

COUNCIL OF THE DISTRICT OF COLUMBIA

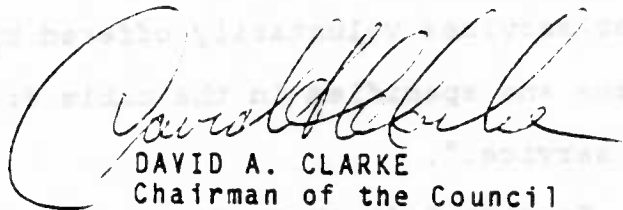
NOTICE

D.C. LAW 5-36

"Cable Television Communications Act of 1981
Clarification Amendment Act of 1983".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 5-170 on first and second readings, June 21, 1983 and July 5, 1983, respectively. Following the signature of the Mayor on July 28, 1983, this legislation was assigned Act No. 5-60, published in the August 26, 1983 edition of the D.C. Register, (Vol. 30 page 4289) and transmitted to Congress July 29, 1983 for a 30-day review, in accordance with Section 602 (c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 5-36, effective October 22, 1983.


DAVID A. CLARKE
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

July	29
August	1, 2, 3, 4
September	12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30
October	3, 4, 5, 6, 7, 17, 18, 19, 20, 21

D.C. LAW 5 - 3 6 1

AN ACT

EFFECTIVE DATE OCT 22 1983

D.C. ACT 5 - 6 0

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JUL 28 1983

To amend the Cable Television Communications Act of 1981 to clarify various provisions; to establish a Cable Television Enterprise Fund; and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Cable Television Communications Act of 1981 Clarification Amendment Act of 1983".

Sec. 2. The Cable Television Communications Act of 1981, effective August 21, 1982 (D.C. Law 4-142; D.C. Code, sec. 43-1801 et seq.), is amended as follows:

(a) Section 3(3) (D.C. Code, sec. 43-1802(3)) is amended to read as follows:

"(3) The term 'Basic Service' means local broadcast signals, public and municipal access channels, and all subscriber services voluntarily offered by the franchisee or franchisees and specified in the cable franchise agreement as basic service."

(b) Section 3(4) (D.C. Code, sec. 43-1802(4)) is amended by striking the subsection designation "(g)".

(c) The last sentence of section 3(6) (D.C. Code, sec. 43-1802(6)) is amended to read as follows:

"The terms 'Cable Television System', 'Cable', or 'CATV' shall not include any facility that serves or will

CODIFICATION
D.C. Code,
sec. 43-1802
(1983 Supp.)

D.C. Code,
sec. 43-1802
(1983 Supp.)

D.C. Code,
sec. 43-1802
(1983 Supp.)

serve subscribers wholly in 1 or more single or multiple unit dwellings under common ownership or management and which does not utilize public ways within the District of Columbia."

(d) Section 3(15) (D.C. Code, sec. 43-1802(15)) is amended by striking the word "nonexclusive".

D.C.Code,
sec. 43-1802
(1983 Supp.)

(e) Section 3(25) (D.C. Code, sec. 43-1802(25)) is amended to read as follows:

D.C.Code,
sec. 43-1802
(1983 Supp.)

"(25) The term 'Municipal Channels' means specifically designated channels on any cable television system which are reserved by this act solely for the governmental and not-for-sale use of the District."

(f) Section 3(29) (D.C. Code, sec. 43-1802(29)) is amended by striking the phrase "on any public" and by inserting the phrase "on any" in lieu thereof.

D.C.Code,
sec. 43-1802
(1983 Supp.)

(g) A new paragraph (30a) is added to read as follows:

D.C.Code,
sec. 43-1802
(1983 Supp.)

"(30a) The term 'Rent-a-Citizen' means the practice of giving an ownership interest in a cable business to a resident of the District of Columbia at no cost or for less than actual value with the intent to use the fact of the resident's ownership in the cable business as a means of influencing the eventual award of a cable franchise in the District of Columbia. The term 'Rent-a-Citizen' includes the practice of enlisting District of Columbia residents as directors, officers, employees, or consultants in name and title only with the intent to use the fact of the resident's association with the cable business as a means of exerting influence over the eventual award of a cable franchise in the District of Columbia."

D.C.Code,
sec. 43-1802
(1983 Supp.)

New
D.C.Code,
sec. 43-1802.
(1983 Supp.)

(h) Section 3(31) (D.C. Code, sec. 43-1802(31)) is amended to read as follows:

"(31) The term 'Request for Proposal' means the document inviting the submission of proposals from qualified applicants interested in obtaining a franchise or franchises to construct and operate a cable television system in the District of Columbia as provided in this act."

(i) A new section 3a is added to read as follows:

"Sec. 3a. Grant of Authority.

"(a) The Council of the District of Columbia may grant, in accordance with and pursuant to the procedures set forth in this act, 1 or more revocable franchises to construct, operate, maintain, and reconstruct a cable television system within the public ways of the District of Columbia.

"(b) No person or persons; corporation, whether publicly or privately held; partnership; business venture; association; or institution shall operate a cable television system within the District of Columbia without first obtaining a franchise pursuant to this act. Nothing in this section shall be construed as infringing upon the plenary power of the United States, the authority and rights vested in the District to make use of the municipal channels reserved under this act, or the authority and right vested in the citizens of the District of Columbia to make use of the public access channels reserved under this act.

"(c) Any franchise granted pursuant to this section is conditioned under the District's reservation of the right to

grant similar franchises to other persons, firms, or corporations to construct and operate a cable television system within the District of Columbia within the same or other areas of the District of Columbia at any time.

"(d) Any franchise granted pursuant to this act shall be valid for a maximum term of 15 years from the date the franchise is granted and shall be subject to prior revocation pursuant to procedures established in this act."

(j) Section 4 (D.C. Code, sec. 43-1803) is amended as follows:

D.C.Code,
sec. 43-1803
(1983 Supp.)

(1) Subsection (d) is amended to read as follows:

Note,
D.C.Code,
1-1141
(1981 ed.)

"(d) The term of the members shall be 2 years after the first meeting of the Design Commission."

(2) Subsection (i) is amended to read as follows:

"(i) The Design Commission shall receive funds annually in accordance with the appropriations process. These funds may be applied to the costs associated with hearings, the development of surveys and other forms of community interface, and for the hiring of consultants and staff. The Design Commission shall be treated as an agency for purposes of minority contracting. All provisions of the Minority Contracting Act of 1976, effective March 29, 1977 (D.C. Law 1-95; D.C. Code, sec. 1-1141 et seq.), shall apply to the Design Commission."

(k) Section 5 (D.C. Code, sec. 43-1804) is amended to read as follows:

D.C.Code,
sec. 43-1804
(1983 Supp.)

"Sec. 5. Duties of the Design Commission.

"(a) The Design Commission shall, in all of its

deliberations and decisions, and in discharging the duties and responsibilities set forth in this section, consider and promote the safety, health, and welfare of the people of the District of Columbia.

