

AN ACT

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Columbia
Official Code*

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Cable Television Communications Act of 1981 to reflect changes in cable television technology, standards, and federal law and to encourage more competition in the cable television industry in the District.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Cable Television Reform Amendment Act of 2002”.

Sec. 2. The Cable Television Communications Act of 1981, effective August 21, 1982 (D.C. Law 4-142; D.C. Official Code 34-1201 *et seq.*) is amended as follows:

New
Subchapter I,
Chapter 12,
Title 34

- (a) The existing text is designated as title I.
- (b) A new title II is added to read as follows:

“TITLE II CABLE TELEVISION REFORM ACT OF 2002

New
Subchapter
II,
Chapter 12,
Title 34

“SUBTITLE I. GENERAL PROVISIONS.

- “Sec. 101. Short title.
- “Sec. 102. Findings and purposes.
- “Sec. 103. Definitions.
- “Sec. 104. Applicability to open video systems.

“SUBTITLE II. OFFICE OF CABLE TELEVISION AND TELECOMMUNICATIONS.

- “Sec. 201. Establishment of the Office of Cable Television and Telecommunications; executive director; general counsel.
- “Sec. 202. Powers and responsibilities of the Office of Cable Television and Telecommunications.
- “Sec. 203. Cable Television Special Account.

“SUBTITLE III. OTHER CABLE ENTITIES.

- “Sec. 301. Cable Television Advisory Committee.
- “Sec. 302. Public Access Corporation.
- “Sec. 303. Public Service Commission regulation of the use of existing utility

companies' rights-of way.

“SUBTITLE IV. FRANCHISING AND RE-FRANCHISING PROCESS.

- “Sec. 401. Franchise and franchise agreement required.
- “Sec. 402. Application for an initial franchise.
- “Sec. 403. Evaluation of an initial franchise application.
- “Sec. 404. Negotiation of an initial franchise agreement.
- “Sec. 405. Minimum contents of franchise agreement.
- “Sec. 406. Procedure for Council review and approval of initial franchise.
- “Sec. 407. Franchise renewal; commencement under federal cable act.
- “Sec. 408. Franchise review prior to expiration.

“SUBTITLE V. TRANSFER OR REVOCATION OF FRANCHISE.

- “Sec. 501. Approval required for transfer of franchise to a person other than the District.
- “Sec. 502. Procedure for transfer of franchise to a person other than the District.
- “Sec. 503. Mandatory transfer of franchise to the District; general requirement.
- “Sec. 504. Revocation of franchise; mandatory transfer to the District.
- “Sec. 505. Transfer or purchase of franchise after denial of renewal.
- “Sec. 506. Cable operator as trustee.
- “Sec. 507. Arbitration.

“SUBTITLE VI. REQUIRED PAYMENTS; INSURANCE AND INDEMNIFICATION.

- “Sec. 601. Franchise fee.
- “Sec. 602. Security fund.
- “Sec. 603. Indemnification of the District.
- “Sec. 604. Insurance.
- “Sec. 605. Performance bond.

“SUBTITLE VII. CONSTRUCTION AND OPERATION OF THE CABLE SYSTEM.

- “Sec. 701. Jurisdictional parity.
- “Sec. 702. Operation and construction of system; general requirements.
- “Sec. 703. Construction schedule.
- “Sec. 704. Construction of facility.
- “Sec. 705. Construction notice to the public.
- “Sec. 706. Use of cable system by the District during emergencies and disasters.

“SUBTITLE VIII. PUBLIC, EDUCATIONAL, AND GOVERNMENT CHANNELS.

- “Sec. 801. PEG channels; carriage requirements.
- “Sec. 802. Funding for PEG channels.
- “Sec. 803. Allocation of PEG channels.

“SUBTITLE IX. REGULATION, OVERSIGHT, AND INSPECTION OF CABLE SYSTEM AND RECORDS.

- “Sec. 901. Right to inspection.
- “Sec. 902. Test and performance monitoring.

- “Sec. 903. Periodic evaluations; performance hearings.
- “Sec. 904. Provision of information; retention of records.
- “Sec. 905. Inspection of records.
- “Sec. 906. Submission of correspondence by cable operator.
- “Sec. 907. Rate and service regulation.
- “Sec. 908. Subscriber fees.
- “Sec. 909. Reports.
- “SUBTITLE X. CONSUMER PROTECTION.
 - “Sec. 1001. Consumer protection.
 - “Sec. 1002. Protection of privacy.
- “SUBTITLE XI. COMPETITION AND CUSTOMER CHOICE.
 - “Sec. 1101. Landlord-tenant relationship.
- “SUBTITLE XII. EMPLOYMENT AND NON-DISCRIMINATION.
 - “Sec. 1201. Prohibition of discrimination.
 - “Sec. 1202. Affirmative action.
 - “Sec. 1203. Employment of District residents.
- “SUBTITLE XIII. COMPLIANCE.
 - “Sec. 1301. Compliance.
 - “Sec. 1302. Specific performance.
 - “Sec. 1303. Willful or repeated violations.
- “SUBTITLE XIV. MISCELLANEOUS PROVISIONS.
 - “Sec. 1401. Obscenity.
 - “Sec. 1402. Cable theft.
 - “Sec. 1403. Rights reserved to District.
 - “Sec. 1404. Rules.

New
Part A,
Subchapter
II,
Chapter 12,
Title 34

- “SUBTITLE I. GENERAL PROVISIONS.
 - “Sec. 101. Short title.
 - “This title may be cited as the Cable Television Reform Act of 2002”.
 - “Sec. 102. Findings and purposes.
 - “(a) The Council of the District of Columbia finds that:
 - “(1) The rates, services, and operation of cable services and systems in the District affect the public interest;
 - “(2) Further development of cable television may result in greater benefits for District residents;
 - “(3) Cable television and cable technology play an essential role in the District’s basic infrastructure;
 - “(4) Cable systems occupy and extensively use scarce and valuable public rights-of-way in a manner reserved primarily for those who provide essential service to the public;

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“(5) Cable systems have the capacity to provide, in addition to entertainment and information services to District residents, a variety of broadband interactive communications services to individuals, the District government, and other institutions; and

“(6) It is, and should be, the policy of the District of Columbia to provide fair regulation of cable service providers in the public interest.

“(b) The purposes of this title are:

“(1) To ensure that any authority granted to provide cable service is exercised in the public interest;

“(2) To establish the procedures for granting, renewing, transferring, and revoking authority to provide cable services;

“(3) To establish baseline standards for the operation of cable service providers in the District;

“(4) To establish a framework for the ongoing regulation of cable service providers and for the promulgation of rules and regulations governing the provision of cable service;

“(5) To encourage the optimum development of the economic, educational, and community service potentials of cable services and cable systems;

“(6) To promote just and reasonable rates and charges for cable services without discrimination, undue preferences or advantages, or unfair or destructive competitive practices;

“(7) To promote harmonious relationships between cable operators and their customers;

“(8) To create and maintain an economic and regulatory environment that promotes competition in the cable television industry in the District; and

“(9) To attract the deployment and maintenance of advanced cable services in the District.

“Sec. 103. Definitions.

“For the purposes of this title, the term:

“(1) “Advisory Committee” means the Cable Television Advisory Committee established by section 301.

“(2) “Affiliate” means, when used in relation to any person, another person who owns or controls, or is owned or controlled by, or is under common ownership or control with such person.

“(3) “Basic service” means the lowest tier of cable service that includes the retransmission of local broadcast signals.

“(4) “Cable service” means:

“(A) The one-way transmission to subscribers of video programming or other programming service; and

“(B) The subscriber interaction, if any, which is required for the selection or use of video programming or other programming service.

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“(5) “Cable facility” means antennae, transmitters, poles, wires, cables, conduits, amplifiers, instruments, and any other equipment used to provide cable service in the District, including any appliances used in connection with, or appurtenant to, any item listed in this paragraph.

“(6) “Cable operator” means a person or group of persons:

“(A) Who provides cable service over a cable system or over an open video system and directly or through one or more affiliates owns a significant interest in such cable system or open video system; or

“(B) Who controls or is responsible for, through any arrangement, the management and operation of a cable system or open video system.

“(7) “Cable system” means the cable facilities, including the set of closed transmission paths and associated signal generation, reception, and control equipment, that are used to provide cable service to multiple subscribers within the District. The term cable system shall not include:

“(A) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

“(B) A facility that serves subscribers without using any public rights-of-way;

“(C) A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, approved June 19, 1934 (48 Stat. 1070; 47 U.S.C. § 201 *et seq.*) (“Communications Act of 1934”) provided, that such a facility shall be considered a cable system to the extent it is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

“(D) An open video system that is certified by the FCC pursuant to section 653 of the federal cable act (47 U.S.C. § 573); provided, that the term cable system shall be construed to include an open video system under the circumstances set forth in section 104; or

“(E) A facility of any electric utility used solely for operating its electric utility systems.

“(8) “Control” means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments, or negative control. A rebuttable presumption of the existence of control shall arise from the beneficial ownership, directly or indirectly, by a person, or group of persons acting in concert, of more than 20% of a person.

“(9) “Converter” means an electronic device that may serve as an interface between a cable signal transmission and a subscriber’s television receiver or other terminal equipment, and which may perform a variety of functions, including signal security, descrambling, electronic polling, frequency conversion, and channel selection.

“(10) “Corporation Counsel” means the District of Columbia Corporation Counsel.

“(11) “District” means the government of the District of Columbia or the geographic location of the District of Columbia, as applicable.

“(12) “Educational channel” means a specifically designated channel on a cable system set aside for use by a public or private school, scientific or educational institution, or consortium of schools or institutions.

“(13) “Executive Director” means the Director of the Office of Cable Television and Telecommunications.

“(14) “Fair market value” means the price that a willing buyer would pay to a willing seller for a cable system as a going concern in an arm’s-length transaction, but with no value allocated to the franchise itself.

“(15) “Federal cable act” means the Cable Communications Policy Act of 1984, approved October 30, 1984 (98 Stat. 2779; 47 U.S.C. §§ 521-573).

“(16) “FCC” means the Federal Communications Commission or its successor agency.

“(17) “Franchise” means an authorization, or renewal of an authorization, issued by the Council, to construct or operate a cable system.

“(18) “Franchise agreement” means a contract entered into pursuant to this act, between the District and a cable operator that sets forth, subject to this act and other laws, the terms and conditions under which a franchise shall or may be exercised.

“(19) “Gross revenues” means all revenues received by a cable operator, or an affiliate of a cable operator, before payment of expenses and other costs, from the operation or use of its cable system or open video system, including revenues derived from cable services including cable modem service, interactive services, the sale or lease of subscriber equipment, installation and other service fees, the sale of advertising time (and related services), earnings from home shopping channels, and any item defined as gross revenue in a franchise agreement.

“(20) “Government channel” means a specifically designated channel on a cable system set aside for use by the District government.

“(21) “Installation” means the connection of cable service to a subscriber’s television receiver or other terminal equipment.

“(22) “Institutional network ” or “I-Net” means a one-way and two-way network with upstream and downstream capacity, and including dedicated, high speed data, video, television, audio communications and telephony facilities, designed and constructed to connect District government buildings and facilities, and other buildings and facilities designated or authorized by the District.

“(23) “Office” means the Office of Cable Television and Telecommunications established by section 201.

“(24) “Open video system” means the cable facilities, including the set of closed

transmission paths and associated signal generation, reception, and control equipment, that are designed to provide cable service to multiple subscribers within the District, and which the FCC, in accordance with section 653 of the federal cable act (47 U.S.C. § 573), has certified as compliant with Title VI of the federal cable act and its rules.

