findings of fact relevant thereto and shall be supported by a preponderance of the evidence of record.

(E) If the final written decision of the Town shall be that the franchisee has committed and failed to cure the material breach(es) of its franchise and that the Town has suffered or incurred the material damages, costs and expenses, then the Town Treasurer shall be authorized to make the subject withdrawal from the security fund at any date after ten (10) business days shall have elapsed from and after the date on which a certified copy of such decision shall have been delivered to the franchisee. If the final written decision of the town shall be that the franchisee has not committed, or has not failed to cure, the material breach(es) of its franchise or that the has not suffered or incurred the subject damages, costs and expenses, then the Town Treasurer shall not be authorized to make the subject withdrawal from the security fund. The prevailing party shall be entitled to recover from the other party for all reasonable attorney's fees incurred by it in connection therewith.

(F) In the event that the franchise is duly revoked in accordance with the terms of this Ordinance, the security fund shall become property of the Town. In the event that the franchise expires, or is duly terminated in accordance with the terms of this Ordinance, the Town shall thereupon return the remaining balance plus accrued interest of the security fund to the franchisee, provided that there in no outstanding default or unpaid amounts owed to the Town by the franchisee.

(G) The rights reserved to the Town with respect to the security fund are in addition to all other rights of the Town whether reserved by this Ordinance, the franchise agreement or authorized by other law, and no action, proceeding or exercise. of a right with respect to such security fund shall affect any other right the Town may have.

#### SECTION ELEVEN: MINIMUM FACILITIES AND SERVICE

(A) The following minimum requirements for facilities and services shall apply to all franchises. With the agreement of the franchisee the Town may require that a franchise exceed these minimum requirements as set forth in the franchise agreement.

- (1) A cable system shall have a minimum capacity of 35 video channels available for immediate or potential use, and have the capability of future activation of two-way communications when technologically and economically feasible.

- (2) Depending on programming needs, and provided that any existing access channel is then being fully utilized and has no programming time available, the Town can require a cable system to provide an access channel for public, education, or government access.

- (3) A cable system shall provide leased access channels as required by federal law.

- (4) Service to public buildings may be required without charge as set forth in the franchise agreement.

(5) When technologically and economically feasible, a franchisee shall interconnect the cable system access channels with those of other cable systems in the County upon the direction of the Commissioners or as otherwise provided in the franchise agreement.

(6) A franchisee shall design its system to allow the government to interrupt cable service in an emergency to deliver necessary information to subscribers.

(7) A franchisee shall make available to any subscriber who requests equipment capable of decoding closed-captioning information for the hearing impaired, the names and addresses of vendors or suppliers of such equipment. A franchisee shall also provide, upon the request of any subscriber, free installation of such device after the respective subscriber has received it. A franchisee shall itself not have any obligation to sell, lease or maintain any such equipment.

(8) At the request of a subscriber, a franchisee shall provide one or more "lock-out" devices which shall allow the subscriber to eliminate the comprehensible reception of any one or more pay channels other than those in the basic tier of service (i.e., one such "lock-out" device to be provided for each such channel which the subscriber desires to render incomprehensible). The franchisee may charge the subscriber for the cost of installation and maintenance of this device.

(B) Unless otherwise provided in the franchise agreement, a franchisee shall promptly extend cable service from its existing lines where the minimum density of the unserved area is thirty (30) dwellings per cable mile. The franchisee shall be required to extend its existing cable service to potential subscribers residing in areas which do not meet the minimum density under the following conditions:

(1) If they are willing to pay a one-time charge equivalent to the franchisee's construction cost per dwelling passed above the franchisee's construction cost at the minimum dwelling density, or

(2) as to any cable mile having a minimum of twenty (20) homes, if fifteen (15) potential subscribers per cable mile commit themselves to taking service for at least one year.

#### SECTION TWELVE: FRANCHISE FEE

(A) A franchisee, in consideration of the privilege granted under a franchise for the use of public rights-of-way to construct and operate a cable system, shall pay to the Town three (3%) percent of the franchisee's gross revenues during the period of its franchise. A franchisee shall pay the franchise fee due to the town for the preceding quarter within sixty (60) calendar days of the end of that quarter.