"(b) The Design Commission shall:

"(1) Develop and submit to the Council before July 1, 1983, a Request for Proposal, cable franchise application, and a procedure for the granting of a franchise or franchises which shall guarantee, to the greatest extent possible, a cable system which will provide local community access and full minority participation in all phases of development and maintenance of any cable system in the District of Columbia. The Chairperson of the Design Commission shall submit to the Council on April 1, 1983, May 1, 1983, and June 1, 1983, reports on the progress of the Design Commission with respect to completing the tasks required by this subsection.

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

"(3) Assist the Council in the development of the initial terms, fees, and rates to be charged the franchisee or franchisees and cable subscribers.

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

"(5) Advise the Council regarding requirements of the franchisee or franchisees to interconnect cable systems within the District of Columbia, adjoining jurisdictions,

and the federal government.

"(6) Respond to any request of the Council for specific recommendations regarding any matter upon which the Council desires advice.

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

"(8) Submit to the Council within a reasonable time after completion of its mandate a comprehensive report which outlines the activities and recommendations of the Design Commission.

"(9) Perform any other functions required of the Design Commission by this act.

"(c) The Design Commission may:

"(1) Make recommendations to the Council as the Design Commission deems necessary regarding the establishment of rules, standards, requirements, and procedures for the consideration, approval, and maintenance of all operations of a cable system in the District of Columbia.

"(2) Advise the Council regarding the need for legislation or amendment to existing laws or regulations as the Design Commission deems necessary, including advice with respect to the privacy rights and civil liberties of cable subscribers.

"(d) In discharging the duties required or authorized by this section, the Design Commission shall identify, involve, and utilize the services of District of Columbia

residents, business firms, consultants, and District of Columbia based agencies with expertise and experience in cable television technology, franchising, engineering, financing, ownership, and development in the research, analysis, and overall work of the Design Commission."

(1) Section 6 (D.C. Code, sec. 43-1805) is amended to read as follows:

D.C.Code,
sec. 43-1805
(1983 Supp.)

"Sec. 6. Office of Cable Television Established.

"There is established an independent Office of Cable Television which shall be administered by an Executive Director appointed by the Mayor with the advice and consent of the Council. The Executive Director shall serve for a term of 6 years from the date of his or her appointment and shall be removed from office for cause only. The Mayor shall furnish the Office with suitable quarters for the conduct of its business. No person shall be eligible to hold the office of Executive Director who has not been a bona fide resident of the District of Columbia for a period of at least 3 years preceding his or her nomination or who has voted or claimed residence elsewhere during this period. The Executive Director shall not have or had within 3 years preceding his or her nomination any ownership or business interest in any cable franchise in the District of Columbia. The nomination of an Executive Director shall be submitted to the Council for its advice and consent within 60 days of the selection of a franchisee or franchisees by the Council."

(m) Section 7 (D.C. Code, sec. 43-1806) is amended to

D.C.Code.
sec. 43-1806
(1983 Supp.)

read as follows:

"Sec. 7. Powers and Responsibilities of the Office of Cable Television.

"(a) The powers and duties vested in the Office pursuant to this section shall be subject to the legislative authority of the Council. The Office shall be an independent agency of the District.

"(b) The Office shall be the administrative agency within the District responsible for protecting and promoting the public interest in cable television and assuring that the policies and provisions of the cable television laws of the District are properly executed.

"(c) In carrying out the mandate contained in subsection (b), the Office shall have the power to issue rules to carry out the powers conferred upon the Office by this act which are necessary to effectuate the charge to promote and protect the public interest in cable television. All rules shall be issued by the Office in accordance with the requirements of title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1201; D.C. Code, sec. 1-1501 et seq.), and shall be approved by the Council.

"(d) The Office shall:

"(1) Monitor franchisee compliance with the provisions of this act and any cable television franchise agreement entered into with the District.

"(2) Coordinate and manage the use of all municipal channels reserved by this act.

"(3) Make any reasonable requests of the franchisee or franchisees as are required by this act or which are necessary to protect and promote the public interest in cable television.

"(4) Impose reasonable conditions and restrictions on the franchisee or franchisees as are necessary to protect the safety, health, and welfare of the citizens of the District of Columbia, and as are necessary to protect and promote the public interest in cable television.

"(5) Resolve disagreements between franchisees and subscribers, public users, or private users of cable television. In cases where a franchisee has not satisfactorily responded to subscriber, public, or private user complaints, the Office may order adjustments including any of the following:

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

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

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

"(7) Educate the public on the benefits and uses of cable television.

"(8) Conduct periodic evaluations of the cable system with the cooperation of the franchisee or franchisees and, pursuant thereto, make recommendations to the Council for amendments to this act or to the franchise agreement.

"(9) Submit an annual report to the Council which shall include, but need not be limited to, an account of franchise fees received and distributed, a review of any plans submitted during the year by the franchisee for development of new services, and a report on franchisee compliance with this act and any franchise agreement entered into with the District.

"(10) Issue rules which protect the privacy rights and civil liberties of cable subscribers. These rules shall include, but need not be limited to:

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

"(B) The requirements that warnings be given to subscribers participating in 2-way cable subscriber opinion samples, viewer participation games, product purchase campaigns, and other cable features involving an

indication of individual subscriber opinion or preferences, so that subscribers will be aware that responses are being registered and recorded;

"(C) A restriction of the use and availability of motion-sensing features of cable; and

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

"(11) Perform any other functions required of the Office by this act."

(n) A new section 8a is added to read as follows:

"Sec. 8a. Cable Television Fund Established.

"(a) There is established a 'Cable Television Fund' into which shall be deposited all revenue owed and accruing to the District from the establishment, regulation, and operation of a cable television system within the District of Columbia. The Cable Television Fund shall be an enterprise fund as defined in section 4(b)(4) of the District of Columbia Fund Accounting Act of 1980, effective June 14, 1980 (D.C. Law 3-70; D.C. Code, sec. 47-373(b)(4)), and shall be used for the payment of public costs incurred by the District in connection with the implementation, administration, and regulation of cable television within the District of Columbia. The Executive Director shall administer the Cable Television Fund and receive all payments required by this act. All Cable Television Fund deposits shall be secured in a manner consistent with deposits of revenues by the District and shall include, but

New
D.C. Code,
sec. 43-1807.1
(1983 Supp.)

Note,
D.C. Code,
sec. 47-373
(1981 ed.)

not be limited, to the following revenue:

- "(1) Franchise application fees pursuant to section 11(b);
- "(2) Franchise award fees pursuant to section 14a(b);
- "(3) Annual franchise fees pursuant to section 25;
- "(4) Collections by the District of Columbia on indemnities, insurances, and bonds pursuant to section 26;
- "(5) Publication costs due pursuant to section 47; and
- "(6) All penalties imposed pursuant to section 51.

"(b) Within 120 days after the close of each fiscal year all funds remaining as surplus to obligations incurred within that fiscal year to administer and regulate the cable television system shall be transferred to the general revenues of the District."

(c) Section 9 (D.C. Code, sec. 43-1808) is amended to read as follows:

D.C. Code,
sec. 43-1808
(1983 Supp.)

