

Expedited Bill No. 40-06
 Concerning: Cable Communications-
Amendments
 Revised: 10-17-06 Draft No. 3
 Introduced: September 19, 2006
 Enacted: October 17, 2006
 Executive: October 25, 2006
 Effective: October 25, 2006
 Sunset Date: None
 Ch. 34, Laws of Mont. Co. 2006

**COUNTY COUNCIL
 FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President at the Request of the County Executive.

AN EXPEDITED ACT to:

- (1) assure that the cable communications law is consistent with federal and state law;
- (2) clarify the scope of the communications cable law; and
- (3) generally amend the cable communications law.

By amending

Montgomery County Code
 Chapter 8A, Cable Communications
 Sections 8A-2, 8A-3, ~~[[8A-7,]]~~ 8A-8, 8A-9, 8A-10, 8A-11, 8A-12, 8A-14,
 8A-15, 8A-18, 8A-20, 8A-22, 8A-23, 8A-24, 8A-25, 8A-26, 8A-27, 8A-28,
 8A-29, 8A-30, and 8A-31~~[[A]]~~

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 Section 1. Sections 8A-2, 8A-3, [[8A-7,] 8A-8, 8A-9, 8A-10, 8A-11, 8A-
2 12, 8A-14, 8A-15, 8A-18, 8A-20, 8A-22, 8A-23, 8A-24, 8A-25, 8A-26, 8A-27,
3 8A-28, 8A-29, 8A-30, and 8A-31[[A]] of the County Code are amended as
4 follows:

5 **8A-2. Intent and purposes.**

6 It is the intent of the County to promote the public health, safety and general
7 welfare by providing for the grant of one or more franchises for the construction
8 and operation of a cable system; to provide for the regulation of each cable system
9 by the County in accordance with federal and state law; to provide for the payment
10 of fees and other valuable consideration by a franchisee to the County for the
11 privilege of using the public rights-of-way for constructing and operating a cable
12 system; to promote the widespread availability of cable and other communications
13 service to County residents and businesses wherever economically feasible,
14 including to those who reside in multifamily buildings and in rural communities; to
15 encourage the development of cable as a means of communication between and
16 among the members of the public and public institutions; and to encourage the
17 provision of diverse information to the community over cable.

18 **8A-3. Definitions.**

19 In this Chapter, the following words and phrases have the meanings
20 indicated in this Section.

21 * * *

22 *Cable System* means a facility, consisting of a set of closed
23 transmission paths and associated signal generation, reception, and
24 control equipment that is [designated] designed to provide cable
25 service which includes video programming and which is provided to
26 multiple subscribers within the County. This term does not include:

- 27 (1) a facility that serves only to retransmit the television signals of
28 one or more television broadcast stations;
- 29 (2) [a facility that serves only subscribers in one or more multiple
30 unit dwellings under common ownership, control or
31 management, unless such facility uses any public right-of-way]
32 a facility that serves subscribers without using any public right-
33 of-way;
- 34 (3) a facility of a common carrier that is subject, in whole or in
35 part, to the provisions of Title II of the Communications Act of
36 1934, except that the facility will be considered a cable system
37 to the extent that it is used in the transmission of video
38 programming directly to subscribers, unless the extent of such
39 use is solely to provide interactive on-demand services; [or]
- 40 (4) an open video system that complies with federal law; or
41 [(4)] (5) any facilities of any electric utility used solely for operating
42 its electric utility systems.

43 * * *

44 *Complaint* means a complaint [concerning] related to the provision of
45 cable service [or any other product or service].

46 *Control of a franchisee or applicant* means the legal or practical
47 ability to [direct] exert actual working control over the affairs of the
48 franchisee or applicant either directly or indirectly, whether by
49 contractual agreement [or], majority ownership of an [economic]
50 interest, any lesser ownership interest, or in any other manner.

51 * * *

52 *Franchise agreement* means ~~[[a contract]]~~ an agreement entered into
53 in accordance with the provisions of this Chapter between the County

54 and a franchisee that sets forth the terms and conditions under which
55 the franchise will be exercised.

56 * * *

57 *Gross revenues* means all of a cable operator's revenues derived [by a
58 franchisee] from the operation of [its] the cable system to provide
59 cable services [in the County, including revenues derived from cable
60 service, home shopping channels, institutional services, rental or lease
61 of equipment, installation fees, or ancillary services].

