

**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**

**1998 Legislative Session**

Bill No. CB-98-1998

Chapter No. 76

Proposed and Presented by Council Member Estep

Introduced by Council Member Estep

Co-Sponsors \_\_\_\_\_

Date of Introduction October 6, 1998

**BILL**

1 AN ACT concerning

2 Telecommunications Franchises for the Use of Public Property and

3 Public Rights-of-way in the County

4 For the purpose of establishing procedures for the granting of franchises for the use of public

5 property and/or public rights-of-way for telecommunications systems; preserving the County's

6 rights in and control over public property and public rights-of-way used to provide

7 telecommunications service; providing for the payment of compensation and other valuable

8 consideration by telecommunications franchisees; authorizing executive regulations to

9 implement, enforce, and administer this Division; and, generally providing for the franchising of

10 telecommunications systems in the County.

11 BY adding :

12 SUBTITLE 5A. CABLE TELEVISION.

13 DIVISION 2.

14 Sections 5A-149, 5A-150, 5A-151, 5A-152, 5A-153, 5A-154,

15 5A-155, 5A-156, 5A-157, 5A-158, 5A-159, 5A-160,

16 5A-161, 5A-162, 5A-163, 5A-164, 5A-165, 5A-166,

17 and 5A-167,

18 The Prince George's County Code

19 (1995 Edition, 1997 Supplement).

20 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,

21 Maryland, that Sections 5A-149, 5A-150, 5A-151, 5A-152, 5A-153, 5A-154, 5A-155, 5A-156,

1 5A-157, 5A-158, 5A-159, 5A-160, 5A-161, 5A-162, 5A-163, 5A-164, 5A-165, 5A-166, and 5A-  
 2 167, of the Prince George's County Code be and the same are hereby added:

3 **SUBTITLE 5A. CABLE AND TELECOMMUNICATIONS.**

4 **DIVISION 2. TELECOMMUNICATIONS FRANCHISES.**

5 **Sec. 5A-149. Short title; purposes.**

6 (a) This Division shall be known and may be cited as the Telecommunications Franchise  
 7 Law.

8 (b) It is the intent of the County to preserve its rights in and control over public property  
 9 and public rights-of-way by prescribing the manner in which access to public property and/or  
 10 public rights-of-way shall be granted for the purpose of providing telecommunications service.  
 11 Accordingly, the purposes of this Division are as follows:

12 (1) To promote the public health, safety and general welfare by providing for the  
 13 grant of franchises for the construction, replacement, reconstruction, operation, and maintenance  
 14 of telecommunications systems;

15 (2) To manage the limited resources of the public rights-of-way and/or public  
 16 property to the long-term benefit of the public;

17 (3) To recover the costs of maintaining the public rights-of-way and/or public  
 18 property; compensate for the burden imposed on taxpayers by occupation of the public rights-of-  
 19 way and/or public property by non-governmental business; recover the fixed and variable costs  
 20 of occupation of the public rights-of-way and/or public property by non-governmental business;  
 21 and recover fair compensation for the occupation of the public rights-of-way and/or public  
 22 property by non-governmental entities in their respective businesses; and

23 (4) To establish the position of Telecommunications Transmission Facility  
 24 Coordinator and provide for the administration and coordination of telecommunications facility  
 25 planning and construction.

26 (5) To recognize the public interest in continued provision of universal service on  
 27 regulated prices and terms, as provided for in 47 U.S.C. Section 214(e).

28 **Sec. 5A-150. Definitions.**

29 (a) In this Division, the following words and phrases have the meanings indicated:

30 (1) **Applicant** means a person who submits an application.

31 (2) **Application** means a request for authority to construct, replace, reconstruct,

1 operate, or maintain a telecommunications system within the County public rights-of-way;  
 2 transfer a franchise; renew a franchise; or modify a franchise. An application includes the initial  
 3 request plus all subsequent written amendments or supplements to the request.

4 (3) **Cable Franchisee** means a person that is providing cable service, as defined by  
 5 federal law, pursuant to a valid franchise issued in accordance with Division 1 of this Subtitle.

6 (4) **Control of a franchisee or applicant** means the legal or practical ability to direct  
 7 the affairs of the franchisee or applicant either directly or indirectly, whether by contractual  
 8 agreement or majority ownership of an economic interest or in any other manner.

9 (5) **Director** means the Director of the Office of Management and Budget.

10 (6) **Franchise** means the right granted by the County to construct, operate, replace,  
 11 reconstruct, and maintain all or any part of a telecommunications system over, on or under public  
 12 property and/or public rights-of-way within all or specified areas of the County. The term does  
 13 not include any license or permit that may be required by this Division or other laws, ordinances,  
 14 or regulations of the County for the privilege of transacting and carrying on a business within the  
 15 County or for disturbing the surface of any street, road, public thoroughfare, public property or  
 16 public right-of-way.

17 (7) **Franchise Agreement** means a contract entered into in accordance with the  
 18 provisions of this Division between the County and a franchisee that sets forth the terms and  
 19 conditions under which the franchise will be exercised.

20 (8) **Franchisee** means any person granted a franchise under this Division.