"Sec. 9. Powers of the Public Service Commission.

"(a) The Public Service Commission shall regulate the rates, terms, and conditions for cable television use of existing utility company rights-of-way located within the District of Columbia, including use of existing utility poles and underground conduits.

"(1) The Public Service Commission shall regulate the rates, terms, and conditions of existing rights-of-way

use in accordance with federal law and FCC rules and regulations, and shall ensure that all rates, terms, and conditions are just and reasonable.

"(2) In regulating the rates, terms, and conditions required by this section, the Public Service Commission shall consider the interests of both cable television subscribers and utility consumers.

"(b) The Public Service Commission shall resolve disagreements (including, but not limited to, the use of public ways by the franchisee or franchisees to install and maintain the franchisee's cable system) among the franchisees and public utilities."

(p) Section 10 (D.C. Code, sec. 43-1809) is amended to read as follows:

D.C. Code,
sec. 43-1809
(1983 Supp.)

"Sec. 10. Mandatory Provisions of the Request for Proposal.

"(a) The Request for Proposal developed and issued by the Design Commission in accordance with subsection (b) shall contain the following:

"(1) Instructions concerning the preparation and filing of applications.

"(2) Minimum requirements which all applicants are expected to meet.

"(3) Guidelines used by the Design Commission in evaluating applicant proposals.

"(4) A nonrefundable application fee.

"(5) A provision requiring that a minimum of 10% of total channel capacity shall be provided at no charge to

the District; that the District shall have exclusive control of these channels which shall be designated as municipal channels; and that when these municipal channels have become fully utilized, additional channels shall be made available to the District at fair market value.

"(6) A provision requiring that the cable television system be installed to comply in all respects with the capacity, capability, and technical performance requirements set forth in federal law and FCC rules and regulations for cable television including applicable amendments thereto.

"(7) A provision mandating that the cable television system shall be constructed with the capacity for 2-way interactive capability; that applicants shall include a demonstration of a plan to implement this capability in the future; and that the franchisee or franchisees shall provide 2-way interactive capability when the District, through the Office, so directs.

"(8) A provision that the franchisee or franchisees shall furnish to the District a map of suitable scale indicating the areas to be served and the schedule for the staging of service as part of the formal application; that the map shall identify all neighborhoods, developments, communities, streets, and public buildings in the District of Columbia; and that the map and service schedule shall be made a part of the franchise agreement and the schedule shall include the installation of cable service which shall be available to every household within the franchise

territory.

Enrolled Original

"(9) A provision requiring that the franchisee or franchisees shall possess the capability to interconnect its cable television system with any federal government system located within the District of Columbia, and other cable television systems or broadband communications facilities located in contiguous communities including those in the State of Maryland and the Commonwealth of Virginia.

"(10) A provision that the franchisee or franchisees shall provide without charge within the franchise territory at least 1 service outlet to each fire station, police station, public library, and public school building used for municipal purposes as may be designated by the District through the Office.

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

"(12) A provision that the franchisee or franchisees shall be required to provide a minimum of 6 public access channels free of charge on a nondiscriminatory basis.

"(13) A provision specifying the percent of total channel capacity to be set aside for public access purposes.

"(14) A provision encouraging applicants to propose creative rates and service offerings for basic service, including an offering relating to an initial rate

period for basic service not to be less than 3 years.

"(b) The Request for Proposal, cable franchise application, and statement of procedures and schedules developed by the Design Commission pursuant to section 5(b)(1) shall be issued by the Design Commission within 3 days following their approval by the Council. If the Council disapproves any part of the Request for Proposal, cable franchise application, and statement of procedures and schedules, the Chairman of the Council shall return the documents to the Design Commission within 3 days along with a statement of Council recommendations for their revision. The Design Commission shall resubmit to the Council for its approval a revised Request for Proposal, cable franchise application, and statement of procedures and schedules incorporating all of the revisions recommended by the Council within 15 days following receipt by the Chairperson of the Design Commission of the Council's recommendations.

"(c) The Request for Proposal developed and issued by the Design Commission and approved by the Council, and all instructions, guidelines, criteria, procedures, schedules, rules, requirements, fees, terms, and conditions contained therein, shall apply to all applicants and shall be effective upon approval by resolution of the Council."

(q) Section 11 (D.C. Code, sec. 43-1810) is amended to read as follows:

"Sec. 11. Application for Franchise.

"(a) The Design Commission shall publish in at least 2 newspapers of general circulation a notice of the issuance

D.C. Code,
sec. 43-1810
(1983 Supp.)

of the Request for Proposal, franchise application, and statement of procedures and schedules for the granting of a franchise or franchises within 3 days after adoption of the Council resolution of approval provided for in section 10(b). The notice shall state where copies of the Request for Proposal, franchise application, and statement of procedures and schedules may be obtained and the time and days during which copies will be made available to the public. The notice shall also specify a fee which shall be assessed to cover the costs associated in making copies available to the public.

"(b) The application for a cable television franchise shall be submitted to the Design Commission. The application shall request facts and information of the applicant as well as a complete disclosure of all those persons holding a financial interest in the corporation or partnership making the application for a franchise. Applications shall be accompanied by a nonrefundable application fee set forth in the Request for Proposal and shall be payable by certified check to the order of the D.C. Treasurer.

"(c) The Design Commission shall review applications to determine whether proposals by each applicant meet all minimum requirements for system implementation required by this act. Only those applications meeting the minimum requirements of this act shall be considered for evaluation."

(r) Section 13 (D.C. Code, sec. 43-1812) is amended to

D.C. Code,
sec. 43-1812
(1983 Supp.)

read as follows:

"Sec. 13. Evaluation of Proposals.

"(a) The Design Commission shall evaluate all applications meeting the minimum requirements imposed by this act.

"(b) In evaluating applications, the Design Commission shall enlist the assistance of a qualified technical consultant or consultants.

"(c) In addition to evaluation of minority participation, local hiring, affirmative action, and other matters required by this act, the evaluation of applications shall include, but not be limited to, the following:

"(1) A review of each application for internal consistency.

"(2) An evaluation of each application for the feasibility of proposed plans.

"(3) Evaluation of the financial resources and commitments of each applicant. Applicants shall be evaluated for clearly demonstrated financial resources to build the proposed system and operate the system until it becomes profitable.

"(4) Evaluation of the applicant's proposed capital expenses, revenues, and rates for realistic projection. Applicant's projections shall be evaluated to determine the degree to which good performance and a reasonable but not excessive return to the system owner will be insured.

"(5) Evaluation of technical design to determine

ability to deliver all services proposed and to adapt to and implement new technologies, services, and programming.

"(d) Prior to making final evaluations of applications, the Design Commission shall provide for and undertake a clarification of proposals. The Design Commission shall establish clarification procedures with Council approval. Clarification of proposals shall be limited to inconsistencies, vague and contradictory language, vague offerings and promises, requests for additionally needed information, and to making technical corrections in the applications of prospective franchisees. All proposal clarifications shall be initiated by the Design Commission, except that technical corrections may be initiated by applicants.