62 [*Institutional services* means video, audio, data, and other
63 transmission services provided by a franchisee to institutional users on
64 an individual application, private channel basis, including two-way
65 video, audio, or digital signals among institutions, or from institutions
66 to residential subscribers.]

67 * * *

68 [*Other product or service* means any product or service that is not a
69 cable service but uses any facility or equipment constructed, installed,
70 maintained, operated, or occupying the public rights-of-way under a
71 franchise issued under this Chapter, notwithstanding how the service
72 or product is characterized or regulated under federal law. *Other*
73 *product or service* may include one-way or interactive video, audio,
74 data (including cable modem), and information services.]

75 * * *

76 *Subscriber* means [any person who legally receives any cable service
77 or other product or service provided by a franchisee, but does not
78 include persons who receive not more than two channels of non-
79 commercial closed circuit video service which is not made available
80 to the general public.] the County or any person who is lawfully

81 receiving, for any purpose or reason, any cable service [[via a cable
82 system]], whether or not a fee is paid for that service.

83 * * *

84 *Transfer* of a franchise means any transaction in which:

- 85 (1) an ownership or other interest in a franchisee is transferred,
86 directly or indirectly, from one person or group of persons to
87 another person or group of persons so that control of the
88 franchisee is transferred; or
- 89 (2) the rights held by the franchisee under a franchise agreement
90 are transferred or assigned to another person or group of
91 persons.
- 92 (3) The following transactions do not constitute a transfer of a
93 franchise:

94 (A) A transaction among or between affiliates if:

95 (i) the initial franchisee provides an unconditional
96 guarantee of performance by the new franchisee in
97 a form acceptable to the County before the
98 transaction closes;

99 (ii) the transferee agrees, in writing, before the
100 transaction closes, that it will abide by and accept
101 all terms of the franchise agreement and this
102 Chapter, and that it will assume the obligations,
103 liabilities, and responsibility for all acts and
104 omissions, known and unknown, of the previous
105 franchisee under the franchise agreement and this

106 Chapter for all purposes, including renewal;

107 (iii) the initial franchisee has no uncured defaults from
108 the time of the notice through the date of closing of
109 the transaction; and,

110 (iv) the initial franchisee has provided the County at
111 least 90 days notice and has responded completely
112 to all information requests from the County;

113 (B) A sale of ownership or other interest in an entity
114 controlling a franchisee, either directly or indirectly, if
115 the successor controlling entity commits in writing that it
116 will not take any action to impede the franchisee from
117 satisfying all obligations under the franchise agreement,
118 including but not limited to completing a system build-
119 out [[unless the sale occurs before the franchisee has
120 completed build-out of its cable system as promised in
121 the franchise agreement]];

122 (C) A transfer in trust, by mortgage, by other hypothecation,
123 or by assignment, of any right, title, or interest of a
124 franchisee in the franchise or cable system in order to
125 secure indebtedness.

126 *Transfer of interest* in a franchisee means the sale or transfer, directly
127 or indirectly, of an existing or newly created equity interest in the

128 franchisee that does not result in a transfer of control of the
129 franchisee.

130 The following transactions do not constitute a transfer of an interest if
131 the Executive or a designee finds that the franchisee [[responds]] has
132 responded completely to all information requests from the County:

133 (1) A transaction among or between affiliates;

134 (2) A sale of ownership, or other interest, in an entity controlling
135 the franchisee, either directly or indirectly; or,

136 (3) A transfer in trust, by mortgage, by other hypothecation, or by
137 assignment, of any right, title, or interest of the franchisee in the
138 franchise or cable system in order to secure indebtedness.

139 * * *

140 **8A-8. Application [for] to grant, [renewal, modification,] renew, modify, or**
141 **transfer [of] a franchise.**

142 * * *

143 (c) A person may apply for a new franchise in response to the County's
144 request for proposals or on an unsolicited basis. The County may
145 issue a request for proposals when the County receives an unsolicited
146 application or at any other time. If the County elects to issue a request
147 for proposals after receiving an unsolicited application, the applicant
148 may submit an amended application in response to the request for
149 proposals, may inform the County that its unsolicited application
150 should be considered as its response to the request for proposals, or
151 may withdraw its unsolicited application. The County may reject

152 [without further consideration] an application that is unresponsive to a
153 requirement of a request for proposals.

