

COUNCIL OF THE DISTRICT OF COLUMBIA


NOTICE

D.C. LAW 4-142

"Cable Television Communications Act of 1981".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 4-35 on first, amended first, second amended first, third amended first, fourth amended first and second readings, March 9, 1982, April 6, 1982, April 27, 1982, May 11, 1982, May 25, 1982 and June 8, 1982, respectively. This legislation was deemed approved without the signature of the Mayor on June 30, 1982, pursuant to Section 404(e) of "the Act", and was assigned Act No. 4-208, published in the July 9, 1982, edition of the D.C. Register, (Vol. 29 page 2872) and transmitted to Congress on July 7, 1982 for a 30-day review, in accordance with Section 602 (c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 4-142, effective August 21, 1982.


ARRINGTON DIXON
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

July 12,13,14,15,16,19,20,21,22,23,26,27,28,29,30

August 2,3,4,5,6,9,10,11,12,13,16,17,18,19,20

AN ACT

D.C. ACT 4 - 208

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUN 30 1982

To authorize the District of Columbia government to grant franchises for the construction and operation of cable television systems; to place limited regulatory authority over such systems within the purview of the Public Service Commission; and for other purposes.

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BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
 That this act may be cited as the "Cable Television
 Communications Act of 1981".

Sec. 2. Legislative Purposes.

The Council of the District of Columbia finds,
 determines, and declares:

- (a) That after careful investigation, the rates,
 services, and operation of cable television companies in the
 strict of Columbia are affected with a public interest;

D.C.Code,
 sec. 43-1
 (1981 ed.)

(b) That it should be, and is declared, the policy of the District of Columbia government to provide fair regulation of cable television companies in the interest of the public;

(c) That the objects of such regulations are:

(1) to promote adequate, economic, and efficient cable television service to the citizens and residents of the District of Columbia;

(2) to encourage the optimum development of the educational, economic, and community-service potentials of the cable television medium;

(3) to provide just and reasonable rates and charges for cable television system services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices;

(4) to promote and encourage harmony between cable television companies and their subscribers and customers;

(5) to cooperate with other jurisdictions and with the federal government in providing and coordinating efforts to regulate cable television companies effectively in the public interest;

(6) to encourage the accessibility of minority ownership of cable television companies, and minority involvement in the development and operation of cable television companies in the District of Columbia; and

(7) to encourage ongoing citizen participation in the operation of the cable system.

(d) That to secure such regulations and promote the

Objectives thereof, authority to regulate cable television companies (including services, operations, and recommendations of rate structure in the manner and in accordance with the policies set forth in this act) shall be vested with the Public Service Commission.

(e)(1) That, after careful investigation, the Council finds the existence of a past and present history of discrimination, underrepresentation, and underutilization of minority residents which prevades all aspects of the District of Columbia's television broadcast industry, including, employment, programming, and ownership.

(2) Further, that national statistics on the level of minority representation and participation in the cable television industry evidence a continuing underrepresentation and underutilization of minorities and as a consequence, minimal economic benefit accruing to minority communities through the growth of this multi-billion dollar industry; this is true even in geographic locales where minorities are the majority or near majority populace.

(f) The Council further recognizes the advent of cable television in the District of Columbia as a crucial opportunity to minimize and remedy the historic social and economic isolation of large segments of the District of Columbia's minority population.

(g) It is the intent of this legislation that District of Columbia minority residents be included in substantial numbers, as nearly as possible reflective of their numbers

in the overall populace of the District of Columbia, in the development, operation, and ownership of the cable television system. That in order to promote maximum, broad-based minority participation and control within the District of Columbia's cable industry, the Council requires that all cable television Franchisee's implement and maintain throughout the term of the franchise, strong affirmative action policies and programs for the benefit of the minority groups specified in this act.

(h) That in order to promote diversity of programming and in order to adequately represent the views of minorities residing in the District of Columbia, the Council shall adopt a policy to encourage minority ownership of telecommunications properties.

(i) That in order to avoid charges of influence-peddling and political favoritism, which in many jurisdictions have resulted in an acrimonious, divisive, and distracting franchising process, the cable industry practice of enlisting local supporters, commonly called "rent-a-citizen" is specifically discouraged.

Sec. 3. Definitions.

For purposes of this act:

(1) The term "Ancillary Service" means any communication service, other than basic service, provided over the franchise's system by the Franchisee directly or as a carrier for the Franchisee's subsidiaries, affiliates, or any other person engaged in communication services, including, but not limited to burglar alarms, data

D.C. Code,
sec. 43-1
(1981 ed.)

transmission facsimile reproduction, meter reading, home shopping, leased channel programming, and any other service for which a separate charge is made.

(2) The term "Bandwidth" means a section of the frequency spectrum needed to transmit pictures, sound, data or any combination thereof.

(3) The term "Basic Service" means all subscriber service provided by the Franchisee, including the delivery of broadcast signals covered by the regular monthly charge paid by all subscribers, excluding optional services for which a separate charge is made.

(4) The term "Board" means the Public Access Board established by section 30(g).

(5) The term "Cable Television Converter" means a device used to facilitate the reception of non-standard television signals on conventional television receivers.

(6) The terms "Cable Television System", "Cable", and "CATV" mean a non-broadcast facility consisting of a set of transmission paths and associated signals generation, reception, and control equipment under common ownership and control, that distributes, or is designed to distribute to subscribers, the signals of 1 or more television broadcast stations, including any ancillary service offered by the Franchisee.

The terms "Cable Television System", "Cable", or "CATV" shall not include (A) any such facility that serves fewer than 50 subscribers, or (B) any such facility that serves or will serve only subscribers in 1 or more multiple unit

dwellings under common ownership or management.

(7) The term "Commission" means the Public Service ^{Enrolled Original} Commission of the District of Columbia established by paragraph 97(a), section 8 of An Act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 995; D.C. Code, sec. 43-401).

(8) The term "Council" means the Council of the District of Columbia.

(9) The term "Design Commission" means the District of Columbia Cable Design Commission established by section 4.

(10) The term "District" means the District of Columbia government.

(11) The term "Educational Access Channel" means a specifically designated channel on any cable system which is reserved for use by educational authorities and institutions of cable television.

(12) The term "Executive Director" means the Director of the independent Office of Cable Television established by section 6.

(13) The term "Fair Market Value" means the price that a willing buyer would pay to a willing seller.

(14) The terms "Federal Communications Commission" and "FCC" mean the federal agency as presently constituted by the Communications Act of 1934, approved June 19, 1934 (48 Stat. 1064; 47 U.S.C. sec. 151 et seq.).

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(15) The term "Franchise" means the nonexclusive rights granted hereunder to construct and operate a cable television system along the public ways in the District of Columbia, or within specified areas in the District of Columbia, and is not intended to include any license or permit required for the privilege of transacting and carrying on a business within the District of Columbia as may be required by laws of the District.

(16) The term "Franchisee" means the natural person, partnership, domestic and foreign corporation, association, joint venture, or organization of any kind granted a franchise by the Council under this act and its lawful successor, transferee, or assignee.

(17) The term "Franchise Territory" means all or any portion of the District of Columbia for which a franchise has been granted.

(18) The term "Full Width of the Improvement" means the width of the original excavation plus space on each side of the excavation necessary to "shore up" the backfill to restrict settling of dirt.

(19) The term "Gross Revenues" means all revenue derived by the cable system from any and all resources.

(20) The term "Leased Channel" means a channel or portion of a channel on any cable system which is reserved for carriage of program material provided by persons who lease channel time from the Franchisee for the presentation of programs.

(21) The term "Local Government Access Channel" means

specifically designated channels on any cable television system which are reserved by this act for the use of the District for access purposes.

(22) The term "Material" means any visual material shown on a cable television system, whether or not accompanied by a soundtrack, or any sound recording played on a cable television system.

(23) The term "Mayor" means the Mayor of the District of Columbia.

(24) The term "Minority" means Black Americans, Native Americans, Hispanic Americans, Oriental Americans who, by virtue of being a member of the foregoing groups, have been found by the Council to be economically and socially disadvantaged because of historical discrimination practiced against these groups by the institutions within the United States of America.

