

TELEVISION

Chapter 99**TELEVISION**

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**[HISTORY: Adopted by the Council of the Town of Middleburg 11-12-87.
Amendments noted where applicable.]**

GENERAL REFERENCES

Streets and sidewalks - See Ch. 91.

- § 99-1. Title.**

This chapter shall be known and may be cited as the "Cable Television Ordinance."

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§ 99-2. Definitions.

- A. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.
- B. For the purposes of this chapter, the following terms, phrases, words, abbreviations and their derivations shall have the same meanings given herein:

CABLE TELEVISIONS SYSTEM or CABLE SYSTEM or SYSTEM - Any facility that in whole or in part receives directly or indirectly and amplifies or otherwise modifies the signals carrying programs broadcast by one (1) or more television or radio stations and distributes such signal by wire, cable or otherwise to subscribing members of the public who pay for such services. It shall not apply to a facility that serves only to retransmit the signals of one (1) or more television broadcast stations or to a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control or management unless such facility uses any public right-of-way.

GRANTEE - The person to whom or to which a franchise is granted by the Town Council pursuant to this chapter or anyone who succeeds such person in accordance with the provisions of the franchise.

PERSON - Any person, firm, partnership, association, corporation, company or organization of any kind.

STREET - Except where limited by a franchise agreement, and in any event only to the extent necessary to install and maintain a cable system, the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place alley, court, boulevard, parkway, drive or other easement now or hereafter held by the town or Commonwealth of Virginia Department of Highways and Transportation (Department) for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by the town or Department.

TOWN - The Town of Middleburg, Virginia.

TOWN COUNCIL - The present governing body of the town or any successor to the legislative powers of the present Town Council.

§ 99-3. Grant of authority; use of facilities; restrictions.

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- A. Grant of authority. Any grantee of a franchise to operate a cable television system shall have the nonexclusive right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways, and public places now laid out or dedicated, and all extensions thereof, and additions thereto in the town on poles, wires, cable, underground conduits, manholes and other facilities or persons, provided that consent is obtained from such persons, equipment and facilities necessary for the maintenance and operation in the town of a cable television system for the interception, sale and distribution of television and radio signals.
- B. Use of facilities. The town reserves unto itself the use of and the right to grant to other persons the use of said streets, alley, public places and facilities for such uses other than for the operation in the town of a cable television system.
- C. Restrictions. Except as provided herein, no person shall construct, install, maintain or operate a cable system within the town or within any public property of the town unless a franchise has first been obtained pursuant to the provisions of this chapter and unless such franchise is in full force and effect. Except as expressly provided in the franchise agreement, such franchise shall not take the place of any other license or permit which may be legally required of the grantee in order to conduct such a business.

§ 99-4. System construction. [Amended 3-8-1990]

The town shall have the right to review the grantee's construction plans and specifications prior to the commencement of construction to assure compliance with the standards specified in the franchise agreement and this chapter and to inspect all aspects of system construction. The grantee shall be solely responsible for taking all steps necessary to assure compliance with such standards and to ensure the safety of the system as installed. The grantee shall, within ninety (90) days following completion of construction of the system, file as-built plans of such system with the town and shall thereafter file amendments to such plans within ninety (90) days following completion of any extension or modification of such system.

§ 99-5. Reports and documents.

A copy of any annual performance test reports required by the Federal Communications Commission as well as copies of any and all other correspondence, petitions, reports, applications and other documents filed by any person granted a franchise pursuant to this chapter with any federal or state agency or received by such grantee from any such agency shall be furnished by the grantee simultaneously to the town.

§ 99-6. Term of franchises; nonexclusive rights; termination of franchise.