(B) Any payment of franchise fees to adjust for a shortfall in the quarterly payments for the preceding year shall be made no later than the filing date for the annual financial statements. Adjustments for any overpayment will be credited to subsequent quarterly payments.

(C) Unless a franchise agreement provides otherwise, a franchisee shall file with the Commissioners within sixty (60) calendar days of the end of each calendar quarter a financial statement showing the gross revenues received by the franchisee during the preceding quarter and the number of subscribers served.

(D) A franchisee shall file within three (3) months of the end of its fiscal year the franchisee's annual financial statements for the preceding year prepared and certified by its chief financial officer. The financial statement shall include a statement of income, a balance sheet, and where the franchisee

is in a significant construction phase, a general statement of sources and applications of funds. The statement shall include notes that specify all significant accounting policies and practices upon which it is based. A summary shall be provided comparing the current year with previous years since the beginning of the franchise.

(E) The town Treasurer may inspect and audit any and all books and records of the franchisee relating to the operations of the franchisee within the Town and recompute any amounts determined to be payable under the franchise. The cost of the audit will be borne by the franchisee if the annual payment to the Town is increased by more than three (3%) percent as a result of the audit.

(F) In the event that a franchise payment is not received by the on or before the due date, interest will be charged from the due date at the annual interest rate then chargeable for unpaid federal income taxes (26 U.S.C. Sec. 6621). In addition, the franchisee will pay a late charge of five (5%) percent of the amount of such payment.. Interest and late charges will not be imposed for any payment necessary as a result of the yearly adjustment provided for in subsection (B) above, if the payment to correct for a shortfall does not exceed ten (10%) percent of the total payments made during the year. In the event such payment does exceed ten (10%) percent of the total payments made during the year, the franchisee will be liable for interest and late charges for the entire amount due.

(G) When a franchise terminates for whatever reason, the franchisees shall file with the commissioners within ninety (90) calendar days of the date its operations cease an audited financial statement showing the gross revenues received by the franchise\* since the end of the previous fiscal year. Adjustments will be made at that time for franchise fees due to the date that the franchisees operations ceased.

(H) All payments due the Town by a franchisee shall be made to the Treasurer and will be General Fund revenues.

#### SECTION THIRTEEN: REPORTS AND RECORDS

(A) Within one hundred twenty (120) days of the close of its fiscal year, a franchisee shall, upon the written request of the Town made prior to the end of the respective fiscal year, file with the Commissioners an annual report that includes the following information with respect to such franchisees operations within the County:

(1) A summary of the previous calendar year's activities in development of the system, including but not limited to services begun or dropped, number of subscribers (including gains and losses), homes passed and miles of cable distribution plant in service. The summary shall also include a comparison of any actual construction, including system upgrades, during the year with any projected construction previously provided to the Town.

(2) A copy of updated maps depicting the location of all trunks where there was construction in the year of the report.

(3) A summary of complaints identifying the nature of complaints and their disposition. Where complaints involve one or more recurrent system problems, the nature of each problem and what steps have been taken to correct it shall be identified. More detailed information or complaints shall be submitted upon request of the Commissioners.

(4) If the franchisee is a corporation, a list of officers and members of the board and the officers and board members of any parent corporation; and, where a parent corporation's stock is publicly traded, a copy of its most recent annual report.

(5) A list of all partners or stockholders holding five percent or more ownership interest in (i) the franchisee and (ii) any

parent corporation; provided, however, when any such entity has fewer than ten (10) persons holding a five (5%) percent ownership interest, the ten (10) largest such holders. Alternatively, the annual ownership information required by the FCC for broadcast licensees may be supplied.

(6) A copy of all the franchisee's rules and regulations applicable to subscribers and users of the cable system.

(7) A report on the number of elderly and handicapped subscribers receiving any rate discounts and the amount of the discounts.

(B) A franchisee shall maintain with respect to its operations within the Town a complete set of books and records available for inspection by the Town during normal business hours upon fourteen (14) days prior written notice.