"(e) The Design Commission shall undertake a final evaluation in accordance with procedures established by the Design Commission with Council approval. Final evaluation of applicants shall include at least 1 public hearing to be held by the Design Commission to hear final presentations from applicants. Citizens shall be given the opportunity to comment on the applicants and their proposals at any public hearing held pursuant to this section.

"(f) After examining the applications submitted pursuant to procedures outlined herein and as further established by the Design Commission upon the approval of the Council, the Chairperson of the Design Commission upon the advice of the Design Commission, shall evaluate and transmit all applications to the Council and shall recommend

to the Council those applications which best serve the residents of the District of Columbia."

(s) Section 14 (D.C. Code, sec. 43-1813) is amended to read as follows:

D.C. Code,
sec. 43-1813
(1983 Supp.)

"Sec. 14. Development of Proposed Franchise Agreement by Design Commission.

"(a) In tandem with its evaluation of applications, the Design Commission, with the assistance of a qualified consultant or consultants, shall develop a proposed franchise agreement for each applicant.

"(b) Each proposed franchise agreement shall reflect with specificity and accuracy all of the offerings of the prospective franchisee as contained in the prospective franchisee's application.

"(c) All requirements of this act shall be incorporated into each proposed franchise agreement as specific provisions of the proposed agreement between the District and the applicant.

"(d) The proposed franchise agreement shall cover all matters regarding system construction and operation, including, but not limited to, District regulation and authority over the franchise, programming, public and municipal access, service area, location of facilities and personnel, system design and capacity, areawide connection, capacity reserved for lease, reports and records, maintenance and complaints, ownership and control, police powers of the District, franchise fee, financial and insurance requirements, rights reserved to the District,

default and remedies, liquidation damages, notices, basic service rates and services, and all terms and conditions.

"(e) The Chairperson of the Design Commission shall transmit each proposed franchise agreement to the Council along with applications and the evaluation of applicants."

(t) A new section 14a is added to read as follows:

"Sec. 14a. Selection of Franchisee or Franchisees.

New
D.C.Code,
sec. 43-1813.1
(1983 Supp.)

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

"(b) Each applicant to whom the District grants a franchise shall pay to the District within 90 calendar days after the grant of the franchise a franchise award fee to be

set in the act granting the franchise. The payment shall be nonrefundable and shall be made payable by certified check to the order of the D.C. Treasurer."

(u) Section 15 (D.C. Code, sec. 43-1814) is amended to read as follows:

D.C.Code,
sec. 43-1814
(1983 Supp.)

"Sec. 15. Franchise Review.

"(a) It shall be the policy of the District to amend a franchise agreement, upon application of a franchisee, when necessary to enable the franchisee to take advantage of advancements in the state-of-the-art which will afford an opportunity to more effectively, efficiently, or economically serve the subscribers. The provisions of this section shall not be construed to require the Council to amend the franchise agreement(s).

"(b) Every 3 years following the grant of a franchise, the Council shall hold a public hearing to allow public comment on franchisee performance and to discuss state-of-the-art changes."

(v) Section 16 (D.C. Code, sec. 43-1815) is redesignated as section 17 and amended as follows:

D.C.Code.
sec. 43-1815
redesignated as
sec. 43-1816
and amended
(1983 Supp.)

(1) By striking the word "special" wherever it appears; and

(2) Subsection (d) is amended to read as follows:

"(d) Notwithstanding the fact that the Council may determine that the franchisee has been in reasonable compliance with the terms and conditions imposed by this act and the franchise agreement, the Council shall have the right not to renew the franchise, in which event the Council

shall, on the expiration date of the franchise, either authorize the District to purchase the assets of the franchisee's cable television system at its fair market value or, consistent with the provisions of this act, select a new franchisee, after a full public proceeding and cause the new franchisee to purchase the assets at fair market value."

(w) Section 17 (D.C. Code, sec. 43-1816) is redesignated as section 16 and amended to read as follows:

"Sec. 16. Franchise Revocation.

D.C. Code,
sec. 43-1816
redesignated a
sec. 43-1815
and amended
(1983 Supp.)

"(a) Whenever a franchisee shall willfully fail or refuse, or neglect to conduct, operate, or maintain its system in accordance with the terms of this act or the franchise agreement, or to comply with the conditions of street occupancy, or to make required extensions, or arbitrarily or capriciously discontinue service to subscribers, or in other ways violate the terms and conditions of this act or the franchise agreement, the Office shall notify the franchisee in writing, setting forth the nature and facts of the noncompliance.

"(b) Where the Office determines after notice and a hearing, that the franchisee has failed to take corrective action within a reasonable period of time, or has engaged in a pattern of noncompliance, or has become insolvent, unable to pay its debts or is bankrupt, or has attempted to or has practiced any fraud upon the District or subscribers, it shall find that the franchisee has materially breached the terms and conditions of this act or the franchise agreement,

and shall recommend to the Council that it take action to suspend or terminate the franchise in accordance with section 18."

(x) Section 18 (D.C. Code, sec. 43-1817) is amended to read as follows:

D.C. Code,
sec. 43-1817
(1983 Supp.)

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

"(a) If, at any time during the term of the franchise, the Council determines, based on findings by the Office, that the franchisee has materially breached the terms and conditions imposed by this act or the franchise agreement, the Council may, by act, either suspend for a time certain, or terminate the franchise, or authorize the District to exercise the right of first refusal to purchase the assets of the franchisee's cable television system at a cost not to exceed fair market value. Nothing in this subsection shall be construed to abridge the Council's authority to exercise its emergency legislative powers under appropriate circumstances.

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

"(c) In the event the Council authorizes the District to exercise its option to purchase the assets of the franchise's cable system at the fair market value, it shall

give the franchisee written notice of its intent to do so. The franchisee shall, within 7 days of receipt of the notice, enter into bona fide negotiations with the District for the purpose of consummating the transaction at the earliest possible date."

(y) Section 20(a) (D.C. Code, sec. 43-1819(a)) is amended to read as follows:

D.C.Code,
sec. 43-1819
(1983 Supp.)

"(a) In the event the Council elects to authorize the District to purchase the franchisee's cable system and its fair market value cannot be agreed upon, the final price shall be determined by an arbitration panel."

(z) Section 21 (D.C. Code, sec. 43-1820) is amended to read as follows:

D.C.Code,
sec. 43-1820
(1983 Supp.)

"Sec. 21. Transfer of Franchise.

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

"(b) No person who has an ownership interest exceeding 5% in a franchise shall transfer, sell, assign, or otherwise dispose of the interest so that the person's ownership interest shall be less than 5% without the prior consent of

the Council. No person shall purchase or otherwise acquire an ownership interest exceeding 5% without the prior consent of the Council. The District may take legal or equitable action to set aside, annul, revoke, or cancel the transfer of the ownership interest, or the franchise, if the transfer is not made according to this act and the franchise agreement.

