

Resolution No.: 16-85  
Introduced: April 10, 2007  
Adopted: April 10, 2007

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: County Council

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**SUBJECT:** Executive Regulation 26-06AM, Internet Access Service Standards

**Background**

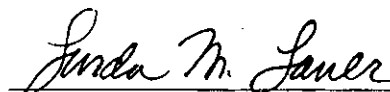
1. Bill 41-06 added a new County Code §11-4A. Code subsection 11-4A(d) requires the County Executive to “issue regulations under Method (2) that establish minimum internet access service standards that a merchant must comply with.”
2. On January 30, 2007, the County Council received Executive Regulation 26-06, Internet Access Service Standards, from the County Executive.
3. The Council reviewed the regulation under Method (2) of §2A-15 of the County Code.
4. Under Method (2), if the Council does not approve or disapprove a regulation within 60 days after the Council receives the regulation, the regulation automatically takes effect.
5. The Management and Fiscal Policy Committee reviewed Executive Regulation 26-06, Internet Access Service Standards on March 1, 2007. The Committee (2-0) recommended approval of Executive Regulation 26-06 with amendments.
6. On March 23, 2007, the Executive resubmitted the regulation as Executive Regulation 26-06AM, Internet Access Service Standards.

**Action**

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

Executive Regulation 26-06AM, Internet Access Service Standards, is approved.

This is a correct copy of Council action.

  
\_\_\_\_\_  
Linda M. Lauer, Clerk of the Council



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Internet Access Service Standards	Number 26-06AM
Originating Department Office of Consumer Protection	Effective Date April 10, 2007

Montgomery County Regulation on:  
**INTERNET ACCESS SERVICE STANDARDS**

Office of Consumer Protection

Issued by: County Executive  
Regulation No. 26-06AM

Authority: Code Section 11-4A  
Council Review: Method 2 under Code Section 2A-15  
Supersedes: Executive Regulation 26-03AMII  
Register Vol. 23, Issue 11  
Comment Deadline: \_\_\_\_\_  
Effective Date: April 10, 2007  
Sunset Date: None

**SUMMARY:** This regulation establishes internet access service standards.

**ADDRESS:** Office of Consumer Protection  
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Rockville, Maryland 20850

**STAFF CONTACTS:** Jane Lawton, Cable Administrator  
Office of Cable and Communications Services  
(240) 777-3724

Eric Friedman, Acting Director  
Office of Consumer Protection  
(240) 777-3719

**BACKGROUND:** Bill 41-06 amended Chapter 11 of the Code by adding a new Section 11-4A which requires the County Executive to issue regulations that establish minimum internet access service standards. This regulation implements that requirement.

## SECTION 1. AUTHORITY

This Executive Regulation is authorized by Montgomery County Code 2004, as amended, Section 11-4A.

## SECTION 2. GENERAL PROVISION



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This regulation sets forth customer service standards that must be met by a Merchant that provides Internet Access Service to consumers in the County using any facility that the merchant controls and that is located in the County's Public Rights-of-Way. In addition, a Merchant that offers internet access service in the County must satisfy any additional or stricter requirements established by the FCC, a franchise agreement, or other applicable federal, state, or local law, as the same may be amended from time to time. Nothing in this regulation relieves a Merchant who is a cable operator of its obligation to comply with any other applicable law.

### SECTION 3. DEFINITIONS

The definitions contained in Chapter 11 of the Code are incorporated herein. In addition, the following definitions apply to this regulation.

(1) *Internet Access Service or Service*: The provision of internet access to a consumer using facilities that are controlled by a Merchant and that are located in the County's Public Rights-of-Way.

(2) *County*: Montgomery County, Maryland.

(3) *Normal Business Hours*: Those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours must include some evening hours at least one night per week and/or some weekend hours.

(4) *Normal Operating Conditions*: Those service conditions which are within the control of the Merchant. Those conditions which are not within the control of the Merchant include, but are not limited to: natural disasters; civil disturbances; power outages; telephone network outages; severe or unusual weather conditions; viruses detected in a Consumer's computer; the presence of intentional or malicious electronic attacks on the Internet infrastructure, such as denial of service attacks and the unforeseeable failure of equipment or software not owned, leased, or licensed by the Merchant that provides access to the Internet; and violations of Consumer agreements by the Consumer that create or cause the condition. Those conditions which are within the control of the Merchant include, but are not limited to: special promotions; rate increases; regular peak or seasonal demand periods; and maintenance or rebuild of the Cable System.

(5) *Public Rights-of-Way*: The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar



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property within the County which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining facilities. No reference herein to a Public Right-of-Way shall be deemed to be a representation or guarantee by the County that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a Merchant shall be deemed to gain only those rights to use as are properly in the County and as the County may have the right and power to give.

(6) *Service Interruption or Interruption of Service:* The loss of Internet Access Service.

(7) *System Outage or Outage:* A Service Interruption affecting more than ten (10) Consumers, as reported by the Consumers, or as otherwise becomes known or should be known through the exercise of ordinary due diligence to the Merchant, in the same serving area.