154 (d) An application for a new franchise must contain the following
155 information:

156 (1) Identification of the persons who own or control the applicant,
157 including:

158 * * *

159 [(8) A description of the services to be provided initially, including
160 all broadcast and non-broadcast signals to be carried and all
161 non-television services, and if services will be offered by tiers,
162 identification of the signals or services, or both, to be included
163 on each tier.]

164 [(9) The proposed rate structure, including charges for each service
165 tier, installation, converters, and other equipment or services.]

166 [(10)] (8) * * *

167 [(11)] (9) * * *

168 [(12)] (10) * * *

169 [(13)] (11) If an applicant proposes to construct a cable system which
170 would constitute an overbuild, the identification of the area
171 where the overbuild would occur[,] and the potential subscriber
172 density in the area to be served by competing cable systems[,
173 and other information necessary for the County to make its
174 determination under section 8A-9(e)].

175 [(14)] (12) * * *

176 [(15)](13) Any other information necessary to demonstrate
177 compliance with this Chapter[, and any other information that
178 the County requests from the applicant].

179 (e) An application to modify a franchise agreement must include the
180 following information:

181 * * *
182 (4) Any other information necessary for the County to decide
183 whether [to approve the modification] the modification
184 complies with County law.

185 * * *
186 (i) Within 10 business days after receiving an application for a new
187 franchise for an overbuild, the County Executive must [decide
188 whether to accept or reject the application for filing] determine
189 whether the application is complete under subsection (d). If the
190 application is complete, the Executive must accept it for filing. If the
191 application is not complete, the Executive must specify the additional
192 information required under subsection (d) before the application can
193 be accepted for filing.

194 (1) If the Executive rejects the application for filing, the [Executive
195 must specify the additional information required to accept the
196 application for filing. The] applicant may resubmit or
197 supplement the application with the additional information, and
198 the Executive must reconsider, within the 10-day deadline
199 starting on the date of resubmission, whether the application is
200 [acceptable for filing] complete under subsection (d).

201 * * *
202 [This subsection] Acceptance of an application as complete for filing
203 does not limit the Executive's authority to request additional
204 information [later] related to the criteria in Section 8A-9(e), or to
205 recommend, [based on any grounds] after full review of the

206 application, that the Council deny the application based on those
207 criteria.

208 * * *

209 **8A-9. Grant of Franchise.**

210 * * *

211 (e) In evaluating an application for a new franchise, the County must
212 consider:

213 * * *

214 (3) the nature of the proposed facilities[, and equipment[, and
215 services];

216 * * *

217 (k) (1) When the Executive submits a proposed franchise agreement to
218 the Council for approval, the Council may, within the
219 applicable time provided in Section [8A-29(d)] 8A-28(d):

220 * * *

221 (B) grant the franchise with conditions [, which may modify
222 or override any provision of the proposed franchise
223 agreement] that the Council finds are necessary to assure
224 that the franchise complies with County law;

225 * * *

226 (2) If the Executive [proposed] proposes to deny the franchise
227 application or cannot reach agreement with the applicant on a
228 proposed franchise agreement within the time specified in
229 subsection (h), the Executive immediately must recommend to
230 the Council that the Council deny the application and explain
231 the reasons for the recommendation. The Council may, within
232 the applicable time provided in Section [8A-29(d)] 8A-28(d):

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* * *

(C) grant the franchise with any conditions that the Council determines are necessary [to protect and promote the public interest] to assure that the franchise complies with County law.

(I) Every franchise grant is subject to a franchise acceptance fee in an amount [that does] not to exceed the County's costs to consider the application, less the amount of the filing fee. The County's costs include time spent by County employees and officials to review, negotiate, and approve the franchise agreement, and fees paid to attorneys, experts, and other consultants. Within 30 days after the Council grants a franchise under this Chapter, the County must notify the approved applicant of the amount of the franchise acceptance fee and how the County calculated the amount. If the approved applicant does not pay the franchise acceptance fee within 30 days after the County notifies the applicant, the grant is void. The franchisee must not act under the franchise until the franchisee complies with the bond, insurance, and other prerequisites of the franchise agreement.

8A-10. Insurance; bond; indemnification.

