COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Praisner, Andrews, and Ewing.

AN ACT to:
(1) establish a system to adjudicate complaints regarding services delivered or carried by a cable communications system in the County;
(2) clarify and improve the law protecting consumers of cable service and any other product or service delivered or carried by a cable system;
(3) require regulations to establish initial service-level requirements for cable modem service [[and allow changes to these requirements by regulation]]; and
(4) [[clarify and strengthen requirements to protect consumers against financial risks of a franchisee; and
(5)]] generally amend County law regarding cable communications and other products or services delivered or carried by a cable system.

By amending
Montgomery County Code
Chapter 8A, Cable Communications
Sections 8A-2, 8A-3, 8A-19, 8A-29, and 8A-31

By adding
Chapter 8A, Cable Communications
Section 8A-31A

The County Council for Montgomery County, Maryland approves the following Act:
Section 1. Sections 8A-2, 8A-3, 8A-19, 8A-29, and 8A-31 of the County Code are amended, and Section 8A-31A is added, as follows:

8A-2. Intent and purposes.

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


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

[(a) * * *]
[(b) * * *]
[(c) * * *]
[(d) * * *]
[(e) * * *]

Commission means the Cable [[Communications]] Compliance Commission.

Complaint means a complaint concerning cable service or any other product or service.
[h] County means Montgomery County, Maryland, except for the territory located in the municipalities of Barnesville, Brookeville, Chevy Chase Village, Chevy Chase Section 3, The Town of Chevy Chase, Chevy Chase Section 5, Gaithersburg, Garrett Park, Glen Echo, Kensington, Laytonsville, Poolesville, Rockville, Somerset, Takoma Park, and Washington Grove. [Unless otherwise clear from the context, where the term “County” is used in this Chapter, it means the County Executive. However, where legislative approval of an activity is specifically required under this chapter, “County” means the County Executive subject to the approval of the County Council.]

[i] * * *

[j] * * *

[k] * * *

[l] * * *

[m] * * *

[n] * * *

[o] * * *

[p] Gross revenues means all revenues derived by a franchisee from the operation of its cable system [within] in the County, including revenues derived from cable service, home shopping channels, institutional services, rental or lease of equipment, installation fees, [or] [ancillary services][, or programming][, and any other product or service].

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

Other product or service means any product or service that is not a cable service but uses any facility or equipment constructed, installed, maintained, operated, or occupying the public rights-of-way under a franchise issued under this Chapter, notwithstanding how the service or product is characterized or regulated under federal law. Other product or service may include one-way or interactive video, audio, data (including cable modem), and information services. [[To encourage earlier deployment of cable service and other products and services, a franchise agreement may include a contractual agreement between the franchisee and the County to treat any other product or service according to the same terms and conditions that the franchise applies to cable service. Unless a franchise agreement includes an enforceable contractual provision to treat the other product or service as a cable service, the franchisee must not demand, collect, or retain any subscriber fees or other compensation for any other product or service unless the franchisee provided that product or service under a separate franchise granted under Chapter 49.]]

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

[(w)] * System malfunction * means an equipment or facility failure that results
in the loss of satisfactory service on one or more channels. A
malfunction is a major malfunction if it affects 11 or more
subscribers.

[(x)] * * *

[(y)] * * *

[(z)] * * *

[[User means a person [utilizing a cable system’s facilities for
purposes of transmission of material] who uses any facility or
equipment constructed, installed, maintained, operated, or occupying
the public rights-of-way under a franchise issued under this Chapter to
provide any cable service, other product or service, or information
to subscribers or [others] any other person.]] * * *


(a) The franchisee must post with the County, and maintain at all times
during the term of the franchise, a cash security deposit [in] [[of not
less than 1.25 percent of the franchisee’s total gross revenues during
the preceding 4 quarters, or]] in the amount specified in the franchise
agreement [before the franchise is effective] [[, whichever is
greater]]. The County must hold the security deposit as security for:

(1) faithful performance of all applicable provisions of law and the
franchise agreement;

(2) compliance with all orders, permits, and directions of the
County; and
payment by the franchisee of any claims, liens, or taxes due to
the County because of the construction, operation or
maintenance of the system.

* * *

The requirements of this Section may be waived only [[by resolution
adopted by the Council]] with the Council’s approval.


* * *

The County Executive [has responsibility for the administration]
[[, and the Commission to the extent authorized in Section 8A-31,]]
must administer and [enforcement of] enforce this Chapter and any
franchise agreement [[according to policies adopted or enacted by
the Council]], including:

(1) adjusting any rate of interest, fee, bond, or insurance coverage
amount [in] to comply with the highest minimum requirements
of this Chapter or [in] a franchise agreement[[, or that the
Executive or the Commission find are necessary to protect
consumers]];

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

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

(4) adopting [of] regulations under method (2) to implement
federal law, this Chapter, and all franchise agreements, except
that the Executive must issue regulations establishing
application filing fees [must be] under method (3);

* * *

(c) Actions by the County Executive in the following matters are subject
to approval and modification by the Council:

* * *

8A-31. Cable Communications [Advisory Committee] [[Commission]]

Advisory Committee.