“(25) “Other programming service” means a service other than cable service that a cable operator makes available to all subscribers generally.

“(26) “PEG channels” means channel capacity designated for public access channels, educational channels, and government channels, and the facilities and equipment for the use of the channels.

“(27) “Person” means an individual, corporation, partnership, association, joint-stock company, trust, or any other legal entity, excluding the government of the District of Columbia and its agencies.

“(28) “Public access channel” means a channel on a cable system that is reserved for noncommercial use by members of the public on a nondiscriminatory basis.

“(29) “Public rights-of-way” means the surface, the airspace above the surface, and the area below the surface of any street, road, avenue, highway, parkway, concourse, boulevard, park, public space, bridge, viaduct, tunnel, or any other property to which the District has title, easement, or jurisdiction.

“(30) “Subscriber” means a person who:

“(A) Lawfully receives cable service provided by a cable operator by means of or in connection with its cable system or open video system, whether or not a fee is paid for such cable service; and

“(B) Does not further distribute the cable service.

“(31) “Video programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

“Sec. 104. Applicability to open video systems.

“(a) Except as otherwise provided in this title, this title shall apply to an open video system to the extent permitted by federal law. In applying the provisions of this title to an open video system, the term “cable system” shall be construed to include an open video system.

“(b) An open video system operator shall not operate in the District without first:

“(1) Receiving a franchise from the Council; and

“(2) Entering into:

“(A) A franchise agreement pursuant to this act; or

“(B) An open video system agreement; provided, that the open video system agreement shall contain the minimum requirements set forth in section 405; provided further, that the open video system agreement shall be negotiated with the Office and transmitted to the Council for approval by act.

“(c) In lieu of the franchise fee required by section 601, the operator of an open video system shall pay to the District a fee of 5% of the gross revenues of the operator.

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“(d) Any person who provides cable service over the open video system of another person and who assesses charges to subscribers that are not received by the open video system operator shall pay a fee to the District in an amount equal to 5% of the person’s gross revenues. The operator of the open video system shall collect the fee from the person and shall remit the fee to the District. If the open video system operator fails to collect or remit the fee, the operator shall be directly liable to the District for payment of the uncollected or unremitted fee.

“(e) An open video system operator shall be subject to all requirements of District law regarding the authorization to use or occupy the public rights-of-way, and the approval by the Federal Communications Commission of an open video system operator’s certification pursuant to section 653 of the federal cable act (47 U.S.C. § 573) shall not confer upon the operator any authority to use or occupy the public rights-of-way that the operator does not otherwise possess.

“(f) Notwithstanding anything to the contrary, if a cable operator, its parent, affiliate, or subsidiary elects to offer to subscribers video programming services through an open video system, the cable operator shall remain subject to all the terms and conditions of a franchise granted pursuant to this act.

“SUBTITLE II. OFFICE OF CABLE TELEVISION AND TELECOMMUNICATIONS.

New Part B

“Sec. 201. Establishment of the Office of Cable Television and Telecommunications; executive director; general counsel.

New § 34-1252.01

“(a) There is established within the executive branch, as a subordinate agency, the Office of Cable Television and Telecommunications. The Office shall be responsible for regulating cable service, cable service providers, and the cable television industry, protecting and promoting the public interest in cable service, and executing the policies and provisions of the cable television laws and regulations of the District.

“(b) The Office shall be administered by an Executive Director, who shall be appointed by the Mayor and shall be subject to confirmation by the Council pursuant to section 2 of the Confirmation Act of 1979, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01). Notwithstanding any other provision of law, the Executive Director shall become a bona fide resident of the District within 180 days after the effective date of confirmation by the Council and shall remain a District resident for the duration of the appointment. Failure to become a District resident or to maintain District residency shall result in forfeiture of the appointment. The Executive Director shall not have, or have had within 2 years preceding his or her nomination, any ownership or business interest of over 5% in, or a substantial business affiliation with, any cable operator in the District.

“(c) The duties of the Executive Director shall include the general administration of the Office, the preparation of the budget, hiring of staff, maintaining records, administering and enforcing the provisions of this act and regulations promulgated pursuant to this act, and such other duties required by law.

“(d) The Executive Director shall establish an Office of the General Counsel within the

Office. The Office of the General Counsel shall be headed by a General Counsel appointed by the Executive Director with the approval of the Corporation Counsel. The General Counsel, with the consent of the Executive Director and the approval of the Corporation Counsel, may appoint Assistant General Counsels.

“(e) The Executive Director may appoint a Director of Programming to be the station manager of the government channels.

“Sec. 202. Powers and responsibilities of the Office of Cable Television and Telecommunications.

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“In addition to the general authority of the Office set forth in section 201(a), the Office shall have the powers and responsibilities to:

- “(1) Promulgate rules or regulations to administer or enforce this act;
- “(2) Issue guidelines, instructions, application forms, and other documents that are necessary or useful to the administration or enforcement of this act;
- “(3) Prescribe fees in accordance with this act;
- “(4) Receive and review applications to provide cable service in the District;
- “(5) Negotiate, on behalf of the District, franchise agreements and other agreements necessary for the implementation of this act;
- “(6) Draft and adopt a model franchise agreement, which shall be updated as needed to reflect changes in cable law, technology, standards and changes in the cable-related needs and interests of the District;
- “(7) Monitor and enforce cable operator compliance with the provisions of this act, regulations promulgated pursuant to this act, franchise agreements, and any other agreements entered into with the District pursuant to this act or pursuant to a franchise agreement;
- “(8) Coordinate, manage, and oversee the use of, and the programming on, all government channels;
- “(9) Make reasonable requests of a cable operator in furtherance of this act, any regulations promulgated pursuant to this act, or the general public interest in cable service and cable systems;
- “(10) Establish reasonable conditions and restrictions on cable operators necessary or useful to protect and promote the public interest in cable television or to protect the public health, safety, or welfare;
- “(11) Intervene in, and resolve, disagreements between cable operators and subscribers or other lawful users of cable service;
- “(12) Ensure that cable operators provide uniform, nondiscriminatory access to their cable system and cable services;
- “(13) Ensure that the District maintains an environment conducive to the competitive operation of multiple cable operators;
- “(14) Educate the public on the benefits and uses of cable television;

“(15) Conduct periodic evaluations of the cable system to ensure compliance with this act and with regulations promulgated pursuant to this act, or to ensure the public health, safety, or welfare;

“(16) Solicit and accept funds from nonprofit and government entities to underwrite specifically designated programming on government channels; provided, that the Office shall first establish policies to preclude commercialization on behalf of the underwriter or grantors, the broadcasting of comparative product descriptions, claims of product performances or superiority, price information, or any control over programming content by the grantor or the underwriter; provided further, that the solicitation and acceptance of funds shall be conducted in accordance with Mayor’s Order 2002-2, issued January 11, 2002 (49 DCR 900), or its successors;

“(17) Provide the Advisory Committee with notice of legislative hearings and other similar activities of the Office, as well as reports and other information and materials essential to the Advisory Committee’s fulfillment of its responsibilities under this act;

“(18) Allocate and assign public, educational, and government channels and negotiate and enter into operating agreements for the use of the channels, subject to the provisions set forth in section 302 and subtitle VIII;

“(19) Recommend to the Council amendments to this act, a franchise agreement, or any other agreements related to cable service or a cable system; and

“(20) Submit an annual report to the Council which shall include an account of franchise agreement fees received and distributed, a review of any plans submitted during the year by the cable operator for development of new services, and a report on cable operator compliance with this act, regulations, and any franchise agreement.

“Sec. 203. Cable Television Special Account.

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“(a) There is hereby established within the General Fund of the District, a Cable Television Special Account, to which shall be credited all revenues owed and accruing to the District from the establishment, regulation, and operation of a cable system. The Cable Television Special Account shall be nonlapsing. Revenues deposited into the special account shall not revert to the General Fund at the end of any fiscal year or at any other time. All special account deposits shall be secured in a manner consistent with deposits of revenues by the District.

“(b) Revenues deposited into the special account shall be continually available to the Office for the uses and purposes set forth in this act, subject to authorization in an appropriations act.

“(c) The Executive Director shall administer the special account and receive all payments required by this act.

“(d) Deposits into the special account shall include:

“(1) Fees and penalties collected pursuant to this act, to regulations promulgated pursuant to this act, or to a franchise agreement, including franchise fees, application fees, and

transfer fees;

“(2) Collections by the District on indemnities, insurance, and bonds pursuant to this act, to regulations promulgated pursuant to this act, or to a franchise agreement;

“(3) PEG funding provided by a cable operator pursuant to a cable franchise agreement, which shall be used exclusively for PEG purposes; and

“(4) Other payments authorized by this act, by regulations promulgated under this act, or by an agreement entered into under the authority of this act.

“SUBTITLE III. OTHER CABLE ENTITIES.

“Sec. 301. Cable Television Advisory Committee.

“(a) There is established a Cable Television Advisory Committee to assist and advise the Mayor and the Council regarding the design, regulation, and programming of cable systems in the District.

“(b) The Advisory Committee shall consist of 13 members as follows:

“(1) Two members who shall represent the Council, who shall be comprised of:

“(A) One member to be designated by the Chairman of the Council; and

“(B) One member to be designated by the chairperson of the Council committee with oversight over the Office;

“(2) Eight members, to be appointed by the Mayor, who shall be comprised of:

“(A) One member who shall be an Advisory Neighborhood Commissioner;

“(B) Two members who shall be District residents with extensive knowledge of cable television;

“(C) One member who shall be a District resident with expert knowledge of the telecommunications industry;

“(D) One member who shall be an engineer with technical knowledge of cable television and telecommunications;

“(E) One member who shall be a senior citizen and resident of the District;

“(F) One member who shall represent the Office of the Deputy Mayor for Planning and Economic Development;

“(G) One member who shall represent the Department of Transportation;

“(3) One member who shall represent the Consortium of Universities to be selected by the Consortium from among its members;

“(4) One member who shall represent the District of Columbia Public School Board of Education, to be selected by the President of the Board from among the members of the Board; and

“(5) One member who shall represent the Public Access Corporation to be selected by the Chairman of the Board of Directors of the Public Access Corporation from among the members of the Board of Directors.

New Part C
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“(c) The Advisory Committee shall:

“(1) Advise the Mayor, the Council, and the Office in the general oversight of the cable television industry;

“(2) Assess the cable programming and technology needs and interests of District residents;

“(3) Recommend changes to District law, regulations, or policy regarding cable television; and

“(4) Meet at least on a quarterly basis to familiarize its members with, among other things, current cable industry technology and trends.

“(d) The members of the Advisory Committee shall be appointed or designated for terms of 4 years; provided, that the members of the Advisory Committee serving on the day prior to the effective date of this title shall continue in office under the following schedule:

“(1) The terms of the members appointed under subsection (b)(1)(A), (b)(2)(A), (b)(2)(D), (b)(2)(F), (b)(3), (b)(5) of this section and the member appointed earlier under subsection (b)(2)(B) of this section shall expire 2 years after the effective date of this title; and

“(2) The terms of the members appointed under subsection (b)(1)(B), (b)(2)(C), (b)(2)(E), (b)(2)(G), (b)(4) of this section, and the member appointed later under subsection (b)(2)(B) of this section shall expire 4 years after the effective date of this title.

“Sec. 302. Public Access Corporation.

“(a)(1) There shall be established, pursuant to the requirements of this act and in accordance with the District of Columbia Nonprofit Corporation Act, approved August 6, 1962 (76 Stat. 265; D.C. Official Code § 29-301 *et seq.*), a nonprofit Public Access Corporation (“Corporation”) in the District for the purpose of facilitating and governing nondiscriminatory use by the public of those specifically designated and reserved noncommercial public access channels of a cable system.