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- A. Any franchise or renewal of a franchise granted pursuant to this chapter shall be for a term of up to fifteen (15) years from the date the franchise is accepted by the grantee, or in the event of a renewal from the date on which the original franchise would have expired by its own terms.
- B. No franchise granted pursuant to this chapter shall give any exclusive right to a grantee, and every such franchise shall be deemed to reserve the right to grant other franchises to use and occupy the public ways of the town for cable system purposes or any other purposes on any terms the town may from time to time deem appropriate.
- C. Every such franchise shall, whether or not specifically so conditioned in the franchise agreement, be deemed to be revocable in accordance with the terms of this chapter and shall be deemed to create only a license to use the public ways of the town which shall terminate automatically upon the expiration, revocation or other termination of the franchise agreement granting it. Specific provisions concerning franchise renewal, nonrenewal, revocation and compensation to the grantee in the event of franchise nonrenewal or revocation shall be in accordance with applicable federal law and as set forth in the franchise agreement governing the grantee's operation of its system, and shall be deemed to be as binding on the parties as if set forth fully in this chapter.

§ 99-7. Revocation of franchise.

In addition to all of the rights and powers reserved or pertaining to the town, the town reserves as an additional, separate and distinct power the right to terminate the franchise and all rights and privileges of a grantee hereunder if the grantee, by act or omission, violates any substantial term or condition of this chapter or of the franchise agreement, and within the thirty (30) days following written notice by the town shall fail to effect compliance. The grantee shall not be declared in default or be subject to any sanction under any provision of this chapter in any case in which performance of any such provision is prevented for any reasons related to force majeure.

§ 99-8. Conditions of occupancy.

- A. Unless expressly provided otherwise in a franchise agreement, every grantee hereunder shall at all times comply with any and all rules and regulations enacted or to be enacted by the town with reference to construction activity in public ways, and all poles, conduits, cables, equipment, structures and other facilities of any cable system franchised pursuant to this chapter shall be installed and located in compliance with all applicable town ordinances and the franchise agreement and so as to cause minimum interference with the rights and reasonable convenience of the general public. All such facilities shall at all times be kept and

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maintained in a safe, adequate and substantial condition, and in good order and repair. The grantee shall at all times employ reasonable 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.

- B. In area where utility lines are installed below ground, the grantee shall be required to install all lines and other relevant property below ground.

§ 99-9. Limitations on grantee's rights.

- A. Nothing herein or in any franchise agreement executed pursuant to this chapter shall be construed to entitle any grantee hereunder to use any property other than the public way or to use any public way to any extent beyond that which the town is legally empowered to authorize.
- B. No location of any pole, structure or other facility of the grantee shall be a vested interest, and such poles, structures and facilities shall be removed, relocated or modified by the grantee at its own expense whenever the town or any other governmental authority having jurisdiction shall reasonably determine that the public convenience would be enhanced thereby.
- C. Removal.
 - (1) Emergency removal or damage. Whenever, in case of emergency, it becomes necessary in the sole judgment of the town to remove or damage any of the grantee's facilities in order to avoid or minimize the likelihood or possibility of personal injury or loss of life or to avoid substantial harm to individual or public property, no charge shall be made by the grantee against the town for restoration and repair of such damage.
 - (2) Nonemergency removal. At the request of any person holding a valid building moving permit issued by the town or any other governmental authority having jurisdiction, and upon at least forty-eight (48) hours notice, the grantee shall temporarily raise, lower or cut its wires as may be necessary to facilitate such move. The direct expense of such temporary changes, including standby time, shall be paid by the permit holder, and the grantee shall have the authority to require payment in advance.

§ 99-10. Emergency use of facilities.

In case of any emergency or disaster, the grantee shall, upon request of the Town Council, make available facilities to the town for emergency use during the emergency or disaster period.

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§ 99-11. Limitation of franchise agreement.

Any franchise granted pursuant to this chapter authorizes only operation of a cable television system as provided for in the terms of the franchise agreement and does not take the place of any other franchise, license or permit which might be required by law of the grantee.

§ 99-12. Removal facilities from subscribers' premises.

Upon termination of service to any subscriber, the grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

§ 99-13. Right to adopt additional regulations.

The right is hereby reserved by the town to adopt, in addition to the provisions herein contained and existing ordinances, such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations by ordinance or otherwise, shall be reasonable, and not in conflict with the rights herein granted and shall not be in conflict with the laws of the Commonwealth of Virginia or the United States.

§ 99-14. Town use of system.

The town shall have the right during the term of any franchise granted pursuant to this chapter to install and maintain free of charge upon the poles of the grantee any wire and pole fixtures necessary for a police or fire alarm system so long as such wires and poles fixtures do not interfere with the grantee's operation of its system.