"(c) Any sale, transfer, or assignment proposed by a franchisee shall be made by a proposed bill of sale or similar document, a copy of which shall be filed with the Office 90 days prior to any proposed sale, transfer, or assignment.

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

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

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

(aa) Sections 25 and 26 (D.C. Code, secs. 43-1824 & -1825) are amended to read as follows:

"Sec. 25. Franchise Fee.

"(a) The franchisee or franchisees shall pay to the District an annual franchise fee equal to 5% of its annual gross revenues or \$250,000 whichever is greater. The annual franchise fee required by this section shall be set in an amount consistent with federal law and FCC rules and regulations.

D.C. Code,
sec. 43-182
(Supp. 1983)

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

"(c) The Office shall have the right, consistent with the provisions of this act, to audit and to recompute any amounts determined to be payable under this act. The audit shall take place within 12 months following the close of each of the franchisee's fiscal years. Any additional amount due the District as a result of the audit shall be paid within 30 days following written notice to the

franchisee by the Office. The notice which the Office sends to the franchisee shall include a copy of the audit report. The cost of the audit shall be borne by the franchisee if it is determined that the franchisee's annual payment to the District for the preceding year is increased thereby by more than 5%.

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

"(e) In the event a franchise is terminated prior to its expiration date and the District invokes its right to purchase the franchisee's cable television system, the franchisee shall file with the Office, within not less than 30 calendar days following the date that ownership and control passes to the District or its assignee, a financial statement clearly showing the gross revenues received by the franchisee since the end of the previous fiscal quarter. The franchisee shall pay the franchise fee due at the time the statement is filed.

"Sec. 26. Insurance, Bonds, and Indemity.

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

D.C.Code,
sec. 43-1825
(1983 Supp.)

"(1) A general comprehensive public liability

policy indemnifying, defending, and holding harmless the District, its officers, boards, commissions, agents, and employees from any and all claims made by any person on account of injury to, or death of a person or persons caused by the operations of the franchisee under the franchise herein granted or alleged to have been so caused or alleged to have occurred. The minimum liability for the policy shall be set forth in the franchise agreement.

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

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

"(b) The bond and all insurance policies called for herein shall be in a form satisfactory to the Corporation Counsel of the District of Columbia and shall require 30

calendar days written notice of any cancellation to both the Office and the franchisee or franchisees. A franchisee shall, in the event of any cancellation notice, obtain, pay all premiums for, and file with the Office written evidence of payments of premiums and duplicate copies of any insurance so cancelled within 30 calendar days following receipt by the Office or the franchisee of notice of cancellation.

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

"(d) The foregoing indemnity is conditioned upon the Office's giving the franchisee or franchisees prompt notice of the commencement of any suit or action covered by the

terms of this section. Nothing herein shall be deemed to prevent the District from cooperating with a franchisee and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the District of any sum by reason of the bond required in this act shall be any limitation upon the liability of a franchisee to the District under this act. Any sum so received by the District shall be deducted from any recovery which the District shall establish against the franchisee under the terms of this act."

(bb) Section 27 (D.C. Code, sec. 43-1826) is amended and redesignated as sections 27, 27a, and 27b to read as follows:

"Sec. 27. Subscriber Rates.

"(a) The initial rates and services for basic service shall be set by agreement and shall remain effective for a minimum period of 3 years from the date of a grant of a cable franchise to an applicant.

D.C. Code,
sec. 43-1826
(1983 Supp.)

"(b) All applicants for a cable franchise shall, in responding to the Request for Proposal, make offerings regarding the rates and services to be included in basic service. The Request for Proposal shall encourage applicants to offer creative basic service packages and shall state that in selecting a franchisee due consideration will be given to the rates and services offered by an applicant as basic service. Rates and service offerings for basic service shall be realistic. All applicants shall be required to show convincingly that projected rates and

services can be supported by franchise operations.

"(c) All rates and service offerings for basic service shall be specified in the franchise application. An applicant's rates and service offerings shall be specifically incorporated into the applicant's proposed franchise agreement, into the final franchise agreement, and into the act granting the franchise.

"Sec. 27a. Subscriber Rates - Conditions.

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

New
D.C.Code,
sec. 43-1826.1
(1983 Supp.)

"(b) A franchisee shall not, with regard to fees, discriminate or grant any preference or advantage to any person. Fees may be negotiated between the franchisee and the subscribers, or a committee acting on the behalf of the subscribers, for basic service provided to 10 or more dwelling units within an apartment building, condominium, garden apartment, or townhouse complex under common ownership; to 10 or more room units within hotels and motels; or to commercial establishments engaged in the sale of television receivers. Nothing in this section shall be construed to prohibit a franchisee from instituting preferential or advantageous fees for the elderly, the handicapped, or recipients of public assistance.

"(c) A franchisee shall have the authority and the right to add to its service or installation fees any federal, state, or District taxes or fees directly imposed

on subscribers, and for any copyright fees that may be imposed as a result of legislative or judicial action at the federal, state, or local level. If during the term of the franchise the franchisee receives refunds of any copyright payments, it shall, without delay, notify the Office, suggest a plan for flow-through of the refunds to its subscribers, and retain the refunds in an interest-bearing account pending order of the Office. After considering the plan submitted by the franchisee, the Office shall order the flow-through of refunds to the franchisee's subscribers in a fair and equitable manner.

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

"Sec. 27b. Rate Regulation.

"(a) Rate regulation shall apply to the extent a franchisee is not exempt from local rate regulation by preemption of federal law.

"(b) The Council expressly reserves the authority to regulate subscriber rates for basic service after the initial rate period. The Council may exercise the authority to regulate rates at any time after the initial rate period upon a determination that the public interest in cable television requires or will be furthered by rate regulation. Any decision to exercise the authority reserved by this section shall be made by the Council after notice to all grantees of cable franchises in the District of Columbia.

New
D.C. Code,
sec. 43-1826.
(1983 Supp.)

Prior to exercising the authority reserved herein to regulate rates, the Council shall hold at least 1 public hearing on the question of rate regulation.

"(c) Until the Council has determined to exercise the authority reserved by this section, rates for basic service may be changed by the franchisee once a year after the expiration of the initial rate period by filing with the Office 90 days prior to implementation a schedule of proposed rates and by notifying its subscribers in writing at least 60 days prior to implementation of the rate change."

(cc) Section 28 (D.C. Code, sec. 43-1827) is amended to read as follows:

D.C. Code,
sec. 43-1827
(1983 Supp.)

"Sec. 28. Books and Records.

"(a) The books and records of a franchisee's operation within the District of Columbia shall be made available during normal business hours for inspection and audit by the Office.

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

(dd) Section 30 (D.C. Code, sec. 43-1829) is amended and redesignated as sections 30 and 30a to read as follows:

D.C. Code,
sec. 43-1829
(1983 Supp.)

"Sec. 30. Public Access Board Establishment.