## SECTION 4. INTERNET ACCESS SERVICE STANDARDS

### (a) *Installations, Connections, and Other Merchant Services.*

(1) **Standard Installations.** Except as federal rate regulations may otherwise require, the Merchant shall not assess a Consumer any cost other than a standard installation charge for service drops of one hundred seventy-five (175) feet or less, to the primary outlet, unless the Merchant demonstrates to the County's satisfaction that extraordinary circumstances justify a higher charge. Except as applicable law may otherwise require, where a drop exceeds one hundred seventy-five (175) feet in length from the nearest Public Right of Way, the Merchant may charge a Consumer an additional charge for any drop up to four hundred (400) feet long.

(2) **Location of Drops.** The Consumer's preference as to the point of entry into the residence shall be observed whenever feasible. Runs in building interiors shall be as unobtrusive as possible. The Merchant shall use due care in the process of installation and shall restore the Consumer's property to its prior condition. Such restoration shall be undertaken as soon as possible after the damage is incurred and shall be completed within no more than thirty (30) days after the damage is incurred.

(3) **Non-standard Installations.** In locations where the Merchant's System must be underground, drops must be placed underground as



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well. Except as federal law may otherwise require, in any area where the Merchant would be entitled to install a drop above-ground, the Merchant will provide the homeowner the option to have the drop installed underground if requested, but may charge the homeowner the difference between the cost of the above-ground installation and the cost of the underground installation.

(4) Delinquent Accounts. The Merchant shall use its best efforts to collect on delinquent Consumer accounts before terminating service. In all cases, the Merchant shall provide the customer with at least ten (10) working days written notice, with the telephone number to call to arrange payment or to resolve disputes, prior to disconnection.

*(b) Telephone and Office Availability.*

(1) Each Merchant shall maintain an office at a convenient location in the County that shall be open during Normal Business Hours to allow Consumers to request service, pay bills, and conduct other business.

(2) Each Merchant will maintain at least one local, toll-free or collect call telephone access line which will be available to Consumers 24 hours a day, seven days a week. Trained representatives of the Merchant shall be available to respond to Consumer telephone inquiries during Normal Business Hours.

(3) Under Normal Operating Conditions, the following standards shall be met by the Merchant at least seventy five (75) percent of the time, measured quarterly.

(A) Telephone answering time shall not exceed thirty (30) seconds, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional thirty (30) seconds.

(B) A customer will receive a busy signal less than three percent (3%) of the time.

(C) When the business office is closed, an answering machine or service capable of receiving and recording service complaints and inquiries shall be employed. Inquiries received after hours must be responded to by a trained representative of the Merchant on the next business day. To the extent possible, the after-hours answering service shall comply with the same telephone answer time standard set forth in this Section.



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(4) The Merchant must hire sufficient staff so that it can adequately respond to customer inquiries, complaints, and requests for service in its office, over the phone, and at the Consumer's residence.

*(c) Scheduling and Completing Service.*

Under Normal Operating Conditions, each of the following standards shall be met by all Merchants at least 90% of the time, as measured on a quarterly basis:

(1) Prompt Service. Installations located up to 400 feet from the nearest Public Right-of Way shall be completed within seven (7) business days after the order is placed or Miss Utility marking, or at a later time if requested by the Consumer. Repairs and maintenance for Service Interruptions and other repairs not requiring work within a Consumer's premises must be completed within thirty-six (36) hours of the time the Consumer reports the problem to the Merchant or its representative or the interruption or need for repairs otherwise becomes known to the Merchant. At the request of the Consumer, the commencement of the thirty-six (36) hour deadline may be extended. Work on all other requests for service shall be scheduled for the next available appointment, or at a later time mutually agreeable to the Merchant and the Consumer. The Merchant shall exercise its best efforts to complete such work within three (3) days from the date of the initial request, except installation requests, provided that the Merchant shall complete the work in the shortest time possible where, for reasons beyond the Merchant's control, the work could not be completed in those time periods even with the exercise of all due diligence; the failure of the Merchant to hire sufficient staff or to properly train its staff shall not justify the Merchant's failure to comply with this provision.

(2) Service Times. The Merchant shall perform service calls, installations, and disconnects at least during Normal Business Hours. In addition, maintenance service capability enabling the prompt location and correction of System Outages shall be available Monday through Friday from the end of Normal Business Hours until 12:30 a.m., and from 8:00 a.m. until 12:30 a.m. on Saturdays, Sundays, and holidays.

(3) Appointments. The appointment window for installations, service calls, and other installation activities will be either a specific time or, at maximum, a 4-hour time block during Normal Business Hours. Where a Consumer cannot conveniently arrange for a service call or installation during Normal Business Hours, the Merchant shall make



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reasonable efforts to schedule service and installation calls outside Normal Business Hours for the express convenience of the Consumer.

(4) Cancellations. The Merchant may not cancel an appointment with a Consumer after the close of business on the business day preceding the appointment. If the Merchant's representative is running late for an appointment with a Consumer and will not be able to keep the appointment as scheduled, the Consumer will be contacted, and the appointment rescheduled, as necessary, at a time which is convenient for the Consumer.