(C) Upon written request of the franchisee and approval by the Town Attorney, which approval shall not be unreasonably withheld or delayed, information of a proprietary nature submitted to the Town pursuant to this Ordinance by a franchise agreement and exempted by the Maryland Public Information Act from disclosure will not be made available for public inspection.

#### SECTION FOURTEEN: CUSTOMER SERVICE REQUIREMENTS

(A) Unless otherwise provided in the franchise agreement, a franchisee shall maintain in its franchise district a business office open during normal business hours with a listed local telephone number and employ a sufficient number of telephone lines to allow reasonable access by subscribers and members of the public. When the business office is closed, an answering machine or service capable of receiving service complaints and inquiries shall be employed.

(B) A franchisee shall have available during customary business hours such personnel, equipment, and procedures as shall be reasonably capable of locating and correcting major system malfunctions. Corrective action for all major system malfunctions shall be initiated and, subject to then prevailing circumstances such as weather conditions, be completed promptly. Corrective action for all other malfunctions shall be initiated as provided for in the franchise agreement, but not later than the next business day after the subscriber service call is received, provided that such call is received during customary business hours, and such corrective action shall be completed as promptly as reasonably possible.

(C) A franchise agreement may specify procedures for investigation and resolution of all complaints, including, but not limited to, those regarding the quality of service and equipment malfunction.

(D) A franchisee shall provide to each subscriber, at the time cable service is installed, written instructions for placing a service call, filing a complaint or requesting an adjustment. Each subscriber shall also be provided with a schedule of the subscriber's rates and charges, a copy of the service contract, delinquent subscriber disconnect and reconnect procedures, and a description of any other of the franchisee's policies in connection with its subscribers.

(E) A franchisee may interrupt service on the cable system only for good cause and for the shortest time possible and, except in emergency situations, only after prior notice to Town of the anticipated service interruption (and, if the Town promptly so requests, to the respective subscribers who will be affected thereby).

(F) A franchisee shall maintain a complete record of service complaints received and action taken. These records shall be open to the Town for

inspection during normal business hours. Such records shall be retained for not less than three years.

(G) Upon termination of service to a subscriber and at the subscriber's request, a franchisee shall remove all its facilities and equipment from the subscriber's premises within thirty (30) days of the subscriber's request. Where removal is impractical, such as with buried cable or internal wiring, facilities and equipment may be disconnected and abandoned rather than removed.

#### SECTION FIFTEEN: DISCRIMINATION PROHIBITED

(A) Unless approved by the Town and to the extent consistent with federal law, no franchisee may in its rates or charges, or in the availability of the services or facilities of its system, or in any other respect except for system promotional activities, bulk sales to multiple dwelling units, and discount sales programs, make or grant undue preferences or advantages to any subscriber or potential subscriber to the system, or to any user or potential user of the system, nor subject any such persons to any undue prejudice or any disadvantage. A franchisee shall not deny, delay or otherwise burden service or discriminate against subscribers or users except for discounts for the elderly and handicapped who have an annual income of less than \$15,000.

(B) A franchisee shall not deny cable service to any potential subscribers because of the income of the residents of the area in which the subscribers reside.

(C) A franchisee shall not refuse to employ, nor discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of race, color, or creed, and shall at all times be an equal opportunity employer.

#### SECTION SIXTEEN: USE OF RIGHTS-OF-WAY

(A) A franchisee shall utilize whenever reasonably possible and with the owner's permission, existing poles, conduits or such other facilities. Copies of agreements for use of poles, conduits or such other facilities shall be filed with the Commissioners upon request of the Commissioners.

(B) All transmission lines, equipment and structures shall be installed and located so as to avoid unreasonable interference with the rights and reasonable convenience of property owners. The Town may from time to time issue such reasonable rules and regulations concerning the installation and maintenance of the cable system installed in the public rights-of-way as may be consistent with this Ordinance, the franchise agreement, and the Cable Act.

(C) Suitable safety devices and practices as required by local, county, state, and federal laws, ordinances, regulations and permits shall be used during, construction, maintenance and repair of a cable system.