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

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

"(c) The Mayor shall make his or her appointments after the other members of the Board are appointed. The Mayor shall make his or her appointments to assure representation on the Board from the constituency groups identified in this subsection. To the extent possible, the membership of the Board should include representatives of public interest organizations, civil rights groups, the

health and arts communities, labor organizations, business groups, consumers, educators, religious leaders, minorities, women, gay people, handicapped persons, and child advocates.

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

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

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

"(g) Each member appointed to the Board shall be a person who has displayed an interest or an ability in 1 of the various fields of telecommunications. Members shall be appointed to ensure that they are representative of all the various geographic areas and neighborhoods within the District of Columbia.

"(h) In order to create a totally coordinated public access program for the District of Columbia, the Board through the Corporation shall be selected from among all

parties seeking access on an equitable basis, with particular accomodation of groups who have been traditionally underserved by the broadcast media.

"(i) It is not intended that the Corporation's local origination and access channels shall duplicate service that the District may provide on the municipal channels. The public access channels are separate and distinct from those channels reserved for the District's exclusive use.

"Sec. 30a. Public Access.

New
D.C.Code,
sec. 43-1829
(1983 Supp.)

"(a) When the cable system has achieved 20% penetration of all potential cable subscribers as determined by the Office the franchisee or franchisees shall maintain at least 2 studios that will be capable of producing live or recorded programming to be cablecast in color and black and white for distribution by cable throughout the franchise territory.

"(b) The percent of total channel capacity to be set aside for public access purposes shall be established in the Request for Proposal. The franchisee or franchisees shall be required to provide through the Board a minimum of 6 public access channels free of charge on a nondiscriminatory basis. The Board may assign the public access channels for a specified length of time. Public access channels shall be nonprofit channels on which specific communities may have programming on a regular basis. At least 35% of the channel capacity designated for public access use shall be set aside for use for use by minorities as defined in this act. The adoption and implementation of the 35% set-aside shall not

constitute a discriminatory practice prohibited under section 41. The public access channels shall be coordinated and managed by the Public Access Board.

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

(ee) Section 31 (D.C. Code, sec. 43-1830) is amended to read as follows:

D.C. Code,
sec. 43-1830
(1983 Supp.)

"Sec. 31. Operational Requirements and Records.

"(a) The franchisee or franchisees shall construct, operate, and maintain the cable television system subject to the supervision of the Office and in full compliance with the regulations, including applicable amendments, of the Federal Communications Commission and all other applicable

federal or District laws and regulations, including the latest editions of the National Electrical Safety Code and the National Fire Protection Association National Electrical Code. The cable television system shall be subject to inspection by the Office.

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

"(c) The franchisee or franchisees shall exercise their best efforts to design, construct, operate, and maintain the system at all times so that signals carried are delivered to subscribers without material degradation in quality.

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

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

(ff) Section 32 (D.C. Code, sec. 43-1831) is amended to read as follows:

"Sec. 32. Tests and Performance Monitoring.

D.C. Code,
sec. 43-1831
(1983 Supp.)

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

"(b) System monitor test points shall be established at or near the output of the last amplifier in the longest feeder line, at or near the trunk line extremities, at not fewer than 8 widely scattered locations. At least once each month, the following data shall be obtained and recorded for each monitor test point, made available for inspection by the Office, and retained in the franchisee's files until the relevant portion of the system has been either substantially rebuilt or replaced:

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

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

"(3) Any other data which the Office deems

necessary.

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

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

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

(gg) Section 33 (D.C. Code, sec. 43-1832) is amended to read as follows:

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

D.C. Code,
sec. 43-1832
(1983 Supp.)

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

downed lines and other accidents involving the cable line system.

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

"(c) The franchisee or franchisees shall furnish each subscriber, at the time service is installed, written instructions that clearly set forth procedures for placing a service call or requesting an adjustment. The instructions shall also include the name, address, and telephone number of the franchisee and a reminder that the subscriber can call or write the Office for information regarding terms and conditions of this act and of the franchise agreement if the franchisee fails to respond to the subscriber's request for installation, service, or adjustment within a reasonable period of time.

"(d) In the event a subscriber does not obtain a satisfactory response to the subscriber's request for service or an adjustment within a reasonable period of time, the subscriber may advise the Office in writing of the

subscriber's dissatisfaction. The Office shall have an obligation to investigate the matter and to keep records with respect to all complaints for the remaining life of the franchise or for 3 years, whichever amount of time is of longer duration.

"(e) The franchisee or franchisees shall interrupt systems service after 7:00 a.m. and before 1:00 a.m. only with good cause and for the shortest time possible, and, except in emergency situations, only after publishing notice of service interruption between 1:00 a.m. and 7:00 a.m. for routine tests, maintenance, and repair, with notification, any night except Friday, Saturday, or Sunday or the night preceding a holiday."

(hh) Section 34 (D.C. Code, sec. 43-1833) is amended to read as follows:

"Sec. 34. Street Occupancy.

D.C. Code,
sec. 43-1833
(1983 Supp.)

"(a) The franchisee or franchisees shall utilize existing poles, conduits, and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities until the written approval of the District is obtained. No location of any pole or wire-holding structure of a franchisee shall be a vested interest and poles or structures shall be removed or modified by the franchisee at its own expense whenever the District Department of Transportation determines that public convenience would be enhanced thereby.

"(b) When the District, a franchisee, or public

utility serving the District of Columbia desires to make use of poles, conduits, or other wire-holding structures, but agreement with the pole owner or right-of-way holder cannot be reached, the Commission may require the owner to permit use upon terms the Commission shall determine to be just and reasonable, if the Commission determines that the use would enhance the public convenience and would not unduly interfere with the operations of the owner.

"(c) All transmission lines, equipment, and structures shall be so installed and located as to cause minimum interference with the rights, appearance, and reasonable convenience of property owners who adjoin on any street and at all times shall be kept and maintained in a safe, adequate, substantial condition, and in good order and repair. The franchisee or franchisees shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Any poles or other fixtures placed in any public way by the franchisee shall be placed in a manner as not to interfere with the usual travel on the public way.

"(d) The franchisee or franchisees shall remove, replace, or modify the installation of any of its facilities as may be deemed necessary by the District to meet its proper responsibilities. Costs necessary to repair or refinish public ways defined in section 3(30) shall be borne by the franchisee or franchisees.

"(e) Wherever any electrical and telephone utility wiring is located underground within conduits, either at the time of initial construction or subsequent thereto, and there is adequate capacity in the existing conduits for television cable, the cable shall be located underground within the existing conduits. If there is not adequate capacity in the existing underground conduits, the District Department of Transportation shall determine whether cable wiring should be located underground or overhead. Nothing in this section shall be construed to supersede any provision of existing laws or regulations with respect to prohibition of the installation of overhead wiring in certain areas of the District of Columbia.

"(f) Excavation work performed by franchisee or franchisees in any public way shall be subject to all applicable laws, rules, and regulations of the District or any agency thereof. The franchisee shall, at its own expense and in a manner approved by the District, restore to District standards and specifications, on an interim basis, any damage or disturbance caused to the public way as a result of its operations or construction on its operations on its behalf, and shall guarantee the restoration until the time a permanent restoration is made. Permanent restoration shall be performed by the District Department of Transportation, and the costs associated therewith shall be billed to the franchisee or franchisees for the full width of the permanent improvement. The franchisee or franchisees shall place a deposit with the District Department of

Transportation in an amount sufficient to cover the projected costs to be incurred by the District for the permanent restoration of any ongoing excavation.