(5) Emergency Maintenance. The Merchant shall keep emergency system maintenance and repair staff, capable of responding to and repairing system malfunctions or interruptions, on a twenty-four (24) hour basis at all times, and under Normal Operating Conditions shall provide an immediate response to System Outages twenty-four (24) hours a day, seven (7) days a week.

(6) Other Inquiries. Under Normal Operating Conditions, billing inquiries and requests for service, repair, and maintenance not involving Service Interruptions must be acknowledged by a trained customer service representative within twenty-four (24) hours, or prior to the end of the next business day, whichever is earlier. The Merchant shall respond to all other inquiries within five (5) business days of receipt of the inquiry or complaint.

(7) To the extent consistent with federal law, no charge shall be made to the Consumer for repairs or maintenance of Merchant-owned equipment or facilities, except for the cost of repairs to the Merchant's equipment or facilities where it can be shown that the equipment or facility was damaged by a Consumer.

(8) Mobility-Limited Consumers. With regard to mobility-limited Consumers, upon Consumer request, the Merchant shall arrange for pickup and/or replacement of cable modems or other equipment used at the Consumer's address to provide Service.

*(d) Interruptions of Service.*

The Merchant may intentionally interrupt service only for good cause and for the shortest time possible and, except in emergency situations or to the extent necessary to fix the affected Consumer's service problems, only after a minimum of forty-eight (48) hours prior notice to Consumers and the County of the anticipated service interruption,



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provided however, that planned maintenance that does not require more than two (2) hours' interruption of service that occurs between the hours of 12:00 midnight and 6:00 a.m., shall not require such notice to Consumers, but shall require notice to the County no less than twenty-four (24) hours prior to the anticipated service interruption. Brief interruptions of service of less than five minutes necessary to conduct planned maintenance shall not require notice to Consumers or the County.

*(e) Notice to Consumers.*

(1) The Merchant shall provide the following materials to each Consumer at the time Service is installed, at least annually thereafter, and at any time upon request. Copies of all such materials provided to Consumers shall also be provided to the County.

- (A) a written description of products and services offered, including a schedule of rates and charges and the technical specifications of the Service, including data speed;
- (B) a written description of the Merchant's installation and service maintenance policies, delinquent Consumer disconnect and reconnect procedures, and any other of its policies applicable to its Consumers;
- (C) written instructions on how to use the Service;
- (D) written instructions for placing a service call;
- (E) a written description of the Merchant's billing and complaint procedures, including the address and telephone number of the County office responsible for receiving Consumer complaints;
- (F) a copy of the service contract, if any;
- (G) notice regarding Consumers' privacy rights; and
- (H) notice that Consumers are not obligated to purchase a modem supplied by a Merchant in order to receive Cable Modem Service.

(2) Consumers and the County will be notified in writing of any changes in rates or any significant changes in any other information





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required to be provided by this section, as soon as possible. Notice must be given to Consumers and the County a minimum of thirty (30) days in advance of such changes and other significant changes if the change is within the control of the Merchant.

(3) All Merchant promotional materials, announcements, and advertising of Service to Consumers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms and, in the case of telephone orders, the Merchant shall take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential customers before the order is accepted.

(4) The Merchant shall maintain a public file containing all notices provided to Consumers under these customer service standards, as well as all promotional offers made to Consumers. Copies of all notices, promotional or special offers sent to Consumers and any agreements used with Consumers shall be filed promptly with the County. The Merchant must provide to the County a copy of all forms describing customer service policies and procedures when they are distributed to customers, and if possible, should provide these forms to the County before they are distributed.

*(f) Billing.*

Bills shall be clear, concise, and understandable. Bills must be fully itemized with itemizations including, but not limited to, equipment charges. Bills shall clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

*(g) Rebate Policy.*

In the event of a Service Interruption, the Merchant shall repair the Service Interruption as soon as possible. This obligation is satisfied if the Merchant offers the Consumer the next available repair appointment within the twenty-four hour period following the Service Interruption, or at the request of the Consumer, to a mutually convenient later time for the repair call, and successfully repairs the Service Interruption during the agreed appointment. If the Service Interruption is not repaired at the time of the scheduled appointment, the Consumer will receive a credit of 10% of the Consumer's normal monthly bill for each 24 hour period, or segment thereof, that the Service Interruption continues beyond the scheduled repair call.



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### SECTION 5: FORCE MAJEURE

The Merchant shall not be deemed in default of this regulation where performance was rendered impossible by war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, or epidemics, or other causes beyond the Merchant's control, and the Merchant shall not be penalized for such noncompliance, provided that the Merchant takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with this regulation without unduly endangering the health, safety, and integrity of the Merchant's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

### SECTION 6. ENFORCEMENT

The enforcement remedies contained in Chapter 8A, Chapter 11 and the cable franchise agreements are incorporated herein. This regulation may be enforced in the same manner as any applicable franchise agreement.

### SECTION 7. EFFECTIVE DATE

This regulation takes effect on \_\_\_\_\_

Isiah Leggett  
County Executive

March 22, 2007  
Date

APPROVED AS TO FORM AND LEGALITY  
OFFICE OF THE COUNTY ATTORNEY

By:   
Date: 3/12/07