(2) The Corporation shall have jurisdiction over the use of all public access channels and all matters related to the governance, management, time, equipment, facilities, and other services related to the public access channels.

(3) The Corporation shall be responsible for all resources and assets dedicated to the Corporation under this act, and any franchise agreement, or open video system agreement.

“(b)(1) The Corporation shall have no less than 3 categories of members, including:

“(A) A 13-member Board of Directors;

“(B) A 15-member Board of Advisors; and

“(C) Associate members.

“(2) The names of the members of the Corporation shall be public information.

“(c) The Board of Directors shall be the governing body of the Corporation. The bylaws of the Corporation shall provide that 2 members of the Board shall always be persons nominated by the Mayor and confirmed by the Council and that 2 members of the Board shall always be persons nominated by the chairperson of the Council committee having jurisdiction over cable

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television and confirmed by the Council. The chairperson and the remaining members of the Board shall be elected in accordance with the bylaws of the Corporation.

“(d) The Board of Advisors shall advise the Board of Directors and shall have the authority or responsibilities that the bylaws of the Corporation confer and as the Board of Directors may from time to time determine. Each member of the Board of Advisors shall be a resident of the District of Columbia. To the extent possible, the membership of the Board of Advisors shall include representatives of public interest organizations, civil rights groups, the health and arts communities, labor organizations, business groups, consumers, educators, religious leaders, minorities, women, gays and lesbians, handicapped persons, and child advocates.

“(e) Any person nominated by the Mayor or the Council to the Board of Directors or the Board of Advisors shall be a District resident and shall not be an employee of the District, an employee or owner of a cable operator or any of its contractors.

“(f) Any person nominated by the Mayor or the Council to the Board of Director or the Board of Advisors shall, to the extent possible, have knowledge of areas that include telecommunications law, television programming, corporate or foundation management, public relations, fund raising, and career development training.

“(g) Neither members of the Board of Directors nor members of the Board of Advisors shall be compensated for the performance of their duties as members of these boards, except that they may be reimbursed for expenses incurred in the performance of their duties as the Corporation shall determine.

“(h) The articles of incorporation or the bylaws of the Public Access Corporation shall reflect and ensure that the statutory mandates and legislative intent of the Council shall be protected and promoted by the Corporation in the issuance of regulations guaranteeing nondiscriminatory use of the public access channels; in the development of opportunities within the community-at-large for training and experience in the field of telecommunications; and in permitting any resident of the District qualified to use the public access facilities to become a member of the Public Access Corporation, with voting rights equal to those of other members. The articles shall also provide for these members to elect members of the Board.

“(i) The bylaws of the Corporation shall include a requirement that an annual report of all the Corporation’s activities, including a financial audit, be submitted to the Council for its information within 120 days of the end of each fiscal year of the Corporation.

“(j) The bylaws of the Corporation shall include rules for procurement and personnel policies.

“(k) The bylaws of the Corporation shall include a requirement that the Corporation submit to the Mayor the budget of the Corporation for its next fiscal year, approved by the Board, for inclusion in the annual budget that the Mayor is required to submit to the Council pursuant to section 442 of the Home Rule Act, approved December 24, 1973 (87 Stat. 798; D.C. Official Code § 1-204.42). The Corporation shall submit to the Mayor annually the budget

of the Public Access Corporation for its next fiscal year, approved by the Board, for inclusion in the annual budget that the Mayor is required to submit to the Council pursuant to section 442 of the Home Rule Act (D.C. Official Code § 1-204.42).

“(l) The Corporation shall establish its bank account in a financial institution located in the District.

“(m) The Corporation's management and use of public access channels shall not duplicate programming or services that the District may provide on government channels.

“(n) The Corporation may solicit any monies, equipment, and services provided under and in accordance with the terms of an agreement ratified by the District as a part of a grant of franchise for a cable system; and may receive monies, equipment, and services from other sources, including grants from the District, the federal government, private foundations, businesses, organizations, individuals, membership dues, and donations. Any monies, equipment, and services received pursuant to this subsection shall be utilized in accordance with the bylaws of the Corporation, and in a manner consistent with the purposes and limitations of this act.

“(o) All assets of the Corporation, including all facilities and monies dedicated to public access use by the District and the franchise agreement or open video system agreement, shall be deemed assets held by the Corporation in trust for the benefit of the citizens of the District for the purpose of developing and implementing the use and programming of public access channels. In the event of voluntary or involuntary dissolution of the Corporation, all assets of the Corporation shall revert to the District. In addition to all other lawful grounds, the Corporation may be dissolved involuntarily by a decree of the court in an action instituted by the Mayor, on the Mayor's own initiative or at the request of the Council, in the name of the District when it is proven by a preponderance of the evidence that the Corporation has continued to exceed, abuse, or fail to fulfill the powers or purposes set forth in this act and the Corporation's articles, has continued to exceed or abuse its bylaws, or has breached and continues to breach its fiduciary obligations to the citizens of the District. Any involuntary dissolution shall be undertaken pursuant to the notice and remedy provisions of section 53 of the District of Columbia Nonprofit Corporation Act, approved August 6, 1962 (76 Stat. 286; D.C. Official Code § 29-301.53).

“Sec. 303. Public Service Commission regulation of the use of existing utility companies' rights-of way.

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“(a) The Public Service Commission shall regulate the rates, terms, and conditions for cable operators' use of existing utility company rights-of-way located within the District, including the use of existing utility poles and underground conduits in accordance with federal law and regulations, and shall ensure that all rates, terms, and conditions are just and reasonable.

“(b) In regulating rates, terms, and conditions under this section, the Public Service Commission shall consider the interests of both cable service subscribers and utility consumers.

“(c) The Public Service Commission shall resolve disagreements among cable operators and public utilities, including the use of public rights-of-way by a cable operator to install and maintain the cable operator’s cable system.

“SUBTITLE IV. FRANCHISING AND RE-FRANCHISING PROCESS.

“Sec. 401. Franchise and franchise agreement required.

“(a) The Council may grant one or more franchises to provide cable service over, on, under, or within the public rights-of-way.

“(b) No person may construct or operate a cable system over, on, under, or within a public right-of way without first obtaining a franchise under this act

“(c) No person may exercise the authority granted by a franchise without first having entered into a franchise agreement with the District pursuant to this act.

“(d) A franchise granted pursuant to this act shall:

“(1) Authorize the use of the public rights-of-way for installing, on poles or underground, cables, wires, lines, optical fibers, underground conduits, ducts, conductors, amplifiers, vaults, and other facilities necessary and pertinent to operate a cable system to serve subscribers within the District; provided:

“(A) The authority to use the public rights-of-way shall be subject to the permitting and other regulatory authority of the District;

“(B) The authority to use the public rights-of-way shall be subordinate, without limitation, to the District’s use and any prior lawful occupancy of the public-rights-of-way;

“(2) Be subject to prior revocation pursuant to this act and the franchise agreement;

“(3) Be subject to any terms, conditions, or obligations set forth in this act, the franchise, the franchise agreement, and other applicable law and regulation;

“(4) Become void upon the failure to comply with any material term of the franchise, franchise agreement, or this act, as determined by the Office; and

“(5) Constitute an obligation to provide the cable services regulated by this act, the franchise agreement, and any other applicable law or regulation.

“(e) A franchise granted pursuant to this act shall not:

“(1) Limit the District's right to grant a franchise to other persons to provide cable service within the same or other areas of the District at any time;

“(2) Waive the requirement of the cable operator to obtain, or be deemed, approval of:

“(A) Any other permit or authorization to transact or carry on business in the District;

“(B) Any permit or authorization to operate on, over, under, or within public streets or property, including street cut permits; or

“(C) Any permit or authorization to occupy any property of the District

New Part D
New
§ 34-1254.01

government or private property to which access is not specifically granted by the franchise, including permits or authorization to place devices in, on, over, or under poles, conduits, structures, or railroad easements.

“Sec. 402. Application for an initial franchise.

New
§ 34-1254.02

“(a) An application for the grant of an initial franchise may be filed pursuant to a request for proposals issued by the District or on an unsolicited basis.

“(b) The application shall be filed with the Office and shall be on a form prescribed by the Mayor. The application shall contain the following information:

“(1) The names and addresses of persons authorized to act on behalf of the applicant with regard to the application;

“(2) The name and address of the applicant and identification of the ownership and control of the applicant, including the names and addresses of all persons with more than 5% (non-voting or voting) ownership interest in the applicant and its affiliates, all officers and directors of the applicant and its affiliates, general partners or managing members as applicable, and all other business affiliations and cable system ownership interests of each such person;

“(3) An executive summary demonstrating the applicant’s technical ability to construct and operate a state-of-the-art cable system, including identification of key personnel;

“(4) A description of the applicant’s legal qualifications to construct and operate the proposed cable system;

“(5) A detailed description of the physical facility proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities.

“(6) A demonstration of financial qualifications to complete the construction and operation of the proposed cable system;

“(7) A description of prior experience in cable ownership, construction, and operation, and identification of the communities in which the applicant or any of its principals, including persons named pursuant to paragraph (2) of this subsection, have, or have had, a cable franchise or any interest therein;

“(8) Where applicable, a description of the construction of the proposed system, including an estimate of plant mileage and its location, the proposed construction schedule and map, and a description, where appropriate, of how services will be converted from existing facilities to new facilities;

“(9) A demonstration of how the applicant will meet the cable-related needs and interests of District residents, including public, educational, and government access channel capacity and facilities and financial or capital contribution to an institutional network;

“(10) An affidavit or a declaration by the applicant or authorized officer certifying the truth and accuracy of the information in the application and certifying that the application is consistent with all the requirements of federal and District law;

“(11) For informational purposes, the proposed rate structure, including projected charges for each service tier, installation, converters, and other equipment or services,

and the ownership interest of the applicant or any of its affiliates in any proposed program services to be delivered over the cable system; and

“(12) Any other information required by the Office by regulation.

“(c) The Office may establish, by regulation, fees for filing and processing an application under this section.

“Sec. 403. Evaluation of an initial franchise application.

“(a) Within 45 days after receiving an application under section 402, the Office shall certify the application as complete or shall transmit to the applicant a description of missing information and the time by which the missing information must be provided.

“(b) Upon certifying the application as complete, the Office shall have published in the District of Columbia Register a Notice of the Filing of an Application for a Cable Franchise, which shall contain the name of the applicant, the nature of the application, and a description of the procedures under this act.

“(c) Within 120 days after certifying an application as complete, the Office shall determine whether the applicant has the ability and commitment to adequately provide cable service in the District and to meet the cable-related needs and interests of the District and of District residents. In making this determination, the Office may procure the assistance of qualified technical, financial, and legal consultants.

“(d) In determining the ability and commitment of an applicant to adequately provide cable service in the District and to meet the cable-related needs and interests of the District and of District residents, the Office shall consider the following:

“(1) Whether the proposed plans for the cable system are feasible and reasonable, considering the applicant’s legal, financial, and technical resources and abilities and any other relevant factors;

“(2) Whether the applicant has the ability, willingness, and commitment to construct, operate, and maintain a state-of-the-art cable system in the best interests of the District and of District residents;

“(3) Whether the applicant has the ability to adapt to and implement new technologies, services, and programming;

“(4) Whether the proposed cable system will serve the public interest and meet the cable-related needs of the District;

“(5) Whether the applicant has had a previous franchise application denied by the District or any other franchising authority;

“(6) Whether the applicant has filed materially misleading information in its application or intentionally withheld information that the applicant is required to provide;

“(7) Whether the applicant has demonstrated a willingness and the ability to comply with the requirements of this act and any regulations promulgated under this act; and

“(8) Any other relevant information.

