

MACON COUNTY, NORTH CAROLINA
CHAPTER 8 OF THE MACON COUNTY CODE
MACON COUNTY CABLE TELEVISION ORDINANCE

WHEREAS, the current cable ordinance of the County of Macon was adopted by final reading on the 2nd day of August, 1999, the same replacing a prior Ordinance which was adopted in the year 1980, and

WHEREAS, the rapid development of advanced cable television resources requires new documentation and procedures that will evolve continuously to reflect the evolution of the cable television industry as well as state and federal regulatory policy. To that end, the County has developed a comprehensive cable television policy that will define the County's role in establishing, monitoring and regulating the cable television providers franchised within and providing services within the County, and

WHEREAS, the County has determined to replace the existing Macon County Cable Television Ordinance, as codified as Chapter 8 of the Macon County Code and replace it with the following.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF MACON THAT CHAPTER 8 OF THE MACON COUNTY CODE IS HEREBY AMENDED BY DELETING THE SAME IN FULL AND REPLACING IT WITH THE FOLLOWING ORDINANCE WHICH SHALL BECOME A PART OF THE ORDINANCES OF THE COUNTY.

Sec. 8-1. Short title; purpose; authority

- A. This article shall be known as "Macon County Cable Television Ordinance", and it shall become a part of the ordinances of the County.
- B. This article is intended to provide for the licensing and regulation of cable television systems pursuant to North Carolina General Statute § 153A-46 and North Carolina General Statute § 153A-137 and shall be subject to and governed by the Communications Act of 1984, as amended from time to time, including any future amendments relating to cable television, telecommunications and any other applicable laws.
- C. This article shall be in force from and after its adoption for the grant of any new franchise or renewal of any franchise existing at the time of adoption.

Sec. 8-2. Definitions

For the purposes of this Ordinance, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, words in the singular number include the plural, and words in the neuter gender include each of the other genders. The words "shall" and "must" are always mandatory and not merely directory.

"Access" shall mean any programming or channel designated for use by any other person other than the company.

"Affiliate", when used in relation to any person, shall mean another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

"Basic Cable Service " or "Basic Service" shall mean any service tier which includes the retransmission of local television broadcast signals and access channels. This definition is subject to changes in applicable Federal law.

"Board of Commissioners" shall mean the Board of Commissioners of the County of Macon, North Carolina or its designee.

"Cable Act" shall mean the Cable Communications Policy Act of 1984 and the Telecommunications Consumer Protection and Competition Act of 1992 as they may be amended or succeeded.

"Cable Operator" shall mean any person or group of persons:

1. who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or
2. who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

"Cable Service" shall mean:

1. the one-way transmission to subscribers of (a) video programming, and,

2. subscriber interaction, if any, which is required for the selection or use of such video programming.

"Cable System" shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

1. a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;
2. a facility that serves subscribers without using any public right-of-way;
3. a facility or common carrier which is subject, in whole or in part, to the provisions of The Telecommunications Act of 1996, except that such facility shall be considered a cable system (other than for purposes of 47 USC § 541) to the extent such facility 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; and,
4. an open video system that complies with 47 USC § 653.

"County" shall mean County of Macon or the area within the present and future territorial limits of the County and such territory outside of the County over which the County has jurisdiction or control by virtue of any law.

"Channel" shall mean a portion of the electromagnetic spectrum (or any other means of transmission, including but not limited to optical fibers, which is capable of carrying the equivalent signal or signals), and includes uses of all or any portion of such band of frequencies for digital video/television signals.

"Construction Completion Date" shall mean the date, after receiving a request from Franchisee, on which the County or its designee issues a certificate of completion to a Franchisee.

"Customer Service Standards" shall mean FCC, National Cable Television Association, or successor organization, and standards adopted by the County, which govern the manner in which the Grantee interacts with the public and its customers.

"FCC" shall mean the Federal Communications Commission.

"Franchise" shall mean an initial authorization, or renewal thereof, issued by the County, whether such authorization is designated as a franchise, permit, ordinance, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system but neither supersede nor take the place of any license, license fee or permit authorization which might otherwise be required for the privilege of transacting and operating a subscription Cable Service under any other County ordinance licensing or regulating business within such areas.

"Grantee" or "Franchisee" or "Company" shall mean the person, firm, or corporation to whom a franchise, as hereinabove defined, is granted by the County under this chapter, and the lawful successor, transferee or assignee of said person, firm, or corporation.

"Gross Revenues" shall mean all receipts received by the grantee, arising from or attributable to the sale of cable services derived from the operation of the Cable System, including, but not limited to, monthly Cable Service fees; installation, connection, disconnection, reconnection up/down grade fees for the provision of Cable Service, leased access fees, late fees, returned check fees, bad debt recovery, interactive Cable Service fees, converter sales, service and rentals; net advertising revenues attributed to the operation of the Cable System, revenues received by Grantee for home shopping program service carriage. Excluded are converter or other equipment deposits, bad debts, FCC regulatory charges, franchise fees, any sales, excise, or any other taxes collected by Grantee on behalf of any state, County, or other governmental unit. In no event shall Gross Revenue include any revenues otherwise classified as not a Cable Service revenue pursuant to federal or state law.

"Initial Service Area" shall mean that geographical area within the unincorporated limits of the County as of the date of acceptance of a franchise pursuant to this article.

"Interactive On-Demand Services" shall mean a service providing video programming to subscribers on an on-demand basis, but does not include services providing video programming pre-scheduled by the programming provider;

"NCTA" shall mean the National Cable Television Association or successor organization.

"Ordinance" or "Cable Ordinance" shall mean The Macon County Cable Television Ordinance.

"Other Programming Service" shall mean information audio, video, data or text service that a cable operator makes available to all subscribers;

"Person" shall mean an individual, partnership, association, joint stock company, trust, corporation, or governmental entity;

"Public, Educational, or Governmental Access Channel" shall mean:

1. channel capacity designated for public, educational, or governmental use; and,
2. facilities and equipment for the use of such channel capacity;

"Public Buildings" shall mean county, city or town supported K-12 schools, post secondary technical schools, county and city government buildings [facilities] and county, city or town supported rescue and volunteer fire facilities.