(D) A franchisee shall remove, replace or modify at its own expense the installation of any of its facilities within any public right-of-way when required to do so by the Town to allow it to change, maintain, repair or improve a public thoroughfare.

(E) On streets and roads where electrical and telephone utility wiring is located underground, either at the time of initial construction or subsequently, the cable shall also be located underground at the franchisee's expense. Between a street or road and a subscriber's residence, the cable shall be located underground at the franchisee's expense if electrical and



telephone utility wiring are located underground. Between a street or road and a subscribers residence, if electric or telephone utility wiring is aerial, a franchisee may install aerial cable except where a property owner or resident request to underground installation and agrees to bear the difference in cost by which underground installation exceeds the cost of aerial installation. Where cable is required to be buried hereunder no cable shall be temporarily left above ground for more than seventy-two (72) hours after the franchisee has received the respective locates (i.e., the marked locations of the existing underground utilities) by the Miss Utility locator service, without prior approval of the respective owners (or occupants) of the real property on which said cable is to be located, weather conditions permitting.

(F) A franchisee shall obtain any required federal, state, county or municipal permits before causing any damage or disturbance to public thoroughfares or private property as a result of its construction or operations and shall restore as nearly as possible to their former condition in accord with applicable construction industry standards such private property and public thoroughfares, the latter in a manner approved by the Town. Such permits shall not be unreasonably withheld or delayed by the Town or any agency or representative. If such restoration is not performed as hereinabove specified within a reasonable time, the Town, or the property owner in the case of private property, may, after prior notice to the franchisee, cause the repairs to be made at the expense of the franchisee.

(G) A franchisee may trim trees within public rights-of-way at its own expense as necessary to protect its wires and facilities, subject to any direction that may be provided by the Town. Trees on private property may be trimmed with the consent of the property owner.

(H) At the request of any person holding a valid building moving permit and upon sufficient notice; the franchisee shall temporarily raise, lower or cut its wires as necessary to facilitate such move upon not less than seventy-two (72) hours advance notice. The direct expense of such temporary changes, including standby time, shall be paid by the permit holder and the franchisee may require payment in advance.

#### SECTION SEVENTEEN: SUBSCRIBER PRIVACY

A franchisee shall protect the privacy of all subscribers pursuant to the provisions of Section 631 of the Cable Act, 47 U.S.C. Sec. 551. A franchisee shall not condition subscriber service on the subscriber's grant of permission to disclose information which, pursuant to federal law, cannot be disclosed without the subscriber's explicit consent.

#### SECTION EIGHTEEN: TECHNICAL STANDARDS

(A) Any cable system constructed within the Town shall meet or exceed technical standards consistent with this ordinance, the franchise agreement and the franchisees application. The system shall be capable of delivering all National Television Systems Committee (NTSC) color and monochrome standard signals and designed to provide picture quality of TACO Grade 2 or better with reasonable reliability but in no event less than required by the current FCC standards. All television signals transmitted on a cable system shall include any associated closed captioning information for the hearing impaired. Antennas, supporting structures and outside plant used in the system shall be designed to comply with the recommendations of the Electronic Industries Association on tower structures and outside plant.

(B) All construction, installation and maintenance shall comply with the National Electrical Safety Code, the National Electric Code, all state and

local regulations, and good and accepted industry practices.

(C) At the stages of construction specified in the franchise agreement, the franchisee shall perform, at its expense, proof of performance tests designed to demonstrate compliance with the requirements of this ordinance, the franchise agreement and FCC requirements. The franchisee shall provide the proof of performance test results promptly to the Commissioners.

(D) The Commissioners may require annual (but no less frequently than biannual) proof of performance tests on completed portions of the system, to be performed at the expense of the franchisee. The franchisee shall provide the test results promptly to the Commissioners.

(E) The franchisee shall advise the Commissioners when a proof of performance test is scheduled so that the Town may have an observer present.

(F) A franchisee shall not design, install or operate its facilities in a manner that will interfere with the signals of any broadcast station, the electrical system located in any building, the cable system of another franchisee, or individual or master antennas used for receiving television or other broadcast signals.