21 (9) **Gross Revenues** means all revenues derived directly or indirectly by the  
 22 franchisee, its affiliates, subsidiaries, parent companies and any person in or with whom the  
 23 franchisee has a financial interest, or revenues received by the franchisee from a person with  
 24 whom the franchisee has a revenue-producing agreement, from the operation of the  
 25 Telecommunications System in the designated franchise area, which operation shall be  
 26 interpreted to include all telecommunications services, provided, however, that any amounts  
 27 includable as gross revenues that are received by an affiliate or any other entity that is a  
 28 sublessee of a franchisee's telecommunications system shall not be counted as gross revenues to  
 29 the extent that such amounts are also received by the franchisee and subject to the right-of-way  
 30 charge, to ensure that no such revenue is counted twice. This term shall not include taxes  
 31 imposed directly upon any subscriber or user by the Federal, State, County or other

1 governmental unit and which the franchisee is required to collect on behalf of said governmental  
 2 unit. A right-of-way charge is not such a tax. Gross Revenues shall include, but not be limited  
 3 to:

4 (A) All gross revenues from local telecommunications services billed to a  
 5 County address or account number or originating or terminating within the unincorporated area  
 6 of the County;

7 (B) All gross revenues from long distance telecommunications services billed to  
 8 a County address or account number or originating or terminating within the unincorporated area  
 9 of the County;

10 (C) All gross revenues from telecommunications services levied on a usage or  
 11 usage sensitive, mileage or flat rate basis;

12 (D) All gross revenues collected from connection or disconnection fees;

13 (E) All gross revenues from penalties or charges to customers for checks  
 14 returned from banks, net of bank costs paid; all gross revenues from recoveries of bad debts  
 15 previously written off, and revenues from sales of assignments of bad debts. Unrecovered bad  
 16 debts charged off after diligent, unsuccessful efforts to collect may be excluded from gross  
 17 revenue computations;

18 (F) All gross revenues from the rental, lease or sublease of any conduit space, or  
 19 of any portion of the franchisee's telecommunications system, or of any capacity to other  
 20 persons, whether or not owned in whole or part by the franchisee, for the provision of  
 21 telecommunications services, including, but not limited to, all gross revenue from local access  
 22 fee charges;

23 (G) All other gross revenues from the provision of telecommunications services  
 24 provided by the franchisee within the County;

25 (H) The value of any bartered services provided by the franchisee, except those  
 26 free services required under the franchise agreement;

27 (I) All gross revenues included in any Federal Communications Commission  
 28 chart of accounts of telecommunications revenue; and

29 (J) All gross revenues collected as a line item or otherwise passed through to the  
 30 consumer, including, but not limited to, right-of-way charges.

31 (10) **Minor Antenna** means a radio/antenna device no more than twenty-five (25)

1 inches in length, fifteen (15) inches in width, and ten (10) inches in height (excluding mounting  
 2 brackets, fasteners, cabling and antenna), with five watts or less of transmitter output power,  
 3 which is installed on streetlight arms or mast arms mounted on preexisting poles, or rooftops or  
 4 other preexisting support structures.

5 (11) **Person** means any individual, corporation, partnership, association, joint venture,  
 6 or organization of any kind and the lawful trustee, successor, assignee, transferee or personal  
 7 representative thereof.

8 (12) **Public Property** means any real property owned or controlled by the County that  
 9 is specifically identified in the franchise agreement, including buildings, and may include surplus  
 10 property as defined in Section 2-111.01 of this Code. To the extent of any conflict with Section  
 11 2-111.01, this Division prevails.

12 (13) **Public Right-of-Way** means the surface and space above, on, beside and below  
 13 any public highway, avenue, street, lane, alley, boulevard, concourse, driveway, bridge, tunnel,  
 14 park, parkway, waterway, dock, bulkhead, wharf, pier, building, public easement, right-of-way  
 15 or any other public ground or water within the unincorporated area of the County or belonging to  
 16 the County.

17 (14) **Telecommunications** means the transmission, between or among points specified  
 18 by the user, of information of the user's choosing, without change in the form or content of the  
 19 information as sent and received.

20 (15) **Telecommunications Services** means the offering of telecommunications for a  
 21 fee, by a person, which the person is authorized to provide under applicable Federal, State, and  
 22 local law, regardless of the facilities used. It includes, without limitation, transmission by optical  
 23 fiber, coaxial cable, wireless methods, or any other means, and includes, without limitation,  
 24 voice, video, data, telephone service, cellular service and personal communications services.

25 (16) **Telecommunications System** means all or any part of a facility that occupies  
 26 County property and/or public rights-of-way owned or controlled by the County and is used to  
 27 provide one or more telecommunications services.

28 (17) **Telecommunications Transmission Facility** means any antenna mounted on a  
 29 structure which is used to transmit or retransmit wireless voice, data, or image information, but  
 30 shall not mean or include a Minor Antenna.

31 (18) **Telecommunications Transmission Facility Coordinator** means the person

1 responsible for:

2 (A) The preparation of a master plan for the erection of telecommunications  
3 transmission facilities

4 (B) The coordination of applications for the erection of telecommunications  
5 transmission facilities in the County; and

6 (C) Such approval by the County as required by provisions of County law other  
7 than this definition.

8 (19) **Transfer of a Franchise** means any transaction in which:

9 (A) An ownership or other interest in or control of a franchisee or its  
10 telecommunications system is transferred, directly or indirectly, from one person or group of  
11 persons to another person or group of persons so that actual working control of the franchisee's  
12 telecommunications system is transferred; or

13 (B) The rights held by the franchisee under a franchise agreement are transferred  
14 or assigned to another person or group of persons.

15 (20) **Transfer of Interest** in a franchisee means the sale or transfer, directly or  
16 indirectly, of an existing or newly created equity interest in the franchisee that may or may not  
17 result in a transfer of control of the franchisee.

18 (21) **Wireless communication system** means all or any part of a facility that is  
19 licensed by the Federal Communications Commission under Title 47 Code of Federal  
20 Regulations, Parts 20, 22, 24, 90 or 101 and is located in whole or in part on public property  
21 and/or public rights of way and is used to provide one or more telecommunications services.

22 **Sec. 5A-151. Franchise requirement.**

23 (a) A person shall not construct, operate, replace, reconstruct or maintain a  
24 telecommunications system on, over, or under any public rights-of-way in the unincorporated  
25 area of the County without a franchise granted by the County to provide telecommunications  
26 services within the County. The County may grant one or more franchises in accordance with  
27 this Division.

