

**Montgomery County Maryland**  
**Montgomery County Code**

**Chapter 8A. Cable Communications.**  
**(Select Sections Pertaining to PEG Access)**

**Sec. 8A-1. Title.**

This Chapter is known and may be cited as the "Cable Communications Law." (FY 1991 L.M.C., ch. 3, § 1.)

**Sec. 8A-2. Intent and purposes.**

It is the intent of the County to promote the public health, safety and general welfare by providing for the grant of one or more franchises for the construction and operation of a cable system; to provide for the regulation of each cable system by the County; to provide for the payment of fees and other valuable consideration by a franchisee to the County for the privilege of using the public rights-of-way for constructing and operating a cable system; to promote the widespread availability of cable and other communications service to County residents and businesses wherever economically feasible, including to those who reside in multifamily buildings and in rural communities; to encourage the development of cable as a means of communication between and among the members of the public and public institutions; and to encourage the provision of diverse information to the community over cable. (FY 1991 L.M.C., ch. 3, § 1; [2002 L.M.C., ch. 31, § 1.](#))

**Sec. 8A-3. Definitions.**

In this Chapter, the following words and phrases have the meanings indicated in this Section. Words defined in Section 602 of the Cable Act have the meaning stated in the Cable Act unless this Section provides a different definition.

*Access channel* means any channel set aside under the franchise agreement for public use, educational use, or governmental use without a charge by the franchisee for channel usage. An access channel may be scheduled on a professional basis or may be operated so that any member of the general public may cablecast.

*Application* means a proposal to construct and operate a cable system within the County, transfer a franchise, renew a franchise, or modify a franchise. An application includes the initial proposal plus all subsequent amendments or supplements to the proposal and relevant correspondence.

*Cable Act* means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq.

*Cable system* means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide cable service which includes video programming and which is provided to multiple subscribers within the County. This term does not include:

- (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility uses any public right-of-way;
- (3) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that the facility will be considered a cable system to the extent that it is used in the transmission of video programming directly to subscribers; or
- (4) any facilities of any electric utility used solely for operating its electric utility systems.

*Cable service* means the one-way transmission of video or other programming service to subscribers and any subscriber interaction provided in connection with that service.

*Commission* means the Cable Compliance Commission.

*Community access organization* means a nonprofit corporation that provides services to:

- (1) support the production of local programming or the operation of local access channels, or both;
- (2) serve viewers as well as program producers; and
- (3) promote high quality productions, responsible and diverse points of view, and balance in subject matters.

*Complaint* means a complaint concerning cable service or any other product or service.

*Control of a franchisee or applicant* means the legal or practical ability to direct the affairs of the franchisee or applicant either directly or indirectly, whether by contractual agreement or majority ownership of an economic interest.

*County* means Montgomery County, Maryland, except for the territory located in the municipalities of Barnesville, Brookville, Chevy Chase Village, Chevy Chase Section 3, The Town of Chevy Chase, Chevy Chase Section 5, Gaithersburg, Garrett Park, Glen Echo, Kensington, Laytonsville, Poolesville, Rockville, Somerset, Takoma Park, and Washington Grove.

*Council* means the County Council.

*County Executive* means the chief executive officer of the County or designee.

*Fair market value* means the price that a willing buyer would pay to a willing seller for a going concern based on the system valuation prevailing in the industry at the time but with no value allocated to the franchise itself.

*FCC* means the Federal Communications Commission.

*Franchise* means the right granted by the County to a franchisee to construct, maintain and operate a cable system over, on, or under streets, roads and all other public ways, easements and rights-of-way within all or specified areas of the County. The term does not include any license or permit that may be required by this Chapter or other laws, ordinances, or regulations of the County for the privilege of transacting and carrying on a business within the County or for disturbing the surface of any street or public thoroughfare.

*Franchise agreement* means a contract entered into in accordance with the provisions of this Chapter between the County and a franchisee that sets forth the terms and conditions under which the franchise will be exercised.

*Franchisee* means any person granted a franchise under this Chapter.

*Gross revenues* means all revenues derived by a franchisee from the operation of its cable system in the County, including revenues derived from cable service, home shopping channels, institutional services, rental or lease of equipment, installation fees, or ancillary services.

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

*Leased access channel* means a channel designated in accordance with Section 612 of the Cable Act, for commercial use by persons unaffiliated with the franchisee.

*Other product or service* means any product or service that is not a cable service but uses any facility or equipment constructed, installed, maintained, operated, or occupying the public rights-of-way under a franchise issued under this Chapter, notwithstanding how the service or product is characterized or regulated under federal law. *Other product or service* may include one-way or interactive video, audio, data (including cable modem), and information services.

*Overbuild* means a cable system constructed to serve any subscribers served by an existing cable system, including those parts of an existing system that will be constructed and activated by December 31, 1989 pursuant to a staging map filed with the County.

*Participating municipality* is a municipality that enters into an agreement with the County under which the County will administer a cable franchise granted by the municipality.