#### SECTION NINETEEN: ENFORCEMENT REMEDIES

(A) The Town has the right to apply any one or combination of the following remedies in the event a franchisee commits a material violation of any material provision of its franchise agreement:

(1) Impose liquidated damages in such amount, whether per day, incident, or other measure of violation, as provided in the franchise agreement. Payment of liquidated damages by the franchisee will not relieve the franchisee of its obligation to meet the franchise requirements.

(2) Revoke the franchise as provided for in Section 22.

(B) In determining which remedy or remedies are appropriate# the shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the determines are appropriate.

(C)In addition to or instead of any other remedy, the may seek legal or equitable relief from any court of competent jurisdiction.

(D)Notwithstanding anything to the contrary herein, the Town shall not apply any remedy in the event that the respective violation is attributable to an Act of God or other cause beyond the reasonable control of the franchisee.

#### SECTION TWENTY: RENEWAL OF FRANCHISE

(A)If a franchisee decides to initiate a formal franchise renewal process in accordance with Section 626(a)-(g) of the Cable Act, 47 U.S.C. Sec. 546(A)-(G), it shall notify the Commissioners within 30 to 36 months of the franchise expiration date. Upon such notification, or at the la own initiative, the shall commence the following process:

(1) The Commissioners shall review and evaluate the future cable-related community needs and interests and the franchisees past performance within one hundred twenty (120) days. The review and evaluation process shall include opportunity for public comment.

(2) Immediately upon completion of, the review and evaluation

process, the Commissioners shall notify the franchisee that it may file a renewal application. The notice shall specify the information to be included in the renewal application and the deadline for filing the application, which shall be no later than ninety (90) calendar days following the date of the notice. If the franchisee does not submit a renewal application by the specified date, it will be deemed not to be seeking renewal of its franchise.)

(3) Upon receipt of the renewal application, the Commissioners shall publish notice of its receipt and may schedule one or more public meetings or implement other procedures under which comments from the public on the application may be received.

(B) In considering a renewal application the Town shall consider whether:

(1) The cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

(2) The quality of the cable operator's service, including signal quality, response to customer complaint and billing practices (but without regard to the mix, quality or level of cable services or other services provided over the system) has been reasonable in light of community needs;

(3) The cable operator has the financial, legal and technical ability to provide the services, facilities and equipment set forth in its proposal; and

(4) The cable operator'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.

(C) The Commissioners shall hold at least one public hearing to consider the application. The Cable Television Advisory Committee may make recommendations to the Commissioners prior to its public hearing, a copy of which recommendations shall be made available to the franchisee in advance of the Commissioners public hearing.

Following the public hearing on the renewal application, the Commissioners shall either:

(1) Pass a Resolution agreeing to renew the franchise, subject to the negotiation of a franchise renewal agreement satisfactory to the Town and the franchisee, or

(2) Pass a Resolution that makes a preliminary assessment that the franchise should not be renewed.

(D) The Commissioners action under Subsection (C) above shall be taken within six (6) months of the date of the renewal application notice to the franchisee required in Subsection (2) above.

(E) If a preliminary assessment is made that a franchise should not be renewed, at the request of the franchises or on its own initiative, the shall commence in administrative proceeding in accordance with Section 626(c) of the Cable Act, 47 U.S.C. Section 546(c) and other applicable federal, state and local laws.

(F) The Commissioners shall initiate an administrative proceeding by issuing a hearing order which establishes the issues to be addressed in the hearing and the procedures to be followed, and shall conduct the hearing. Upon completion of the hearing, the Commissioners shall issue a recommended decision. Parties to the hearing and the public shall have 30 calendar days to comment on the recommended decision after its issuance.

(G) Based on the recommended decision, the comments and arguments presented, and other evidence of record, the Commissioners shall make a final

determination on whether to grant or deny the renewal application. The Commissioners shall issue a written decision setting forth the reasons for their decision.

(H) The provisions of subsections (A)-(G) above notwithstanding, a franchisee may submit a proposal for renewal of a franchise in accordance with 47 U.S.C. Sec. 546(H). The Town shall hold one or more public hearings or implement other procedures under which comments on the proposal may be received from the public. Following such public hearings or other procedures, the Commissioners shall determine whether the franchise should be renewed and the terms and conditions of any renewal.