"Public Way and Right-Of-Way" shall also mean the surface of, and the space above and below all streets, avenues, boulevards, roads, alleys, lanes, squares, bridges, viaducts, easements, tunnels, causeways, greenways, and sidewalks, lying within the street right-of-way, and all other public highways within the County; provided, however, that any right to use them granted by this Ordinance and any franchise agreement shall be subject to the rules and regulation of the State of North Carolina governing the use of such streets, alleys and public ways and highways.

"Reasonable Notification" shall mean 30 days advance written notice.

"Residential Subscriber" shall mean a subscriber who receives service in an individual dwelling unit or multiple dwelling, where the service is not to be utilized in connection with a business, trade or profession.

"Street" shall mean the surface of and the space above and below any publicly owned or maintained property or right-of-way, street, road, highway, freeway, land, path, alley, court, sidewalk, parkway or drive, now or hereafter existing as such within the County.

"Subscriber" shall mean any person or entity lawfully receiving any portion of the Cable Service of a Grantee pursuant to this Ordinance.

"Service Tier" shall mean a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator;

"Year" shall mean a calendar year; and,

"Video Programming" shall mean programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Sec. 8-3. Requirement of franchise

No person shall construct, install, maintain, expand, enlarge, or otherwise increase, or operate a cable television system through, on, over, or under any public way in the unincorporated area of the county without first having applied for, been granted, and accepted a franchise under the provisions hereof. Provided however the grant of such franchise shall not constitute nor require the franchisee to be nor to become a public utility.

Sec. 8-4. Application for franchise

The County shall review and evaluate applications for a franchise. The application shall include the following:

- A. Full and true disclosure of the actual ownership of the applicant, including the identity of all principals. If a corporation, applicant shall include the corporation's process agent address for service of notice, provide a certified copy from the North Carolina Secretary of State of authorization to do business within the state. If a partnership, applicant shall provide names and addresses of all partners, names and addresses of general partner(s) responsible for overseeing the management of the franchise.
- B. A detailed statement of services proposed to be offered, including public, civic, or community services.
- C. A schedule of initial rates, fees, and other charges to be established by the applicant.
- D. Information sufficient to determine the character and business responsibility of the applicant, its financial, technical and other qualifications. Information shall include financial statement certified by a certified public accountant; insurance bonds and certificates. Additional

materials requested by the county in order to ascertain the responsibility and qualifications will not be unreasonably withheld by applicant.

- E. A nonrefundable application fee in the amount of five thousand dollars (\$5,000.00) in the form of certified check made payable to "Macon County" shall be paid for each initial or renewal franchise at the time of application. Additional funds as required to process the application and grant the franchise will be reimbursed to the County by the applicant upon final acceptance of the franchise.

Sec. 8-5. Grant of franchise

- A. The County may, by individual ordinance adopted for the purpose, grant applicant a nonexclusive, revocable franchise to construct, operate, and maintain a cable television system within the unincorporated areas of the county. Franchisee will have the right and obligation to provide cable television services subject to the terms, conditions and provisions of this Ordinance, the franchise and state statutes and federal regulations as in place and as are amended from time to time.
- B. All franchises granted by the County are hereby made subject to the ordinance provisions now in effect and hereafter made effective.
- C. Nothing in this Ordinance shall be deemed, construed, or applied to require the County to grant any franchise. Any decisions of the County concerning the granting, or the refusal to grant, one or more franchises shall be final.

Sec. 8-6. Franchise - Not Exclusive

- A. No Franchise issued pursuant to this Ordinance shall be exclusive. The County expressly reserves the right to grant franchises to other persons or corporations, as well as the right in its own name, to operate a cable system for similar or different purposes allowed Grantee hereunder. The material terms and conditions of such additional franchise or franchises shall be reasonably comparable to the material terms and conditions herein, taking into consideration all of the circumstances in existence at the time such additional franchise or franchises are granted, including without limitation any applicable legal limitations on the County's regulatory authority and the necessity to provide for competitive entry of multiple providers.

- B. The grant of a cable television franchise to another enterprise may result in the Grantee having fewer or greater obligations than those established by this Ordinance. If additional franchises result in one Grantee having substantially different obligations and/or terms, the County will negotiate in good faith with the existing franchise holder(s) to modify the terms of any franchise so as to encourage a competitive market place.
- C. The County reserves the right to require the Grantee to secure a separate telecommunication franchise, to the extent consistent with federal and state law, for the provision of telecommunication services within the County.

Sec. 8-7. Acceptance of franchise; letter of credit; police power

- A. Within thirty (30) calendar days following the grant of a Franchise, the Grantee shall file with the County its written acceptance of the Franchise, together with certificates of insurance and letter of credit instruments required herein. The Grantee shall state that it agrees to be bound by and to comply with all requirements pursuant to the provisions of the Franchise. All of the statements and declarations contained in the application shall be incorporated as conditions and material representations of any Franchise issued by the County, and the breach of any such conditions and representations shall constitute cause for the pursuit of remedies by the County as provided herein. Such acceptance and agreement shall be acknowledged by the Grantee before a notary public, and shall be in form and content as is approved by the County Attorney.
- B. Within sixty (60) days following the award of the Franchise or 30 days prior to construction, the Grantee shall deposit with the County a letter of credit from a financial institution, approved by the County, in the amount of fifty-thousand dollars [\$50,000]. The form and content of the letter shall be approved by the County Attorney. The letter of credit shall be used to insure the faithful performance of the Grantee of all provisions of the Franchise, and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the County exercising jurisdiction over the Grantee's acts or defaults, and payment by the Grantee of any penalties, claims, liens, liquidated damages, fees due the County.
- C. If the Grantee fails to pay to the County any compensation, not in dispute, due the County within the time fixed herein; or fails, after ten (10) days

notice to pay to the County any penalties, claims, liens, liquidated damages, fees due the County, such failure by the Grantee can be remedied by demand on the letter of credit. The County may immediately request payment of the amount due, with interest and penalties, from the letter of credit. Upon such request for payment, the County shall notify the Grantee of the amount and date thereof.