(a) A franchisee must have the following insurance coverage in force at all times during the franchise period:

* * *

All insurance policies must be with sureties qualified to do business in Maryland and in a form approved as to legality by the County Attorney. The County may accept a self-insurance plan that assures comparable protection in lieu of these insurance policies.

* * *

260 **8A-11. Minimum facilities and services.**

261 (a) The following minimum requirements for facilities and services apply
262 to all franchises:

263 * * *

264 (2) A cable system must provide at least 6 access channels, which
265 [will] must be individually designated by the County for public,
266 educational or governmental access. The County may require
267 the franchisee to contribute to capital costs for access studios
268 and related equipment and facilities, as permitted by federal
269 law.

270 * * *

271 (4) Service to all public buildings without charge may be [required]
272 [without charge as set forth] negotiated in the franchise
273 agreement.

274 * * *

275 (b) The County may [require that a] negotiate franchise [exceed] terms
276 exceeding the minimum requirements [set forth] in subsection (a).

277 * * *

278 **8A-12. Franchise fee.**

279 (a) A franchisee, in consideration of the privilege granted under a
280 franchise for the use of public rights-of-way to construct and operate a
281 cable system, must pay the County 5 percent of the franchisee's gross
282 revenues from the operation of its cable system to provide cable
283 service [within] in its franchise area during the period of its franchise.
284 A franchisee must pay the franchise fee due to the County for the
285 preceding quarter within 30 days [of] after the end of that quarter.

286 * * *

287 (d) A franchisee must file within 3 months [of] after the end of its fiscal
288 year the franchisee's annual financial statements for the preceding
289 year ~~[[either]]~~ certified by an authorized officer of the franchisee or an
290 affiliate ~~[[or]]~~ and audited by a certified public accountant. The
291 franchisee [will] must bear the cost of the preparation of all financial
292 statements.

293 (e) The County may inspect and audit any books and records, and
294 recompute any amounts determined to be payable under the franchise.
295 However any audit to recompute franchise fees must take place within
296 [12] 36 months [following the close] after the end of the franchisee's
297 fiscal year. The franchisee must bear the cost of the audit [will be
298 borne by the franchisee] if the annual payment to the County for the
299 preceding year is increased by more than 5 percent as a result of the
300 audit.

301 * * *

302 **8A-14. Customer service requirements.**

303 * * *

304 (d) A franchisee must provide each subscriber at the time cable service is
305 installed written instructions for placing a service call, filing a
306 complaint, or requesting an adjustment. These instructions must
307 include the name, address, and telephone number of the County office
308 designated to handle subscriber complaints. Each subscriber must
309 also be provided with a schedule of the subscriber's rates and charges,
310 a copy of the service contract, delinquent subscriber disconnect and
311 reconnect procedures, and a description of any other relevant
312 franchisee subscriber policies. The franchisee must provide to the
313 County [must approve] a copy of all forms describing customer

314 service policies and procedures [before] when they are distributed to
315 subscribers, and if possible, should provide these forms to the County
316 before they are distributed. All forms must be conspicuously posted
317 in the franchisee's local business office.

318 * * *

319 **8A-15. Service discrimination and exclusive programming agreements**
320 **prohibited.**

321 (a) Unless approved by the County and to the extent consistent with
322 federal law, a franchisee must not, in its cable service rates or charges,
323 or in the availability of [the] its cable services [or facilities of its
324 system], or in any other respect, grant undue preferences or
325 advantages to any subscriber or potential subscriber, or to any user or
326 potential user, nor subject any of these persons to any undue prejudice
327 or any disadvantage. [A franchisee must] Unless prohibited by
328 applicable federal law, the County may require the franchisee to have
329 a uniform rate structure for its cable services throughout the franchise
330 area. A franchisee must not deny, delay, or otherwise burden service
331 or discriminate against subscribers or users on the basis of age, race,
332 religion, color, sex, sexual orientation, handicap, national origin, or
333 marital status, except for discounts for the elderly and handicapped.

334 * * *

335 **8A-18. Technical standards.**

336 (a) Any cable system constructed [within] in the County must meet or
337 exceed the technical standards [in this Chapter, the franchise agreement,
338 and the franchisee's application] under applicable law. [All video
339 channels in a cable system must be capable of delivering National
340 Television Systems Committee (NTSC) color and monochrome

341 standard signals and designed to provide picture quality of TASO grade
342 2 or better and superior reliability. For purposes of this Chapter, a
343 TASO grade 2 picture is one with barely visible interference that does
344 not detract from viewing.] All television signals transmitted on a cable
345 system must include any closed captioning information for the hearing
346 impaired. Antennas, supporting structures, and outside plant used in the
347 cable system must comply with the recommendations of the Electronics
348 Industries Association and applicable federal and local regulations on
349 tower structures and outside plant.