(I) Once the Commissioners grant a renewal application, the Commissioners and the franchisee shall agree on a franchise agreement, pursuant to the procedures specified in section 8(g)-(H), before the renewal becomes effective.

(J) If renewal of a franchise is ultimately denied, the former franchisees may sell or otherwise transfer ownership of the system to any third person, subject to the Commissioners' approval of such person, pursuant to Section 21 hereof, which approval the Commissioners shall not unreasonably withhold or delay. Any such sale or other transfer shall be effected at fair market value (which for purposes of this section shall be the price that a willing buyer would pay to a willing seller for the system as a going concern, together with a new franchise substantially in the form of a renewal of the former franchisee's franchise, based on cable system valuations prevailing in the industry at the time). Subject to the provisions of Section 21, hereof, the County shall cooperate with the former franchisee in any such sale or other transfer. The Commissioners shall negotiate in good faith with any prospective purchaser for a new franchise agreement.

(K) If renewal of a franchise is denied and the former franchisee is unable to effect a transfer of ownership of the system within a reasonable time pursuant to Section 20(I), the may require the former franchisee to remove its facilities and equipment. If the former franchisee fails to do so within a reasonable period of time, the Commissioners may have the removal done at the former franchisee's and/or surety's expense; provided, that the former franchisee shall not have any obligation to remove its facilities and equipment where removal is impractical, such as with buried cable or internal wiring, which facilities and equipment may be disconnected and abandoned rather than removed.

#### SECTION TWENTY-ONE: TRANSFERS

Unless otherwise provided in the franchise agreement:

(A) A transfer of a franchise shall not occur without prior approval of the Town provided that the Town shall not unreasonably withhold or delay its approval.

(B) The proposed transferee shall submit to the Commissioners an application to transfer the franchise. An application to transfer a franchise shall meet the requirements of section Six and provide complete information on the proposed transaction, including details on the legal, character, financial, technical and other pertinent qualifications of the transferee, and on the potential impact of the transfer on subscriber rates. At minimum, the information required in Section 7(g)(1)-(4) shall be provided by the proposed transferee. The information required in Section 7(E)(S)-(10) shall also be provided whenever the proposed transferee expects material changes to occur in those areas.

(C) Final action on an application for transfer of a franchise shall be taken by the Commissioners.

(D) Approval by the Town of a transfer of a franchise does not constitute a waiver or release of any of the rights of the Town under this Ordinance or the franchise agreement.

(E) The Town may impose a grant fee to cover its costs in excess of the filing fee in considering an application for transfer of a franchise.

#### SECTION TWENTY-TWO: TERMINATION OR REVOCATION OF FRANCHISE

(A) A franchise may be revoked by the Commissioner for the franchisee's material failure to construct, operate or maintain the cable system as required by this Ordinance or the franchise agreement or for other material breach by the franchisee of any other material provision of this Ordinance or the franchise agreement in accordance with the procedures set forth herein. If within thirty (30) calendar days following written notice from the Commissioners to the franchisee that it is in material breach of this Ordinance or the franchise agreement, the franchisee has not taken corrective action or corrective action is not being actively and expeditiously pursued, the Commissioners acting on its own motion or upon the recommendation of the committee shall give written notice to the franchisee of its intent to consider revocation of the franchise, stating its reasons.

(B) The Commissioners shall initiate an administrative proceeding to investigate facts and make recommendations on possible revocation. Such a proceeding shall be commenced by the issuance of a hearing order which establishes the issues to be addressed in the hearing and the procedures to be followed, and the Commissioners shall appoint a presiding officer for the hearing. Upon completion of the hearing, the presiding officer shall issue a recommended decision. The franchisee and any members of the public shall have thirty (30) calendar days, or such other longer period of time as the hearing order may specify, to comment on the recommended decision after its issuance. Within thirty (30) days after receipt of any such comments, or such other period as the hearing order may specify, the Committee may submit recommendations to the Commissioners.