- D. The letter of credit shall be maintained at fifty-thousand dollars (\$50,000) during the entire term of the Franchise unless modified in accordance with this Agreement. In the event that amounts are withdrawn pursuant to this Section, the Grantee, if necessary, shall take any required action to maintain the letter of credit in said full amount within three (3) business days of notification by the County of its withdrawal against the letter of credit.
- E. The rights reserved to the County with respect to the letter of credit are in addition to all other rights of the County, whether reserved by the Franchise, or authorized by law, and no action, proceeding or exercise of a right with respect to such a letter shall affect any other right the County may have.
- F. The letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit shall not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the County, by registered mail, of a written notice of such an intention to cancel or not to renew."
- G. The Grantee shall renew the letter of credit not less than 30 days prior to its expiration and provide a copy of the renewal to the County. Failure to comply with this provision shall entitle the County to draw down the letter of credit in its entirety.
- H. By accepting a franchise granted pursuant to this chapter, the franchisee acknowledges and concedes that, notwithstanding the terms of the franchise, it is at all times subject to the lawful exercise of the County's police power. The Board of Commissioners hereby expressly reserves the right to adopt, in addition to this Ordinance and to any franchise agreement, such other ordinances as it deems necessary to protect the public health, safety, or welfare, provided that such other ordinances are consistent with state and federal law and authorized by said police power.

Sec. 8-8. Service Area

- A. The service area shall be the entire area within the unincorporated areas of Macon County, North Carolina.
- B. Except as may be otherwise provided in an individual franchise agreement, each franchisee shall provide service to all contiguous areas by way of Public Right-Of-Way where the number of occupied dwelling units meets or exceeds a density of twenty (20) dwelling units per mile of cable, such areas to be measured linearly from any point of existing service and to include occupied dwellings within four hundred (400) feet of such route. Such service shall be extended as soon as practical after the adoption of this Ordinance, and in any event upon request of any person residing within any area where the aforesaid density conditions exist.
- C. In areas not meeting the aforementioned density of twenty (20) occupied dwellings per mile in which mandatory extension of service is provided, upon the request of (50) percent of the owners of occupied dwelling units per mile along the shortest and most direct feasible route from the nearest termination point of franchisee's existing service to the dwelling of the last person requesting such non-mandatory extension, and within four hundred (400) feet on either side of such route, the franchisee shall extend service to any such subscriber(s) upon their payment to the franchisee of an amount equal to the proportional cost of such extension by such route, determined by multiplying the cost of such extension by a fraction with the denominator of twenty (20) per mile and a numerator equal to twenty (20) per mile less the density of occupied dwelling units along the route of such extension and occupied dwellings within four hundred (400) feet of such route.
- D. Nothing contained in this section shall be construed to require franchisees to overbuild any portion of a service area, and either mandatory or nonmandatory service extensions required hereby shall be provided by the franchisee whose existing service terminates nearest to any occupied dwelling subject to either extension requirement. Nor shall this section be construed to preclude any person or group of persons from requesting non-mandatory connection from any other franchisee in the service area other than the nearest franchisee, nor be construed to preclude voluntary overbuild in any area for which a franchise is held.
- E. In the event that two or more franchisees are contiguous to and equal distance from a mandatory service area and no franchisee wishes to

voluntarily build the area, the County will determine which franchisee will build. The determination will be made after reviewing the franchisees' compliance and prior commitment to providing service to both mandatory and non-mandatory service areas.

Sec. 8-9. Continuous, efficient service; pro rata refunds or credits.

- A. The franchisee shall provide continuous, efficient service, on a nondiscriminatory basis, in return for payment of its rates, fees, and other charges for service. Interruptions of service shall be for good cause only and for the shortest time possible. Planned interruptions of thirty (30) minutes or more shall be preceded by at least twenty-four (24) hours' advance notice to all subscribers and, to the extent feasible, shall occur during periods of minimum use of the cable television system.
- B. In the event service to one-fourth (1/4) or more of the subscribers of any franchisee is interrupted for more than twenty-four (24) consecutive hours, whether pre-planned or not, the franchisee shall provide each such subscriber subject to such interruption with a pro rata credit or refund for the entire period of such interruption.

Sec. 8-10. Maintenance; repairs.

- A. The franchisee shall establish maintenance service capability enabling the prompt location and correction of system malfunctions. The franchisee shall maintain adequate records of all complaints and requests for repairs, and their resolution, which records shall be open for public inspection.
- B. Under normal operating conditions, each of the following four (4) standards will be met no less than ninety-five (95) percent of the time measured on a quarterly basis;
 - 1. Standard installations will be performed within seven (7) business days after an order has been placed. Standard installations are those that are located up to four hundred (400) feet from the existing distribution system.
 - 2. Excluding conditions beyond the control of the franchisee, the franchisee will begin working on service interruptions promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Franchisee must begin actions to correct other service problems the next business day after notification of the service problem.

3. For all installations, service calls, and other installation activities, franchisee shall provide its customer either a specific appointment time or, at maximum, a four-hour time block during business hours. Franchisee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.
4. A franchisee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a representative of franchisee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

Sec. 8-11. Local office hours; telephone availability; complaints; notice of procedures.

- A. The franchisee shall maintain an office and bill payment location within the franchise service area, or in the Towns of Franklin or Highlands, which shall be open and accessible to the public during normal business hours. If franchisee provides service to an equal number of subscribers in the eastern and western portion of the county, franchisee shall have an office in or near each of the above towns. The franchisee shall provide a local, toll-free or collect call telephone access line which will be available to its subscribers twenty-four (24) hours a day, seven (7) days a week for recording of subscriber complaints, including, but not limited to, billing errors, service disconnections, service interruptions, and equipment failure. Complaints other than those related to a system malfunction or service interruption shall be answered not later than the next business day after the complaint has been received, and corrective action shall be completed as soon as practical. Adequate records shall be made of all subscriber complaints, describing the nature of each complaint and showing when and what corrective action was completed. Such records shall be available to the public or to representatives of the board, upon request, and shall be retained in the franchisee's files for not less than three (3) years.