“(e) In making a determination under this section, the Office may hold a public hearing

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to receive testimony on the applicant and the application. The Office shall have a notice of the hearing published in the District of Columbia Register and shall hold the hearing on no less than 15 days notice. The Office may consider multiple applications at a hearing.

“(f) In making a determination under this section, the Office may accept written and oral testimony and any other materials relevant to the application or its determination.

“(g) If the Office determines that an applicant does not possess the ability and commitment to adequately provide cable service in the District and meet the cable-related needs and interests of the District and District residents, the Office shall give the applicant additional time, not to exceed 90 days, and shall in writing indicate the deficiencies in the application and recommend how the applicant can correct the deficiencies. If the applicant, after the additional time, remains unable to meet the standards of this section, the application shall be denied. The Office shall transmit to the Council a notice of denial of application and shall set forth the reasons for the denial.

“Sec. 404. Negotiation of an initial franchise agreement.

New
§ 34-1254.04

“(a) If the Office determines under section 403 that an applicant has the ability and commitment to adequately provide cable service in the District and to meet the cable-related needs and interests of the District and of District residents, the Office shall commence the negotiation of the terms of a franchise agreement between the District and the applicant.

“(b) The Office and the applicant shall agree on the terms of a proposed franchise agreement within one year after the commencement of the negotiations under subsection (a) of this section. The Office may extend the one-year period of negotiations for up to 180 additional days, if additional time is necessary to finalize the terms of the proposed franchise agreement and there is good cause for not having finalized the agreement within the one-year period.

“Sec. 405. Minimum contents of franchise agreement.

New
§ 34-1254.05

“(a) The proposed franchise agreement shall contain the following provisions:

“(1) The applicant shall construct, operate, and maintain a state-of-the-art cable system.

“(2) The capacity of the cable system shall be at least 750 MHz, with both downstream and upstream capacity.

“(3) The cable system shall be capable of providing Internet access services.

“(4) The applicant shall pay a franchise fee of at least 5% of gross revenues.

“(5) The applicant shall contribute at least 1% of gross revenues to the operations of the Public Access Corporation;

“(6) The applicant shall provide at least 8 PEG channels on the analog portion of the cable system and at least 10 PEG channels on the digital portion of the cable system.

“(7) The applicant shall provide at least 1% of gross revenues each year as continuing capital support for the public, educational, and government access channels.

“(8) The applicant shall enter into an agreement regarding contracting with, and procuring from, local, small, and disadvantaged business enterprises.

“(9) The applicant shall enter into a First Source agreement.

“(10) The applicant shall provide significant financial resources or capacity or equipment to an institutional network.

“(11) The construction schedule required by section 703.

“(b) The term of a franchise agreement shall not exceed 15 years in the case of an initial franchise and shall not exceed 10 years in the case of a renewed franchise.

“(c) The proposed franchise agreement shall include procedures for amending the franchise agreement, including the District’s right to amend the franchise agreement in order to take advantage of advancements in technology.

“(d) The proposed franchise agreement shall also cover matters regarding system construction, operation, and maintenance; indemnity, insurance and bonding requirements; reports and records; default and remedies; notices; and all terms and conditions related to the provision of cable service the Office deems necessary or appropriate.

“Sec. 406. Procedure for Council review and approval of initial franchise.

New
§ 34-1254.06

“(a) If the Office and the applicant agree on the terms of a proposed franchise agreement under section 405, the Office shall submit to the Mayor and the Council a Recommendation for the Approval of a Franchise Application consisting of the franchise application, the proposed franchise agreement, and a summary of factors supporting the recommendation.

“(b) If at the end of the initial or extended negotiation period under section 404, the Office and the applicant are unable to agree on the terms of a proposed franchise agreement, the Office shall submit to the Mayor and the Council a Recommendation for the Denial of a Franchise Application consisting of the franchise application and a summary of the factors supporting the recommendation. The summary shall describe specific deficiencies of the application and a general description of why the application should not be granted.

“(c) The Council may, by act, grant a franchise and approve the franchise agreement, with or without conditions or modifications which may override any provisions of the proposed franchise agreement, deny a franchise or reject the proposed franchise agreement and remand the proposed franchise agreement to the Office with recommendations to renegotiate any of the provisions of the agreement and submit a revised agreement to the Council, or deny a franchise or reject the proposed franchise agreement.

“(d) Each applicant to whom the District grants a franchise shall pay to the District, within 30 days after the franchise is granted, a franchise award fee to be set in the act granting the franchise. The payment shall be nonrefundable. An applicant’s failure to pay the franchise award fee within the 30-day period shall make the franchise and franchise agreement void.

“Sec. 407. Franchise renewal; commencement under federal cable act.

New
§ 34-1254.07

“(a) The Office may commence a franchise renewal proceeding under section 626(a) of the federal cable act (47 U.S.C. § 546(a)).

“(b)(1) Upon commencement of a franchise renewal proceeding under this section, the Office shall commence the following:

“(A) A formal assessment of community cable-related needs, both current and future;

“(B) A formal assessment of the cable operator’s compliance with this act, the franchise, and the franchise agreement over the course of the franchise; and

“(C) A formal assessment of the technical aspects of the cable system.

“(2) The Office shall complete the assessments under this section prior to taking action under subsection (e) of this section.

“(c) If the Office commences a proceeding under section 626(a) of the federal cable act (47 U.S.C. § 546(a)), the cable operator shall submit a proposal for renewal of the franchise within such time, and with such information, as the Office shall establish by regulation.

“(d) The Office shall provide public notice of the proposal through publication of a Notice of Cable Franchise Renewal Proposal in the District of Columbia Register.

“(e) After the submission of a completed renewal proposal the Office shall:

“(1) Within 90 days, provide to the Council a written recommendation that the franchise should be renewed, along with a proposed franchise agreement which shall meet the standards of section 405; or

“(2) Within 120 days, issue a preliminary assessment that the franchise should not be renewed and commence an administrative proceeding consistent with section 626(c) of the federal cable act (47 U.S.C. § 546(c)). After the completion of the administrative proceeding, the Office shall transmit to the Council a written proposed decision granting or denying the proposal for renewal based upon the record of the proceeding and stating the reasons for the proposed decision. If the proposed decision is to deny the renewal, the Office shall provide a detailed explanation of the proposed denial’s consistent with federal law.

“Sec. 408. Franchise review prior to expiration.

“(a) If the Office does not commence a renewal proceeding under section 407, the Office shall commence a franchise review proceeding no later than 24 months before the expiration of the franchise.

“(b) The Office shall commence the proceeding by having published in the District of Columbia Register a Notice of Commencement of Cable Franchise Review Prior to Expiration, which shall state the name of the cable operator, the nature of the proceedings, and the relevant procedures under this act and federal law.

“(c) Within 120 days after commencement of the review proceeding under this section, the Office shall hold a public hearing, on at least 30 days notice published in the District of Columbia Register. The public hearing shall be held to receive testimony on at least the following issues:

“(1) The current and future cable-related community needs and interests of the District and of District residents;

“(2) The performance of the cable operator under the franchise during the then current franchise term; and

New
§ 34-1254.08

“(3) The quality of services provided by the cable operator.

“(d)(1) Within 120 days after the commencement of the proceeding, the Office shall commence the following:

“(A) A formal assessment of community cable-related needs, both current and future;

“(B) A formal assessment of the cable operator’s compliance with this act, the franchise, and the franchise agreement over the course of the franchise; and

“(C) A formal assessment of the technical aspects of the cable system.

“(2) The Office shall complete the assessments under this section before submitting a proposed franchise agreement under subsection (h) of this section.

“(e) As part of the review proceeding, the Office shall commence, at least 18 months before the expiration of the franchise, the negotiation of the terms of a new franchise agreement between the District and the applicant.

“(f) The Office shall use its best efforts to reach agreement with the cable operator on the terms of a proposed franchise agreement within one year after the commencement of the negotiations under subsection (e) of this section. The Office may extend the one-year period or until the expiration date of the franchise, if additional time is necessary to finalize the terms of the proposed franchise agreement and there is good cause for not having finalized the agreement within the one-year period.

“(g) The proposed franchise agreement shall contain the provisions set forth in section 405.

“(h) If the Office and the applicant agree on the terms of a proposed franchise agreement under this section, the Office shall submit to the Mayor and the Council a Recommendation for the Approval of a Cable Television Franchise consisting of the proposed franchise agreement and a summary of factors supporting the recommendation.

“(i) If the Office determines that there is a basis for denial of a franchise under federal law, and determines that the franchise should be denied, the Office shall submit to the Mayor and the Council a Recommendation for the Denial of a Franchise, including a summary of the factors supporting the recommendation and a detailed explanation of the proposed denial’s consistency with federal law.

“(j) After a proposed franchise agreement is submitted to the Council under subsection (h) of this section, the Council may, by act, grant a franchise and approve the franchise agreement, with or without conditions or modifications which may override any provisions of the proposed franchise agreement, deny a franchise or reject the proposed franchise agreement and remand the proposed franchise agreement to the Office with recommendations to renegotiate any of the provisions of the agreement and submit a revised agreement to the Council, or deny a franchise or reject the proposed franchise agreement.

“(k) Each applicant to whom the District grants a franchise renewal shall pay to the District, within 30 days after the franchise is granted, a franchise award fee to be set in the act

granting the franchise. The payment shall be nonrefundable. A cable operator's failure to pay the franchise award fee within the 30-day period shall make the franchise and franchise agreement void.

“SUBTITLE V. TRANSFER OR REVOCATION OF FRANCHISE.

New Part E

“Sec. 501. Approval required for transfer of franchise to a person other than the District.

New
§ 34-1255.01

“(a) Except for conveyances of real or personal property in the ordinary course of the operation of a cable system, neither a franchise, nor a cable operator, nor any rights or obligations of a cable operator in a cable system or pursuant to a franchise agreement, nor a cable system, nor any assets of a cable system, nor the persons holding control of the cable operator, franchise, cable system, or the assets of the cable system, shall be transferred, nor shall title therein, either legal or equitable, or any right or interest therein, pass to or vest in any person, either by act of the cable operator, by act of any persons holding control of or any interest in the cable operator, the cable system, the assets of the cable system, or the franchise, by operation of law, or otherwise, without the prior consent of the Council.

“(b) No person who has an ownership interest exceeding 20% (for voting interest) or 50% (for non-voting interest) in a franchise, cable operator, cable system, the assets of a cable system, the persons holding control of such cable operator, franchise, cable system, or the assets of a cable system shall transfer the interest so that the person's ownership interest shall be less than 20% (for voting interest) or 50% (for non-voting interest) without the prior consent of the Council. No person shall purchase or otherwise acquire an ownership interest exceeding 20% (for voting or non-voting interest) in a franchise, cable operator, cable system, any assets of a cable system, the persons holding control of such cable operator, franchise, cable system, or the assets of a cable system without the prior consent of the Council.

“(c) No change in control of a franchise, cable operator, cable system, any assets of a cable system, the persons holding control of such franchise, cable operator, cable system, or the assets of a cable system shall occur by act of the cable operator, by act of any persons holding control of, or any interest in, the franchise, cable operator, cable system, or the assets of a cable system, or by operation of law or otherwise without the prior consent of the Council.

“(d) Nothing in this section shall be construed as suggesting that any other event which could result in a change of ownership or control, regardless of the manner in which such ownership or control is evidenced (such as, for example, stock, bonds, debt instruments, or other indicia of ownership or control), does not require the consent of the Council, if such change would in fact result in a change in control.