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

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

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

*Transfer of a franchise* means any transaction in which:

(1) an ownership or other interest in a franchisee is transferred, directly or indirectly, from one person or group of persons to another person or group of persons so that control of the franchisee is transferred; or

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

*Transfer of interest in a franchisee* means the sale or transfer, directly or indirectly, of an existing or newly created equity interest in the franchisee that does not result in a transfer of control of the franchisee.

*User* means a person utilizing a cable system's facilities for purposes of transmission of material or information to subscribers or others. (FY 1991 L.M.C., ch. 3, § 1; 1998 L.M.C., ch. 10, § 1; [2002 L.M.C., ch. 31](#), § 1.)

## **Sec. 8A-11. Minimum facilities and services.**

(a) The following minimum requirements for facilities and services apply to all franchises:

(1) A cable system must have a minimum capacity of 54 video channels available for immediate or potential use.

(2) A cable system must provide at least 6 access channels, which will be individually designated by the County for public, educational or governmental access. The County may require the franchisee to contribute to capital costs for access studios and related equipment and facilities.

(3) A cable system must provide leased access channels as required by federal law. The franchisee must provide information on all leased access channels in its annual report under Section 8A-13(a). This information must include a description of any applications to lease access channels that are pending consideration or which have been denied by the franchisee.

(4) Service to all public buildings may be required without charge as set forth in the franchise agreement.

(5) Upon the directive of the County, a franchisee must interconnect the cable system access channels with those of other cable systems in the Washington and Baltimore metropolitan areas and Frederick County or as otherwise provided in the franchise agreement.

(6) A franchisee must design its system to allow the County to interrupt cable service in an emergency to deliver necessary information to subscribers.

(b) The County may require that a franchise exceed the minimum requirements set forth in subsection (a).

(c) The County may waive minimum requirements set forth in subsection (a) for limited franchises where the applicant demonstrates that a waiver is in the public interest. (FY 1991 L.M.C., ch. 3, § 1.)

## **Sec. 8A-32. Community access organizations.**

(a) The County may contract with one or more community access organizations using funds from the Cable TV Special Revenue Fund or any other funds the County designates for community access in the approved County budget and under the County cable communications plan. Unless prohibited or otherwise limited under its contract with the County, the cable communications plan, or any executive regulation, a community access organization may also receive revenues from other sources.

(b) The County may require a community access organization to perform one or more of the following functions as specified in the contract between the County and the community access organization:

- (1) manage the public access channels assigned to it by the County;
- (2) establish policies and procedures for the form, content, and scheduling of public access channels;
- (3) train members of the community in the production of cable programs;
- (4) maintain facilities and equipment for community use;
- (5) provide technical access channel assistance and support to the County, participating municipalities, and educational institutions;
- (6) promote the use and benefits of the public, educational, and government access channels;
- (7) produce and transmit local news and other programs; and
- (8) undertake any other cable-related activity specified by the County as being in the public interest.

(c) A community access organization must:

(1) determine independently in the public interest and without government interference the content and scheduling of programming for the public access channels assigned to it;

(2) develop and implement policies to ensure fair, non-partisan and unbiased coverage of issues on the public access channels assigned to it and may not promote the candidacy of any candidate for public office by extending opportunities for use not extended to other candidates for the same office;

(3) require that each officer, director, and executive director file a confidential financial disclosure statement in accordance with Chapter 19A with respect to all communications-related activities and interests;

(4) have on its board of directors one voting member selected by each of the following:

- (A) the Montgomery County Chapter of the Maryland Municipal League;
- (B) the City of Rockville;
- (C) the City of Takoma Park; and
- (D) each franchisee except for limited franchisees;

(5) develop and implement fair and reasonable procedures to allow members of the community access organization to nominate and elect 8 residents of the County to serve on its board of directors. Member means any individual who resides in the County and, at least 15 days before the deadline for voting for directors:

- (A) is certified by the organization to use the organization's equipment or facilities; or
- (B) requested the organization's program guide;

(6) promote and encourage programming representing a diversity of community interests and needs; and

(7) make a good faith effort to meet the affirmative action and minority, female, and disabled procurement goals that apply to County government.

(d) A community access organization must provide a copy of its current articles of incorporation and bylaws to the County Executive and the County Council before the organization contracts with the County. Any proposed amendments must be submitted to the County Executive and County Council for review and comment at least 60 days before the

organization takes final action on the amendment. The organization must submit a copy of all adopted amendments to the Executive and the Council within 5 working days of adoption. The organization's articles of incorporation and bylaws are subject to all County laws, including those enacted after the County contracts with the organization.

(e) A community access organization must provide the County with regular and complete financial reports as well as all other reports required under its contract with the County. In addition, it must provide the County with an annual independent audit, including a copy of any accompanying management letter. (FY 1991 L.M.C., ch. 3, § 1; 1996 L.M.C., ch. 18, § 1.)