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

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

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

(ii) Section 35 (D.C. Code, sec. 43-1834) is amended to read as follows:

D.C. Code,
sec. 43-1834
(1983 Supp.)

"Sec. 35. Construction Schedule and Reports.

"(a) Upon accepting a franchise, a franchisee shall, within 90 days, file the documents required to obtain all

necessary federal and District licenses, permits, and authorizations required for the conduct of its business, and shall submit monthly reports to the Office on its progress in this respect until all documents are obtained.

"(b) Franchise agreements adopted by the Council shall incorporate construction and service schedules which shall set dates for the construction of the cable system, and maps of specific households and areas within the franchise territory. The schedules and maps shall be updated whenever substantial changes become necessary. Every 3 months after the start of construction, the franchisee or franchisees shall furnish a report to the Office on the progress of construction until construction is completed. The report shall include a map that clearly defines the area wherein regular subscriber service is available.

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

"(d) The schedule for wiring the District of Columbia shall ensure that no substantial differences in the time by which service shall be available in a neighborhood will exist relative to the neighborhood's relative median income

levels or racial composition."

(jj) Section 37 (D.C. Code, sec. 43-1836) is amended to read as follows:

"Sec. 37. Limits on Franchisee's Recourse.

D.C. Code,
sec. 43-1836
(1983 Supp.)

"(a) Except as expressly provided in this act and in a franchise agreement, a franchisee shall have no recourse against the District for any loss, expense, or damage resulting from the terms and conditions of this act or the franchise agreement or because of the District's failure to have the authority to grant the franchise. A franchisee expressly agrees that upon its own investigation and understanding, the District has the power and authority to grant a franchise.

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

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

documents.

"(d) A franchisee agrees, by the acceptance of a franchise, to accept the validity of the terms and conditions of this act and the franchise agreement in their entirety and that it will not, at any time, proceed against the District in any claim or proceeding challenging any terms or provisions of this act or the franchise agreement as unreasonable, arbitrary, void, or that the District did not have the authority to impose the term or condition."

(kk) Section 40 (D.C. Code, sec. 43-1839) is amended to read as follows:

"Sec. 40. Rights Reserved to the District.

D.C. Code,
sec. 43-1839
(1983 Supp.)

"The District expressly reserves the following rights:

"(1) To exercise its governmental powers, now or hereafter, to the full extent that the powers may be vested in or granted to the District.

"(2) To adopt, in addition to the provisions contained herein and in the franchise agreement and in any existing applicable acts, additional regulations that it finds necessary in the exercise of its police power, if the regulations, by act or otherwise, shall be reasonable and not in conflict with the rights herein granted.

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

(ll) Section 41 (D.C. Code, sec. 43-1840) is amended to

read as follows:

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

D.C.Code,
sec. 43-1840
(1983 Supp.)

"A franchisee shall not refuse to hire or employ, discharge, or otherwise discriminate against any person for any reason provided in the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Code, sec. 1-2501 et seq.), and the provisions of that act shall apply to the franchisee."

Note,
D.C.Code,
sec. 1-2501
(1981 ed.)

(mm) Section 42(a)-(h) (D.C. Code, sec. 43-1841(a)-(h)) is amended to read as follows:

D.C.Code,
sec. 43-1841
(1983 Supp.)

"Sec. 42. Affirmative Action Requirements.

"(a) In order to maximize opportunities for minority employment and participation in the cable system, an applicant shall submit at the time of submission of its proposal a written Affirmative Action Plan ('Plan') for approval in accordance with section 253 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Code, sec. 1-2524), as amended by this act. The Plan shall apply to all job categories with the franchisee's workforce.

"(b) Each franchisee shall make a positive and good faith effort to establish employment goals and timetables designed to achieve minority representation equal to the minority population of the District of Columbia by the end of the second year of the franchise and throughout the balance of the franchise term, provided qualified or qualifiable minority persons are available. The adoption

and implementation of goals and timetables by a franchisee shall not constitute a discriminatory practice prohibited under section 41.

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

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

"(e) Upon the grant of a franchise, the franchisee shall submit its construction and skilled trades apprenticeship training programs to the Director of the District of Columbia Apprenticeship Council for approval and registration pursuant to section 5 of the Amendments to An Act To Provide for Voluntary Apprenticeship in the District of Columbia Act of 1978, effective March 6, 1979 (D.C. Law 2-156; D.C. Code, sec. 36-409).

"(f) The franchisee or franchisees shall report annually to the Office of Human Rights regarding the status of its training programs including a detailed analysis of the franchisee's efforts to achieve its goals and

timetables.

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

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

(nn) Section 43 (D.C. Code, sec. 43-1842) is amended to read as follows:

"Sec. 43. Contracting Requirements.

D.C. Code,
sec. 43-1842
(1983 Supp.)

"(a) A franchisee shall be treated as an agency for purposes of minority contracting. All provisions of the Minority Contracting Act of 1976, effective March 29, 1977 (D.C. Law 1-95; D.C. Code, sec. 1-1141 et seq.), shall apply to the franchisee except the meaning of the term 'minority' shall have the same meaning as in section 3(24) of this act.

Note,
D.C. Code,
sec. 1-1141
(1981 ed.)

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

(oo) Section 44 (D.C. Code, sec. 43-1843) is amended to read as follows:

D.C. Code,
sec. 43-1843
(1983 Supp.)

"Sec. 44. Local Hiring and Purchasing Policy.

"A franchisee's employee workforce and subcontractors shall consist of not less than 51% District of Columbia residents."

(pp) A new section 45a is added to read as follows:

"Sec. 45a. Landlord-Tenant Relationship.

"(a) No landlord of a residential property shall:

"(1) Interfere with the installation of cable television facilities upon his or her property or premises, except that a landlord may require:

New
D.C.Code,
sec. 43-1844.
(1983 Supp.)

"(A) That the installation of cable television facilities conform to those reasonable conditions and architectural controls set forth by the landlord as being necessary to protect the safety, functioning, appearance of the premises, and the convenience and well-being of other tenants;

"(B) That the cable television company or the tenant or a combination thereof bear the entire cost of the installation, operation, or removal of the facilities; and

"(C) That the cable television company agrees to indemnify the landlord for any damages caused by the installation, operation or removal of the facilities.

"(2) Demand or accept payment from any tenant, in any form, in exchange for permitting cable television service or facilities on or within his or her property or premises, or from any cable television company in excess of any amount allowed by the Office upon application by the

landlord. The Office shall, by rule, provide procedures by which landlords may apply for and receive adequate compensation following notice provided in accordance with due process of law.

"(3) Discriminate in rental charges or otherwise between tenants who receive cable television service and those who do not.