28 (b) A person shall obtain a franchise, subject to the provisions of this Division for any  
29 telecommunications system that occupies one or more portions of public property and/or the  
30 public rights-of-way.

31 (c) The provisions of this Division do not apply to a cable franchisee who is providing

1 only cable service in accordance with the provisions of Division 1 of this Subtitle. A person who  
 2 provides any telecommunications service other than cable service over a cable system must  
 3 obtain a separate franchise pursuant to this Division for such a system insofar as that system is  
 4 used to provide telecommunications service.

5 (d) The franchise requirement of Subsections (a), (b), and (c) does not apply to a  
 6 telecommunications provider that makes limited and specified use of the public rights-of-way for  
 7 a telecommunications system. Such a provider must obtain a site lease pursuant to Section 5A-  
 8 160 of this Division for the specific sites to be used in the public rights-of-way. By way of  
 9 illustration and not limitation, a wireless provider who utilizes only a specific portion of the  
 10 right-of-way for an interconnection with a wireline facility must obtain a site lease pursuant to  
 11 5A-160 in lieu of a franchise agreement pursuant to 5A-151.

12 (e) No person shall provide a telecommunications service through facilities owned,  
 13 maintained or operated by any party upon, across, beneath, or over any public right-of way in the  
 14 County without obtaining a franchise therefor pursuant to the provisions of this Division.

15 (f) The provisions of this Division do not apply to communications circuits and lines  
 16 installed in conjunction with the facilities of a public utility, where those circuits and lines are  
 17 utilized solely for communications for and in connection with the internal conduct of the utility's  
 18 own affairs.

19 (g) The County may, upon application in proper form, issue a license to any person  
 20 demonstrating a need in the course of its business to emplace or operate private communications  
 21 lines in the public rights-of-way to facilitate internal communications between or among its  
 22 places of business. Such license shall not authorize the provision of telecommunications services  
 23 for hire. Operation under such a license does not require payment of a right-of-way charge  
 24 pursuant to the provisions of this Division, however, all applicable permit fees and other County  
 25 requirements must be met by the applicant prior to the issuance of a license under this Section.

26 **Sec. 5A-152. Application for franchise.**

27 (a) An application for a franchise must be on a form supplied by the County and include at  
 28 a minimum the following information:

29 (1) The name, address, telephone and facsimile number of the applicant;

30 (2) The name, address and telephone number of a responsible person whom the

31 County may notify or contact at any time concerning the applicant's telecommunications system;

1           (3) An engineering site plan showing the proposed location of the  
 2 telecommunications system, including any manholes or overhead poles, the size, type and  
 3 proposed depth of any conduit or other enclosures, the relationship of the system to all existing  
 4 poles, utilities, sidewalks and other improvements within the public rights-of-way, and the  
 5 facility or public property address;

6           (4) The technical standards that the applicant proposes to follow in construction and  
 7 operation of the telecommunications system;

8           (5) A description of the telecommunications services to be provided;

9           (6) The period of time the applicant intends to use the public property or rights-of-  
 10 way;

11           (7) Financial information;

12           (8) A list of other jurisdictions in which the applicant operates or has operated a  
 13 telecommunications system; and

14           (9) Any additional information the County's application form may require.

15           (b) An application must be accompanied by a filing fee of Five Thousand Dollars (\$5,000).

16           (c) If the information in an application is incomplete or if the proposed use is inconsistent  
 17 with the requirements of this Division and other applicable laws, the application may be returned  
 18 as unacceptable for filing. The County may request further information in connection with an  
 19 application, and the applicant shall cooperate with the County in supplying such information as  
 20 the County may reasonably request.

21           (d) If the information provided in an application is complete and meets all the  
 22 requirements of this Division, the County shall hold a public hearing on the application. Public  
 23 notice in the County newspapers of record shall be given at least fifteen (15) days prior to the  
 24 public hearing. At the public hearing, the County may accept written and oral testimony and any  
 25 other material relevant to the application. If more than one application has been submitted,  
 26 multiple applications may be considered in the same hearing.

27           (e) In evaluating an application, the County may consider:

28           (1) The applicant's managerial, technical, financial and legal qualifications to  
 29 construct and operate a telecommunications system on County property;

30           (2) The nature of the proposed facilities, equipment, and services;

31           (3) The applicant's recent performance record of using public rights-of-way in

1 providing telecommunications services in other communities, if any;

2 (4) Whether the proposal will serve and protect the public interest;

3 (5) The effects of a grant of a franchise on the use of the public rights-of-way,  
 4 including consideration of the effect on current authorized users of the rights-of-way; and

5 (6) Such other factors as the County may deem relevant.

6 (f) Based upon the application, the written and oral testimony and other material presented  
 7 at the hearing, and any other information relevant to the application, the County shall propose to  
 8 grant or to deny a franchise application and shall notify the applicant of the proposed grant or the  
 9 proposed denial of the application.

10 (g) If the County proposes to grant a franchise application, the County Executive and the  
 11 applicant shall agree on the terms of a franchise agreement within ninety (90) days from the  
 12 notice of the proposed grant. This period may be extended for good cause by the County  
 13 Executive. If agreement is not reached within ninety (90) days and if the period is not extended,  
 14 the notice of proposed grant shall become void.

15 (h) After complying with the requirements of this Section, the County Executive may grant  
 16 a franchise and execute a franchise agreement, subject to the approval of the County Council.

17 (i) The County Executive shall submit the franchise agreement to the County Council for  
 18 its approval by resolution.

19 (j) Every franchise grant is subject to a franchise acceptance fee in an amount not to  
 20 exceed the County's costs in considering the application, less the amount of the filing fee. Within  
 21 thirty (30) days of the date the grant of the franchise is approved by the County Council, the  
 22 County shall notify the approved applicant of the amount of the franchise acceptance fee and its  
 23 method of calculation. If the franchise acceptance fee is not paid within thirty (30) days of the  
 24 date the County notifies the approved applicant of the amount, the grant shall become void.