(25) The terms "Municipal Bandwidth" and "Municipal Bandwidth Channels" mean a section of the frequency spectrum needed to transmit pictures, sound, data, or any combination of these which is reserved by this act for the use of the District without restriction on its use.

(26) The term "Net Income" means the amount remaining after deducting from gross revenues all of the direct expenses associated with the operation of the cable television system including the franchise fee, interest, depreciation, and federal or state income taxes.

(27) The term "Office" means the independent Office of Cable Television established by section 6.

(28) The term "Ownership in a Business" means an economic relationship with a business (any corporation, partnership, sole proprietorship, firm, enterprise, association, organization, self-employed individual, holding company, joint stock, trust, and any legal entity through which business is conducted for profit) as an officer, director, employee, or holder of stock in such a business with a fair market value of at least \$1,000.

(29) The term "Public Access Channel" means a specifically designated, noncommercial channel or any public cable television system which is reserved for noncommercial use by members of the public on a nondiscriminatory basis.

(30) The term "Public Way" means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, or other public right-of-way including public utility easements or rights-of-way, and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the District which may be utilized for the purpose of installing and maintaining the Franchisee's cable system after negotiation of terms and conditions mutually satisfactory to the District, the Franchisee, and the appropriate public utility.

(31) The term "Request for Proposal" means the document issued by the franchising authority for the franchise applicant's use, which states proposed guidelines, outlines minimum requirements for each applicant, and specifies application deadlines.

(32) The term "Service Area" means that portion of the franchise territory for which cable television service is planned.

(33) The term "Subscriber" means a member of the general public who receives broadcast programming and any ancillary service distributed by a cable television system and does not further distribute it.

Words in the singular number include the plural number.

The word "shall" is always mandatory and not merely directory.

Sec. 4. District of Columbia Cable Design Commission Established.

There is established a District of Columbia Cable Design Commission to assist and advise the Council regarding the development, regulation, and design of a cable television system in the District of Columbia which will best serve the public interest.

D.C. Cod.
sec. 40
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(a) The Design Commission shall consist of 28 members. All members of the Design Commission shall be residents of the District of Columbia and shall be appointed in the following manner: 1 member shall be appointed by each member of the Council; 1 additional member shall be appointed by each member of the Council who is a chairperson of a Council committee representing the area of jurisdiction of that committee as outlined in the rules of the Council; and 6 persons shall be appointed by the Mayor.

(b) The Mayor shall make his or her appointments after the other members of the Design Commission are appointed.

Commission

Commission

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The Mayor shall make his or her appointments to assure Enrolled Original representation on the Design Commission from the constituency groups identified in this subsection. To the extent possible, the membership of the Design Commission should include representatives of public interest organizations, civil rights, the health and arts communities, labor organizations, business groups, consumers, educators, religious leaders, minorities, women, gay people, handicapped persons, and child advocates.

(c) A member of the Design Commission shall not have any ownership in a business interest in any business enterprise which operates a cable system or is an applicant for a cable franchise. From the inception of his or her term, each member shall be subject to the District of Columbia Campaign Finance Reform and Conflict of Interest Act, approved August 14, 1974 (88 Stat. 447; D.C. Code, sec. 1-1401 et seq.).

(d) The term of the members shall be 1 year from the first meeting of the Design Commission.

(e) The Chairperson of the Council's Committee on Public Services and Consumer Affairs shall appoint 1 member to serve as Chairperson of the Design Commission. The Design Commission shall elect from its members other officers as it considers necessary.

(f) A majority of the members of the Design Commission shall constitute a quorum. A quorum of the members shall be necessary for the Design Commission to conduct its business.

(g)(1) The members of the Design Commission shall serve

term

without compensation.

(2) The members of the Design Commission shall be entitled to reimbursement for reasonable expenses.

(h) The Design Commission shall determine the time and place of its meetings:

PROVIDED, That the Council may convene the Design Commission at any time. All meetings of the Design Commission are open to the public consistent with section 742 of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 831; D.C. Code, sec. 1-1504).

(i) The Design Commission annually shall receive funds in accordance with the appropriations process. These funds may be applied to the costs associated with hearings, the development of surveys and other forms of community interface, and for the hiring of consultants and staff.

(j) The Design Commission shall cease to exist 30 days after submission of the comprehensive report referred to in section 5(n) outlining the activities and recommendations of the Design Commission.

Sec. 5. Duties of the Design Commission.

The Commission shall:

(a) Consider the safety, health, and welfare of the people of the District of Columbia in the development of cable telecommunications.

(b) Make recommendations to the Council regarding the establishment of rules, standards, requirements, and procedures for the consideration, approval, and maintenance

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of all operations of a cable system in the District of Columbia.

(c) Advise the Council as to the most appropriate form of ownership of the cable telecommunications system.

(d) Develop, within 90 days after its initial meeting, a Request for Proposal, cable franchise application, and a procedure for the granting of a franchise or franchises which shall guarantee, to the greatest extent possible, a cable system which will provide local community access and full minority participation in all phases of development and maintenance of any cable system in the District of Columbia.

(e) Identify, involve, and utilize the services of District of Columbia residents, business firms, consultants and District of Columbia-based agencies with expertise and experience in cable television technology, franchising, engineering, financing, ownership, and development in the research analysis, and overall work of the Design Commission.

(f) Assist the Council in the development of the initial terms, fees, and rates to be charged the Franchisee and cable subscribers.

(g) Assist the Council in the development of survey materials to complete a community needs assessment.

(h) Advise the Council regarding requirements of the Franchisee to interconnect cable systems within the District of Columbia and adjoining jurisdictions.

(i) Advise the Council regarding provisions in the Request for Proposal which may include, but not be limited

to, governmental, educational, health or medical, cultural, business or commercial, and community services or uses of a cable system; possibilities for community service delivery including 2-way communication systems, videotext systems, cable systems involving fiber optic systems, microwave, satellite, or any other type data transmission systems, meter reading and 2-way traffic control systems, home security systems, smoke detector systems, police and emergency medical alert systems, electronic newspapers, home banking, bill paying, and other electronic fund transfer systems, home catalogue shopping, information retrieval systems from libraries and other sources a requirement that cable systems provide a device capable of locking out programming on a designated number of channels, including public access channels, and interactive opinion polling systems. The Design Commission shall inform the Council of any advances in technology or expansion of services as they become available.

(j) Assist the Council regarding the establishment of a procedure for dealing with consumer complaints regarding the operation of cable.

(k) Keep all records, files, reports, documents, and papers received from any person or persons, business, or federal, state, or local governments as may be appropriate.

(l) Advise the Council as to the establishment of a system of accounts by which the gross annual revenues of the Franchisee shall be determined.

(m)(1) Advise the Council regarding the need for

legislation, amendment to existing laws, or regulations governing the use and operation of cable and protecting the privacy rights and civil liberties of cable subscribers.

(2) The proposed regulations governing the use and operation of cable and protecting the privacy rights and civil liberties of cable subscribers may be concerned with, but shall not be limited to:

(A) The collection, use, sale, or distribution by cable operators or others of information obtained by cable operators concerning the opinion preferences, consumer product purchases, and credit ratings of individual subscribers;

(B) The requirement that warnings be given to subscribers participating in 2-way cable subscriber opinion samples, viewer participation games, product purchase campaigns, and other cable features involving the indication of individual subscriber opinion or preference, so that subscribers will be aware that responses are being registered and recorded;

(C) Restriction of the use and availability of motion-sensing features of cable; and

(D) Other matters promoting the public interest and the convenience of the subscribing and viewing public.

(n) Submit to the Council a comprehensive report which outlines the activities and recommendations of the Design Commission at the completion of its 1-year term.

Sec. 6. Office of Cable Television.

There is established an independent Office of Cable

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Television which shall be administered by an Executive Director appointed by the Mayor with the advice and consent of the Council. The Executive Director shall not have any ownership in a business interest in any business enterprise which operates a cable system or is an applicant for a cable franchise.

Sec. 7. Powers of the Office of Cable Television.

The Office of Cable Television shall:

(a) Issue procedures governing the business of the Office.

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sec. 43-
(1981 ex

(b) Advise the Council on the most efficient and profitable use of the District-owned bandwidth channels.

(c) Mandate a minimum number of public access channels for the District to use for educational and community purposes and oversee the use of those channels.