- B. Unresolved complaints, if any, shall be reported to County, in writing, within thirty (30) days after the end of each calendar year quarter. The nature and number of any unresolved complaints shall be taken into account by the County in considering whether to renew or to revoke a franchise.
- C. Each franchisee shall, at the time of entering into an agreement to provide cable service of any kind, inform every subscriber of the provisions of this article.
- D. Trained representatives of franchisee will be available to respond to customer telephone inquiries during normal business hours.
- E. Under normal operating conditions, telephone answer time by a representative of franchisee, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

Sec. 8-12. Notification to subscribers; billing; refunds; and credits.

- A. The franchisee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:
 - 1. Products and services offered;
 - 2. Prices and options for programming services and conditions of subscription to programming and other services;
 - 3. Installation and service maintenance policies;
 - 4. Instructions on how to use the cable service;
 - 5. Channel positions of programming carried on the system; and
 - 6. Procedures which may be used to make complaints, requests for repairs and to contest alleged billing errors, including the address and telephone number of the county's cable office.

- B. Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the franchisee. Increases made without such prior notice shall be void. In addition, the franchisee shall notify subscribers thirty (30) days in advance of any significant changes in the other information required herein.
- C. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- D. In case of a billing dispute, the franchisee must respond to a written complaint from a subscriber within thirty (30) days.
- E. Refund checks will be issued promptly by franchisee, but no later than either:
 - 1. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or
 - 2. The return of the equipment supplied by the franchisee if service is terminated.
- F. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

Sec. 8-13. Protection of subscriber information.

- A. 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:
 - 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;
 3. The period during which such information will be maintained by the franchisee;
 4. The times and place at which the subscriber may have access to such information in accordance with subsection D and
 5. The limitations provided by this section with respect to the collection and disclosure of information by a franchisee and the right of the subscriber under subsections F and H to enforce such limitations.
 6. In the case of subscribers who have entered into such an agreement before the effective date of this chapter, such notice shall be provided within one hundred eighty (180) days of such date, and at least once a year thereafter.
 7. For purposes of this section, the term "personally identifiable information" does not include any record of aggregate data which does not identify particular persons.
- B. Except as provided in this subsection, no franchisee shall use the cable system to collect personally identifiable information concerning any subscriber, without the prior written or electronic consent of the subscriber concerned. Franchisee may use the cable system to collect such information in order to:
1. Obtain information necessary to render a cable service or other service provided by the franchisee to the subscriber; or
 2. Detect unauthorized reception of cable communications.
- C. Except as provided in this subsection, a franchisee shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned. A franchisee may disclose such information if the disclosure is:
1. Necessary to render, or conduct, a legitimate business activity related to cable service or other service provided by the franchisee to the subscriber;

2. Subject to subsection (H), 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. A disclosure of the names and addresses of subscribers to any cable service or other service, if:
 - a) The franchisee has provided the subscriber the opportunity to prohibit or limit such disclosure, and
 - b) Disclosure does not reveal, directly or indirectly, the:
 1. Extent of any viewing or other use by the subscriber of a cable service or other service provided by the franchisee; or
 2. The nature of any transaction made by the subscriber over the cable system of the franchisee.
- D. A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a franchisee. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such franchisee. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.
- E. A franchisee 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 (D) or pursuant to a court order.
- F. Any person aggrieved by any act of a franchisee in violation of this section may bring a civil action in accordance with the provisions of section 631 of the Cable Franchise Policy and Communications Act of 1984.
- G. Nothing in this chapter shall be construed to prohibit the County from enacting or enforcing laws consistent with federal law for the protection of subscriber privacy.

- H. A governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order:
 - 1. The entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and
 - 2. The subject of the information is afforded the opportunity to appear and contest such entity's claim.

Sec. 8-14. Arbitrary and Capricious Action by Grantee

If the Grantee arbitrarily and capriciously discontinues service to a substantial number of its subscribers, the Grantee's franchise may be revoked by the County following notice to the Grantee and an opportunity to be heard. Notwithstanding, notice to the grantee under this Section may be less than thirty (30) days. Simultaneously, the County may seek appropriate judicial and/or other relief as provided by the Ordinance, Franchise Agreement or applicable law.

Sec. 8-15. Remedies

- A. In addition to any other rights set out elsewhere in this Ordinance, the County reserves the right to declare a forfeiture of any franchise issued pursuant to this Ordinance and all of Grantee's rights arising thereunder, in the event that:
 - 1. The Grantee is found to have violated any material provision of the Franchise Agreement or this Ordinance; or
 - 2. The Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the County.
- B. The County shall give Grantee thirty (30) days written notice of its intent to exercise its rights under this Section, stating the reasons for such action. If Grantee cures the problem within the thirty (30) days notice period, or if the Grantee initiates substantial effort, to remedy the stated problem, and the efforts continue in good faith, the County shall defer its remedy rights. If Grantee fails to cure the stated violation within the thirty (30) days notice period, or if the Grantee does not undertake efforts satisfactory to the County, to remedy the stated violation, then the

County, upon reasonable notice, may impose any or all of the remedies available herein.

Sec. 8-16. Regulation

- A. The Board of Commissioners shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this Ordinance in the public interest. Any failure by the County to promptly enforce compliance with this Ordinance in accordance with federal, state and local laws and ordinances shall not relieve Grantee of its obligation to comply with all provisions of this Ordinance.
- B. The Grantee's rights pursuant to the Telecommunications Act of 1996 or any other subsequent federal or state law, shall not be abrogated or otherwise limited.
- C. Following reasonable notice, the County reserves the right to inspect the installation and maintenance of all Cable System related facilities. The Grantee shall have the right to be present during any such inspection.
- D. The Grantee shall comply with the FCC, NCTA and all terms of this Ordinance promulgated by the County for cable-telecommunication service providers as they may be amended from time to time.
- E. The Grantee shall comply with all federal, state and local regulations, such as the National Electrical Code, National Electrical Safety Code, Fiber Optic Cable Installation Specifications, 1987 Telecommunication Industry Committee, traffic safety/lane closure rules and construction requirements promulgated by the County and as amended periodically.