(a) [A] Established. The Cable Communications [Advisory Committee]
[[Commission]] Advisory Committee is established to provide advice
and recommendations on the administration of this Chapter and any
franchise agreement or application[[; adjudicate complaints
involving cable service or any other product or service or alleged
violation of this Chapter, and establish and enforce service level
requirements for these services]].

[[ ]] [(b) The Cable Communications Advisory Committee should meet
quarterly or on a more frequent basis if requested by the County
Executive or County Council or if the chairperson or Committee
determines it necessary.[[ ]]]

[(c)]]

[(b) Membership.

(1)]

(c) The [[ ]] Cable Communications Advisory Committee [[ ]] [[Commission]] must [be composed of] include at least 13 and not
more than 19 voting members appointed by the County Executive and
confirmed by the Council [for 3-year terms.][, including:] for 3-year terms.

[[ ]]

(d) The membership must include [[ ]]]

\[((A))]\]

one representative selected by the Montgomery County Chapter of the Maryland Municipal League[.];

\[((B))]\]

one representative selected by the City of Rockville[.]; and

\[((C))]\]

one representative selected by the City of Takoma Park.

[[(2) The Commission must include 1 or 2 non-voting members appointed by the Executive and confirmed by the Council who represent the cable communications industry. A Commissioner appointed under this paragraph must not participate in the adjudication of a complaint.]]

(3)]

The [membership] [[Commissioners]] members annually must [annually] elect the chairperson and vice chairperson of the [Committee] [[Commission]] Committee. A person must not serve more than 2 consecutive terms as chairperson.

[(e)]

[[(3)]]

[[(4)]]

(e) [Members] [[Commissioners]] Members are subject to [the provisions of] Chapter 19A, except that [[a voting member or prospective member of the Commission must file a limited public]] financial
disclosure [[statements are limited to]] [[statement regarding any]]
statements are confidential and limited to communications-related
activities and interests. [[The]] [[Each voting and non-voting member
or prospective member of the Commission also must file a
confidential financial disclosure statements[[are confidential]] [as
provided under law].]]

* * *

8A-31A. **Cable Compliance Commission.**

(a) **Established.** The Cable Compliance Commission is established to
adjudicate subscriber complaints involving customer cable service or
any other product or service.

(b) **Membership.** The Commission is comprised of 5 voting members
appointed by the County Executive and confirmed by the County
Council. Each appointee must be appointed to a 3-year term. The
Commission should include:

(1) a cable television service subscriber;

(2) a broadband Internet service subscriber;

(3) an individual with general business experience; and

(4) an individual with technical experience in communications.

(c) **Officers.** The Commissioners annually must elect a chair and vice
chair of the Commission. An individual must not serve more than 2
consecutive terms as chair.

(d) **Insufficient initial quorum.** The Executive must appoint 5 members of
the Commission and submit the appointments for confirmation by the
Council by March 15, 2003. If the Council has not confirmed at least
3 appointees by May 15, 2003, the Cable Communications Advisory
Committee established under Section 8A-31 must perform the
functions of the Commission until at least 3 members of the Commission are confirmed by the Council.

(e) Ethics. Each member of the Commission is subject to Chapter 19A, except that the member or prospective member must file a limited public financial disclosure statement regarding any communication-related activities and interests and a full confidential financial disclosure statement.

[(c) Duties. Notwithstanding any franchise provision or subscriber or user agreement to the contrary, the Commission must:

(1) decide a complaint, including any complaint alleging a violation of this Chapter, a franchise, a regulation issued by the Commission or the Executive, or any]] [] [[other legal requirement]] [[applicable provision of Chapter 11 (Consumer Protection), including, for example, a complaint filed by a subscriber]] [[or]] [[, user, or]] [[by]] [[the Department of Technology Services]] [[on behalf of the County, one or more individuals, or the public,]] [[alleging that:]]

[[(A) a franchisee failed to comply with customer service standards in this Chapter or any stricter standard established in the franchise or by the Commission or Executive regulation, or adopted by the Council by resolution;]]

(B) a franchisee failed to provide the highest level of cable or other products or service required by this Chapter, Commission regulations, a franchise, or any other legal requirement; or]]
[(C) a franchisee] [[engaged]] [[violated Section 8A-15 by
engaging in an anti-competitive actions]] [[affecting the]]
[public or another County cable franchisee]] [[a current
or prospective subscriber or user;]

(2) issue regulations under method (2) to implement this Chapter
and protect consumers, including minimum requirements for
levels of service and customer service for cable service and any
other product or service;

(3) review the annual cable communications plan required under
Section 8A-28 and make budget recommendations to the
Executive and the Council regarding the plan and the
Commission’s operations; and

(4) report at least annually to the Executive and Council on the
Commission’s activities and any recommendations for
improving the law, regulations, and cable and other products
and services to County residents and businesses.]]