(d) Encourage the use of access channels among the widest range of institutions, groups, and individuals within the District of Columbia.

(e) Educate the public on the benefits and uses of cable technology.

(f) Conduct a periodic evaluation of the cable system with the cooperation of the Franchisee and, pursuant thereto, make recommendations to the Council for amendments to this act or to the franchise agreement.

(g) Make an annual report to the Council, including an account of franchise fees received and distributed and a review of any plans submitted during the year by the Franchisee(s) for development of new services.

Sec. 8. Executive Director's Duties and Powers.

The Executive Director of the Office of Cable Television shall have the general duties of administering the Office, including preparation of the budget, hiring of staff and other personnel, scheduling matters before the Office, maintaining records, and such other duties as may be assigned to him or her by the Council, or as may be required by law.

D.C.Code
sec. 43-
(1981 ed

Sec. 9. Powers of the Public Service Commission.

(a) The Public Service Commission shall:

(1) Initially review requests for rate modifications and recommend to the Council rate modifications which are reasonable and nondiscriminatory.

D.C.Code
sec. 43-
(1981 ed

(2) Recommend to the Council fees to be established for basic and ancillary cable services to conform to the provisions contained herein and consistent with FCC Rules and Regulations for Cable Television. The Commission may, at any time, recommend that the Council increase or decrease any rate; require discontinuance of any scheduled service; revise or delete any term or condition applicable thereto, upon a determination, and after a public hearing following notice to the Franchisee, that a particular rate, service, or term or condition (A) explicitly or implicitly violates the intent of this act or (B) has the effect of unreasonably restricting the use of public access.

(3) Resolve disagreements (including, but not limited to, the use of public way by the Franchisee to

install and maintain the Franchisee's cable system) among the Franchisee, public utilities, subscribers, and public and private users of the cable television system. In cases where the Franchisee has not satisfactorily responded to complaints, the Commission shall have the power to order adjustments which may take the form of the following:

(A) Require the Franchisee to adjust billing charges for services based upon the Commission's evaluation of the deficiencies involved, and if necessary, require the Franchisee to make reasonable refunds; and

(B) In cases where requests for service have been ignored or unfulfilled for whatever reason, the Commission shall have the power to require the Franchisee to provide service in response to all reasonable requests. The Commission shall ensure that the Franchisee provides uniform access to the cable system in order to avoid economic discrimination.

(4) Audit all Franchisee records as required by this act, and in the Commission's discretion, require the preparation and filing of information additional to that required in this act.

(5) Publish in newspapers of record in the District of Columbia, stating the date, time, place, subject matter, and reasonable rules governing the taking of testimony, a 30-calendar day notice of public hearings on requests for rate modifications, franchise revocations, and franchise renewals. With respect to all other public hearings, the notices shall be published at least 15 days

(excluding Saturdays, Sundays, and holidays) prior to the hearings. All public hearings related to a specific franchise territory shall be held within the geographical boundaries of the affected territory.

(6) A member of the Commission shall not have any ownership in a business interest in any business enterprise which operates a cable system or is an applicant for a cable franchise. Each Commissioner and his or her staff shall be subject to the District of Columbia Campaign and Finance Reform and Conflict of Interest Act, approved August 14, 1974 (88 Stat. 446; D.C. Code, sec. 1-1401 et seq.).

(b) The Office of the People's Counsel shall participate in proceedings before the Commission and the Council concerning cable rate modifications and shall exercise the full grant of authority vested in the Office of the People's Counsel established by section 1 of An Act To provide a People's Counsel for the Public Service Commission in the District of Columbia, and for other purposes, approved January 2, 1975 (88 Stat. 1975; D.C. Code, sec. 43-406).

Sec. 10. Application for Franchise.

(a) The application for a cable television franchise shall be submitted to the Design Commission on a written application form furnished by the Design Commission and in accordance with the procedures and schedules to be established and published by the Design Commission. The application will request facts and information which the Design Commission deems appropriate as to the legal,

D.C. Code
sec. 43-
(1981 ed)

financial, technical, and character qualifications of the applicant, as well as a complete disclosure of all those persons holding a financial interest in the corporation or partnership making the application for a franchise.

Applications shall be accompanied by a nonrefundable fee to be set by the Design Commission payable by certified check to the order of the D.C. Treasurer, which amount shall be used by the District to offset direct expenses incurred in the franchising and evaluation procedures, including, but not limited to, staff time and consulting assistance.

(b) Each applicant to whom the District grants a nonexclusive franchise shall, in addition to the nonrefundable fee specified in this section, pay to the District within 90 calendar days after the grant of the franchise a sum to be determined by the Design Commission. Said payment shall also be nonrefundable, shall be made payable by certified check to the order of the D.C. Treasurer, and shall be used to offset costs incurred by the District in granting the franchise and administering the provisions of this act.

Sec. 11. Recommendations to the Council.

After examining all applications submitted pursuant to procedures outlined herein and as further established by the Design Commission, the Chairperson of the Design Commission, upon the advice of the Design Commission, shall evaluate and transmit all applications to the Council and shall recommend to the Council those applications which best serve the residents of the District of Columbia. The Chairperson

D.C. Code
sec. 41
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shall transmit a proposed franchise agreement along with the applications to the Council.

Sec. 12. Grant of Authority.

(a) After examining those applications submitted pursuant to procedures established herein, the Council is authorized to grant by act, 1 or more nonexclusive franchise(s) for the right to construct and operate a cable television system within the public ways of specified areas of the District of Columbia. The franchise(s) will be granted to the applicant(s) who, in the Council's judgment will best serve the public interest, and whose construction, technical, and financial plans and arrangements are both feasible and adequate to fulfill the conditions set forth in this act. All such construction, technical, and financial plans, and arrangements and conditions shall be specifically incorporated into the franchise awarded to the applicant. No provisions of this act shall be deemed or construed to require the Council to grant a franchise following receipt of any franchise application(s).

D.C.Code
sec. 43-
(1981 ed

(b) A minimum of 10% of the total bandwidth shall be provided at no charge to the District with no restrictions on its use. The District shall have exclusive control of this bandwidth. When this municipal bandwidth has become fully utilized, additional bandwidth in an amount set forth in the Request for Proposal shall be made available to the District at the fair market value.

Sec. 13. Term of Franchise. The franchise shall be valid for a maximum term of 15 years from the date the

D.C.Code,
sec. 43-1
(1981 ed.

franchise is granted by the District subject to prior revocation pursuant to procedures established in this act. The franchise may be renewed pursuant to procedures established in this act.

Sec. 14. Notice to the Franchisee. The Commission shall not hold any meetings involving the review, renewal, revocation, or termination of the franchise unless the Chairperson of the Commission has advised the Franchisee in writing at least 30 calendar days prior to such meeting as to its time, place, and purpose and published notice of the meeting in a newspaper of general circulation in the District of Columbia at least 15 days (excluding Saturdays, Sundays, and holidays) before the meeting.

D.C.Code
sec. 43-
(1981 ed

Sec. 15. Franchise Review. It shall be the policy of the Council to amend the franchise agreement, upon application of the Franchisee, when necessary to enable the Franchisee to take advantage of advancements in the state-of-the-art which will afford it an opportunity to more effectively, efficiently, or economically serve its subscribers:

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sec. 43-
(1981 ed.

PROVIDED, HOWEVER, That this section shall not be construed to require the District to amend the franchise agreement. In the event a Franchisee makes such request, the Commission shall set forth the time and place of a special Commission meeting, the purpose of which will be to consider system performance, system design modification, and the possible need for reasonable and appropriate modifications in the franchise agreement of a nature that would result in

effectively terminating the franchise.

Sec. 16. Franchise Renewal.

(a) The Council shall set forth the time and place of a special Council meeting to be publicly announced and held not less than 15 months prior to the franchise expiration date, the purpose of which meeting will be to review the Franchisee's performance during the entire term of the franchise, to consider the adequacy of the franchise from the standpoint of the District, the Franchisee, the subscribers, and the Federal Communications Commission's Rules and Regulations for Cable Television and to determine the advisability of renewing the franchise.

D.C. Code
sec. 41
(1981 ed)

(b) The Council shall hear any interested person during the special meeting and shall determine whether or not the Franchisee did reasonably comply with the terms and conditions imposed by this act and the franchise agreement.