350 * * *

351 (c) The franchisee must perform at its expense proof of performance tests
352 designed to demonstrate compliance with the requirements of [this
353 Chapter, the franchise agreement, the FCC requirements] applicable law
354 at the stages of construction specified in the franchise agreement. The
355 franchisee must provide the proof of performance test results promptly
356 to the County.

357 * * *

358 [(f) A franchisee must not design, install or operate its facilities in a manner
359 that will interfere with the signals of any broadcast station, the electrical
360 system located in any building, the cable system of another franchisee,
361 or individual or master antennas used for receiving television or other
362 broadcast signals.]

363 * * *

364 **8A-20. Enforcement Remedies.**

365 (a) If a franchisee violates any provision of the law or its franchise
366 agreement, the County may take one or more of the following actions:

367 (1) impose liquidated damages in the amount, whether per day,
368 incident, or other measure of violation, as provided in the
369 franchise agreement. Payment of liquidated damages by the
370 franchisee will not relieve the franchisee of its obligation to
371 meet the franchise requirements;

372 [(2) reduce the duration of the franchise on any basis the County
373 determines is reasonable and affords the franchisee reasonable
374 due process;]

375 [3] (2) require the franchisee to pay its subscribers or classes of
376 subscribers in an amount and on a basis the County determines
377 is necessary to cure the breach or default, or equitably
378 compensate for the violation; or

379 [4] (3) revoke the franchise under this Chapter.

380 * * *

381 **8A-22. Renewal of franchise.**

382 * * *

383 (h) If the County denies the renewal of a franchise, and the franchisee does
384 not have other authority to maintain and operate its facilities in the
385 County's public rights-of-way, the County may, on the recommendation
386 of the County Executive and with the approval of the Council, acquire
387 ownership of the cable system or transfer ownership of the system to
388 another person, subject to applicable law. Any acquisition or transfer
389 under this subsection must be at fair market value, determined on the
390 basis of the cable system valued as a going concern but with no value
391 allocated to the franchise itself, subject to applicable law.

392 (i) If the County does not renew a franchise and the franchisee does not
393 have other authority to maintain and operate its facilities in the County's
394 public rights-of-way, and the County does not buy the cable system, the
395 County may require the former franchisee to remove its facilities and
396 equipment, subject to applicable law. If the former franchisee fails to
397 do so within a reasonable period of time, the County may remove the
398 facilities and equipment at the former franchisee's or the surety's
399 expense or at the expense of both, subject to applicable law.

400 **8A-23. Transfers.**

401 * * *

402 (c) An application for transfer of an interest in a franchisee must describe
403 the proposed transaction in detail and identify the interest to be
404 transferred, the transferor, and transferee. If the proposed transferee is
405 not a current equity owner of the franchisee, the application must
406 include the information required by [section] Sections 8A-8(e)(1)
407 [through] and (2).

408 (d) An application for a transfer must provide all documents and
409 information related to the transaction and to the financial position of
410 the cable system before and after the proposed transaction.

411 [(d)] (e) A public hearing must be held on an application for transfer of an
412 interest in a franchisee of 25 percent or more.

413 [(e)] (f) Before approving transfer of a franchise, the County must consider
414 the legal, financial, technical and character qualifications of the
415 transferee to operate the system, and whether operation by the

416 proposed franchisee will adversely affect the cable services to
 417 subscribers or otherwise be contrary to the public interest. Before
 418 approving a transfer of an interest in a franchisee, the County must
 419 consider whether the transferee's interest will have any effect on the
 420 franchisee's operation of the system, the franchisee's qualifications, or
 421 the public interest.

422 [(f)] (g) The Council must take final action on an application for transfer of a
 423 franchise after receiving recommendation from the County Executive.
 424 The County Executive may take final action on an application for
 425 transfer of an interest.