"(b) Rental agreements and leases executed prior to the effective date of this section may be enforced notwithstanding this section.

"(c) No cable television company may enter into any agreement with the owners, lessees, or persons controlling or managing buildings served by cable television, or do or permit any act that would have the effect, directly or indirectly, of diminishing or interfering with existing rights of any tenant or other occupant of the building to use or avail himself or herself to master or individual antenna equipment.

"(d) The Office shall issue rules to carry out the purposes of this section."

(qq) Section 46 (D.C. Code, sec. 43-1847) is amended to read as follows:

D.C. Code,
sec. 43-1847
(1983 Supp.)

"Sec. 46. Protection of Privacy.

"(a) The franchisee or franchisees shall not permit the transmission of any aural, visual, or digital signal, including 'polling' the channel selection from any subscriber's premises without first obtaining written permission of the subscriber. This provision is not

intended to prohibit the use of transmission of signals useful only for the control or measurement of system performance.

"(b) The franchisee or franchisees shall not permit the installation of any special terminal equipment in any subscriber's premises that will permit transmission from subscriber's premises of 2-way services utilizing aural, visual, or digital signals without first obtaining written permission from the subscriber.

"(c) The franchisee or franchisees shall not provide to any person, except the subscriber as provided in subsection (d), any data in its possession with respect to an individual subscriber's financial transactions, viewing selections, and utilization of computer-based interactive services, or any other personal or private information. The franchisee or franchisees shall exercise the highest possible standard of care in protecting the privacy of this data. This individual subscriber data shall not be subject to subpoena or other compulsory process.

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

"(e) Any information obtained by a franchisee or franchisees about a subscriber shall be made available to the subscriber within 10 days after receipt of a request from the subscriber to examine the information.

"(f) Upon a subscriber's application for cable television service, including, but not limited to,

interactive service, a cable television corporation shall provide the applicant with a separate notice explaining the subscribers's right to privacy protection afforded by this section.

"(g) Any person or corporation which violates this section shall be imprisoned for not more than 6 months, or shall be fined not more than \$10,000, or both. Nothing in this subsection shall preclude the right of subscribers to pursue alternative civil remedies for the invasion of the right of privacy. Any violation of this section by a franchisee also shall be deemed to be a material breach of the franchise agreement which shall constitute grounds for termination of the franchise."

(rr) Section 47 (D.C. Code, sec. 43-1846) is amended to read as follows:

"Sec. 47. Publication Costs.

D.C. Code,
sec. 43-1846
(1983 Supp.)

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

(ss) Section 48 (D.C. Code, sec. 43-1847) is amended to read as follows:

"Sec. 48. Obscenity Laws and Broadcast Guidelines.

D.C. Code,
sec. 43-1847
(1983 Supp.)

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

Note,
D.C. Code,
sec. 22-2001
(1981 ed.)

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

(tt) Section 51 (D.C. Code, sec. 43-1850) is amended to read as follows:

"Sec. 51. Penalties and Enforcement.

D.C. Code,
sec. 43-1850
(1983 Supp.)

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

Note;
D.C. Code,
sec. 23-101

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

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

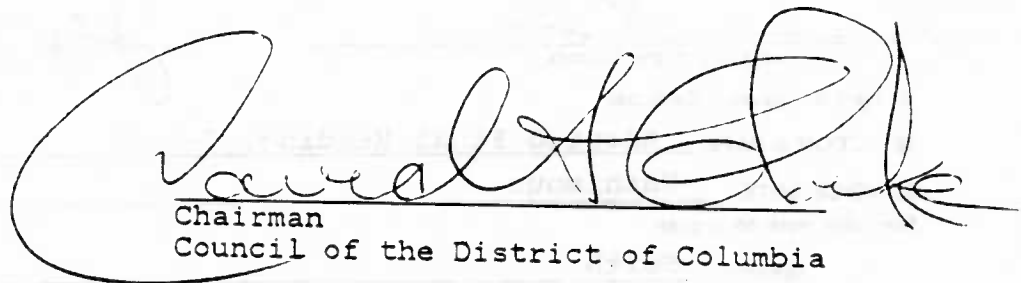
Sec. 3. The following sections of the Cable Television Communications Act of 1981, effective August 21, 1982 (D.C. Law 4-142; D.C. Code, sec. 43-1801 et seq.), are repealed:

D.C. Code,
secs. 43-1801
-1802(2), (11
& (21), -1811
-1818, -1828,
-1835
repealed

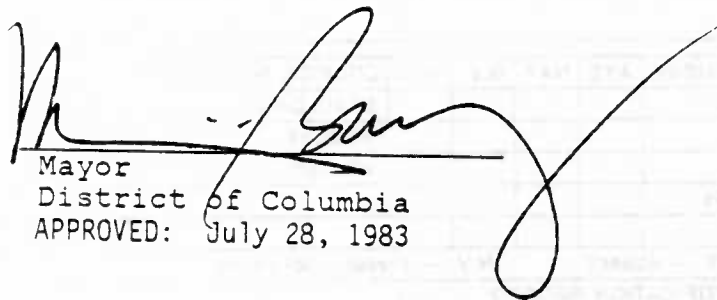
- (1) Section 2(d) (D.C. Code, sec. 43-1801(d)).
- (2) Section 3(2) (D.C. Code, sec. 43-1802(2)).
- (3) Section 3(11) (D.C. Code, sec. 43-1802(11)).
- (4) Section 3(21) (D.C. Code, sec. 43-1802(21)).
- (5) Section 12 (D.C. Code, sec. 43-1811).
- (6) Section 19 (D.C. Code, sec. 43-1818).
- (7) Section 29 (D.C. Code, sec. 43-1828).

(8) Section 36 (D.C. Code, sec. 43-1835).

Sec. 4. This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED: July 28, 1983



COUNCIL OF THE DISTRICT OF COLUMBIA
Council Period Five — First Session

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: B 5-170

Item on Consent Calendar

ACTION & DATE: Adopted First Reading, 6-21-83

VOICE VOTE: By Majority, Member Jarvis voted present

Recorded vote on request

Absent: Moore

ROLL CALL VOTE: — RESULT _____

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MOORE, JR.					SPAULDING				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SHACKLETON									
MASON					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Roseanna Smith
 Secretary to the Council

July 14, 1983
 Date

Item on Consent Calendar

ACTION & DATE: Adopted Final Reading, 7-5-83

VOICE VOTE: Unanimous

Recorded vote on request

Absent: Smith

ROLL CALL VOTE: — RESULT _____

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MOORE, JR.					SPAULDING				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SHACKLETON									
MASON					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Roseanna Smith
 Secretary to the Council

July 14, 1983
 Date

Item on Consent Calendar

ACTION & DATE: _____

VOICE VOTE: _____

Recorded vote on request

Absent: _____

ROLL CALL VOTE: — RESULT _____

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MOORE, JR.					SPAULDING				
CRAWFORD					RAY					WILSON				
JARVIS					ROLARK					WINTER				
KANE					SHACKLETON									
MASON					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Secretary to the Council

Date