(c) If the Council determines that the Franchisee has been in reasonable compliance with the terms and conditions imposed by this act and the franchise agreement, it may renew the franchise. A franchise agreement renewal shall be by act of the Council. The District shall have the right to recoup from the Franchisee those direct expenses above normal administrative costs incurred pursuant to renewal of the franchise.

(d) Notwithstanding the fact that the Council may determine that the Franchisee has been in reasonable compliance with the terms and conditions imposed by this act and the franchise agreement, the Council shall have the

right not to renew the franchise, in which event the District shall, on the expiration date of the franchise, either purchase the assets of the Franchisee's cable television system at its fair market value or consistent with the provisions of this act, select a new Franchisee, after a full public proceeding, and cause such new Franchisee to purchase the assets at fair market value.

Sec. 17. Franchise Revocation Procedure.

Whenever the Franchisee shall willfully fail, refuse, or neglect to conduct, operate, or maintain its system in accordance with the terms of this act or the franchise agreement, or to comply with the conditions of street occupancy, or to make required extensions, or in other ways violate the terms and conditions of this act or the franchise agreement, the Commission shall notify the Franchisee in writing, setting forth the nature and facts of such noncompliance. Where the Commission determines that the Franchisee has failed to take corrective action within a reasonable period of time after notification, or has engaged in a pattern of noncompliance, it shall find that the Franchisee has materially breached the terms and conditions of this act or the franchise agreement, and shall recommend to the Council that it take action to suspend or terminate the franchise in accordance with the procedures set forth in section 18.

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Sec. 18. Termination of Franchise or Forced Purchase by the District.

(a) If, at any time during the term of the franchise,

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(1981 ed.)

the Council determines, after notice to the Franchisee and a hearing, that the Franchisee has materially breached the terms and the conditions imposed by this act or the franchise agreement, has become insolvent, unable or unwilling to pay its debts or is bankrupt, has attempted to or has practiced any fraud upon the District or subscribers, the Council may either suspend for a time certain, or terminate the franchise, or exercise the right of first refusal to purchase the assets of the Franchisee's cable television system at a cost not to exceed fair market value.

(b) Should the Council decide to terminate the franchise the Franchisee shall continue to operate the franchise until the Council has selected a new Franchisee. The Council shall select a new Franchisee by utilizing the same procedures and standards followed to award the initial franchise under this act.

(c) In the event the Council exercises its option to purchase the assets of the Franchisee's cable system at the fair market value, it shall give the Franchisee written notice of its intent to do so. The Franchisee shall, within 7 days of receipt of such notice, enter into bona fide negotiations with the District for the purpose of consummating the transaction at the earliest possible date.

Sec. 19. Arbitrary and Capricious Action by the Franchisee.

If, as a result of a dispute between the Franchisee and the District and prior to a settlement of that dispute as provided for in this act, or for any other reason, the

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Commission determines that the Franchisee has arbitrarily or capriciously discontinued service to its subscribers, the Franchisee shall forfeit its right of notice and a hearing as provided for in this act, and the Council shall, by act, immediately suspend for a time certain or terminate the franchise and seek such other judicial relief as may be available.

Sec. 20. Provisions for Arbitration.

(a) In the event the Council elects to purchase the Franchisee's cable system and its fair market value cannot be agreed upon, the final price shall be determined by an Arbitration Panel.

(b) The membership of the Arbitration Panel shall consist of 3 members. One member shall be selected by the Council, 1 member shall be selected by the Franchisee, and the third member shall be selected by the Franchisee representative and the Council representative acting jointly. If the Franchisee representative and the Council representative fail to agree as to the third member, either or both members shall apply to the American Arbitration Association and the latter shall select the third member of the Arbitration Panel. Absent majority agreement to the contrary, the third appointee shall be the Presiding Officer.

(c) Each party shall bear the expenses of its own representatives. The expenses of arbitration shall be borne as determined by the Arbitration Panel in its award or findings, but in no event shall the District be obligated

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for more than one-half of the expenses.

(d) The determination of the majority of the 3-member Arbitration Panel shall be binding on the parties.

Sec. 21. Transfer of Franchise.

(a) The franchise granted under this act shall be a privilege to be held in personal trust by the Franchisee. It shall not be assigned, transferred, sold, or disposed of, in whole or in part, by voluntary sale, merger, consolidation, or otherwise by forced or involuntary sale, without prior consent of the Council. The District may take legal or equitable action to set aside, annul, revoke, or cancel the franchise, or the transfer of the franchise, if said transfer is not made according to the procedures set forth in this act and the franchise agreement.

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(b) No person who has an ownership interest exceeding 5% in the franchise shall transfer, sell, assign, or otherwise dispose of such interest so that the person's ownership interest shall be less than 5% without the prior consent of the Council. No person shall purchase or otherwise acquire an ownership interest exceeding 5% in the franchise without the prior approval of the Council. The District may take legal or equitable action to set aside, annul, revoke, or cancel the transfer of such ownership interest, or the franchise, if the transfer is not made according to this act and the franchise agreement.

(c) Any sale, transfer, or assignment proposed by the Franchisee shall be made by a proposed bill of sale or similar document, a copy of which shall be filed with the

Commission within 90 days prior to any such proposed sale, transfer, or assignment.

(d) The Commission shall recommend whether Council approval of the proposed sale, transfer, or assignment should be granted. The proposed assignee must comply with all provisions of this act and must be able to provide proof of financial, legal, technical, and character qualifications as well as a complete disclosure of all those persons holding an ownership interest in the proposed assignee.

(e) Prior consent of the Council shall be required for a transfer in trust, mortgage, or other instrument or hypothecation in whole or in part, to secure an indebtedness of the Franchisee.

(f) The consent of the Council to any sale, transfer, lease, trust, mortgage, or other instrument or hypothecation shall not constitute a waiver or release of any of the rights of the District under this act and the franchise agreement.

Sec. 22. Transfer of Ownership to the District.

Upon payment of the purchase price, the Franchisee shall immediately transfer to the District possession and title to all facilities and property, real and personal, related to its cable television system, free from any and all liens and encumbrances not agreed to be assumed by the District in lieu of some portion of the purchase price. The Franchisee shall make it a condition of each contract entered into by it with reference to its operations under this act and the franchise agreement, that the contract

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shall be subject to the exercise of this option by the District and that the District shall have the right to succeed to all privileges and obligations thereof upon the exercise of such option.

Sec. 23. District's Right to Assign.

The District shall have the right and power to assign its purchase rights to a successor Franchisee selected by the Council following the procedures and standards established by this act for the initial award of the franchise.

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Sec. 24. Franchisee's Obligation as Trustee.

Until such time as the Franchisee transfers to the District or to a new Franchisee, possession and title to all assets, real and personal, related to its cable television system, the Franchisee shall, as trustee for its successor in interest, continue to operate the cable television system under the terms and conditions of this act and the franchise agreement and to provide the basic service and all of the services that may be provided at that time. During such interim period, the Franchisee shall not sell any of the system assets nor shall the Franchisee make any physical, material, administrative or operational change that would tend to:

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- (a) degrade the quality of service to the subscribers;
- (b) decrease income; or
- (c) materially increase expenses without the express

permission, in writing, of the District or its assignee.

The District may seek legal and equitable relief to enforce

the provisions of this section.

Sec. 25. Franchise Fee.

(a) The Franchisee shall pay to the District an annual sum equal to at least 5% of its annual gross revenues during the period of its operation under the franchise to cover the costs of administering the cable system consistent with FCC Rules and Regulations.

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(b) The Franchisee shall file with the District, within 30 days after the expiration of each of the Franchisee's fiscal quarters, a financial statement clearly showing the gross revenues received by the Franchisee during the preceding quarter. Payment of the quarterly portion of the franchise fee shall be payable to the District at the time the statement is filed. The Franchisee shall also file, within 120 days after the Franchisee's fiscal year, an annual report, prepared and audited by a certified public accountant acceptable to the District, showing the yearly total gross revenues.