[(d)]

(f) Authority. The Commission may:

[(1) Order the county cable administrator or the County’s Chief
Information Officer to take]] [[Take any action that the
Commission decides is necessary to enforce customer-service
and other requirements of this Chapter or Chapter 11
(Consumer Protection), a regulation, or a franchise.

(2) Impose any penalty or sanction that the County could impose
under this Chapter or Chapter 11, a regulation issued under]
[[this]] [[either Chapter, or a franchise agreement]] [[. The
Council must approve any Commission order to revoke,
reduce] [[, except revoking, reducing the term of, or otherwise modifying a franchise]] [[, or to][[.,] [[The Commission may require]]

(1) Require a franchisee to provide a refund [[or other payment]] to [[all customers in the County who receive the particular cable service or other product or service that was the subject of a complaint]] a complainant.

[(3)]]

(2) Appoint a qualified person to mediate a case if the complainant [[(which may include the County)]] and respondent agree to binding or non-binding mediation. A consent order resulting from mediation and approved by the Commission is an order of the Commission. If the mediator or the Commission finds that the parties are not likely to agree to a mediated consent order within a reasonable time, the Commission must decide the case.

[(4)]]

(3) Order a franchisee [[or claimant]] to pay damages of up to $1,000 to a person injured or aggrieved by the franchisee’s actions. This limit applies separately to each violation.

[(e)]]

(g) Hearing Procedures.

(1) The Administrative Procedures Act (Article II of Chapter 2A) applies to a complaint filed with the Commission and governs the Commission’s hearings and decisions, unless otherwise expressly provided in this Chapter. The Commission may
issue procedural rules under method (2) to implement this subsection.

(2) Before filing a complaint with the Commission, a complainant must file the complaint with the county cable administrator. If the cable administrator is unable to resolve the complaint to the complainant’s satisfaction within 30 days, the complainant may file the complaint with the Commission.

(3) If the Commission decides to conduct a public hearing on the complaint, the Commission must notify the complainant, the franchisee, the county cable administrator or the County’s Chief Information Officer (CIO), and any other person that Commission rules require to be notified. Except as provided in Section 2A-9, the notice must be sent [or delivered] at least 15 days before the hearing. The Commission may hold a hearing at the request of any party to the complaint (which may include the cable administrator or CIO) or on the Commission’s own initiative, or may decide a complaint without a hearing.

[(f)]

(h) Legal representation. The County Attorney must provide legal advice and representation to the Commission and must enforce any Commission order. The County Attorney may represent the interests of the County in any proceeding before the Commission, consistent with policies established by the Council.

[(g)]

(i) Conflicting subscriber agreement. Any provision in a subscriber agreement, whether written or oral, that conflicts with this Chapter, a franchise agreement, or any regulation or other legal requirement is
unenforceable. An unenforceable provision does not affect other provisions of the **subscriber agreement** that can be given effect without the unenforceable provision. “Subscriber agreement” includes any agreement that the **franchisee** requires a **subscriber[[], user, or other person]** to [[sign]] agree to as a condition of receiving **cable service** or any other **products and services**.

[[[(h)]] (i) Fee. The Executive may issue regulations under method (3) setting a reasonable fee for filing a complaint with the [[Board]] **Commission**. The filer must pay the fee to the County when filing a complaint. The **Commission**, cable administrator, or CIO may waive the filing fee upon request if the fee would be a financial hardship for the complainant. If the parties agree to a consent order after mediation, the **Commission** may refund the filing fee. The **Commission** may order the losing party to pay another party’s filing fees or other reasonable expenses related to the hearing, including attorney’s fees, in addition to ordering payment of damages [[or equitable relief]].

[[[(i)]] (k) Staff and other support. The Chief Administrative Officer must provide the services and County facilities that are reasonably necessary for the **Commission** to perform its duties.

**Sec. 2.** [[Initial service]] **Service-level requirements for cable modem service.**

[[[(a)]] General requirement. In addition to any other customer service requirement in a franchise, law, or rule, any person who provides Internet service as a “cable service” or as any “other product or service” (as those terms are defined in Code Section 8A-3, as amended by this Act) must provide service that meets the following
minimum functional requirements. These requirements are not intended to establish technical standards and may be satisfied using any available technology. Any requirement concerning the speed or reliability of service applies to communications between a subscriber’s or user’s computer and a host computer controlled or directly accessed by a franchisee, including the franchisee’s point-of-presence service provider.]]