“(e) If a transfer is not made according to the procedures set forth in this act and the franchise agreement, the District may take legal or equitable action to set aside, annul, revoke, or cancel:

“(1) The franchise;

“(2) The transfer of a franchise, cable operator, the rights and obligations of a cable operator in a cable system or pursuant to the franchise agreement, a cable system, any

assets of a cable system, or the persons holding control of such franchise, cable operator, cable system, or assets of a cable system; or

“(3) The transfer of an ownership interest in a franchise, cable operator, the rights and obligations of a cable operator in a cable system or pursuant to the franchise agreement, a cable system, any assets of a cable system, or the persons holding control of such franchise, cable operator, cable system, or assets of a cable system.

“Sec. 502. Procedure for transfer of franchise to a person other than the District.

New
§ 34-1255.02

“(a) At least 180 days before the proposed consummation of a transfer, a petition for franchise transfer shall be filed with the Office. The petition shall include:

“(1) A completed FCC Form 394, or any successor thereto;

“(2) All information required to be filed with the FCC and the District pursuant to FCC regulations;

“(3) Complete information on the proposed transfer, including details on the legal, financial, and technical qualifications of the transferee; and

“(4) Any other information required by the Office or the franchise agreement.

“(b) Within 30 days after receiving a petition under this section, the Office shall certify the petition as complete or shall transmit to the applicant a description of necessary information and the time by which the necessary information shall be provided.

“(c) Within 75 days after certifying a petition as complete, the Office shall transmit to the Council a written recommendation to approve, approve with conditions, or deny the petition.

“(d) The Office may charge a fee for reviewing and processing a transfer petition. The fee may include charges for the procurement of technical and legal consultants to advise the District regarding the transfer. The amount of the fee may be set forth in the applicable franchise agreement.

“(e) The Council may approve a transfer upon such terms and conditions as it deems necessary or proper.

“(f) Notwithstanding the approval of a transfer under this section, the parties to the transfer shall comply with any provisions regarding a transfer set forth in the franchise agreement or established by the Office.

“(g) The approval of a transfer by the Council in one instance shall not render as unnecessary the approval of a subsequent transfer, and shall not constitute a waiver or release of the rights of the District under this act or under the franchise agreement, whether arising before or after the transfer.

“Sec. 503. Mandatory transfer of franchise to the District; general requirement.

New
§ 34-1255.03

“(a) Upon payment of the purchase price by the District, the cable operator shall immediately transfer to the District possession and title to all facilities and property, real and personal, related to its cable system, free from any and all liens and encumbrances that the District has not agreed to assume in lieu of some portion of the purchase price.

“(b) The District may assign its right and power under subsection (a) of this section to a

person who shall assume the rights and obligations of the franchise and franchise agreement.

“Sec. 504. Revocation of franchise; mandatory transfer to the District.

New
§ 34-1255.04

“(a) The Council shall have the right to revoke a franchise, or accelerate the term of a franchise, for cause. The procedures for revocation or acceleration may be set forth in the franchise agreement.

“(b) If at any time during the term of the franchise, the Council determines that the cable operator has materially breached the terms and conditions imposed by this act, the franchise, or the franchise agreement, and the cable operator has failed to cure the breach after due notice and opportunity to cure the breach, the Council may accelerate the term of the franchise or the franchise agreement, revoke the franchise, terminate the franchise agreement, authorize the District to purchase the assets of the cable system at a price not to exceed an equitable price, or select another person to purchase the assets of the cable system at a price not to exceed an equitable price. The franchise agreement may set forth the procedures by which the District may take action in the event of a material breach of this act, the franchise, or the franchise agreement and may define specific circumstances which constitute a material breach. Nothing in this subsection shall be construed to abridge the Council's authority to exercise its emergency legislative powers under appropriate circumstances.

“(c) If the Council authorizes the District to exercise its option to purchase the assets of the franchise’s cable system at a price not to exceed equitable price, it shall give the cable operator written notice of its intent to do so. The cable operator shall, within 7 days of receipt of the notice, enter into negotiations with the District for the purpose of consummating the transaction at the earliest possible date. The District shall have the right and power to assign its purchase rights to another person selected by the Council following the procedures and standards in this act used to approve an initial franchise application.

“(d) Any sale or transfer of a cable system shall comply with section 627 of the federal cable act.

“Sec. 505. Transfer or purchase of franchise after denial of renewal.

New
§ 34-1255.05

Except if there is a pending appeal, or the decision is stayed by a judicial or administrative review, upon a decision by the Council to deny a renewal, the Council may, on the expiration date of the franchise, either authorize the District to purchase the assets of the cable operator's cable system at a price not to exceed fair market value with no value allocated to the franchise itself, or the Council may select another person, after a public hearing, and cause that person to purchase the assets at a price not to exceed fair market value.

"Sec. 506. Cable operator as trustee.

New
§ 34-1255.06

“After termination or revocation of a franchise, and until such time as the cable operator transfers its cable system to the District or to another person pursuant to this act or until such other time as established by the Council, the cable operator shall be a trustee in interest for the District or its successor, and shall continue to operate the cable system under the terms and conditions of this act, the franchise, and the franchise agreement. During the trustee period, the

cable operator shall not sell any of the cable system assets nor shall the cable operator make any physical, material, administrative, or operational change that would tend to degrade the quality of service to subscribers, decrease income, or materially increase expenses, without the express written permission of the District. The District may seek legal and equitable relief to enforce the provisions of this subsection.

“Sec. 507. Arbitration.

New
§ 34-1255.07

“(a) If the Council authorizes the District to purchase a cable system at a fair market value under section 505 or purchase the cable system at an equitable price under section 504(b), and the District and the cable operator cannot agree upon a price, the final price shall be determined by an arbitration panel.

“(b) The arbitration panel shall consist of 3 members, selected as follows:

“(1) One member shall be selected by the Council;

“(2) One member shall be selected by the cable operator; and

“(3) One member shall be selected by the Council and the cable operator acting jointly; provided, that if the Council and the cable operator fail to agree on a member, the Council or cable operator may apply to the American Arbitration Association and the American Arbitration Association shall select the member.

“(c) The member selected under subsection (b)(3) of this section shall be the presiding officer of the arbitration panel, absent majority agreement to the contrary.

“(d) The determination of the majority of the 3-member arbitration panel shall be binding on the parties.

“(e) The cable operator shall bear all expenses regarding the arbitration.

“SUBTITLE VI. REQUIRED PAYMENTS; INSURANCE AND INDEMNIFICATION.

New Part F

“Sec. 601. Franchise fee.

New
§ 34-1256.01

“(a) A cable operator shall pay to the District a franchise fee of at least 5% of its annual gross revenues. The amount of the franchise fee shall be set forth in the franchise agreement.

“(b) The franchise fee shall be paid quarterly.

“(c) A cable operator shall file with the Office within 30 days after the end of each of the cable operator’s fiscal quarter, a financial statement clearly showing the gross revenues received by the cable operator during the preceding quarter. Payment of the quarterly portion of the franchise agreement fee shall be payable by certified check made to the D.C. Treasurer at the time the statement is filed. A cable operator shall also file, within 120 days after the end of the cable operator’s fiscal year, an annual report, prepared by a certified public accountant, showing the yearly total gross revenues.

“(d) The District may audit and recalculate any amounts determined to be payable under this act or the franchise agreement. Any additional amount due the District based on the audit shall be paid within 30 days after the Office sends to the cable operator a written notice setting forth the amount due. The notice shall include a copy of the audit report. The cost of the audit

shall be borne by the cable operator if it is determined that the cable operator's payment to the District for the preceding year is increased by more than 4%.

“(e) If the cable operator does not pay the recomputed amount within the 30-day period established by subsection (c) of this section, the cable operator shall be charged from the due date at the prevailing prime rate of interest.

“(f) The franchise fee shall not be deemed a tax or payment in lieu of taxes or fees of general applicability imposed by the District. No cable operator may designate the franchise fee as a tax in any communication to a subscriber or any third party.

“(g) If a franchise is terminated or revoked prior to its expiration date and the District invokes its right to purchase the cable operator's cable system, the cable operator shall file with the Office, within not less than 30 days following the date that ownership and control pass to the District or its assignee, a financial statement clearly showing the gross revenues received by the cable operator since the end of the previous fiscal quarter. The cable operator shall pay the franchise fee due at the time the statement is filed.

“Sec. 602. Security fund.

New
§ 34-1256.02

“(a) Within 30 days after the approval of a franchise, a cable operator shall deposit with a bank located in the District, in an interest bearing escrow account established in the name of the District, a sum to be determined by the Office or set forth in a franchise agreement, as a security fund for the cable operator's faithful performance of all the provisions of the franchise agreement; its compliance with all orders, permits, and directions of any District agency having jurisdiction over the cable operator's acts or defaults under the franchise agreement; payment of any claims and liens due to the District by reason of the construction, operation, or maintenance of the cable system.

“(b) Of the security fund, no less than 20% shall be in cash, with the balance in the form of an irrevocable, unconditional letter of credit or other instrument in a form acceptable to the Corporation Counsel. The letter of credit or other instrument shall in no event require the consent of the cable operator prior to the collection by the District of any amount covered by such letter of credit or other instrument. The cable operator shall be entitled to interest on the cash portion of the security fund at a rate equal to whatever rate the District is actually earning on the cash.

“(c) The security fund, including any interest, shall become the property of the District to the extent necessary to cure outstanding violations, including outstanding liquidated damages that may be provided for in the franchise agreement, in the event that the franchise is terminated or revoked.

“(d) The bond shall require 30 calendar days written notice of any cancellation to both the Office and the cable operator.

“(e) Any failure by a cable operator to make deposits into or maintain the security fund as provided in this section shall be a material breach of the franchise and shall be grounds for the termination or revocation of the franchise. The procedures to follow in the event of a material

breach may be set forth in the franchise agreement.

“Sec. 603. Indemnification of the District.

New
§ 34-1256.03

“(a) A cable operator shall, at its sole cost and expense, indemnify and hold harmless the District, its officers, elected officials, agents, contractors, and employees against all claims, suits, causes of action, proceedings, judgments for damage arising out of the cable system under the franchise.

“(b) Failure to comply with subsection (a) of this section, or with the indemnification provisions in the franchise agreement, shall constitute a material breach of the franchise. The procedures to follow in the event of a material breach may be set forth in the franchise agreement.

“Sec. 604. Insurance.

New
§ 34-1256.04

“(a) At all times during the term of a franchise, including the time for removal of facilities, the cable operator shall hold a valid liability insurance policy and shall pay all premiums for the policy in a timely manner. The policy shall insure the District, its officers, boards, commissions, elected officials, agents, contractors, and employees against liabilities. The policy shall be issued by a company carrying a rating by Best of not less than “A” and the company shall be authorized by the District’s Superintendent of Insurance to do business in the District.

“(b) The amount of the liability insurance policy, and the terms of the policy, shall be established in the franchise agreement.

“(c) The form of the liability insurance policy shall be acceptable to the Corporation Counsel.

“(d) The policy shall require 30 calendar days written notice of any cancellation to both the Office and the cable operator. If the Office or the cable operator receives a cancellation notice, the cable operator shall obtain a new bond, meeting the requirements of this section, within 30 days after receipt of the notice by the Office or the cable operator.

“(e) The cable operator shall file with the Office written evidence of payment of premiums and executed duplicate copies of the liability insurance policy.

“(f) Failure to comply with the provisions of this section, or with the liability insurance provisions of the franchise agreement, shall constitute a material violation of a franchise.

“Sec. 605. Performance bond.

New
§ 34-1256.05

“(a) At all times during the term of a franchise, including the time for removal of facilities or management, the cable operator shall obtain and hold a performance bond running to the District with good and sufficient surety approved by the Office, in an amount to be determined by the Office or set forth in a franchise agreement, to ensure that the operation of the cable system continues uninterrupted in the event of a default by the cable operator.