(C) Before final action can be taken, the Commissioners shall hold a public hearing, at which time the franchisee and members of the public shall be given an opportunity to be heard. Following the public hearing the Commissioners shall determine whether or not to revoke the franchise based on any recommended decision, the arguments presented at the hearing, any recommendations of the Committee and other evidence of record. Such proceeding shall be held in accordance with the provisions of Section 10(D) hereof. The Commissioners, determination shall be reflected in a written opinion setting forth the reasons for its decision.

(D) Any franchise may, at the option of the Town, be revoked one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a trustee to take over the business of the franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors or other action or proceeding, unless 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 complied, in all material respects, with the terms and conditions of this Ordinance and the franchise agreement and has executed an agreement, approved by the court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of the franchise.

(E) In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a franchisee, the equity may revoke the franchise by serving notice upon the franchisees and the successful bidder at the sale, in which event the franchise and all rights and privileges of the franchise will be revoked thirty (30) calendar days after serving such notice, unless:

(1) The Town has approved the transfer of the franchise to the successful bidder, which approval shall not be unreasonably withheld or delayed; and

(2) The successful bidder has reached an agreement with the Commissioners to assume and be bound by the terms and conditions of the franchise.

(F) If the Town revokes a franchise, or if for any other reason a franchisee abandons or terminates service to all or substantially all of its subscribers, the following procedures and rights shall apply:

(1) The Town may require the former franchisee to remove its facilities and equipment, provided that such franchisee shall not have any obligation to remove its facilities and equipment where removal is impractical, such as with buried cable or internal wiring, which facilities and equipment may be disconnected and abandoned rather than removed. If the former franchisee fails to do so within a reasonable period of time, the Town may have the removal done at the franchisees and/or surety's expense.

(2) If a franchise is revoked, the former franchisee may sell or otherwise transfer ownership of the system to any third person, subject to the Commissioners, approval of such third person pursuant to Section 21 hereof, which approval the Commissioners shall not unreasonably withhold or delay. Any such sale or other transfer shall be effected at fair market value (which for purposes of this section shall be the price that a willing buyer would pay to a willing seller for the system as a going concern, together with a new franchise substantially in the form of a renewal of the former franchisees franchise based on cable system valuations prevailing in the industry at the time). Subject to the provisions of Section Twenty-one hereof shall cooperate with the former franchisees in any such sale or other transfer. The Commissioners shall negotiate in good faith with any prospective purchaser for a new franchise agreement.

(3) If a cable system is abandoned by a franchisee, the Town may, among other legal remedies available sell, assign or transfer all or part of the assets of the system.

#### SECTION TWENTY-THREE: ARBITRATION

(A) Matters that are arbitratable under the provisions of a franchise agreement may be subjected to the arbitration procedures specified below.

(B) The arbitration procedure employed shall be consistent with the rules and procedures of the American Arbitration Association. The Town and the franchisee will each select a qualified arbitrator. The two persons selected shall select a third qualified arbitrator, and the three arbitrators will constitute a panel whose decision is binding on both parties. The fees of the first two arbitrators shall be paid by the party selecting such person, and the third person shall be compensated one-half by the and one-half by the franchisee. The general costs of the proceeding shall be shared equally by the Town and the franchisee.

#### SECTION TWENTY-FOUR: CONTINUITY OF SERVICE MANDATORY

(A) It is the right of all subscribers to receive all services offered

by the franchisee as long as their respective financial and other obligations to the franchisee are satisfied.

(B) In the event of a termination or transfer of the franchise for whatever reason, the franchisee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances. The franchisee shall cooperate with the Town to operate the system for a temporary period following termination or transfer as necessary to maintain continuity of service to all subscribers. The temporary period will not exceed six (6) months without the franchisee's written consent. During such period the cable system shall be operated under such terms and conditions as the Town and the franchisee may agree, or such other terms and conditions that will continue, to the extent possible, the same level of service to subscribers and will provide reasonable compensation to the cable operator.