25 (k) Before the franchise becomes effective, the approved applicant must demonstrate  
 26 compliance with the bond, insurance, and similar provisions of the franchise agreement.

27 **Sec. 5A-153. Franchise conditions; term.**

28 (a) A franchise granted by the County pursuant to this Division shall not become effective  
 29 until a franchise agreement between the County and the applicant has been executed by both  
 30 parties and the applicant has satisfied all requirements of this Division. The term of such  
 31 franchise agreement shall not exceed fifteen (15) years.

1        (b) A franchise authorizes use of the public rights-of-way and those portions of public  
 2 property specifically designated in the franchise agreement for installing and maintaining,  
 3 including, without limitation, cables, wires, lines, poles, wireless transformers, towers and  
 4 antennae and other facilities to operate a telecommunications system, but does not expressly or  
 5 implicitly authorize the franchisee to provide service to, or install cables, wires, lines, poles,  
 6 wireless transformers, towers and antennae or any other equipment or facilities on private  
 7 property without owner consent, or to use publicly or privately-owned utility street lights, traffic  
 8 signals or any other poles or conduits without a separate agreement with the owners.

9        (c) A franchise is subject and subordinate to all County ordinances and police power and  
 10 to the paramount right of use of public property and public rights-of-way by the County for  
 11 public purposes, including, without limitation, relocation, widening or maintenance of the right-  
 12 of-way and sale of public property. The County reserves the right to authorize use of public  
 13 rights-of-way to other persons as it determines appropriate. Upon determination that the County  
 14 needs, for public purposes, to utilize the public property and/or rights-of-way that are occupied  
 15 by a franchisee, the franchisee shall at its expense, at the request of the County, remove any  
 16 facilities and equipment within sixty (60) days of the request and restore the public property or  
 17 rights-of-way to its original condition or to such comparable condition as may be requested by  
 18 the County.

19        (d) A franchise agreement must specify, without limitation:

- 20            (1) Insurance, bond and indemnification requirements;
- 21            (2) Requirements and conditions for construction in and use of the rights-of-way;
- 22            (3) A description of the type and location of the system facilities to be placed on  
 23 public property or within the public rights-of-way;
- 24            (4) Reporting and record-keeping requirements, including financial audits and  
 25 reconciliation of right-of-way charge payments;
- 26            (5) Any other provision or requirement deemed necessary by the County.

27        (e) A franchise agreement constitutes a contract between the franchisee and the County  
 28 once it is executed by the franchisee and the County. By accepting such an agreement, a  
 29 franchisee contractually commits itself to comply with the terms, conditions and provisions of  
 30 the franchise agreement and with all applicable laws, ordinances, codes, rules, regulations, and  
 31 orders, as amended.

1       (f) The County may renew a franchise upon terms and conditions deemed reasonable by  
 2 the County in its sole discretion, and subject to the execution of a new franchise agreement.

3       (g) Nothing in this Division shall be construed as a representation, promise or guarantee by  
 4 the County that any other authorization required by the County in connection with construction,  
 5 operation, reconstruction, replacement or maintenance of a telecommunications system will be  
 6 issued. In addition, nothing in this Division or in any franchise agreement issued in accordance  
 7 herewith shall be construed as an abrogation by the County of any of its police powers. The  
 8 provisions governing any and all other permits that may be required by the County shall still  
 9 apply and all other applicable fees are still due. All franchisee activity shall comply with all  
 10 applicable laws, including laws which may be adopted after the date of the franchise agreement.  
 11 All applicable laws shall include, but are not limited to, building and fire codes, and the Zoning  
 12 and Road Ordinances. All activities of a franchisee and the franchise agreement shall be  
 13 expressly subject to all deeds, easements, dedications, conditions, covenants, restrictions and  
 14 encumbrances which may affect the public rights-of-ways.

15       (h) A franchise agreement is governed by, and shall be construed in accordance with, the  
 16 laws of Maryland.

17       (i) A franchisee or other person is not excused from complying with any of the terms and  
 18 conditions of this Division or a franchise agreement by any failure of the County, on one or more  
 19 occasions, to require compliance or performance.

20       (j) A franchisee is responsible for any costs the County might incur as a result of the  
 21 franchisee's use of the public property or rights-of-way, including without limitation public  
 22 utility fees.

23 **Sec. 5A-154. Right-of-way charge.**

24       (a) As compensation to the County for the privilege of using the public property and/or  
 25 public rights-of-way, a franchisee shall pay to the County a right-of-way charge. The right-of-  
 26 way charge is initially set, as of the effective date of this Act, at three percent (3%) of a  
 27 franchisee's gross revenues per annum. The County Executive shall propose amendments to the  
 28 amount of the right-of-way charge, including the minimum amount, subject to the approval of  
 29 the County Council by resolution.

30       (b) Notwithstanding subsection (a) of this section, a franchisee shall be allowed a credit  
 31 equal to the amount, but not to exceed one half of the right-of-way charge imposed by this

1 section, which the franchisee can show that it owes to another jurisdiction as a charge based on  
2 gross revenues for use of the rights-of-way in such other jurisdiction, in respect of a transmission  
3 whose revenues would otherwise be subject to the County's right-of-way charge.

4 (c) Notwithstanding subsection (a) of this section, a franchisee shall not be required to pay  
5 right-of-way charges to the County based on gross revenues from exempt services provided in  
6 those portions of the County for which the franchisee has been designated as an eligible  
7 telecommunications carrier pursuant to 47 U.S.C. Section 214(e)(2) or (3). Such a franchisee's  
8 right-of-way payments shall be based on its gross revenues from all sources other than exempt  
9 services provided in those areas. For purposes of this subsection, "exempt services" shall mean  
10 telecommunications services that are provided universally throughout the County and are  
11 supported by federal universal support mechanisms pursuant to 47 U.S.C. Section 254(c)(1).