426 [(g)] (h) Approval by the County of a transfer of a franchise does not
 427 constitute a waiver or release of any of the rights of the County under
 428 this Chapter or the franchise agreement, arising before or after the date
 429 of the transfer. A transfer does not waive or release any non-
 430 performance that occurred before the transfer. All previous non-
 431 performance becomes the responsibility of the new franchisee unless
 432 the County otherwise agrees.

433 [(h)] (i) The County may impose a grant fee to cover its costs in excess of
 434 the filing fee in considering an application for transfer of a franchise,
 435 except for the transfer of any franchise granted [prior to] before
 436 January 1, 1988.

437 (j) Any entity guaranteeing the performance of a franchisee may apply to
 438 the County for release of the guarantee if:

439 (1) The franchisee has, for 5 consecutive years, complied with the
440 franchise agreement and this Chapter; and

441 (2) A guarantor which controls the franchise promises to not
442 interfere with the franchise's performance of its obligations
443 under the franchise agreement and this Chapter.

444 * * *

445 **8A-24. Revocation or termination of franchise.**

446 * * *

447 [(d) The County may revoke any franchise 120 days after an assignment
448 for the benefit of creditors or the appointment of a receiver or trustee
449 to take over the business of the franchisee, whether in a receivership,
450 reorganization, bankruptcy assignment for the benefit of creditors, or
451 other action or proceeding. The County must hold a public hearing
452 before revoking a franchise under this subsection. The County may
453 not revoke a franchise under this subsection if, during the 120 day
454 period:

455 (1) the assignment, receivership, or trusteeship is vacated; or

456 (2) the assignee, receiver, or trustee has fully complied with the
457 terms and conditions of this Chapter and the franchise
458 agreement and has executed an agreement, approved by the
459 court having jurisdiction, assuming and agreeing to be bound
460 by the terms, and conditions of the franchise.]

461 [(e) The County may revoke the franchise if there is a foreclosure or other
462 judicial sale of any of the facilities, equipment or property of a
463 franchisee, by serving notice on the franchisee and the successful

464 bidder at the sale. The franchise and all rights and privileges of the
 465 franchise will be revoked 30 days after the County serves notice under
 466 this subsection unless:

- 467 (1) the County has approved a transfer of the franchise; and
- 468 (2) the successful bidder has agreed with the County to assume and
 469 be bound by the terms and conditions of the franchise.]

470 [(f)] (d) If the County revokes a franchise, or if for any other reason a
 471 franchisee abandons, terminates, or fails to operate or maintain service
 472 to its subscribers, and the franchisee does not have other authority to
 473 maintain and operate its facilities in the County's public rights-of-way,
 474 the County may, subject to applicable law:

- 475 (1) require the former franchisee to remove its facilities and
 476 equipment at the franchisee's or surety's expense, or at the
 477 expense of both, after determining that the cable system cannot
 478 be economically maintained and operated;
- 479 (2) acquire ownership of the cable system at an equitable price on
 480 the recommendation of the County Executive and with the
 481 approval of the Council;
- 482 (3) after a public hearing, sell, assign, or transfer all or part of the
 483 assets of a cable system abandoned by a franchisee for the best
 484 price offer obtainable. However, the legal, character, financial,
 485 technical, and other qualifications of the purchaser must meet
 486 County approval. The County must pay any consideration
 487 received in excess of the County's costs, and after other
 488 creditors and subscriber claims have been satisfied, to the
 489 original franchisee.

490 **[8A-25. County purchase of cable system; eminent domain.**

491 (a) The County may, upon the recommendation of the County Executive
 492 and with the approval of the Council, acquire ownership of and
 493 operate a cable system. Any acquisition, construction, or operation of
 494 a cable system by the County is not subject to the requirements of
 495 Chapter 11B.

496 (b) If the County exercises its right to purchase a cable system under this
 497 Chapter or a franchise agreement, and the County and franchisee are
 498 unable to agree on a price for the purchase of the system, the price
 499 may be determined by arbitration. Upon written notice by either the
 500 County or the franchisee to the other, the dispute must immediately be
 501 put to arbitration under the rules and procedures of the American
 502 Arbitration Association. The County and the franchisee will each
 503 select a qualified arbitrator. The 2 persons selected must select a third
 504 qualified arbitrator, and the 3 arbitrators constitute a panel whose
 505 decision is binding on both parties. The fees of the first 2 arbitrators
 506 must be paid by the party selecting that person. The County and the
 507 franchisee must each pay one-half of the compensation of the third
 508 person. The general costs of the proceeding must be shared equally
 509 by the County and the franchisee.