Sec. 8-17. Public Way Use Conditions

- A. The County reserves the right, upon reasonable notice, to require the Grantee at his expense to protect, support, temporarily disconnect, relocate or remove from the Public Right-of-Way any property of the Grantee by reason of traffic conditions, public safety, street construction or excavation, change or establishment of street grade, installation of sewers, drains, water pipes, power or communication lines, tracts, or other types of structure or improvements by governmental agencies or any structures of public improvement. Reasonable notice for this provision shall be construed to mean at least ninety (90) days except in the case of emergencies where no specific notice period shall be required. The County shall endeavor to notify and seek comment from the Grantee, with respect

to minimizing disruption to the cable system, where public works projects may affect the Grantee's cable system.

- B. Whenever a public way exists to accommodate the Grantee's system, the Grantee shall not locate its facilities off the public right-of-way and shall make every effort to locate its facilities within the public way before seeking private easements within the County. The Grantee shall, at no cost to the County, relocate its facilities and appliances which are in conflict with County projects to upgrade or construct roadways.
- C. The Grantee shall locate, place and construct its facilities so as not to interfere with the construction, location and maintenance of sewer or water mains, lines or connections. The Grantee shall take the necessary preventative measures to protect existing facilities within the public way.
- D. Grantee shall adhere to all federal, state, and local regulations as they relate to the location, construction, and maintenance of its facilities within or along the public way.
- E. The Grantee shall restore and replace landscaped areas, pavement, pedestrian lighting, sidewalks, curbs, gutters or other facilities damaged by the Grantee or its contractors with like material to their former condition at the Grantee's expense, and shall thereafter, from time to time, but no longer than one (1) year from the completion of the job, readjust, fill and finish the same as may be necessary due to settling of the earth beneath associated with the Grantee's disruption of the public way.
- F. The County, at its sole discretion, and upon Reasonable Notice, may require the Grantee to locate and identify its facilities within the public way.

Sec. 8-18. System Design Review Process

- A. At least thirty (30) days prior to the date construction of any initial build, upgrade or rebuild is scheduled to commence, the Grantee shall provide a detailed cable system design and construction plan which conforms to applicable federal, state, local and industry standards, for review by the County, which shall include at least the following elements:
 - 1. Design type; trunk and feeder design; number and location of hubs or nodes used;

2. Distribution system cable, fiber, equipment to be used;
 3. Headend design and reception facilities including make and model number of antennae, signal processors, modulators, demodulators, etc.
 4. Plans for standby power at headend, hub nodes, and satellite terminals. The plan should state the make and model number of equipment to be used as well as time capacity.
 5. Longest amplifier cascade in the cable system (number of amplifiers, number of miles, type of cable fiber).
 6. Design maps and trunk maps for the cable system. The cable system design will be shown on maps of industry standard scale using standard symbols, and shall depict all electronic and physical features of the cable plant.
- B. The County shall have thirty (30) days to review and comment upon and/or make recommendations for changes to the Grantee's design and construction plans. The Grantee shall submit written responses to review comments presented the Grantee by the County, and if necessary submit an amended plan, within ten (10) days. The County shall approve or reject the design within an additional ten (10) day period. Such approval shall not be unreasonably withheld.
- C. The Grantee shall not set new utility poles for the installation of aerial facilities within any public way without prior approval. This provision does not prevent the Grantee from leasing space on existing utility poles for its aerial cable distribution facilities from an existing power or telecommunication wireline provider [lessor]. Upon reasonable notice from the lessor, the Grantee shall relocate its aerial facilities underground upon the removal, elimination or vacation of an existing utility pole line.

Sec. 8-19. Initial and Continuing Tests

The Grantee shall perform all tests necessary to demonstrate compliance with FCC requirements. All tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of NCTA "Recommended Practices for Measurements on Cable Television Systems." The Grantee shall perform at least the following tests:

- A. The Grantee shall perform preconstruction quality tests on system components determined by the Grantee based on random samples. All

new trunk and distribution cable shall be swept and Time Domain Reflectance [TDR] tested on the reel to verify compliance with manufacturer's specification of frequency response and structural return loss. No component shall be used in the cable system which fails to meet the manufacturer's specification.

- B. The Grantee shall perform acceptance tests on the cable system at the conclusion of the build to demonstrate compliance with FCC regulations. The County will be given ten (10) days notice prior to such tests and will be permitted to witness the tests. The test results shall be submitted to the County for review. It shall be presumed that the system is in compliance unless within ten (10) days the County issues written notification of non-compliance. The Grantee shall have the obligation, without further notice from the County, to take corrective action if any segment is not operating or performing within FCC specifications.
- C. The Grantee and the County will jointly select test points at various points of the cable system. The quantity of these test points will be mutually agreed upon based on what best represents the architecture of the cable system. The Grantee shall perform Proof of Performance Tests at these locations in conformance with testing required by the FCC through the life of the Franchise, and at other points mutually agreed upon where cable system user complaints indicate tests are warranted or as required to test all major trunk lines. The County will be given ten (10) days notice prior to such tests and will be permitted to witness the tests. A written report of the test results shall be filed with the County within thirty (30) days of the test. If a location fails to meet performance specifications outlined in 47 CFR 76 subpart K, the Grantee, without requirement of additional notice or request from the County, shall take corrective action, re-test the locations, and advise the County of the action taken and results achieved.
- D. The County may conduct inspections of construction areas and subscriber installations, to assure compliance with applicable laws, codes, and requirements of this Ordinance and any Franchise Agreement. Any testing of the system necessary to accomplish such inspections shall only be performed after ten (10) days notice to the Grantee. The Grantee shall be notified in writing of any violations found during the course of inspections. The Grantee must bring violations into compliance within whatever reasonable time is determined by the County, and shall submit a report to the County describing the steps taken to bring itself into compliance. Inspection does not relieve the Grantee of its obligation to build in compliance with all provisions of the Franchise.