[(b) Modification. The Cable Communications Commission may amend or supersede these standards at any time by regulation, as provided in Chapter 8A of the Code.]]

[(c) Functional requirements. Internet service must:

(1) provide and maintain download bandwidth of at least 1.0 megabits per second (Mbps), except that, during any 24-hour period, the bandwidth may be less than:
   (A) 1.0 Mbps for not more than a total of 6 hours;
   (B) 512 kilobits per second (kbs) for not more than a total of 1 hour; and
   (C) 56 kbs for not more than a total of 30 minutes;

(2) provide and maintain upload bandwidth of at least 128kbs for a total of at least 23 hours during any 24-hour period;

(3) limit IP latency, during any 24-hour period, to not more than:
   (A) 60 milliseconds (ms) for more than a total of 1 hour; and
   (B) 30 ms for more than a total of 6 hours;

(4) provide and maintain download capacity of at least:
   (A) 3 gigabytes \[((Gb)) \text{ (GB)}\] in any 24-hour period;
   (B) 100 \[((Gb)) \text{ GB}\] in any 28-day period;

(5) provide and maintain upload capacity of at least:
(A) 2 [(Gb)] (GB) in any 24-hour period; and
(B) 33 [(Gb)] (GB) in any 30-day period;
(6) provide mail servers that are available to actively accept in-
bound email messages during at least 95 percent of any 1-week
period;
(7) provide mail servers that, during any 1-week period, actively
attempt to send out-bound email messages:
   (A) within 5 minutes during at least 95 percent of the period;
   (B) within 24 hours during at least 99 percent of the period;
   and
   (C) within 72 hours at all times;
(8) provide email service that allows:
   (A) at least 5 megabytes [(Mb)] (MB) of storage for each
       mailbox;
   (B) at least [6] 4 email addresses per account;
   (C) messages with up to at least 100 recipients;
   (D) messages that show a user-provided return address;
   (E) individual mail messages of at least 1 [(Mb)] MB;
   (F) a subscriber to retain on the provider’s servers, up to the
       limit of the subscriber’s allocated storage space, any in-
       bound or out-bound email to or from the subscriber;
(9) provide DNS root-server based responses during at least 95 of
any 1-week period;
(10) ensures that no TCP/IP [[ports are not]] port is blocked in either
the incoming or outgoing direction;
(11) allows all methods of multiplexing multiple hosts onto single IP
address (such as network address translation, or NAT); and
(12) allow all subscribers to use any method of sending and receiving encrypted or encapsulated data (such as those generated by a virtual private network, or VPN).]

The County Executive must issue regulations under method (2) establishing minimum cable modem service levels that a franchisee must provide. The regulations supersede any less-stringent requirements in a franchise or subscriber agreement.

Sec. 3. Transition.

[(a) An individual who is a member of the Cable Communications Advisory Committee when this Act takes effect is a member of the Cable Communications Commission. The term of the Commissioner expires when the member’s term on the Committee would have expired.]

[(b) In applying any law or policy that limits the number of consecutive or cumulative terms of a member or officer of the Commission, an individual who became a Commissioner under subsection (a) is deemed to have been appointed and approved as a Commissioner on the date this Act takes effect, without regard to any prior service on the Advisory Committee, to fill the remainder of the term described in subsection (a).]

[(c) Before the Council approves the appointment of any other member of the Commission, the Executive must designate the initial term of the member as 1, 2, or 3 years, so that not more than one-third of Commission member terms will expire in the same year.]

[(d)]]

(a) This Act applies to each current or future franchise, franchisee, subscriber, or other person subject to the requirements of the
County Cable Communications Act, as amended by this and any future Act, and supersedes any contrary regulation, franchise, franchise agreement, subscriber agreement, or other agreement. The complaint adjudication provisions in Chapter 8A of the Code, as amended by this Act, apply to any complaint pending on, or filed on or after, the date this Act takes effect. Section [(8A-31(g))] 8A-31A(i) applies to any subscriber agreement modified or entered into after this Act becomes law.

[(e) Any reference to the Cable Communications Advisory Committee in a law, regulation, or policy in effect when this Act takes effect must be treated as a reference to the Commission unless the context clearly indicates otherwise, or the provision conflicts with this Act.]

(b) The County Executive must designate the initial term of 2 members of the Cable Compliance Commission as 2 years. Any later term of these 2 members, and the terms of all other members, must be 3 years.

Sec. 4. Expiration date.

This Act expires on December 31, 2005.

Approved:

/S/ December 2, 2002
Steven A, Silverman, President, County Council Date

Approved:

/S/ December 5, 2002
Douglas M. Duncan, County Executive Date

This is a correct copy of Council action.

/S/ December 9, 2002
Mary A. Edgar, CMC, Clerk of the Council Date