§ 99-15. Effect of extension of town limits.

Upon the annexation of any territory by the town, any franchise granted hereunder shall extend to the territory so annexed.

§ 99-16. Requirements and limitations on grantee.

- A. Limits on grantee's recourse. No grantee shall have any recourse against the town for any loss, expense or damage resulting from the terms and conditions of this chapter or any franchise granted pursuant to it, nor because of the town's granting or enforcement thereof, nor for the town's failure to have the authority to grant the franchise, nor for any grant or denial or any enforcement or lack of enforcement of any other franchise. Every grantee shall, by its acceptance of a franchise hereunder, be deemed to expressly agree that it accepts such franchise relying solely upon its own investigation and understanding of the power and authority of the town to grant said franchise, and that it waives and releases all claims of any kind

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whatsoever, either known or unknown, existing or future, which it may have in connection with any matter specified in this section.

- B. No extraneous inducements. Every grantee, by accepting a franchise granted pursuant to this chapter, shall be deemed to acknowledge that it has not been induced to accept such franchise by any promise, verbal or written, by or on behalf of the town or by any third person regarding any term or condition of this chapter or of the franchise agreement not expressed therein. The grantee shall further be deemed to warrant that no promise or inducement, oral or written, has been made to any town employee or official regarding receipt of such franchise, other than as contained in the franchise agreement.
- C. Limitations on right of challenge. Every grantee, by acceptance of a franchise hereunder, shall be deemed to acknowledge that it has carefully read the terms and conditions of this chapter and the franchise agreement; that it agrees to accept without reservation the obligations imposed by the terms and conditions of this chapter and the franchise agreement in their entirety; that it agrees not to proceed, at any time, against the town in any claim or proceeding challenging any term or provision of this chapter or the franchise agreement on the basis that the town did not have the authority to impose it or that it is unreasonable, arbitrary or void; and that it agrees not to apply, at any time, for any waivers, exceptions or declaratory rulings from the Federal Communications Commission or any other federal or state regulatory agency.

§ 99-17. Compliance with law.

Every grantee shall, at all times, comply with all federal, state and local laws, ordinances, rules and regulations.

§ 99-18. Special license, easement or permit to traverse town ways for service outside town.

Upon such conditions as the town may from time to time deem necessary or appropriate, and notwithstanding any other provisions within this chapter or in a franchise agreement, the town may issue a license; easement or other permit to anyone other than a grantee to permit that a person to traverse any portion of the town's public ways in order to provide cable service outside the town. Such license or easement, absent a grant of a franchise in accordance with this chapter, shall not authorize nor permit said person to provide cable service of any nature to any user or subscriber within the town.

§ 99-19. Equal access to cable service.

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No grantee hereunder shall deny access to cable service to any potential group of cable subscribers because of the income of the residents of the local area in which such group resides.

§ 99-20. Effect of town's failure to enforce franchise agreement.

No grantee hereunder shall be excused from complying with any of the terms and conditions of this chapter or its franchise agreement by any failure of the town, upon any one (1) or more occasions, to insist upon the grantee's performance of, or to seek the grantee's compliance with, any one (1) or more of such terms or conditions.

§ 99-21. Time limitations.

Whenever this chapter or any franchise agreement executed pursuant to it sets forth any time for any act to be performed by a grantee, such time shall be deemed to be of the essence, and the grantee's failure to perform within the time allotted shall, in all cases, be sufficient grounds for the town to invoke the penalties and remedies available under the terms and conditions of this chapter and the franchise agreement.

§ 99-22. Force majeure.

Whenever a period of time is provided for in this chapter or any franchise agreement executed pursuant to it for either the town or a grantee to do or perform any act or obligation, neither party shall be liable for any delays due to causes beyond the control of such party, such as war; riot; insurrection; rebellion; strike; lockout instituted by a multiemployer bargaining unit of which the grantee is a member; unavoidable casualty or damage to personnel, materials or equipment; fire; flood; storm; earthquake; tornado; orders of a court of competent jurisdiction; any Act of God or other act beyond the control of such party; and upon the occurrence of any such event, said time period shall be extended for the amount of time said party is so delayed; provided, however, that no act or omission shall be deemed beyond a grantee's control if committed, omitted or caused by any subsidiary, affiliate, parent corporation or any person in which the grantee holds a controlling interest or which holds a controlling interest in the grantee, whether held indirectly or directly, and provided further that the failure of a grantee to obtain financing or to pay any money due from it to any person, including the town, for whatever reason, shall not be an act or omission which is beyond the grantee's control.