E. Other Construction Procedures.

1. The Grantee shall:

- a) file plans with the County and secure permits to perform work in any public way. The Grantee, its contractors and subcontractors shall keep the permit on the job site;
- b) follow a cable system design and construction plan consistent with its obligations under this Ordinance, and use the equipment specified (or substitute equipment of equivalent or better quality) in such distribution system design plan and construction plan (except insofar as those plans, if carried out, would result in construction of a system which would not meet requirements of federal, state, or local law; and except for such minor modifications as are typical in the industry); shall use equipment of good and durable quality;
- c) provide a monthly construction report to the County in a form reasonably acceptable to the County;
- d) maintain a public file showing its plan and timetable for rebuild of the cable system (the Grantee shall notify residents in any rebuild area at least one day in advance before first entering onto property to perform any work in conjunction with cable system rebuild, and shall additionally notify affected residents in advance of any work which will involve excavation, replacement of poles, or tree trimming);
- e) submit to the County maps showing the proposed location of additions or extensions of the cable system prior to the start of construction in any geographic area; and
- f) submit as-built and design maps for the County's review after the completion of system construction in any geographic area;

2. System Maintenance

- a) schedule maintenance whenever possible so that activities likely to result in an interruption of service are performed during periods of minimum subscriber use of the cable

system. The Grantee shall make best efforts to minimize interruptions of service consistent with reasonable and customary construction practices.

- b) Maintenance Practices. In addition to its other obligations, the Grantee shall (a) use replacement components of good and durable quality, with characteristics better or equal to replaced equipment; and (b) follow the more stringent of industry maintenance standards or corporate maintenance standards.
- c) The cable system shall meet or exceed the standards set forth in 47 CFR. 76 subpart K ("FCC Standards"), as those standards may be in effect at all times. If the FCC Standards are eliminated and not replaced, the County may continue to enforce the standards which existed prior to the date of elimination. If the County has authority to establish standards, standards may be amended or added to this Ordinance and be enforced under any franchise Agreement.

Sec. 8-20. Allocation of Resources for Public Purposes

In addition to service provided to public buildings as provided in Section 8-29 of this Ordinance, upon request by the County, Grantee will provide one channel for "Public, Educational, and Government Access" in accordance with Section 611 of the Cable Act 47 USC § 531. Capital costs which are required to be incurred for access facilities are not to be charged against Grantee's franchise fee obligation set forth in Section 5 and shall not be passed through to subscribers. All other capital costs paid by Grantee at Grantor's request which are attributable to and in support of the channel can be charged against Grantee's franchise fee obligation. The County shall have the right to approve any and all programming broadcast on such channel.

Sec. 8-21. Inspection of Plant

The County may supervise and inspect the Grantee's cable system during construction, and upon completion, upon ten (10) days notice may inspect the distribution facilities and equipment of the cable system. If, based on subscriber complaints or based on its own investigation, the County believes that the cable system may not be operating in compliance with the franchise agreement or applicable Federal rules, it may require the Grantee to perform tests, prepare a report and present to the County the results of those tests. The Grantee shall identify problems found and ameliorative action taken to remedy the problem.

Sec. 8-22. System design; capacity.

The franchisee shall design, install, construct, operate and maintain the cable television system:

- A. So as to provide high quality service, to meet or exceed the technical standards set forth in rules and regulations promulgated by the Federal Communications Commission regarding cable television, as such rules and regulations may from time to time be amended, or, in the absence of such rules and regulations, or federal preemption of the area, in full compliance with such technical standards as the County may, by ordinance, adopt, and the County hereby expressly reserves the right to adopt such standards;
- B. So that signals are at all times within the limitations imposed by the technical standards established, and delivered to subscribers without material degradation in quality; and
- C. To provide for an audio override of all channels simultaneously, for use in case of public emergencies, or disasters

Sec. 8-23. Compensation; auditing

- A. Grantee shall pay Macon County throughout the term of the Franchise, as compensation, an annual franchise fee in an amount set forth in the Franchise Agreement which shall be established as a percentage of the Grantee's Gross Revenues as defined in Section 8-2 or the maximum amount permitted by the Cable Act if hereafter adopted by resolution of the Grantor.
- B. All such payments of franchise fees shall be payable quarterly by April 30, July 31, October 31 and January 31 for the preceding three (3) month periods ending respectively on March 31, June 30, September 30 and December 31. Franchise fee payments shall be accompanied by a report itemizing and setting forth the revenues/receipts and showing the calculation of the payment due for the period.

- C. The payment of the franchise fee by the Grantee is for the right to construct and operate its Cable System, as defined herein, within the public way and to defray the cost of regulation.
- D. The County on an annual basis, shall be furnished a statement within ninety (90) days of the close of the calendar year, certified by an official of the franchisee responsible for the cable system's financial statements, reflecting the total amounts of Gross Revenues as defined herein, and all payments, and computations for the previous calendar year. Upon ten (10) days prior written notice, the County shall have the right to conduct an independent audit of Grantee's records. If, after resolving any dispute arising from such audit, Grantee has made a franchise fee underpayment of three percent (3%) or more, the Grantee shall assume all reasonable costs of such audit.
- E. Expenses incurred by Grantor for independent technical, legal or financial consultants or advisors employed in the course of granting, enforcement or review of Grantee's franchise and its compliance with and costs incurred by Grantor in connection with the inspection of the cable system construction, performance and audits with respect thereto shall, upon request by Grantor, be paid by Grantee, and shall be chargeable against the franchise fees herein required to be paid by Grantee. Provided, however, if by reason of such view, it is determined that Grantee is not in full compliance with the terms of this Ordinance and its franchise agreement, then and in that event, such costs shall not be chargeable against the franchise fees but shall be paid by Grantee in addition to such fees.
- F. All Grantee's books, maps and records concerning its Gross Revenues and its calculation of payments to the County, shall be open for inspection by the appropriate officer of the County, or its designee, during regular business hours to determine the amount of compensation due to the County from Grantee under this Ordinance. Such records shall be kept so as to accurately show the same. Grantee shall prepare and make available to the County at times reasonably prescribed by the County and in the form prescribed by the County after consultation with the Grantee, such reports with respect to its Cable System and the Gross Revenues derived therefrom, as the County may deem reasonably necessary or appropriate. All other reports required by the County shall be made by Grantee from time to time as required.
- G. In the event Grantee makes one or more underpayments or in the event Grantee fails to make any payment on or before the date it is due,

Grantee shall pay interest at a rate of one and one half percent (1.5%) per month on said underpayment(s) and/or said late payments.

- H. Consistent with federal requirements, the Grantee shall file no less frequently than annually any tariffs, amendments, or modifications affecting the sale of its services and subscriber terminal equipment and shall provide written notification to the County within thirty (30) days of any proposed changes.
- I. Nothing in this section shall be deemed, construed, or applied so as to exempt the franchisee from the payment of any taxes, fees, or other charges lawfully imposed.