(c) The District shall have the right, consistent with the provisions of this act, to audit and to recompute any amounts determined to be payable under this act: PROVIDED, HOWEVER, That such audit shall take place within 12 months following the close of each of the Franchisee's fiscal years. Any additional amount due the District as a result of the audit shall be paid within 30 days following written notice to the Franchisee by the District. The notice which the District sends to the Franchisee shall include a copy of the audit report. The cost of the audit

shall be borne by the Franchisee if it is determined that the Franchisee's annual payment to the District for the preceding year is increased thereby by more than 5%.

(d) In the event that any franchise payment of recomputed amount is not made on or before the applicable dates specified herein the Franchisee shall be charged from the due date at the prevailing prime rate of interest.

(e) In the event the franchise is terminated prior to its expiration date, and the District invokes its right to purchase the Franchisee's cable television system, the Franchisee shall file with the District, within no less than 30 calendar days following the date that ownership and control passes to the District or its assignee, a financial statement clearly showing the gross revenues received by the Franchisee since the end of the previous fiscal quarter. The Franchisee shall pay the franchise fee due at the time the statement is filed.

Sec. 26. Insurance, Bonds, and Indemnity.

(a) At all times during the term of the franchise, including the time for removal of facilities or management as provided for herein, the Franchisee shall obtain, pay all premiums for, and file with the Public Service Commission written evidence of payment of premiums and executed duplicate copies of the following:

(1) A general comprehensive public liability policy indemnifying, defending, and holding harmless the District, its officers, boards, commissions, agents, and employees from any and all claims made by any person on

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account of injury to, or death of a person or persons caused by the operations of the Franchisee under the franchise herein granted or alleged to have been so caused or alleged to have occurred. The minimum liability for such policy shall be set forth in the franchise agreement.

(2) Property damage insurance indemnifying, defending, and holding harmless the District, its officers, boards, commissions, agents, and employees from and against all claims made by any person for property damage caused by the operations of the Franchisee under the franchise herein granted or alleged to have been so caused or alleged to have occurred. The minimum liability for the policy shall be set forth in the franchise agreement.

(3) A performance bond running to the District with good and sufficient surety approved by the District in a sum set by the Council conditioned upon the faithful performance and discharge of the obligations imposed by this act and the franchise awarded hereunder from the date thereof. When basic service is available to more than 50% of the occupied dwelling units within the franchise area, as certified by the Commission, the amount of the bond shall be reduced to a sum set by the Council.

(b) The bond and all insurance policies called for herein shall be in a form satisfactory to the Corporation Counsel of the District of Columbia and shall require 30 calendar days written notice of any cancellation to both the District and the Franchisee. The Franchisee shall, in the event of any such cancellation notice, obtain, pay all

premiums for, and file with the District written evidence of payments of premiums, duplicate copies of any insurance so cancelled within 30 calendar days following receipt by the District or the Franchisee of notice of cancellation.

(c) The Franchisee shall, at its sole cost and expense, indemnify and hold harmless the District, its officers, boards, commissions, agents, and employees against any and all claims, suits, causes of action, proceedings, and judgments for damage arising out of the operation of the cable television system under the franchise. These damages shall include, but not be limited to, penalties arising out of copyright infringements and damages arising out of any failure by the Franchisee to secure consent from the owners, authorized distributors, or licensees of programs to be delivered by the Franchisee's CATV system whether or not any act or omission complained of is authorized, allowed, or prohibited by the franchise. Indemnified expenses shall include, but not be limited to, all out-of-pocket expenses, such as attorney's fees, and shall also include the reasonable value of any services rendered by the Corporation Counsel of the District of Columbia, or his or her designee.

(d) The foregoing indemnity is conditioned upon the District's giving the Franchisee prompt notice of the commencement of any suit or action covered by the terms of this section. Nothing herein shall be deemed to prevent the District from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the

District of any sum by reason of the bond required in this act shall be any limitation upon the liability of the Franchisee to the District under this act:

EXCEPT, That any sum so received by the District shall be deducted from any recovery which the District shall establish against the Franchisee under the terms of this act.

Sec. 27. Subscriber Fees.

(a) By accepting the franchise granted pursuant to the terms and conditions imposed by this act, the Franchisee agrees that the Commission with the approval of the Council shall have the authority and right to cause the Franchisee's fees for basic and ancillary service consistent with FCC regulations to conform to the provisions contained herein. The Commission may at any time recommend that the Council increase or decrease any rate, require discontinuance of any scheduled service, revise or delete any term or condition applicable thereto upon a determination, made after a public hearing following notice to the Franchisee, that a particular rate, service, term, or condition explicitly or implicitly violates the intent of this act or has the effect of unreasonably restricting the use of public access.

(b) All rates shall be approved by the Council upon recommendation by the Commission and shall not be modified except according to procedures established by this act.

(c) The Franchisee shall publish and make available to each potential subscriber a schedule of all applicable fees and charges for providing cable television service.

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(d) The Franchisee shall not, with regard to fees, discriminate or grant any preference or advantage to any person:

PROVIDED, HOWEVER, That the fees may be negotiated between the Franchisee and the subscribers, or committee acting on the behalf of the subscribers for basic service provided to 10 or more dwelling units within an apartment building, condominium, garden apartment, or townhouse complex under common ownership; to 10 or more room units within hotels and motels; or to commercial establishments engaged in the sale of television receivers. Nothing in this section shall be construed to prohibit a Franchisee from instituting preferential or advantageous fees for the elderly, the handicapped, or recipients of public assistance.

(e) The Franchisee shall have the authority and the right to add to its service or installation fees any federal, state, or District taxes or fees directly imposed on subscribers, and for any copyright fees that may be imposed as a result of legislative or judicial action at the federal, state, or local level. If during the term of the franchise, the Franchisee receives refunds of any copyright payments, it shall, without delay, notify the Commission, suggest a plan for flow-through of the refunds to its subscribers, and retain such refunds in an interest-bearing account pending order of the Commission. After considering the plan submitted by the Franchisee, the Commission shall order the flow-through of refunds to the Franchisee's subscribers in a fair and equitable manner.

(f) The Franchisee may, for promotional purposes and, at its own discretion, waive, reduce, or suspend connection or monthly service fees for specific or indeterminate periods for periods not to exceed 30 days.

(g) The subscriber fees shall not be increased except after notice and public hearing upon the written request of the Franchisee setting forth, in detail the increase requested, the reasons therefore, and the desired effective date of such increases.

(h) Following the receipt of the Franchisee's request for changes in subscriber fees, the Commission shall hold a public hearing within 60 days (excluding Saturdays, Sundays, and holidays) of receipt of the request, unless this period of time is extended by order of the Commission. The public hearing shall be held to provide the Franchisee and all other interested persons an opportunity to be heard concerning the request for increased fees. The Commission shall hold the public hearing with notice setting forth the time and place of the hearing published at least once, in 2 newspapers of general circulation in the District of Columbia and on the government access channel no less than 30 days prior to the date of the public hearing. The Commission shall mail a copy of the public hearing notice to the Franchisee at least 15 days (except Saturdays, Sundays, and holidays) prior to the date of the public hearing.

(i) Within the 30 days after completion of the hearing referred to in subsection (h), the Commission shall prepare a report, which shall be transmitted to the Mayor and to the

Council, stating whether it finds the Franchisee's request to be fair and not detrimental to the best interests and welfare of the subscribers and the District of Columbia, either granting or rejecting the request, in whole or designated part. All changes in subscriber fees shall be made by the Council. The Commission shall publish the report within 15 days (excluding Saturdays, Sundays, and holidays) of its release in 2 newspapers of general circulation in the District of Columbia.

(j) Any subscriber fees thus adopted shall thereupon be made part of the franchise agreement granted hereunder.

(k) No request described in subsection (h) may be initiated if a similar request under subsection (h) has been proposed within the previous 6 months.

Sec. 28. Books and Records.

(a) The books and records of the Franchisee's operation within the District of Columbia shall be made available, during normal business hours, for inspection and audit by the Executive Director or the Executive Director's designee, members of the Council, or the Commission upon request.

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(b) Copies of the Franchisee's schedule of charges, contract or application forms for basic service, policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures, and any other terms and conditions adopted as the Franchisee's policy in connection with its subscribers shall be filed with the District and conspicuously posted in the

Sec. 29. System Description and Service.

(a) The cable television system to be installed by the Franchisee shall comply in all respects with the capacity, capability, and technical performance requirements set forth in the FCC Rules and Regulations for Cable Television including applicable amendments thereto.