12 (d) The County reserves its right, to the extent permitted by law, to require a franchisee, as  
13 part of a franchise agreement, to provide telecommunications services, facilities, equipment  
14 and/or capacity for use to the County, at no charge to the County.

15 (e) Right-of-way charge payments are due quarterly, no later than thirty (30) days after the  
16 end of each calendar quarter, and must be accompanied by a financial statement showing the  
17 franchisee's gross revenues for the quarter in question.

18 (f) Any payment of right-of-way charges to adjust for a shortfall in the quarterly payments  
19 for the preceding year must be made no later than the filing date for the audited annual financial  
20 statements as specified in subsection (e) of this section. An adjustment for any overpayment will  
21 be credited in one or more subsequent quarterly payments.

22 (g) A franchisee must file within 3 months of the end of its fiscal year the franchisee's  
23 annual financial statement for the preceding year audited by a certified public accountant. The  
24 franchisee will bear the cost of the preparation of all financial statements.

25 (h) The County shall have the right to audit and to recompute any amounts determined to  
26 be payable under this Division. Any additional amount due the County as a result of the audit  
27 shall be paid within thirty (30) days following a written notice to the franchisee by the County,  
28 which notice shall include a copy of the audit report. The cost of said audit shall be borne by the  
29 franchisee if it is determined that the franchisee's annual payment to the County is increased  
30 thereby by more than five percent (5%).

31 (i) In the event that any franchise payment or recomputed amount is not made on or before

1 the applicable dates specified herein, interest shall be charged from such due date at the annual  
 2 rate of five percent (5%) per annum, or such other amount as may be established by the County  
 3 Council by resolution.

4 (j) The County may, solely at its discretion, reduce any right-of-way charge payment due  
 5 from the franchisee by an amount equal to the amount the County may owe to the franchisee  
 6 under any separate contract or agreement between the County and the franchisee.

7 (k) A person that operates a telecommunications system pursuant to a franchise shall not  
 8 separately identify the right-of-way charge on customer invoices or charge a surcharge to  
 9 customers within the County unless similar charges for all other facilities rented by the person to  
 10 provide telecommunications services are similarly identified or charged.

11 **Sec. 5A-155. Insurance; bond; and indemnification.**

12 (a) A franchisee shall have the following insurance coverage in amounts to be specified in  
 13 the franchise agreement in force at all times during the franchise period:

14 (1) Worker's compensation insurance to meet all state requirements;

15 (2) General comprehensive public liability insurance policy indemnifying, defending  
 16 and saving harmless the County, its officers, boards, commissions, agents and employees from  
 17 any and all claims by any person whatsoever on account of injury to or death of a person or  
 18 persons occasioned by the operations of the franchisee in the County or under the franchise  
 19 herein granted or alleged to have been so caused or occurred with a minimum liability of Five  
 20 Hundred Thousand Dollars (\$500,000) per personal injury or death of any one person and One  
 21 Million Dollars (\$1,000,000) per personal injury or death of two or more persons in any one  
 22 occurrence;

23 (3) Property damage insurance policy indemnifying, defending and saving harmless  
 24 the County, its officers, boards, commissions, agents and employees from any and all claims by  
 25 any person whatsoever for property damage occasioned by the operations of the franchisee in the  
 26 County or under the franchise herein granted or alleged to have been so caused or occurred with  
 27 a minimum liability of Two Hundred Fifty Thousand Dollars (\$250,000) for property damage to  
 28 the property of any one person and Five Hundred Thousand Dollars (\$500,000) for property  
 29 damage to the property of two or more persons in any one occurrence.

30 (4) Automobile liability insurance covering all vehicles as specified in the franchise  
 31 agreement; and

1           (5) Any additional types of insurance and coverage amounts as the County may  
 2 require.

3           All insurance policies must be issued by companies qualified to do business in Maryland  
 4 and in a form approved by the County Attorney. The County may at its discretion accept a self-  
 5 insurance plan that assures comparable protection in lieu of the insurance policies. Said  
 6 insurance shall designate the County as an additional insured. Such insurance shall not be  
 7 canceled except upon thirty (30) days prior written notice to the County.

8           (b) To ensure the franchisee's performance of its obligations under the franchise agreement  
 9 and this Division, a franchisee must have in force at all times during the franchise period a  
 10 performance bond, in a form approved by the County Attorney, consisting of cash, an  
 11 irrevocable letter of credit, or a surety bond. A surety bond must be provided by a surety  
 12 qualified to do business in Maryland. The performance bond must be to the benefit of the  
 13 County. The bond must be of a type and in a sum specified in the franchise agreement as  
 14 necessary to ensure the faithful performance and discharge of obligations imposed by law and  
 15 the franchise agreement.

16           (c) A franchisee must, at its sole cost and expense, indemnify, hold harmless, and defend  
 17 the County, its officials, boards, commissions, agents and employees, against any claims, suits,  
 18 causes of action, proceedings and judgments for damages or equitable relief arising out of the  
 19 construction, reconstruction, replacement, maintenance, or operation of the franchisee's  
 20 telecommunications system and the enjoyment of any franchise granted hereunder regardless of  
 21 whether the act, or omission complained of is authorized, allowed or prohibited by the franchise.  
 22 This requirement includes claims arising out of copyright infringement or a failure by the  
 23 franchisee to secure consent from the owner, authorized distributor, or licensee of a program or  
 24 other information to be delivered by the telecommunications system, and claims arising out of a  
 25 decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of a  
 26 franchise. Indemnified expenses shall include, but not be limited to, all out-of-pocket expenses,  
 27 such as attorney fees, and shall also include the reasonable value of any services rendered by the  
 28 County Attorney or his assistants or any employees of the County.