Sec. 8-24. Books and Records-Inspection

- A. The County may inspect and copy the books, records, maps, plans, and other documents, including financial documents, in the control or possession of the Grantee, affiliates, or any person that constitutes an operator of the Grantee's cable system:
 - 1. to enforce the County's rights or to assess compliance with the Ordinance or the Franchise Agreement and applicable law;
 - 2. in the exercise of any lawful regulatory power; or
 - 3. as may be convenient in connection with any proceeding the County may or must conduct under applicable law with respect to the Grantee's cable system. The material shall be duplicated at a County facility unless the County agrees to inspection and copying at some other place. Material that the County requires the Grantee to produce under this Section shall be produced upon reasonable notice, no later than 30 days after the request for production. Reasonable requests for extensions of time to respond shall not be unreasonably denied.
- B. Access to Grantee's records shall not be denied to the County on the basis that said records contain "proprietary" information. Refusal to provide information required herein to the County shall be grounds for revocation of the Grantee's Franchise. The Grantee may request that the County treat records containing trade secrets or proprietary information as confidential under the North Carolina Public Records law. To the extent authorized by the Public Records law and other applicable state and

federal law, the County shall maintain the confidentiality of information designated "proprietary" by the Grantee.

- C. Should the County receive a request to review the Grantee's records or books under the North Carolina Public Records Law, it will promptly notify the Grantee and provide an opportunity for the Grantee to raise an objection, demonstrate why the requested information is proprietary and, if necessary, seek a court order to protect its proprietary information.

Section 8-25. Books and Records- Reports and Responses to Questions

The Grantee shall provide the following reports quarterly, in a form acceptable to the County, at the time it is scheduled to make its Franchise fee payment:

- A. A report listing, by month, the number of service calls completed by type during the prior quarter;
- B. A report showing the number of outages, by month, for the prior quarter, identifying separately:
 - 1. each planned outage, the time it occurred, its duration, and the estimated number of subscribers affected; and
 - 2. each unplanned outage, the time it occurred, its estimated duration, the area and the estimated number of subscribers affected;
- C. Franchise fee report listing revenues received, by category, in a form acceptable to the County;
- D. A report stating the subscriber totals for:
 - 1. each cable service tier
 - 2. each premium service
 - 3. pay per view and
 - 4. any other programming service, information service, or any other service related to Cable Services.

- E. Within ninety (90) days after the close of the Grantee's fiscal year, the Grantee shall submit a written annual report, in a form approved by the County, including, but not limited to, the following information:
1. a summary of previous years activities in the development of its cable system in the County, including, but not limited to, additions, deletions, or improvements begun or discontinued during the reporting year, services initiated or discontinued, number of subscribers (including gains or losses), homes passed, and miles of cable distribution plant in service;
 2. a financial statement, including a statement of income, balance sheet, and a statement of sources and applications of funds which shall be certified by Grantees' Chief Financial Officer under penalty of perjury; and,
 3. a detailed copy of updated maps depicting the location of all cable plant, showing areas served and locations of all trunk lines and feeder lines in the County.
- F. Unless otherwise specified, the Grantee shall mail the following documents to the County within thirty (30) days of the time they are filed (the documents shall be provided to the County so long as they relate to the Grantee's cable system, or the operation of that cable system, and without regard to whether the documents are filed or received by the Grantee, an affiliate, or some other entity):
1. within thirty (30) days of the date mailed to shareholders or partners, the annual report, if any, of the Grantee, or each affiliate which controls, owns, or manages the Grantee and issues an annual report;
- G. The Grantee shall file with the County any notice of deficiency, forfeiture, or other document issued by any state or federal agency which has instituted any investigation or civil or criminal proceeding naming the cable system, the Grantee, or any operator of the cable system, to the extent the same may affect or bear on the operations of the Grantee's cable system.
- H. The Grantee shall file with the County any request for protection under Bankruptcy laws, or any judgment related to a declaration of bankruptcy

by the Grantee, any affiliate which controls or manages the Grantee, or any operator of the cable system.

Sec. 8-26. Books and Records-Maintenance

In addition to reports required by this Ordinance, the Grantee shall maintain records of the following in a form reasonably acceptable to County. The records shall be kept at the Grantee's local office and shall be available for County review and copying during normal business hours. the following information shall be maintained for the indicated duration:

1. Records of outages, indicating date, duration, area and the estimated number of subscribers affected, type of outage, and cause (to be maintained for five (5) years);
2. Records of service calls for repair and maintenance, indicating date and time service was requested, date and time service was scheduled (if it was scheduled), date service was provided, and (if different) date the problem was solved (to be maintained three (3) years);
3. Records of installation and requests for service extension, indicating date of request, date of acknowledgment, and date and time service was extended (to be maintained three (3) years); and,
4. Maps showing the current location of the cable system (to be maintained throughout the term of the Franchise).

Sec. 8-27. Penalties.

Failure to comply with the provisions of this Ordinance shall subject the grantee to all penalties provided by the general ordinances of the County, applicable statutes and as enumerated in the franchise agreement.

Sec. 8-28. Service to Public Buildings

The Grantee shall, without installation or monthly service charge, provide service to one outlet per building in public buildings located within 400 feet of the Grantee's existing distribution system. Additional outlets in these facilities may be provided for the cost of time and materials (FCC-1205 or equivalent rate schedule).

Sec. 8-29 Insurance

- A. Within thirty (30) days after the effective date of the Franchise, and prior to any operations pursuant to the Franchise, the Grantee shall provide proof of the required insurance. The Grantee and its subcontractors shall maintain this insurance throughout the franchise term. Insurance shall include, in amounts not less than those indicated herein:
1. Worker's Compensation coverage for all employees with Statutory Limits in compliance with applicable state and federal laws.
 2. Comprehensive General Liability with a minimum limit of two-million dollars (\$2,000,000) per occurrence (four-million (\$4,000,000) aggregate) combined single limit for bodily injury liability and property damage liability. This shall include premises and/or operations, independent contractors, and subcontractors and/or completed operations, broad form property damage, and a Contractual Liability Endorsement; and,
 3. Business Auto Policy shall have minimum limits of one-million dollars (\$1,000,000) per occurrence combined single limit for bodily injury liability and property damage liability. This shall include owned vehicles, hired and non-owned vehicles.
- B. The insurance coverage obtained by the Franchisee in compliance with this Section shall be approved by the County, and copies of such insurance policies (or certificate of insurance) and evidence of premium payment shall be filed annually with the County.
- C. The insurance coverage required herein may be modified, pursuant to the provisions of the Ordinance and Franchise Agreement, to reflect changing liability exposure limits.
- D. The County shall be named as an additional insured as their interests may appear.