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(b) The cable television system shall be constructed with the capacity for 2-way interactive capability. Any applicant seeking to operate a system may include a provision for immediate implementation of the 2-way interactive capability. The applicant shall include a demonstration of a plan to implement this capability in the future. The Franchisee shall provide 2-way interactive capability when the District so directs.

(c) The Franchisee shall furnish to the District a map of suitable scale indicating the areas to be served and the schedule for the staging of service as part of the formal application. The map shall identify all neighborhoods, developments, communities, streets, and public buildings in the District of Columbia. The map and service schedule shall be made a part of the franchise agreement and the schedule shall include the installation of cable service which shall be available to every household within the franchise territory pursuant to section 35(b). Failure to fulfill any portion of the service schedule shall be a violation of this act and of the franchise agreement.

(d) The Franchisee shall possess the capability to

interconnect its cable television with other cable television systems or other broadband communications facilities located in contiguous communities including those in the State of Maryland and the Commonwealth of Virginia.

Sec. 30. Public Access.

(a) The Franchisee shall provide, without charge within the franchise territory, at least 1 service outlet to each fire station, police station, public library, and public school building used for municipal purposes as may be designated by the District.

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(b) No charge shall be made to the District or any board, bureau, or department of the District for its use of the District's channels.

(c) The charges for basic and ancillary service to any board, bureau, or department of the District or other government body, or any public benefit corporation in addition to any such service provided free of charge, shall be established in the Request for Proposal.

(d) When the cable system has reached 3500 subscribers, the Franchisee shall maintain at least 2 studios that will be capable of producing live or recorded programming to be cablecast in color and black and white for distribution by cable throughout the franchise territory.

(e) The percent of bandwidth set aside for public access purposes shall be established in the Request for Proposal:

PROVIDED, HOWEVER, That the Franchisee shall be required to provide through the Board a minimum of 6 public access

channels free of charge on a nondiscriminatory basis. When these access channels are 80% in use over a period of time to be designated by the Board, the Board shall require that additional public access channels be made available. The Board shall endeavor to assign community access channels whenever community programming has attained a reasonable number of hours on public access channels. It may assign them for a specified length of time. Community access channels shall be defined as nonprofit, public access channels, on which specific communities may have programming on a regular basis. The community access channels shall be controlled by the community bodies which obtain them in cooperation with the Board. The public access channels shall be controlled by the Board.

(f) The Franchisee shall make available equipment and assistance for the production of programming at its studio free of charge for use by public access channel users. Additional equipment and production assistance shall be made available which will permit access users and the Franchisee to produce programming at locations other than the studio in a manner set forth in the Request for Proposal. For public access channel users, the Franchisee shall provide use of the production facilities and production assistance at an amount set forth in the Request for Proposal. The equipment made available under this subsection shall comply with the requirements set forth in the Request for Proposal and franchise agreement.

(g)(1) There is established a Public Access Board and a

nonprofit public access corporation ("Corporation") in the District of Columbia, for the purpose of coordinating the specifically designated, noncommercial channels or cable telecommunication systems which are reserved for use by members of the public on a nondiscriminatory basis as determined by the Board. The Board shall have the authority to administer the nonprofit Corporation. The costs of administering the corporation shall be borne by the Franchisee in an amount set forth in the Request for Proposal.

(2) The Board shall consist of 28 members. All members shall be residents of the District of Columbia and shall be appointed in the following manner: 1 member shall be appointed by each member of the Council; 1 additional member shall be appointed by each member of the Council who is a chairperson of a Council committee representing the area of jurisdiction of that committee as outlined in the rules of the Council; and 6 persons shall be appointed by the Mayor.

(3) The Mayor shall make his or her appointments after the other members of the Board are appointed. The Mayor shall make his or her appointments to assure representation on the Board from the constituency groups identified in this paragraph. To the extent possible, the membership of the Board should include representatives of public interest organizations, civil rights, the health and arts communities, labor organizations, business groups, consumers, educators, religious leaders, minorities, women,

gay people, handicapped persons, and child advocates.

(4) The Chairperson of the Council's Committee on Public Services and Consumer Affairs shall appoint 1 member to serve as Chairperson of the Board. The Board shall elect from its members other officers as it considers necessary.

(5) A member of the Board shall not have any financial interest in any business enterprise which operates a CATV system. From the inception of his or her term, each member shall be subject to the provisions of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, approved August 14, 1974 (88 Stat. 447; D.C. Code, sec. 1-1401 et seq.).

(6) The term of the Board members shall be 2 years from the first meeting of the Board. A majority of the members of the Board shall constitute a quorum. A quorum of the members shall be necessary for the Board to conduct its business.

(7) Each member appointed to the Board shall be a person who has displayed an interest or an ability in one of the various fields of telecommunications. Members shall be appointed to ensure that they are representative of all the various geographic areas and neighborhoods within the District of Columbia.

(8) In order to create a totally coordinated community access program for the District of Columbia, the Board through the Corporation shall select from among all parties seeking access on an equitable basis, with particular accommodation of groups who have been

traditionally underserved by the broadcast media.

(9) It is not intended that the Corporation's local origination and access channels shall duplicate services that the District may provide on the municipal bandwidth channels. The public access channels are separate and distinct from those channels on the bandwidth reserved for the District's exclusive use as provided in section 12(b).

Sec. 31. Operational Requirements and Records.

(a) The Franchisee shall construct, operate, and maintain the cable television system subject to the supervision of the Commission and in full compliance with the regulations, including applicable amendments, of the Federal Communications Commission and all other applicable federal or District laws and regulations, including the latest editions of the National Electrical Safety Code and the National Fire Protection Association National Electrical Code. The cable television system shall be subject to inspection by the District.

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(1981 ed.)

(b) The Franchisee shall maintain an office within the District of Columbia which shall be open and accessible to the public with adequate telephone service during all usual business hours, including facilities for 24-hour recording of subscriber complaints.

(c) The Franchisee 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.

(d) Copies of all correspondence, petitions, reports, applications, and other documents between the Franchisee and federal or District agencies having appropriate jurisdiction in matters affecting cable television operation shall be made available simultaneously by the Franchisee to the District.

(e) In the case of any emergency or disaster, the Franchisee shall, upon request of the Director, make available its facilities to the District for emergency use during the emergency or disaster.

Sec. 32. Tests and Performance Monitoring.

(a) No later than 90 calendar days after any new or substantially-rebuilt portion of the cable system is made available for service to subscribers, technical performance tests shall be conducted by the Franchisee to demonstrate full compliance with the technical standards of the Federal Communications Commission and this act. These tests shall be performed by, or under the supervision of, a qualified registered professional engineer or an engineer with proper training and experience. A copy of the report shall be submitted to the Commission, describing test results, instrumentation, calibration, and test procedures, and the qualifications of the engineer responsible for the tests.

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(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 line extremities, at not fewer than 8 widely scattered locations. At least once each month, the following data shall be obtained and recorded for

each monitor test point, made available for District inspection, and retained in the Franchisee's files until the relevant portion of the system has been either substantially rebuilt or replaced:

(1) Visual and aural carrier level on each active channel.

(2) Carrier-to-noise ratio on at least 4 frequencies distributed across the pass band (to avoid interrupting service, these measurements may be approximate, and will be used only to detect significant changes).

(3) Any other data which the Commission deems necessary.

(c) At any time after commencement of service to subscribers, the Commission may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal. Requests for additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. The District will endeavor to so arrange its requests for such special tests so as to minimize hardship to the Franchisee or to the subscriber.

(d) A copy of the annual performance test report required by the Federal Communications Commission shall be simultaneously submitted to the District.

(e) The Commission may employ qualified consultants if necessary or desirable to assist in the administration of this act.

Sec. 33. Service, Adjustment, and Complaint Procedure.

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sec. 43-1
(1981 ed.)

(a) Except for circumstances beyond the Franchisee's control, such as acts of God, weather, wars, riots, and civil disturbances, the Franchisee shall establish maintenance service capability enabling the prompt location and correction of major system malfunctions. The maintenance service shall be available 24 hours per day, 7 days a week throughout the year to provide service and repairs for downed lines and other accidents involving the cable line system.