“(b) The cable operator shall make all payments associated with the bond in a timely manner.

“(c) The cable operator shall file with the Office written evidence of payment of premiums and executed duplicate copies of the bond documents.

“(d) The bond shall be with a surety company authorized by the District’s Superintendent of Insurance to transact business in the District.

“(e) The bond shall require 60 calendar days written notice of any cancellation to both the Office and the cable operator. If the Office or the cable operator receives a cancellation notice, the cable operator shall obtain a new bond, meeting the requirements of this section, within 60 days after receipt of the notice by the Office or the cable operator.

“(f) Failure to comply with the provisions of this section, or with the performance bond provisions of the franchise agreement, shall constitute a material violation of a franchise.

“SUBTITLE VII. CONSTRUCTION AND OPERATION OF THE CABLE SYSTEM.

New Part G

“Sec. 701. Jurisdictional parity.

New
§ 34-1257.01

“A cable system authorized by this act shall have no less than the channel capacity, products, and services available from a system serving any similarly sized, or smaller, jurisdiction outside of the District, or a system owned and operated by the cable operator, its parents, affiliates, or subsidiaries outside of the District, except as otherwise set forth in a franchise agreement. In no event shall such system have a bandwidth of less than 750 MHZ. Nothing herein shall be construed to require a cable operator to employ any specific transmission technology.

“Sec. 702. Operation and construction of system; general requirements.

New
§ 34-1257.02

“(a) A cable operator shall construct, operate, and maintain the cable system subject to the supervision and regulatory oversight of the Office and in full compliance with the laws and regulations of the District and federal government, including the Electrical Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986, effective March 21, 1987 (D.C. Law 6-216; D.C. Official Code § 6-1401 *et seq.*); Department of Public Works Standard Specification for Highway and Structures; National Electrical Code, and National Electrical Safety Code.

“(b) A cable operator shall exercise its best efforts to design, construct, operate, and maintain the system at all times so that signals carried are delivered to subscribers without material degradation in quality.

“Sec. 703. Construction schedule.

New
§ 34-1257.03

“(a) Every franchise agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the cable system. The schedule of construction, upgrade, or rebuild shall ensure that no substantial differences in the time by which service shall be available in a neighborhood shall be because of the neighborhood's relative median income, ethnicity, or racial composition.

“(b) Within 90 days or at a time specified in the franchise agreement, whichever is longer, after the approval of a franchise, a cable operator shall file the documents required to obtain all necessary federal and District licenses, permits, and authorizations required for the conduct of its business, and shall submit monthly reports to the Office on its progress in this respect until all documents are obtained.

“Sec. 704. Construction of facility.

“(a) A cable operator shall complete construction of the cable system, and offer and deliver cable service in full compliance with this act and the franchise agreement.

“(b) A cable operator shall use existing poles, conduits, and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities without the approval of the District. No location of any pole or wire-holding structure of a cable operator shall be a vested interest, and poles or structures shall be removed or modified by the cable operator at its own expense whenever the District determines that public convenience would be enhanced thereby.

“(c) All transmission lines, equipment, and structures shall be so installed and located as to cause minimum interference with the rights, appearance, and reasonable convenience of property owners who adjoin on any street and at all times shall be kept and maintained in a safe, adequate, substantial condition, and in good order and repair. The cable operator shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. Any pole or other fixture placed in a public right-of-way by the cable operator shall be placed in a manner that does not interfere with the usual travel on the public right-of-way.

“(d) A cable operator shall remove, replace, or modify the installation of any of its facilities as may be deemed necessary by the District to meet its proper responsibilities. Costs necessary to repair or refinish public rights-of-ways shall be borne by the cable operator.

“(e) Wherever an electrical and telephone utility wiring is located underground within conduits, either at the time of initial construction or subsequent thereto, and there is adequate capacity in the existing conduits for television cable, the cable shall be located underground within the existing conduits. If there is not adequate capacity in the existing underground conduits, the District’s transportation agency shall determine whether cable wiring should be located underground or overhead. Nothing in this section shall be construed to supersede any provision of existing laws or regulations with respect to prohibition of the installation of overhead wiring in certain areas of the District.

“(f) Excavation work performed by a cable operator in any public rights-of-way shall be subject to all applicable laws, rules, and regulations of the District. A cable operator shall, at its own expense and in a manner approved by the District, restore to District standards and specifications, any damage or disturbance caused to public rights-of-way as a result of its operations or construction of its facilities on its behalf, and shall guarantee the restoration until the time a permanent restoration is made. The District shall perform permanent restoration, and the costs associated therewith shall be billed to the cable operator for the full width of the permanent improvement. The cable operator shall place a deposit with the District in an amount sufficient to cover the projected costs to be incurred by the District for the permanent restoration of any excavation, damage, or disturbance of the public rights-of-way.

“(g) Whenever, in the case of fire or other disaster, it becomes necessary, in the judgment of the Office, the Fire Chief, or the Chief of the Metropolitan Police Department to remove or damage any of a cable operator's facilities, no charge shall be made by the cable operator against the District for restoration and repair.

“(h) At the request of any person holding a valid permit issued by the District to remove a building, and upon at least 10 days notice, the cable operator shall temporarily raise, lower, or cut its wires as may be necessary to facilitate the removal. The permit holder shall pay the direct expense of the temporary changes, including standby time, and the cable operator shall have the authority to require payment in advance.

“(i) A cable operator may trim trees on public property at its own expense if necessary to protect its wires and facilities, subject to the permission, supervision, and direction of the District. Trimming of trees on private property shall require written consent of the property owner.

“(j) A cable operator shall not be required to obtain or pay for a permit in order to connect a drop line from a trunk or feeder cable to the premises of a subscriber or in order to install, maintain, or repair cable television equipment and facilities on the premises of a subscriber.

“Sec. 705. Construction notice to the public.

New
§ 34-1257.05

“(a) A cable operator shall notify the general public prior to commencing any proposed construction that will significantly disturb or disrupt public rights-of-way or public space, or that has the potential to present danger or affect the safety of the public generally.

“(b) Except for routine maintenance or minor repair work, at least 5 days prior to commencement of work, a cable operator shall notify residents and others in the immediate vicinity of proposed construction who are most likely to be affected by the construction work either by telephone, in person, by mail, or distribution of door hangers, and shall provide written notice by first class mail to the affected Advisory Neighborhood Commission and the Advisory Neighborhood Commissioner of the affected single-member district. Publication of a notice in a local newspaper shall not be deemed adequate notice. The notice must include the name and local telephone number of the cable operator’s representative who is qualified to answer questions concerning the proposed construction.

“(c) In addition to the notice requirements in subsections (a) and (b) of this section, before entering any person’s property for proposed construction work, a cable operator shall obtain the permission of the owner and shall contact the property owner, and the resident, in the case of a leased property, at least 2 days before entering the person’s property.

"Sec. 706. Use of cable system by the District during emergencies and disasters.

New
§ 34-1257.06

“In the case of an emergency or disaster, the cable operator shall, upon request of the Mayor, the Chairman of the Council, or the Director, make available its facilities to the District for emergency use during the emergency or disaster.

SUBTITLE VIII. PUBLIC, EDUCATIONAL, AND GOVERNMENT CHANNELS.

New Part H

"Sec. 801. PEG channels; carriage requirements.

New
§ 34-1258.01

"(a) A cable operator shall provide at least 8 PEG channels on the analog portion of the cable system and at least 10 PEG channels on the digital portion of the cable system. The total capacity to be set aside for PEG channels shall be set forth in the franchise agreement.

"(b) A cable operator shall carry analog PEG channels on its basic service tier, except as may be otherwise provided in the franchise agreement.

"Sec. 802. Funding for PEG channels.

New
§ 34-1258.02

"(a) A cable operator shall contribute at least 1% of its gross revenues to the operations of the Public Access Corporation.

"(b) A cable operator shall provide at least 1% of its gross revenues as continuing capital support for the public, educational, and government access channels. The Public Access Corporation shall receive at least 25% of the capital support payments provided pursuant to this subsection.

"(c) A cable operator may be required to provide equipment and facilities in support of PEG channels. The requirements for equipment and facilities in support of PEG channels shall be specified in a franchise agreement.

"(d) A cable operator shall make equipment and production assistance available that will permit PEG channel users and the cable operator to produce programming at locations other than the studio, and the requirements for such availability and use shall be set forth in the franchise agreement. A cable operator may be required to make equipment and production assistance available to PEG channel users at its studio; provided, that the requirement for such availability and use shall be set forth in the franchise agreement. The cable operator shall provide use of the equipment, production facilities, and production assistance for PEG channel users at an amount set forth or provided for in the franchise agreement.

"Sec. 803. Allocation of PEG channels.

New
§ 34-1258.03

"(a)(1) At least 2 PEG channels on the analog tier and at least 2 PEG channels on the digital tier shall be assigned and allocated to the Public Access Corporation for use as public channels.

"(2) At least one PEG channel on the analog tier shall be assigned and allocated to the University of the District of Columbia for use as an educational channel.

"(3) At least one PEG channel on the analog tier shall be assigned and allocated to the District of Columbia Public Schools for use as an educational channel.

"(4) At least one PEG channel on the analog tier shall be assigned and allocated to the Council for use as a government channel.

"(5) At least one PEG channel on the analog tier shall be assigned and allocated to the Mayor for use as a government channel.

"(b) The Office shall allocate and assign public, educational, and government channels and negotiate and enter into operating agreements for the use of the channels; provided that:

"(1) No public access channel shall be allocated or assigned to an entity other than the Public Access Corporation.

"(2) No operating agreement shall be required for a channel operated by the Council, the Mayor, or the Public Access Corporation.

"(3) Channels for the use of the Council or the Mayor shall not be subject to discretionary assignment or allocation by the Office and channels for such use shall be made available upon the request of the Council or the Mayor, subject to availability.

"(4) The allocation and assignment of a public, educational, or government channel on the analog tier, other than an allocation and assignment to the Council or the mayor or an allocation and assignment set forth in subsection (a) of this section, shall be submitted to the Council for its review and approval through a proposed resolution transmitted by the Mayor to the Council for a 45-day period of review, excluding Saturday, Sundays, legal holidays, and days of Council recess; provided, that if the Council does not approve or disapprove the allocation and assignment by resolution within the 45-day period, the proposed resolution shall be deemed approve.

"(c) The Office shall establish, by regulation, the process for allocating PEG channels before allocating or assigning channels under this section. The regulations shall not diminish the autonomy or authority of the Public Access Corporation established by this act.

"SUBTITLE IX. REGULATION, OVERSIGHT, AND INSPECTION OF CABLE SYSTEM AND RECORDS.

New Part I

"Sec. 901. Right to inspection.

New
§ 34-1259.01

"The cable system and all parts of the system, during both operation and construction, shall be subject to the right of inspection by the Office or its designee.

"Sec. 902. Test and performance monitoring.

New
§ 34-1259.02

"(a) Not later than 90 days after a new or substantial rebuild of a cable system, or a portion of the cable system, is completed and available for service to subscribers, or at such later time as may be set forth in a franchise agreement, a technical performance test shall be conducted by the cable operator to demonstrate full compliance with the technical standards of the FCC. The test shall be performed by, or under the supervision of, a qualified registered professional engineer or an engineer with proper training and experience. A report shall be submitted to the Office, describing test results, instrumentation, calibration, test procedures, and the qualifications of the engineer responsible for the test.

"(b) System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line, at or near the trunk extremities, and at not fewer than 8 other widely scattered locations.