Sec. 8-30. Indemnification

To the fullest extent allowed by law, Grantee shall fully indemnify, defend and hold harmless the County, its elected officials, officers, employees, agents, boards and commissions from and against any and all claims, suits, actions, liability and judgments

for damages, losses, expenses, costs and fees, including, but not limited to, reasonable attorney fees and other costs of suit or defense, for personal injury and/or property damage which arise out of, result from or are alleged to arise out of or result from the ownership, construction, installation, operation and/or maintenance of the Cable System by Franchisee.

Sec. 8-31. No-Waiver

- A. The failure of the County, upon one or more occasions, to exercise a right or to require compliance or performance under the Franchise agreement or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.
- B. Waiver of a breach of the Franchise agreement or this Ordinance is not a waiver of any similar or different breach. Neither the granting of the Franchise nor any provision herein shall constitute a waiver or bar to the exercise of any governmental right or power of the County.

Sec. 8-32. No Recourse

Except as expressly provided herein, Grantee shall have no recourse whatsoever against the County for any loss, cost, expense, or damage arising out of the provisions or requirements of this Ordinance or because of the enforcement thereof by the County or because of the lack of the County's authority to grant all or any part of this Ordinance.

Sec. 8-33. Revocation of franchise.

- A. In addition to other rights and powers provided by this chapter, or general law, the county hereby expressly reserves the right to revoke any franchise granted under this chapter on any one (1) or more of the following grounds:
 - 1. The franchisee's material misrepresentation of fact in an application submitted pursuant to this chapter.
 - 2. The franchisee's willful or negligent failure or refusal to construct, install, maintain, or operate its cable television system in compliance with any term or condition of this Ordinance or of the franchise agreement.
 - 3. The franchisee's insolvency, or its seeking relief under the bankruptcy laws or having been adjudged bankrupt.

4. Foreclosure or other judicial sale of all or a substantial part of franchisee's cable television system, or
 5. The franchisee's repeated failure to provide efficient, continuous service, or to maintain the system in good repair, or to satisfactorily resolve bona fide subscriber complaints.
- B. The County may revoke a franchise pursuant to this section, only after it has given the franchisee notice of its intention to revoke the franchise and the grounds therefore, and has afforded the franchisee a reasonable opportunity to prove in a hearing before the County that the proposed grounds for revocation never existed or do not warrant revocation. The County shall give at least thirty (30) days notice of such hearing as required for the adoption of ordinances.
- C. A franchise shall not be revoked pursuant to this section for any act or omission beyond the franchisee's control; provided, however, that an act or omission shall not be deemed or construed to be beyond the franchisee's control because of financial difficulties of any sort.
- D. In the event that a franchise is revoked by the County, the county shall have the option to acquire the assets of the franchisee's cable television at their then fair market value, or to select a successor franchisee, consistent with the provisions of this chapter, and to permit such successor to acquire said assets at their then fair market value. Fair market value shall be determined by arbitration pursuant to Article 45A of NCGS Chapter 1. Such option must be exercised within one (1) year of the date of revocation.
- E. In the event that a franchise is revoked by the County, and until such time as the franchisee transfers to the county or to a successor franchisee possession and title to the assets of its cable television system, the franchisee shall continue to operate the cable television system under the terms and conditions of this Ordinance and of the franchise agreement. During such interim period, the franchisee shall not make any material administrative or operational change that would tend to:
1. Degrade the quality of service to subscribers;
 2. Decrease income; or

3. Materially increase expenses without the express permission, in writing, of the county.

For its management services during this period, the franchisee shall be entitled to receive, as compensation, the net profit generated from the operation of its cable television system during such period. Such management services shall not be continued without the franchisee's consent for more than twelve (12) months.

Sec. 8-34. Removal of materials upon termination of franchise.

In the event a franchise is revoked, or otherwise terminated for any lawful reason, the franchisee shall, if the system is not sold to a successor franchisee, or acquired by the County within the period for exercise of its option to acquire or after said option shall have been declined, remove all supporting structures, poles, transmission and distribution systems, and other appurtenances, owned by it, from all public ways in, over, under, through, and along which installed, and restore such areas to their original condition. If not done within six (6) months from notice by the County to restore, such property shall be deemed abandoned.

Sec. 8-35. Time of the essence.

Whenever this Ordinance or the franchise agreement specifies any time for any act to be performed by or on the behalf of a franchisee, such time shall be deemed to be of the essence and the franchisee's failure to perform within the time specified shall, in all cases, be sufficient grounds for the county to invoke the remedies available under the terms and conditions of this Ordinance and of the franchise agreement.

Sec. 8-36. Severability.

If any provision of this Ordinance or of the franchise agreement is held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such holding shall not affect the validity of the remaining provisions thereof.

Sec. 8-37. Effect of state or federal regulation or law.

Should any provision hereof or a resolution or franchise adopted pursuant to the authority hereof, be deemed unenforceable or ineffective because it is inconsistent or irreconcilable with any existing or subsequent provision of State or Federal law, or Regulation, then and in either of said events, such inconsistent provisions shall be deemed amended pro tanto by deleting said inconsistent and irreconcilable provisions

and the remainder of this Ordinance shall continue in full force and effect. The provisions of this Ordinance shall then be deemed to include all mandatory and self-effectuating provisions of such State or Federal law or Regulation.

In addition to the foregoing, Macon County may adopt express amendments to this Chapter in keeping with such inconsistent provisions and/or may adopt other amendments which, from time to time, it may deem advisable.

First reading held _____

Second reading held _____

Chairman, Macon County Board of Commissioners

ATTEST:

Sam K. Greenwood, County Manager