510 (c) Notwithstanding any other provisions of this Chapter, the County and
 511 each participating municipality reserve the right to exercise the power
 512 of eminent domain to acquire the property of any cable system of any
 513 franchisee and to purchase, own, or operate a system so acquired
 514 consistent with state and federal law.]

515 **[8A-26] 8A-25. Continuity of service mandatory.**

516 (a) [It is the right of all] All subscribers have the right to receive all
517 available cable services from the franchisee if their financial and other
518 obligations to the franchisee are satisfied.

519 (b) If the franchise is terminated or transferred, the franchisee must do
520 everything in its power to ensure that all subscribers receive
521 continuous, uninterrupted cable service. The franchisee must
522 cooperate with the County to operate the system for a transition period
523 [following] after termination or transfer as necessary to maintain
524 continuity of cable service to all subscribers. The transition period
525 must not exceed 12 months without the franchisee's written consent.
526 During the transition period, the cable system must be operated under
527 terms and conditions to which the County and the franchisee agree, or
528 on such other terms and conditions that will continue, to the extent
529 possible, the same level of cable service to subscribers and that will
530 provide reasonable compensation to the cable operator.

531 (c) If the franchisee discontinues service to its subscribers without
532 County approval, the franchise may be terminated immediately, and,
533 if the franchisee does not have other authority to maintain and operate
534 its facilities in the County's public rights-of-way, the County may
535 take possession of all facilities and property, real and personal, related
536 to the cable system for the purpose of operating the system. The
537 County may undertake such operation itself or authorize operation by
538 a contractor.

539 [8A-27] 8A-26. **Unlawful solicitation or acceptance of gifts.**

540 * * *

541 [8A-28] 8A-27. **Use of cable funds; Cable Communications Plan.**

542 * * *

543 **[8A-29] 8A-28. Administration.**

544 * * *

545 (b) The County Executive must administer and enforce this Chapter and
546 any franchise agreement, including:

547 * * *

548 (2) except as provided in Section [8A-31A] 8A-31, establishing
549 procedures for conducting public hearings and other proceedings
550 required by this Chapter or a franchise agreement;

551 (3) except as provided in Section [8A-31A] 8A-31, conducting
552 public hearings, including designating hearing officers;

553 * * *

554 (d) Any action by the County Executive that requires approval of the
555 Council is deemed approved by the Council unless disapproved within
556 60 days [from the date] after the Council receives the County
557 Executive's recommended action. The 60-day period does not include
558 any week when the Council does not meet in regular session. The
559 Council by resolution may extend the deadline for action [. The
560 Council may extend the deadline for action on an application for a
561 new franchise for an overbuild] for no more than one additional 60-
562 day period.

563 * * *

564 **[8A-30] 8A-29. Municipal participation.**

565 * * *

566 **[8A-31] 8A-30. [Telecommunications] Cable and Communications**
567 **Advisory Committee.**

568 * * *

569 **[8A- 31A] 8A-31. Cable Compliance Commission.**

570 (a) Established. The Cable Compliance Commission is established to
571 adjudicate subscriber complaints involving customer cable service [or
572 any other product or service] and other [[cable and internet access
573 related]] consumer protection claims [[within the County's
574 jurisdiction as authorized by regulation]] that arise under this Chapter,
575 any regulation adopted or franchise agreement approved under this
576 Chapter, or Section 11-4A.

577 * * *

578 **Sec. 2. Expedited Effective Date.** The Council declares that this
579 legislation is necessary for the immediate protection of the public interest. This Act
580 takes effect on the date when it becomes law.

581 **Sec. 3. Repeal of sunset.** 2002 L.M.C., Chapter 31, Section 4, as amended
582 by 2005 L.M.C., Chapter 14, Section 2, is repealed as follows:


583 **[Sec. 4. Expiration date.**

584 This Act expires on December 31, 2008.]

585 *Approved:*

586  10-18-06
George L. Leventhal, President, County Council Date

587 *Approved:*

588
589  10-25-2005
Douglas M. Duncan, County Executive Date

590 *This is a correct copy of Council action.*

591

592 *Linda M. Lauer*
Linda M. Lauer, Clerk of the Council

10/30/06
Date