(b) A listed local telephone number shall be made available to subscribers for service calls at any time of the day or night. Investigative action shall be initiated in response to all service calls, other than major outages, no later than the next business day after the call is received. Corrective action shall be completed as promptly as practical. Appropriate records shall be made of service calls, showing when and what corrective action was completed. These records shall be available to the District during normal business hours and retained in the Franchisee's files for not less than 3 years.

(c) The Franchisee shall furnish each subscriber at the time service is installed, written instructions that clearly set forth procedures for placing a service call, or requesting an adjustment. The instructions shall also include the name, address, and telephone number of the Franchisee and a reminder that the subscriber can call or write the Commission for information regarding terms and conditions this act and of the franchise agreement if the

(d) The Franchisee shall remove, replace, or modify at its own expense, the installation of any of its facilities as may be deemed necessary by the District to meet its proper responsibilities, including any costs necessary to repair or refinish public ways as defined in section 3(30).

(e) Wherever any 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, such cable shall be located underground within the existing conduits. If there is not adequate capacity in the existing underground conduits, the District Department of Transportation shall determine whether cable wiring should be located underground or overhead:

PROVIDED, HOWEVER, That 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 of Columbia.

(f) Excavation work performed by the Franchisee in any public way shall be subject to all applicable laws, rules, and regulations of the District or any agency thereof. The Franchise shall, at its own expense and in a manner approved by the District, restore to District standards and specifications, on an interim basis, any damage or disturbance caused to the public way as a result of its operations or construction on its behalf, and shall guarantee such restoration until such time a permanent

restoration is made. Permanent restoration shall be performed by the District Department of Transportation, and the costs associated therewith shall be billed to the Franchisee for the full width of the permanent improvement. The Franchisee shall place a deposit with the District Department of Transportation in an amount sufficient to cover the projected costs to be incurred by the District for the permanent restoration of any ongoing excavation.

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

(h) At the request of any person holding a valid permit to remove a building issued by the District, and upon at least 48 hours notice, the Franchisee shall temporarily raise, lower, or cut its wires as may be necessary to facilitate the move. The direct expense of such temporary changes including standby time, shall be paid by the permit holder, and the Franchisee shall have the authority to require payment in advance.

(i) The Franchisee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the supervision and direction of the District. Trimming of trees on private property shall require written consent of the property owner.

(a) Upon accepting the franchise, the Franchisee shall, within 90 days, 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 Commission on its progress in this respect until all such documents are obtained.

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(b) The franchise agreement adopted by the Council shall incorporate a construction and service schedule and map which shall set dates for the construction of the cable system for specific households and areas within the franchise territory. The schedule and map shall be updated whenever substantial changes become necessary. Every 3 months after the start of construction, the Franchisee shall furnish the District a report on progress of construction until construction is completed. The report shall include a map that clearly defines the areas wherein regular subscriber service is available.

(c) The Franchisee shall complete construction of the cable system in the franchise territory and offer and deliver cable television service in full accordance with this act and the franchise granted hereunder to subscribers in not less than 20% of the occupied dwelling units within 1 year after receiving all necessary permits, authorizations, and licenses, and to the franchise territory in not less than 100% of the occupied dwelling units within 5 years.

(d) The schedule for wiring the District of Columbia

shall insure that no substantial differences in the time by which service shall be available in a neighborhood will exist relative to the neighborhoods' relative median income levels or racial composition.

Sec. 36. Penalties.

Penalties which the Commission shall impose in the event of a violation of this act shall be established in the Request for Proposal for the following:

D.C.C
sec.
(1981

(a) Failure to submit plans indicating expected dates of installation of various parts of the cable system;

(b) Failure to commence operations in accordance with this act;

(c) Failure to complete construction and installation of cable system within the proper time;

(d) Failure to supply data requested by the Commission pursuant to this act, or regarding installation, construction, customers, finances, or financial reports, or rate review;

(e) Failure to comply with reasonable recommendations of the Commission relating to rates, services, interconnection, and any other reasonable requests or recommendations made by the Commission pursuant to this act;

(f) Failure to provide adequate service and maintenance services to the public.

Sec. 37. Limits on Franchisee's Recourse.

(a) Except as expressly provided in this act and in the franchise agreement, the Franchisee shall have no recourse against the District for any loss, expense, or damage

D.C.Cc
sec. 4
(1981

resulting from the terms and conditions of this act or the franchise agreement or because of the District's failure to have the authority to grant the franchise. The Franchisee expressly agrees that upon its own investigation and understanding, the District has the power and authority to grant the franchise.

(b) The Franchisee, by accepting the franchise, acknowledges that it has not been induced to accept same by any promise, oral or written, by or on behalf of the District or by any third person regarding any term or condition of this act or the franchise agreement, not expressed therein. The Franchisee further pledges that no promise or inducement, oral or written, has been made to any District employee or official regarding receipt of the franchise.

(c) The Franchisee further acknowledges, by acceptance of the franchise, that the Franchisee has carefully read the terms and conditions of this act and the franchise agreement and accepts without reservation the obligations imposed by the terms and conditions contained herein regardless of whether the obligations are contained in the franchise documents.

(d) The Franchisee, agrees by the acceptance of the franchise, to accept the validity of the terms and conditions of this act and the franchise agreement in their entirety and that it will not, at any time, proceed against the District in any claim or proceeding challenging any terms or provisions of this act or the franchise agreement

as unreasonable, arbitrary, void, or that the District did not have the authority to impose such term or condition.

Sec. 38. Failure to Enforce Franchise. The Franchisee

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 1 or more occasions, to insist upon the Franchisee's performance or to seek the Franchisee's compliance with any 1 or more of such terms or conditions.

D.C.Code
sec. 43-1
(1981 ed)

Sec. 39. Time Essence of Agreement.

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

D.C.Code.
sec. 43-1
(1981 ed.)

Sec. 40. Rights Reserved to the District.

The District expressly reserves the following rights:

(a) To exercise its governmental powers, now or hereafter, to the full extent that such powers may be vested in or granted to the District;

D.C.Code,
sec. 43-1
(1981 ed.)

(b) To adopt, in addition to the provisions contained herein and in the franchise agreement and in any existing applicable acts, additional regulations as it finds necessary in the exercise of its police power:

PROVIDED, That the regulations, by act or otherwise, shall be reasonable and not in conflict with the rights herein

granted; and

Enrolled Originals

(c) The Council has the authority to revoke the franchise when it is determined by an appropriate government agency or judicial authority that sections of this act or franchise agreement are inconsistent with federal laws or regulations.

Sec. 41. Franchisee's Responsibility Not to Discriminate.

The Franchisee shall not refuse to hire or employ, nor discharge, nor 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. Code, sec. 1-2501 et seq.) and the provisions of that act shall apply to the Franchisee.

D.C. Code
sec. 41
(1981 e

Sec. 42. Affirmative Action Requirements.

(a) In order to maximize opportunities for minority employment and participation in the cable system, the Franchisee shall submit to the Office of Human Rights at the time of submission of its proposal a written Affirmative Action Plan ("Plan") for approval in accordance with section 253 of the District of Columbia Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Code, sec. 1-2501 et seq.), as amended by this act. The Plan shall apply to all job categories with the Franchisee's workforce.

D.C. Code
sec. 42
(1981 e

(b) The Franchisee 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 of Columbia, by the end

of the second year of the franchise and throughout the balance of the franchise term, provided qualified or qualifiable minority persons are available. The adoption and implementation of goals and timetables by the Franchisee shall not constitute a discriminatory practice prohibited under section 41.

(c) The Design Commission shall give favorable consideration to franchise applicants whose plans include aggressive, innovative and result-oriented policies and programs for the maximum utilization of minorities.

(d) Each franchise applicant's plan shall also include, detailed on-the-job training and apprenticeship programs, designed to provide District of Columbia residents, particularly unskilled and semi-skilled minority youth, with job skills, job opportunities, and upward mobility, both within the cable television industry and the Franchisee's workforce. These programs shall be applicable to all job categories in the applicant's workforce and shall be maintained throughout the term of the franchise.