(C) If the franchisee intentionally and permanently discontinues service to all of its subscribers without Town approval, the franchise may immediately be revoked and the Town is empowered to occupy and take possession of all facilities and property, real and personal, related to the cable system for the purpose of operating the system. The Town may undertake such operation itself or authorize operation by a contractor.

#### SECTION TWENTY-FIVE: UNLAWFUL SOLICITATION/ACCEPTANCE OF GIFTS

It is unlawful for any person to offer any gift;, favor, loan, service, promise, employment or anything of value to a official or employee, or for a official or employee to solicit or accept any such thing of value, for the purpose of influencing the grant, modification, renewal, transfer or any other matter affecting a franchise or the administration or enforcement of this Ordinance.

#### SECTION TWENTY-SIX: RATES

For the purpose of consumer information the franchisee shall provide a minimum thirty (30) days prior notice to the and the subscribers of any changes in rates and charges. At such time as federal law permits rate regulation of the franchisees cable system, the Town reserves the right, upon at least one hundred twenty (120) days prior written notice to the franchisee to implement procedures to impose such regulation.

#### SECTION TWENTY-SEVEN: ACCESS FACILITIES

(A) Applications for a franchise shall include proposals for the provision of public, educational and governmental access channels sufficient to most community needs during the term of the franchise an determined by the Town. A franchisee or applicant shall specify what grants, if any, it is willing to make for studio equipment and facilities to be used for local program production by all cable access users. Applicants are encouraged to include proposals for local origination programming by the franchisee.

(B) All access channel operators shall conform to the following minimum requirements:

(1) The Town may require in a franchise that a franchisee shall provide such access equipment as shall be necessary to meet the reasonably expected demand for such equipment. Access channels shall be carried on the franchisees lowest priced service offering.

(2) The franchisee shall have no control over the content of the programming carried on except as permitted by federal, state or local law.

The Town may require a franchisee, or select a non-profit corporation or other entity, to manage the access program and to establish reasonable rules for the use of access channels consistent with the requirements of this ordinance, the franchise agreement and the intended purpose of such channels. Such rules shall be subject to review and approval of the Commissioners following a public hearing.

(3) The use of any public Access channel shall be made available to any town resident on a nondiscriminatory basis at no charge for channel use. Where access studio facilities are located on a franchisee's premises the franchisee shall make its personnel available for consultation and assistance to access users at no charge, provided that such personnel can be spared from their normal duties.

(4) The use of any educational access channel shall be made available free of charge to the county school system or other qualified educational institutions for the transmission of local educational programming.

(5) The use of any local governmental access channels shall be made available free of charge to the Town for the transmission of government-related programming.

(6) The franchisee shall submit to the Town on an annual basis a plan for publicizing access programs and access use.

(C) At the request of a franchisee the County shall promulgate rules under which channel capacity dedicated to access use may be used by the franchisee when it is not being used for access purposes.

#### SECTION TWENTY-EIGHT: CABLE ADVISORY COMMITTEE

(A) The Town Council may appoint a Cable Television Advisory committee, or, may function as the Cable Television Advisory Committee. If a committee is appointed, it shall consist of five residents of Leonardtown. Members shall serve for overlapping terms of five years, or until their successors are appointed and confirmed. A vacancy on the committee shall be filled for the unexpired term of the departing member. The advisory committee shall advise the Town on all matters related to the use of cable communications operations, and its duties and functions shall be:

(1) To review complaint and system malfunction statistics and make any recommendations to the franchisee and Commissioners as it may find appropriate for the improvement of the system's technical operation;

(2) To make recommendations as to possible improvements in general categories of programming or service to subscribers, including matters dealing with control and operation of government, public and education access channels, and the overall operation of the system.

(3) To assist in any performance evaluation of a cable system;

and  
(4) To perform other duties as directed by the Commissioners.

(B) Members of the committee shall receive no compensation for their services except reasonable and necessary expenses as may be provided in the budget.

#### SECTION TWENTY-NINE: PERFORMANCE EVALUATION

(A) The Town may periodically evaluate the performance of a franchisee during the franchise term. A franchisee shall cooperate fully with these evaluations and supply the Town with the specific relevant information reasonable requested by the Town. If the Town desires to implement a survey