29 **Sec. 5A-156. Transfers.**

30           (a) No transfer of a franchise, or a transfer of an interest in or control of a franchisee or a  
 31 franchise, shall occur without prior application to and approval by the County. However, a

1 transfer of an interest to a person who already holds an ownership interest of 25 percent or more  
 2 does not require prior County approval if transfer of a franchise does not occur.

3 (b) An application to transfer a franchise must meet the requirements of Section 5A-152  
 4 and provide complete information on the proposed transaction, including the legal, financial,  
 5 technical and other pertinent qualifications of the transferee.

6 (c) An application for transfer of an interest in a franchise must describe the proposed  
 7 transaction in detail and identify the interest to be transferred, the transferor, and the transferee.

8 (d) Before approving transfer of a franchise, the County may consider without limitation  
 9 the legal, financial, and technical qualifications of the transferee to operate the system, and  
 10 whether operation by the proposed franchisee will create any risk of nonperformance of a  
 11 franchise agreement, or otherwise be contrary to the public interest. Before approving a transfer  
 12 of an interest in a franchisee, the County may consider without limitation whether the transferee's  
 13 interest will have any effect on the franchisee's operation of the system, the franchisee's  
 14 qualifications, or the public interest.

15 (e) The County Executive may take final action on an application for transfer of an interest  
 16 or transfer of a franchise.

17 (f) Approval by the County of a transfer of a franchise shall not constitute a waiver or  
 18 release of any of the rights of the County under this Division or the franchise agreement.

19 (g) The County may impose a charge, in addition to any right-of-way charge or other  
 20 compensation authorized by this Division, to cover the County's costs in excess of the filing fee  
 21 in considering an application for transfer of a franchise.

22 **Sec. 5A-157. Enforcement remedies.**

23 (a) If a franchisee violates any provision of this Section or its franchise agreement, the  
 24 County Executive may take one or more of the following actions:

25 (1) Impose liquidated damages in the amount, if any, provided in the franchise  
 26 agreement, whether per day, incident, or other measure of violation. Payment of liquidated  
 27 damages by the franchisee does not relieve the franchisee of its obligation to meet the franchise  
 28 requirements;

29 (2) Enforce the terms of the performance bond required by this Division;

30 (3) Reduce the duration of the franchise on any basis the County determines is  
 31 reasonable and affords the franchisee reasonable due process;

1           (4) Revoke the franchise.

2           (b) In determining which remedy or remedies are appropriate under Subsection (a), the  
 3 County Executive shall consider the nature of the violation, the person or persons bearing the  
 4 impact of the violation, the nature of the remedy required in order to prevent further violations,  
 5 and any other matters the County Executive determines are appropriate.

6           (c) In addition to or instead of these remedies, the County Executive may seek legal or  
 7 equitable relief from any court of competent jurisdiction.

8           (d) Before initiating a remedy under this Section, other than revocation of the franchise,  
 9 the County shall give the franchisee written notice of the violations claimed and at least twenty  
 10 (20) working days to correct the violations.

11 **Sec. 5A-158. Revocation or termination of franchise.**

12           (a) A franchise may be revoked by the County Executive for failure to comply with this  
 13 Division or the franchise agreement, or for any other material breach of this Division or the  
 14 Franchise Agreement. The County must give a franchisee certified written notice that it is in  
 15 material breach of this Division or the franchise agreement. If the franchisee does not correct the  
 16 breach within thirty (30) days of the notice, or, if the County consents to an extension of time but  
 17 corrective action is not being actively and expeditiously pursued and completed within ninety  
 18 (90) days of the notice, the County may give certified written notice to the franchisee of its intent  
 19 to revoke the franchise. The County shall indicate in the written notice the basis for a  
 20 revocation, stating its reasons.

21           (b) The County Executive must hold a public hearing at least fifteen (15) days after public  
 22 notice in the County newspapers of record, and then determine by written decision whether or  
 23 not to revoke the franchise giving reasons based on the information presented at the public  
 24 hearing and any other evidence available.

25           (c) Any franchise shall be deemed revoked one hundred twenty (120) days after an  
 26 assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the  
 27 business of the franchisee, whether in a receivership, reorganization, bankruptcy assignment for  
 28 the benefit of creditors, or other action or proceeding. Provided, however, that a franchise may  
 29 be reinstated at the County's sole discretion if, during the one hundred twenty (120) day period:

30           (1) The assignment, receivership, or trusteeship is vacated; or

31           (2) The assignee, receiver, or trustee has fully complied with the terms and conditions

1 of this Division and the franchise agreement and has executed an agreement, approved by the  
 2 court having jurisdiction, assuming and agreeing to be bound by the terms, and conditions of the  
 3 franchise, or such other conditions as may be established or as are required by applicable law.

4 (d) Notwithstanding the foregoing, the County may revoke the franchise if there is a  
 5 foreclosure or other judicial sale of the facilities, equipment or property of a franchisee, by  
 6 serving notice on the franchisee and the successful bidder at the sale. The franchise and all rights  
 7 and privileges of the franchise will be revoked thirty (30) days after the County serves notice  
 8 under this subsection unless:

9 (1) The County has approved a transfer of the franchise; and

10 (2) The successful bidder has agreed with the County to assume and be bound by the  
 11 terms and conditions of the franchise.

12 (e) If the County revokes a franchise, or if for any other reason a franchisee abandons,  
 13 terminates, or fails to operate or maintain service to its subscribers, the County may request the  
 14 franchisee at the franchisee's or surety's expense to remove its facilities and equipment within  
 15 sixty (60) days of the request and restore the public property and rights-of-way to the County's  
 16 specifications.