(e) Upon the grant of a franchise, the Franchisee shall submit its construction and skilled trades apprenticeship training programs to the Director of the District of Columbia Apprenticeship Council for approval and registration in accordance with section 5 of the Amendments to an Act to provide for Voluntary Apprenticeship in the District of Columbia Act of 1978, effective March 6, 1979 (D.C. Law 2-146; D.C. Code, sec. 36-409).

(f) The Franchisee annually shall report to the Office

of Human Rights regarding the status of its training Enrolled Original programs including a detailed analysis of the Franchisee's efforts to achieve its goals and timetables.

(g) Failure to comply with any provision of this section shall constitute an unlawful discriminatory practice and shall subject the Franchisee to fines imposed by the Commission on Human Rights of not less than \$1,000 for each day that such violation(s) persist, and any other penalties that may be imposed pursuant to District law or this act. Where deemed appropriate, the Office of Human Rights may recommend to the Council suspension or termination of the franchise in accordance with procedures set forth in this act.

(h) For purposes of this section, the term "qualifiable" refers to minority persons who can be trained in accordance with the requirements of this section.

(i) Section 301 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Code, sec. 1-2541) is amended by adding a new subsection (h) at the end thereof to read as follows:

"(h) The Office and the Commission shall enforce sections 41, 42, 43, 44 and any other human rights provisions of the Cable Television Communications Act of 1981."

D.C.Cc
sec. 1
(1981

Sec. 43. Contracting Requirements.

(a) The Franchisee shall be treated as an agency for purposes of minority contracting. All provisions of the Minority Contracting Act of 1976, effective March 29, 1977

D.C.Cc
sec. 4
(1981

(D.C. Law 1-95; D.C. Code, sec. 1-1141 et seq.) shall apply to the Franchisee except the meaning of the term "minority" shall have the same meaning as in section 3(24) of this act.

(b) Where a minority business enterprise is otherwise qualified, but cannot obtain necessary bonding or insurance the Franchisee shall provide or obtain such bonding or insurance and transfer the cost to the minority business enterprise.

Sec. 44. Local Hiring and Purchasing Policy.

Insofar as practicable, the Franchisee's employee workforce and subcontractors shall consist of not less than 51% District of Columbia residents.

D.C. Code
sec. 43-
(1981 ex

Sec. 45. Special License.

(a) The District reserves the right to issue a license, easement, or other permit to anyone other than the Franchisee to permit that person to traverse any portion of the Franchisee's franchise area within the District of Columbia in order to provide adequate service. The license or easement, absent a grant or a franchise in accordance with this act, shall not authorize nor permit a person to provide a cable television service of any nature to any home or place or business within the District of Columbia nor to render any service or connect any subscriber within the District of Columbia to the Franchisee's CATV system.

D.C. Code
sec. 43-
(1981 ex

(b) It shall be unlawful for any person to attach or affix or cause to be attached or affixed, any equipment or device which allows access or use of a cable television service without payment to the Franchisee for same.

Sec. 46. Protection of Privacy.

(a) The Franchisee shall not permit the transmission of any signal, aural, visual, or digital, 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 or transmission of signals useful only for the control or measurement of system performance.

D.C. Code
sec. 4
(1981)

(b) The Franchisee shall not 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 utilizing aural, visual, or digital signals without first obtaining written permission from the subscriber.

(c) The Franchisee shall exercise the highest possible standard of care in protecting the privacy of data in its possession with respect to an individual subscriber's financial transactions, viewing selections, and utilization of other computer-based interactive services. This individual subscriber data shall not be subject to subpoena or other compulsory process.

(d) The Franchisee shall retain individual subscriber data described in subsection (c) only for billing purposes and for no longer than 90 days.

(e) Any person or corporation which violates this section shall be imprisoned for not more than 6 months, or shall be fined not more than \$10,000, or both: PROVIDED, That nothing in this subsection shall preclude the

right of subscribers to pursue alternative civil remedies for the invasion of the right of privacy. Any violation of this section by a Franchisee also shall be deemed to be a material breach of the franchise agreement which shall constitute grounds for termination of the franchise.

Sec. 47. Publication Costs.

The Franchisee shall assume the costs of publication of this act and franchising costs, as such publication is required by law and such is payable upon the Franchisee's filing of acceptance as described herein and above.

D.C. Code
sec. 47
(1981 e

Sec. 48. Obscenity Laws and Broadcast Guidelines.

(a) Section 872 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1332; D.C. Code, sec. 22-2001) shall apply to cable television programming.

D.C. Code
sec. 48
(1981 e

(b) The Franchisee and all users of the cable television system shall comply with all federal laws regarding obscenity on cable television and all District laws regarding obscenity.

(c) The Office shall issue regulations with respect to the type and time of programs to be broadcast over the cable television system.

(d) The Office shall establish guidelines for rating material content to be broadcast over cable television.

(e) The Franchisee shall publish and furnish to all subscribers, free of charge, advance notice of program rating pursuant to the guidelines established by the Office.

(f) No Franchisee shall by means of cable television

knowingly distribute any obscene material to any subscriber.

Sec. 49. "Rent-A-Citizen" Practice Discouraged.

The cable industry practice of enlisting local supporters by providing gifts of equity or other financial inducements, commonly called "rent-a-citizen", whether carried out by individuals, groups or institutions, is specifically discouraged. Engaging in the practice of "rent-a-citizen" by an applicant for the franchise will be considered grounds for disqualifying the applicant's proposal.

D.C. Code,
sec. 43-184
(1981 ed.)

Sec. 50. Severability.

If any section of this act or of the franchise agreement, or any portion thereof is held invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

D.C. Code,
sec. 43-184
(1981 ed.)

Sec. 51. Penalties and Enforcement.

(a) Any individual who violates any provision of this act shall be fined a civil penalty not to exceed \$10,000 per infraction.

D.C. Code,
sec. 43-18
(1981 ed.)

(b) Any person who knowingly files any false or misleading statement, report, voucher or other paper, or makes any false or misleading statement concerning disclosure of information required under this act, shall be fined a civil penalty not to exceed \$25,000.

(c) Prosecutions of violations of this act shall be brought by the Corporation Counsel of the District of Columbia in the name of the District of Columbia.

(d) Additional penalties may be set forth in the franchise agreement.

Sec. 52. Effective Date Clause.

This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)).

Quinton Dixon

Chairman
Council of the District of Columbia

NOT SIGNED

Mayor
District of Columbia
APPROVED: June 30, 1982

DEEMED APPROVED WITHOUT MAYORAL
SIGNATURE UPON EXPIRATION OF THE
TEN-DAY MAYORAL REVIEW PERIOD.



COUNCIL OF THE DISTRICT OF COLUMBIA
Council Period Four
Second Session

DOCKET NO: B 4-35

Item on Consent Calendar

ACTION: Adopted 3rd Amended First Reading, 5-11-82

VOICE VOTE: Unanimous

Absent: Kane

ROLL CALL VOTE:

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. DIXON					KANE					SHACKLETON				
WINTER					MASON					SPALDING				
CLARKE					MOORE, JR.					WILSON				
CRANFORD					RAY									
JARVIS					ROLARK									

X - Indicates Vote A.B. - Absent N.V. - Not Voting

CERTIFICATION OF RECORD

William C. Cunningham
Secretary to the Council

6/15/82
Date

Item on Consent Calendar

ACTION: Adopted 4th Amended First Reading, 5-25-82

VOICE VOTE: Unanimous

Absent: all present

ROLL CALL VOTE:

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. DIXON					KANE					SHACKLETON				
WINTER					MASON					SPALDING				
CLARKE					MOORE, JR.					WILSON				
CRANFORD					RAY									
JARVIS					ROLARK									

X - Indicates Vote A.B. - Absent N.V. - Not Voting

CERTIFICATION OF RECORD

William C. Cunningham
Secretary to the Council

6/15/82
Date

Item on Consent Calendar

ACTION: Adopted Final Reading, 6-8-82

VOICE VOTE: Unanimous

Absent: all present

ROLL CALL VOTE:

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. DIXON					KANE					SHACKLETON				
WINTER					MASON					SPALDING				
CLARKE					MOORE, JR.					WILSON				
CRANFORD					RAY									
JARVIS					ROLARK									

X - Indicates Vote A.B. - Absent N.V. - Not Voting

CERTIFICATION OF RECORD

William C. Cunningham
Secretary to the Council

6/15/82
Date