"(c) The franchise agreement may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal.

"(d) The Office may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal; provided, that a request for an

additional test by the Office shall be on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and the test shall be limited to the particular matter in controversy. The Office shall endeavor to arrange a request for a test under this subsection so as to minimize hardship or inconvenience to the cable operator or subscribers.

“(e) All tests performed under this section shall be conducted in conformity with Federal Communications Commission regulations and any regulations promulgated under this act.

“(f) A copy of the annual performance test required by the Federal Communications Commission shall be simultaneously submitted to Office.

“(g) The Office may employ qualified consultants to assist in the administration of this or any other section of this act.

“Sec. 903. Periodic evaluations; performance hearings.

New
§ 34-1259.03

“(a) At least once every 3 years following the grant of a franchise, the Office shall conduct a performance evaluation of the cable operator and the cable system. The evaluation shall include a public hearing to allow public comment on the cable operator’s performance.

“(b) During the evaluation process, a cable operator shall fully cooperate with the Office, and shall provide all information and documents the Office needs to reasonably perform its review, including information and documents that may be considered proprietary or confidential.

“(c) If any books, records, maps, plans, or other requested documents are voluminous, or for security reasons cannot be copied and moved, then the cable operator may request that the inspection take place at another location; provided, that the cable operator shall make necessary arrangements for copying documents selected by the Office after review, and the cable operator shall pay all travel and additional copying expenses incurred by the Office in inspecting those documents or having those documents inspected by its designee.

“(d) The Office may hold a hearing on the performance of a cable operator, or a specific aspect of the performance of a cable operator, at any time.

“Sec. 904. Provision of information; retention of records.

New
§ 34-1259.04

“(a) A cable operator shall take all steps necessary to ensure that it is able to provide the District all information that must be provided or may be requested under this act or the franchise agreement, including providing appropriate subscriber privacy notices. A cable operator shall be responsible for redacting any data that federal law prevents it from providing to the District. The District retains the right to question any such redaction and to challenge it in any forum having jurisdiction over such a challenge.

“(b) A cable operator shall maintain all records required by this act of a franchise agreement, and all records which may be reasonably requested under this act or the franchise agreement, for at least 3 years.

“Sec. 905. Inspection of records.

New
§ 34-1259.05

“(a) The District shall have the right to inspect the records of a cable operator and to require a cable operator to provide copies of records that the District deems appropriate in order to monitor compliance with this act, the franchise agreement, or any other applicable law or regulation. Records available under this section shall include all books, receipts, maps, plans, contracts, service complaint logs, performance test results, records of requests for service, computer records, disks, or other storage material, in the possession of the cable operator or held by an affiliate, contractor, or subcontractor, or any other person holding any form of management contract for the cable system. A cable operator shall be responsible for collecting the information required and producing it at the office of the Office or at a location designated by the Office.

“(b) The District shall provide a cable operator with at least 24-hours written notice, which shall include at least one business day, prior to an inspection of records under this section. The notice, which shall state the intended purpose of the inspection and intended scope of documents to be inspected, shall serve as the notice that all the above materials may be inspected. The cable operator may request, and the Office may grant, additional time to assemble and produce the requested materials.

“(c) Access to records and the provision of copies of records under this section shall be available at the Office or at a location designated by the Office.

“(d) Access to records and the provision of copies of records under this section shall be at the cable operator’s expense.

“(e) A cable operator shall maintain financial records that allow analysis and review of the operator’s operations in the District.

“(f) Access to a cable operator’s records shall not be denied on the basis that the records contain proprietary or confidential information. The District shall have the right to determine the confidentiality or proprietary nature of a cable operator’s records. All confidential information received by the District shall remain confidential insofar as permitted by law. In seeking access to, or inspecting, a cable operator’s records, the District shall comply with the District’s freedom of information requirements as provided in the Freedom of Information Act of 1976, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*). The refusal by a cable operator to provide information required herein shall be grounds for the revocation of a franchise or of any other permits and licenses issued by the District.

“(g) A cable operator shall maintain a file of records open to public inspection in accordance with applicable federal and District law and regulations.

“Sec. 906. Submission of correspondence by cable operator.

New
§ 34-1259.06

“A cable operator shall submit to the Office copies of all correspondence, petitions, reports, applications, and other documents between the cable operator and federal agencies having appropriate jurisdiction in matters affecting cable operation, or any District agencies within 10 days of such correspondence, petitions, reports, applications, and other documents

being submitted or received by the cable operator, or within a time set forth in a franchise agreement, whichever is lesser.

“Sec. 907. Rate and service regulation.

New
§ 34-1259.07

“(a) All proposed rates and service offerings for cable service shall be specified in an appendix to the franchise agreement.

“(b) A cable operator shall provide a notice of any planned change in rates or services to the Office at least 30 days before the change.

“(c) The Office may regulate cable services and rates in compliance with federal law and regulations; provided, that regulations promulgated by the Office to carry out this subsection shall be transmitted to the Council for a 60-day period of review.

“Sec. 908. Subscriber fees.

New
§ 34-1259.08

“(a) The cable operator shall publish and make available to each potential subscriber a schedule of all applicable fees and charges for providing cable service and shall notify subscribers that basic cable service is available.

“(b) A cable operator shall not, with regard to fees, discriminate or grant any preference or advantage to any person. Nothing in this section shall be construed to prohibit a cable operator from instituting preferential or advantageous fees for the elderly, people with disabilities, or recipients of District or federal public assistance.

“(c) To the extent permitted under applicable law or regulation, a cable operator may, for promotional purposes, waive, reduce, or suspend connection or monthly service fees for specific or indeterminate periods not to exceed 6 months or for a period set forth in a franchise agreement, whichever is shorter.

“(d) The cable operator shall provide a notice of any planned waiver, reduction, or suspension of connection or monthly service fees to the Office at least 30 days before the waiver, reduction, or suspension.

“Sec. 909. Reports.

New
§ 34-1259.09

“(a) Within 10 days after the submission of a report or other document to any federal or District agency or commission, or after such shorter period as may be established in a franchise agreement, the cable operator shall file a copy of the document with the Office. Documents required to be submitted under this subsection include any proof of performance tests and results, equal employment opportunity reports, and all petitions, applications, and communications of all types regarding the cable system, or a group of cable systems of which the cable operator’s system is a part, submitted by the cable operator, an affiliate, or any other person on behalf of the cable operator.

“(b) Each report filed by a cable operator pursuant to this act or the franchise agreement shall be certified by a corporate officer as accurate and complete.

“(c) A cable operator shall at all times maintain the following:

“(1) Records of all complaints received and all actions taken with respect to such complaints;

“(2) A full and complete set of plans, records, and as-built maps showing the exact location of all system facilities and equipment installed or in use in the District, exclusive of subscriber service drops;

“(3) A comprehensive record of all personnel transactions and use of contractors, subcontractors, vendors, and suppliers by race and sex;

“(4) Records of outages, indicating date, time, duration, area, the subscribers affected, type of outage, and cause;

“(5) Records of service requests for repair or maintenance indicating the date and time the service was requested, the date and time of acknowledgment of the request, the date and time service was scheduled (if it was scheduled), the date and time the service was provided, and, if different, the date and time the problem was resolved

“(6) Records of installation, reconnection, and requests for service extension indicating the date of the request, the date of acknowledgment, and the date and time service was provided; and

“(7) A file showing the cable operator’s plans and timetable for new construction or the rebuild of the cable system.

"SUBTITLE X. CONSUMER PROTECTION.

“Sec. 1001. Consumer protection.

“(a) A cable operator shall comply with all federal and District customer service regulations and with all customer service standards contained in the franchise agreement.

“(b) A cable operator shall maintain at least one office within the District, which shall be open and accessible to the public during normal business hours and limited evening and weekend hours, including facilities for 24-hour telephone subscriber assistance.

“Sec. 1002. Protection of privacy.

“(a) For the purposes of this section, the term:

“(1) “Personally identifiable information” does not include any record of aggregate data which does not identify particular persons.

“(2) “Cable operator” includes, in addition to persons within the definition of cable operator in section 103(7), any person who is owned or controlled by, or under common ownership or control with, a cable operator.

“(b) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of the following:

“(1) The nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

“(2) The nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

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New
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New
§ 34-1260.02

“(3) The period during which such information will be maintained by the cable operator;

“(4) The times and place at which the subscriber may have access to such information in accordance with subsection (d) of this section; and

“(5) The limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) of this section to enforce such limitations.

“(c) A cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber except for the following purposes:

“(1) To obtain information necessary to render a cable service or other service provided by the cable operator to the subscriber; or

“(2) To detect unauthorized reception of cable communications.

“(d) A cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber and shall take such actions as are necessary to prevent unauthorized access to personally identifiable information by a person other than the subscriber or cable operator, except if:

“(1) The disclosure is necessary to render, or conduct a legitimate business activity directly related to, a cable service or other service provided by the cable operator to the subscriber;

“(2) The disclosure is subject to subsection (h) of this section, made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed; or

“(3) The disclosure is of the names and addresses of subscribers to the cable service; provided, that:

“(A) The cable operator has provided the subscriber the opportunity to prohibit or limit such disclosure; and

“(B) The disclosure does not reveal, directly or indirectly, the extent of any viewing or other use by the subscriber of a cable service or other service provided by the cable operator, any channel or class of channels to which the subscriber subscribes, or the nature of any transaction made by the subscriber over the cable system;

“(C) The disclosure is otherwise consistent with District law and regulation.

“(e) A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by the cable operator. A cable subscriber shall be provided reasonable opportunity to correct any error in the information.

“(f) A cable operator shall destroy personally identifiable information if the information

is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (b) of this section or pursuant to a court order.

“(g) A cable operator shall not engage in or permit the transmission of any aural, visual, or digital signal, including "polling" the channel selection from any subscriber's premises without first obtaining written permission of the subscriber. This provision is not intended to prohibit the use of transmission of signals useful only for the control or measurement of system performance.

“(h) A cable operator shall not engage in or permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from subscriber's premises of 2-way services using aural, visual, or digital signals without first obtaining written permission from the subscriber.

“(i) In addition to any other lawful remedy available to a cable subscriber, any person aggrieved by any act of a cable operator in violation of this section may bring a civil action in the Superior Court and the Court may award the following:

“(1) Actual damages or liquidated damages computed at the rate of \$100 a day for each day of violation or \$ 1,000, whichever is higher;

“(2) Punitive damages; and

“(3) Reasonable attorneys' fees and other litigation costs reasonably incurred.

“SUBTITLE XI. COMPETITION AND CUSTOMER CHOICE.

“Sec. 1101. Landlord-tenant relationship.

“(a) No landlord of a residential property shall:

“(1) Interfere with the installation, operation, upgrade, or maintenance of cable television facilities upon a property or premises, except that a landlord may require that:

“(A) The installation of cable television facilities conform to those reasonable conditions and architectural controls set forth by the landlord as necessary to protect the safety, functioning, and appearance of the property or premises, and the convenience and well-being of tenants;

“(B) The cable operator or the tenant or both bear the entire cost of the installation, operation, upgrade, maintenance, or removal of the facilities; or

“(C) The cable operator agrees to indemnify the landlord for any damages caused by the installation, operation, upgrade, maintenance, or removal of the facilities.

“(2) Demand or accept payment from any tenant or cable operator, in any form, in exchange for permitting access to a property or premises or for permitting cable television service or facilities on or within a property or premises except as provided in rules and procedures established by the Office allowing for adequate compensation.

“(3) Discriminate in rental charges or otherwise between tenants who receive cable television service and those who do not.

“(b) Rental agreements and leases executed before October 22, 1983, may be enforced notwithstanding this section.