§ 99-23. Acceptance.

This chapter and any franchise agreement executed pursuant to it, and their terms and conditions, shall be accepted by the grantee by written instrument filed with the town within thirty (30) days after the granting of the franchise, unless this period is extended by the town at its sole discretion. In its acceptance, the grantee shall declare that it has carefully read the terms and conditions of this chapter and the franchise agreement and accepts unequivocally and agrees to abide by all of the terms and conditions imposed by this chapter and the franchise agreement. Unless and until so accepted, no franchise

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agreement or franchise shall be of any force or effect whatsoever and references to the date or the effective date of a franchise shall be deemed to refer to the date of such acceptance.

§ 99-24. Theft and reselling of service.

- A. Theft. It shall be unlawful for any person to attach or affix or to cause to be attached or affixed any equipment or device which allows access to or use of any cable service without payment to the grantee for such service.
- B. Reselling. No person receiving within the town any cable service program or signal transmitted over a cable system operating under a franchise issued pursuant to this chapter shall resell such service, program or signal without the express written consent of both the grantee and the town.

§ 99-25. Violations and penalties; injunctive relief.

- A. Penalties. In addition to recovery of money owed by a grantee to the town as a result of any acts or omissions by such grantee, the town, in its sole discretion, may charge to and collect from an escrow, letter of credit or bond required pursuant to the franchise agreement, the following penalties:
 - (1) For failure to activate the system in accordance with the franchise agreement, unless such failure has been approved, a penalty of two hundred dollars (\$200.) per week or portion thereof that such failure occurs or continues.
 - (2) For failure to complete system construction or extension in accordance with the franchise agreement, unless such failure has been approved, a penalty of two hundred dollars (\$200.) per week for each week or portion thereof that such failure occurs or continues.
 - (3) For failure to provide requested data, documents, reports or information or to participate cooperatively in any requested performance evaluation session, a penalty of fifty dollars (\$50.) per day for each day such failure occurs or continues.
 - (4) For failure to test, analyze and report on the performance of the system following request, a penalty of fifty dollars (\$50.) per day for each day such failure occurs or continues.
 - (5) For failure to correct system inadequacies within forty-five (45) days after due notice of such corrective requirement following a performance evaluation session, a penalty of two hundred dollars (\$200.) per week for each week such failure occurs or continues.

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- (6) For failure to comply with construction, operation or maintenance standards within forty-five (45) days following notice of such standards and any deviations therefrom, a penalty of two hundred dollars (\$200.) per week for each week such failure occurs or continues.
- B. Fines. Any person who shall violate any of the provisions of this chapter or a franchise agreement executed pursuant to this chapter shall be subject to a fine not to exceed two hundred dollars (\$200.) for each offense. Each day a violation continues or is permitted to exist shall constitute a separate and distinct offense.
- C. Other relief. In addition to any penalty or fine which may be imposed hereunder, the town shall have the right to initiate actions for injunctive relief, including the issuance of temporary restraining orders and preliminary injunctions, in any appropriate court to abate any violation of this chapter or a franchise agreement executed pursuant to it, and to other rights reserved to it in this chapter and any franchise agreement, including without limitation the right to revoke the franchise.

§ 99-26. Severability.

If any section, subsection, sentence, clause or phrase of this Article is for any reason held illegal, invalid or unconstitutional by the decision of any court or competent jurisdiction or the Federal Communications Commission, such decision shall not affect the validity of the remaining portions hereto. The Town Council hereby declares that it would have passed this chapter and each section, sentence, clause and phrase hereof irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this chapter shall not abate, reduce or otherwise affect any consideration or other obligation required by the town of the grantee of any franchise granted hereunder.