17 **Sec. 5A-159. Applicability.**

18 (a) The provisions of this Division shall apply to all telecommunications transmission  
 19 systems either installed or under construction within the County as of the effective date of this  
 20 Division or thereafter installed or constructed.

21 (b) Within ninety (90) days of the effective date of this law, any person owning or  
 22 controlling such system subject to this Division shall file an application for a franchise as  
 23 specified herein. This period of time may be extended by the County Executive for good cause.

24 (c) Failure of a person to file an application within the time specified shall be a violation  
 25 of this Division and may result in the immediate revocation of any existing permits, licenses or  
 26 franchises issued by the County allowing such person to occupy any public property and/or right-  
 27 of-way in relation to the use, operation or maintenance of a telecommunications system. Upon  
 28 revocation of such permits, licenses or franchises for failure to file an application within the time  
 29 specified, the County may order prompt removal of such facilities at the person's expense and  
 30 seek other redress, both legal and equitable.

1 **Sec. 5A-160. Site Leasing.**

2 (a) The County may enter into leases in lieu of a franchise agreement under Section 5A-  
 3 151 for appropriate sites, antenna space on towers and other supporting structures, and accessory  
 4 buildings on County property with telecommunications providers and radio users. Such leases  
 5 shall contain reasonable provisions protecting the interests of the County. Such leases for  
 6 telecommunications transmission facilities shall comply with the provisions of Section 5A-165.  
 7 To the extent that this Division conflicts with Section 2-111.01, this Division prevails.

8 (b) A lessee pursuant to the provisions of this Division shall be responsible for obtaining in  
 9 a timely manner at its own expense any required approvals for any antenna or antenna structure  
 10 from the Federal Aviation Administration or the Federal Communications Commission, or the  
 11 successors of either; any required zoning from the County; and any building and electrical  
 12 permits and inspection from the County. On any antenna structure which is not occupied by a  
 13 County-owned antenna already subject to the tower registration, lighting, and aeronautical  
 14 painting requirements of the FAA or FCC, or the successors of either, the lessee shall be  
 15 financially responsible for the tower registration, lighting, and aeronautical painting requirements  
 16 applicable to its antenna and/or supporting structure.

17 (c) Any lessee under a lease from the County for an antenna site that is in force on the  
 18 effective date of this ordinance may continue to occupy such antenna site to the conclusion of the  
 19 initial term of the lease but not any renewal or extension thereof, in accordance with the terms of  
 20 such lease, provided, however, that such lessee may elect at any time to apply for a superseding  
 21 lease under this ordinance.

22 (d) A lessee pursuant to this Division may enter into sublease agreements with other  
 23 telecommunications providers to co-locate telecommunications facilities on the lessee's site,  
 24 provided that each sublease includes provisions, in a form acceptable to the County regarding  
 25 liability and the payment of compensation, determined in accordance with Section 5A-165, from  
 26 such sublessees. Any sublease granted by the lessee shall be expressly conditioned upon the  
 27 continued existence of such a separate agreement with the County.

28 **Sec. 5A-161. Telecommunications Transmission Facility Committee.**

29 (a) The telecommunications transmission facility committee shall consist of:

30 (1) The telecommunications transmission facility coordinator;

31 (2) The Director of the Department of Environmental Resources or the Director's

1 designee;

2 (3) The Director of the Department of Public Works and Transportation, or the  
3 Director's designee;

4 (4) The Planning Director, or the Director's designee;

5 (5) The Superintendent of Schools or the Superintendent's designee;

6 (6) The Director of the Office of Business and Regulatory Affairs, or the Director's  
7 designee; and

8 (7) The Chief, Information Technology Division, Office of Management and Budget,  
9 or the Chief's designee.

10 (b) The County Executive shall designate a telecommunications transmission facility  
11 coordinator.

12 (c) The Director shall make available to the telecommunications transmission facility  
13 committee such services and facilities as are necessary for the proper performance of its duties.

14 (d) The telecommunications transmission facility coordinator shall maintain a database of  
15 all telecommunications transmission facilities located in the County and those facilities proposed  
16 to be located in the County.

17 (e) The telecommunications transmission facility committee shall serve as a central source  
18 of information and provide technical advice on the siting of telecommunications transmission  
19 facilities for the County, the Maryland National Capital Park and Planning Commission, the  
20 Board of Education and other public landowners, private landowners, licensed  
21 telecommunication carriers and the general public.

22 (f) The telecommunications transmission facility committee shall promote the appropriate  
23 and efficient location and co-location of telecommunications transmission facilities to minimize  
24 adverse impacts on other land uses in the County. The telecommunications transmission facility  
25 committee shall, among other things, evaluate the esthetic effects of locating multiple  
26 telecommunications transmission facilities in a single location or on a single structure.

27 (g) The telecommunications transmission facility committee shall:

28 (1) Review the siting of each proposed telecommunications transmission facility;

29 (2) Evaluate the technical rationale of proposed locations;

30 (3) Recommend alternative sites and techniques where appropriate to mitigate the  
31 visual impact of the proposed and alternative site;

1           (4) Recommend provisions governing removal of the proposed telecommunications  
 2 transmission facility at the end of its useful life, including the posting of a bond or other financial  
 3 guarantee;

4           (5) Facilitate public participation in the telecommunications transmission facility  
 5 siting process; and

6           (6) Report annually to the County Executive and the County Council on siting policy  
 7 issues.

8 **Sec. 5A-162. Telecommunications Transmission Facility Application fees.**

9           (a) The applicant for each telecommunications transmission facility shall pay a site review  
 10 right-of-way charge of Two Hundred Fifty Dollars (\$250.00) at the time the application for a  
 11 new proposed location is made. There shall be no charge for an application to co-locate on an  
 12 existing structure.

13           (b) The site review right-of-way charge is in addition to any permit or other right-of-way  
 14 charges required.

15 **Sec. 5A-163. Telecommunications Transmission Facility Inventory.**

16           (a) Prior to August 1 of each year, each agency of the County and each agency which  
 17 receives County funding shall submit to the telecommunications transmission facility coordinator  
 18 its telecommunications transmission facility location plan. The plan shall identify the location of  
 19 each existing telecommunication transmission facility and the proposed location of each facility  
 20 to be constructed by or for such agency in the succeeding two years. The plan shall be updated  
 21 whenever the actual or proposed location of a facility changes.

22           (b) Prior to August 1 of each year, each owner of a telecommunications transmission  
 23 facility in the County shall submit to the telecommunications transmission facility coordinator its  
 24 telecommunication transmission facility location plan. The plan shall identify the location of  
 25 each existing telecommunication transmission facility and the proposed location of each facility  
 26 proposed to be constructed in the succeeding two years.

27           (c) The telecommunications transmission facility coordinator shall draft a master plan of  
 28 actual and proposed telecommunications transmission facilities in the County and submit the  
 29 master plan to the County Council for advisory approval only no later than October 1 of each  
 30 year. The master plan shall identify areas of the County where additional sites for  
 31 telecommunications transmission facilities are anticipated to be needed to provide service for

1 public and private uses.

2 **Sec. 5A-164. Telecommunications Transmission Facility Applications.**

3 (a) Every applicant for a building permit or other permit for the erection of a  
 4 telecommunications transmission facility shall submit to the telecommunications transmission  
 5 facility coordinator a telecommunications transmission facility location plan or an amendment to  
 6 an existing plan. The plan shall clearly identify the location of every existing  
 7 telecommunications transmission facility and the proposed location of each facility to be  
 8 constructed or located in accordance with the permit application.

9 (b) Every applicant for a building permit or other permit for the erection of a  
 10 telecommunications transmission facility shall submit to the telecommunications transmission  
 11 facility coordinator a statement regarding whether the telecommunications transmission facility  
 12 is proposed for location on an existing structure. If the application includes the construction or  
 13 erection of a new supporting structure for the facility, the applicant shall provided a detailed  
 14 statement describing the applicant's efforts to locate the proposed telecommunications  
 15 transmission facility on an existing structure; a description of any potential alternate locations for  
 16 the telecommunications transmission facility not requiring such construction or erection; and a  
 17 brief explanation of the reasons why such sites were not selected.

18 (c) The telecommunications transmission facility coordinator shall not disclose to any  
 19 person any information in the plan which qualifies as confidential information under the  
 20 Maryland Public Information Act.

21 (d) Nothing in this provision shall exempt an applicant from any applicable zoning  
 22 requirements or other requirements of law.

23 **Sec. 5A-165. Uniform contracts for use of County facilities.**

24 (a) The telecommunications transmission facility coordinator, with the approval of the  
 25 County Executive, shall develop and make available to persons desiring to erect a  
 26 telecommunications transmission facility in the County a uniform contract for the location of  
 27 telecommunications transmission facilities on land and structure owned and leased by the  
 28 County.

29 (b) The telecommunications transmission facility coordinator, with the approval of the  
 30 County Executive shall develop and make available to persons desiring to erect a  
 31 telecommunications transmission facility in the County a uniform rent and fee schedule designed

1 to minimize differential treatment of telecommunications transmission facility owners.

2 **Sec. 5A-166. Administration; Executive Regulations.**

3 (a) The County Executive shall administer and enforce this Division and any franchise  
4 agreement.

5 (b) The County Executive may adopt regulations that are consistent with this Division to  
6 administer and implement this Division.

7 **Sec. 5A-167. Municipality option right-of-way charges.**

8 (a) Upon application of a municipality, accompanied by a resolution from the municipality  
9 authorizing the inclusion of its rights-of-ways in the franchise territory, the County may include  
10 the municipality's public rights-of-way in the franchise territory. When so approved by the  
11 County, all the terms and provisions of this Division shall apply to the area of the municipality so  
12 designated. The franchisee shall be subject to all municipal ordinances and police power  
13 concerning the municipality's management of its rights-of-way.

14 (b) The County shall pay each municipality participating under subsection (a) a share of  
15 the right-of-way charge revenues which the County receives from the franchisee. Said share  
16 shall be an amount equal to one half of the right-of-way charge revenues the County receives  
17 from the franchisee from telecommunications services billed to a municipal address or account  
18 number or originating or terminating within the municipality. This share shall be paid to the  
19 municipality within ninety (90) days after receipt of the right-of-way charge payment by the  
20 County.

21 SECTION 2. BE IT FURTHER ENACTED that the provisions of this Act are hereby  
22 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,  
23 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of  
24 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining  
25 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this  
26 Act, since the same would have been enacted without the incorporation in this Act of any such  
27 invalid or unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.

28 SECTION 3. BE IT FURTHER ENACTED that the County Executive shall submit a  
29 report to the County Council which identifies the number of telecommunications service  
30 franchises applied for and granted, the franchise right-of-way fees received, telecommunications  
31 site lease rents received, and other relevant information. Such reports shall be submitted on

1 February 1 and August 1, of each year for activities which occurred as of June 30 and  
2 December 31, of each year.

3 SECTION 4. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)  
4 calendar days after it becomes law.

Adopted this 28th day of October, 1998.

COUNTY COUNCIL OF PRINCE  
GEORGE'S COUNTY, MARYLAND

BY: \_\_\_\_\_  
Ronald V. Russell  
Chairman

ATTEST:

\_\_\_\_\_  
Joyce T. Sweeney  
Clerk of the Council

APPROVED:

DATE: \_\_\_\_\_ BY: \_\_\_\_\_  
Wayne K. Curry  
County Executive

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

Asterisks \*\*\* indicate intervening existing Code provisions that remain unchanged.