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“(c) No cable operator shall enter into any agreement with the landlord, owners, lessees, or persons controlling or managing a building or do or permit any act that would have the effect, directly or indirectly, of diminishing, infringing upon, or interfering with the rights of any tenant or other occupant of the building to choose a cable service, Satellite Master Antenna Television, Direct Broadcast Satellite, any other video transmission system, or use or avail himself or herself to master or individual antenna equipment.

“(d) In addition to any other lawful remedy available to a tenant, a person aggrieved by an act of a cable operator or a landlord in violation of this section may bring a civil action in the Superior Court and the court may award damages, punitive damages, reasonable attorneys’ fees, and other litigation costs reasonably incurred.

“SUBTITLE XII. EMPLOYMENT AND NON-DISCRIMINATION.

New Part L

“Sec. 1201. Prohibition of discrimination.

New
§ 34-1262.01

“(a) A cable operator shall not refuse to hire or employ, discharge, or otherwise discriminate against any person for any reason provided in the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*).

“(b) The provisions of the Human Rights Act shall apply to a cable operator.

“Sec. 1202. Affirmative action.

New
§ 34-1262.02

“(a) In order to maximize opportunities for minority employment and participation in the cable television industry, each cable operator shall make a positive and good faith effort to establish employment goals and timetables designed to achieve minority representation equal to the minority population of the District by the end of the first year of the franchise and throughout the balance of the franchise term; provided, that qualified or qualifiable minority persons are available. The adoption and implementation of goals and timetables by a cable operator shall not constitute a discriminatory practice prohibited under this act. For the purposes of this subsection, the term “qualifiable” refers to minority persons who can be trained in accordance with the requirements of this section.

“(b) Upon the grant of a franchise, the cable operator shall submit its construction and skilled trades apprenticeship-training programs to the Director of the District of Columbia Apprenticeship Council for approval and registration pursuant to An Act to Provide for Voluntary Apprenticeship in the District of Columbia, effective March 6, 1979 (D.C. Law 2-156; D.C. Official Code § 32-1431).

“(c) The cable operator shall report annually to the Office of Human Rights regarding the status of its training programs including a detailed analysis of the cable operator's efforts to achieve its goals and timetables.

“(d) Failure to comply with any provision of this section shall constitute an unlawful discriminatory practice and shall subject the cable operator to fines imposed by the Office of Human Rights of not less than \$1,000 for each day that the violation persists and any other penalties that may be imposed pursuant to District law or this act.

“Sec. 1203. Employment of District residents.

New
§ 34-1262.03

“Except as otherwise provided in a cable franchise agreement, a cable operator's employee workforce and subcontractors shall consist of not less than 51% District residents.

New Part M

“SUBTITLE XIII. COMPLIANCE.

“Sec. 1301. Compliance.

New
§ 34-1263.01

“(a) A cable operator shall not be excused from complying with any of the terms and conditions of this act or the franchise agreement, as a result of any failure of the District, upon any one or more occasions, to insist upon the cable operator's performance or to seek the cable operator's compliance with any one or more of such terms or conditions.

“(b) A pending litigation or an appeal to a regulatory body or court of competent jurisdiction shall not excuse a cable operator from the performance of its obligations under this act or the franchise agreement unless a stay is obtained or the cable operator is otherwise excused from performance by operation of law. Failure of the cable operator to perform such obligations because of pending litigation or appeal, in the absence of a stay issued by a court of competent jurisdiction, may result in forfeiture or revocation pursuant to the provisions of this act or the franchise agreement.

“Sec. 1302. Specific performance.

New
§ 34-1263.02

Whenever this act or the franchise agreement sets forth a time for an act to be performed by or on behalf of the cable operator, the time shall be deemed of the essence and the cable operator's failure to perform within the time provided shall, in all cases, be sufficient grounds for the District to invoke the remedies available under the terms and conditions of this act or the franchise agreement.

“Sec. 1303. Willful or repeated violations.

New
§ 34-1263.03

“(a) Whenever a cable operator shall willfully or repeatedly fail, refuse, or neglect to conduct or operate its cable system in accordance with the terms of this act or the franchise, or to comply with the conditions of the use of the public rights-of-way, or in other ways violate the terms and conditions of this act or a franchise agreement within the preceding 3 years, the Executive Director shall notify the cable operator in writing, setting forth the nature and facts of such violations. If within 20 business days following such written notification the cable operator has not furnished proof that corrective action has been taken or is being actively and expeditiously pursued to the satisfaction of the Executive Director, or that the alleged violation did not occur, the Executive Director, through the Mayor, shall submit a resolution for termination of the franchise to the Council.

“(b) If the Council determines that the cable operator had just cause for noncompliance, the Council shall direct the cable operator to comply within such time and manner and on such terms and conditions as are reasonable, or if appropriate, waive compliance in the specific matter presented.

“(c) If the Council determines that the cable operator's noncompliance was without just

cause, the Council may approve the resolution to terminate the franchise.

“(d) No revocation or termination shall be effective unless the Council, or a committee of the Council, shall have held a public hearing where interested parties and the public may be heard and the Council shall set forth the reasons for the termination. In the event the termination of the franchise depends upon a finding of fact, the finding of fact as made by the Council shall be deemed to be conclusive, unless modified by a court of competent jurisdiction.

“(e) The cable operator shall not be declared in violation of or subject to any sanctions under this act in any case in which the performance of the cable operator is prevented for reasons beyond its control. A violation shall not be deemed beyond the cable operator’s control if committed by a person in whom the cable operator holds a controlling interest, be it directly or indirectly.

“(f) The termination of a franchise under this section shall in no way affect any of the rights of the District under the franchise or any provision of law.

"SUBTITLE XIV. MISCELLANEOUS PROVISIONS.

“Sec. 1401. Obscenity.

The cable operator and all users of the cable system shall comply with all federal laws regarding obscenity on cable television and all District laws regarding obscenity.

“Sec. 1402. Cable theft.

“(a) For the purposes of this section:

“(1) “Cable service” means a cable system that has been granted a franchise to operate in the District, an Open Video System that is authorized to operate in the District, a Satellite Master Antenna Television System, Direct Broadcast Satellite, or any other video transmission system for which a person is expected to pay before receiving such transmission.

“(2) “Cable operator” means a person providing cable service as defined in paragraph (1) of this subsection.

“(b) Unless authorized by a cable operator, it shall be unlawful for any person to do, or aid or assist another person in doing, any of the following:

“(1) Attach or affix, or cause to be attached or affixed, any equipment or device, including, but not limited to, a decoder, descrambler, converter, or modem, which allows the access to, or the use of, a cable service without payment to the cable operator. A violation of this paragraph shall be a misdemeanor punishable by a fine of up to \$2500 or imprisonment of up to 6 months, or both.

“(2) Receive a cable signal or obtain, intercept, or receive a service from a cable operator by any equipment or device, including, but not limited to a decoder, descrambler, converter, access code, or modem, with the intent to deprive the cable operator of compensation for the service. It shall be an affirmative defense to an offense under this paragraph that a cable operator has failed to disconnect a service at the request of a subscriber, or where the cable operator failed to disconnect service, upon a request, at the end of an occupancy and a new occupant moves in without knowledge of the existing service. A violation of this paragraph shall

New Part N

New
§ 34-1264.01

New
§ 34-1264.02

be a misdemeanor punishable by a fine of up to \$5000 or imprisonment of up to 1 year, or both.

“(3) Make or maintain either a physical, electrical, acoustical, or other connection to a cable system, or tamper, interfere with, damage, or cut any cables, wires, components, modems, lock boxes, pedestals, or other equipment of a cable operator, with the intent to deprive a cable operator of compensation for its service. A violation of this paragraph shall be a misdemeanor punishable by a fine of up to \$5,000 or imprisonment of up to 1 year, or both.

“(4) Make or maintain any modification or alteration to any device, equipment, or apparatus or remove, disconnect or sell any device, equipment, or apparatus installed by a cable operator, without the authority of the cable operator, for the purpose of intercepting, descrambling, decoding, or receiving any program or other service offered by the cable operator. A violation of this paragraph shall be a misdemeanor punishable by a fine of up to \$5,000 or imprisonment of up to 1 year, or both.

“(5) Make, manufacture, import into the District, assemble, transfer, distribute, promote, sell, lease, lend, offer, own, possess, or possess for sale, advertise or publish for sale or for lease any device, equipment, apparatus, or circuit board designed to intercept, decode, descramble, or otherwise make intelligible any encoded, encrypted, scrambled, or other nonstandard signal distributed by a cable operator. A violation of this paragraph shall be a misdemeanor punishable by a fine of up to \$5,000 or imprisonment of up to 1 year or both.

“(c) A person who commits a violation under subsection (b) of this section, for payment or offer of payment, or with the intent to profit from any consideration received or expected, shall be guilty of a felony and upon conviction shall be subject to a fine of up to \$10,000 or imprisonment of up to 10 years, or both.

“(d) A person convicted for the violation of any of the offenses under subsection (b) of this section 3 times within a 10-year period shall be guilty of a felony.

“(e) A person may seek civil remedies, penalties, damages, or injunctions in addition to the criminal penalties provided under this section. In seeking civil penalties, damages, or injunctions, a person may use a guilty judgment or any other plea bargain agreement as evidence in support of such civil remedies, penalties, or damages.

“Sec. 1403. Rights reserved to District.

New
§ 34-1264.03

“The District expressly reserves the following rights:

“(1) To exercise its governmental powers, now or hereafter, to the full extent that the powers may be vested in or granted to the District.

“(2) To adopt, in addition to the provisions contained herein and in the franchise and in any existing applicable acts, additional regulations that it finds necessary in the exercise of its police power, if the regulations, by act or otherwise, shall be reasonable and not in conflict with the rights herein granted or the provisions contained in a franchise agreement.

“Sec. 1404. Rules.

“The Mayor, in accordance with the procedures of Title I of the District of Columbia

New
§ 34-1264.04

Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*) shall issue rules to implement the provisions of this act.

“Sec. 1405. Transition provisions.

New
§ 34-1264.05

“(a) All appointments, rules, regulations, orders, administrative issuances, obligations, determinations, agreements, and understandings made, established, issued, promulgated, or entered into under the authority of title I of the Cable Television Communications Act of 1981, effective August 21, 1982 (D.C. Law 4-142; D.C. Official Code § 34-1201 - 1250), shall remain in effect until amended, modified, superseded, or repealed.

“(b) The Public Access Corporation established in accordance with section 30 of the Cable Television Communications Act of 1981, effective August 21, 1982 (D.C. Law 4-142; D.C. Official Code § 34-1229), may continue to serve as the Public Access Corporation required by section 302(a); provided, that the Corporation shall amend its bylaws to be consistent with the provisions of this title.

“(c) The funds in the special account established by section 8a of the Cable Television Communications Act of 1981, effective August 21, 1982 (D.C. Law 4-142; D.C. Official Code § 34-1207.1), shall be transferred to the special account established by section 203.”.

Sec. 3. Repealer.

The newly designated title I of the Cable Television Communications Act of 1981, effective August 21, 1982 (D.C. Law 4-142; D.C. Official Code § 34-1201 - 1250), is repealed.

Repeal
§§ 34-1201 -
34-1250

Sec. 4. Fiscal impact statement.

Pursuant to section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)), the Council finds that this act will not have any fiscal impact on the General Fund of the District. The funds for the implementation of this act will be derived from franchise application fees, franchise fees, other fees, and penalties collected pursuant to this act or to a franchise agreement, and collections on indemnities, insurance, and bonds pursuant to this act or to a franchise agreement as provided in the act.

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of a veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved

ENROLLED ORIGINAL

December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia