



Chapter 24

TELECOMMUNICATIONS*

* **Cross References:** Utilities, ch. 26.

State Law References: Authority to grant by ordinance franchises for the operation of cable television, G.S. 153A-137; authority to impose annual financial taxes on cable television companies, G.S. 153A-154.

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Sec. 24-1. Short title.

This chapter shall be known and may be cited as the "Edgecombe County Community Antenna Television Ordinance" or "Edgecombe County CATV Ordinance."
(Ord. of 2-7-1983, § 1)

Sec. 24-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commissioners means the board of commissioners of the county.

Company means the person to whom a franchise is granted pursuant to this chapter.

County means Edgecombe County, North Carolina.

FCC means the Federal Communications Commission or any federal regulatory agency or agencies



having regulatory jurisdiction over cable television.

Franchise means authorization granted pursuant to this chapter to construct, operate, and maintain a cable television system in all or a part of the county.

Gross subscriber revenue means total revenue and receipts received by the company from monthly service charges within the limits of the county, exclusive of incorporated areas, before any expenses or deductions whatsoever are made.

Homes per mile means the total number of residential units located on the property directly adjacent to two consecutive miles of street or other public rights-of-way, as measured along established streets or right-of-way contiguous with the present system of streets and rights-of-way. The total residential units thus obtained shall be divided by two to obtain the homes per mile. Example: eight apartments in one building count as eight homes.

Person means any person, firm, partnership, corporation, company or organization of any kind.

System means the lines, fixtures, equipment, attachments, and all appurtenances thereto which are used in the construction, operation and maintenance of the community antenna television system authorized in this chapter.

(Ord. of 2-7-1983, § 2)

Cross References: Definitions generally, § 1-2.

Sec. 24-3. Grant of authority nonexclusive.

(a) The commissioners are authorized to grant any qualified applicant a nonexclusive right and privilege to construct, erect, operate and maintain in the county or any part thereof wires, poles, cables, underground conduits, conductors and fixtures necessary for the maintenance and operation of a community antenna television system for the reception and distribution of television signals and energy, frequency modulated radio signals, and noncommercial visual and aural signals which are not otherwise prohibited. The right granted in any franchise shall be subject to the terms of this chapter (as may be amended from time to time).

(b) The company shall have the right to enter into arrangements for the attachment onto and the use of facilities owned and operated by public utilities operating within the county whereby the company shall strictly comply with the terms, provisions and restrictions of such agreements, and copies of all agreements made with public utilities operating in the county shall be placed on file in the office of the county manager immediately upon their execution.

(Ord. of 2-7-1983, § 3)

Sec. 24-4. Compliance with the laws, regulations and ordinances of county.

The company shall at all times during the terms of this chapter and a franchise thereby granted, be subject to all lawful exercise of the power of the county and to such other reasonable regulation as the county shall hereafter by resolution or ordinance provide. The construction, operation and maintenance of the system by the company shall be in full compliance with the National Electrical Code as from time to time amended and



revised, and in full compliance with all other applicable rules and regulations now in effect or hereafter adopted by the FCC, the county, the state, including the state building code, and the United States government. Any modification of FCC rules which affect a franchise granted pursuant to this chapter shall be incorporated into the franchise within one year of adoption by the FCC or at the time of franchise renewal, whichever occurs first, or at such earlier time as may be required by law or FCC rules or regulations.

(Ord. of 2-7-1983, § 4)

Sec. 24-5. Company liability, insurance and indemnification.

(a) *Nonenforcement; no estoppel.* The franchisee shall not be relieved of its obligation to comply promptly with any of the provisions of the franchise by any failure of the county to enforce prompt compliance.

(b) *Liability and indemnification of the county.* The franchisee shall indemnify and hold harmless the county at all times during the term of the franchise granted hereby and specifically agrees that it will pay all damages and penalties which the county may legally be required to pay as a result of granting the franchise. Such damages and penalties shall include, but not be limited to, damages arising out of copyright infringements, and other damages arising out of the installation, operation or maintenance of the CATV system authorized in this chapter, whether or not any act or omission complained of its authorized, allowed or prohibited by the franchisee. In case a suit shall be filed against the county either independently or jointly with the franchisee to recover for any claim or damages, the franchisee, upon notice of it by the county, shall defend the county against the action and, in the event of a final judgment being obtained against the county, either independently or jointly with the franchisee solely by reason of the acts of the franchise, the franchisee will pay such judgment and all costs including attorneys fees and hold the county harmless therefrom.

(c) *Insurance.* The franchisee shall be required to maintain insurance in such forms and in such companies as shall be satisfactory to the county with the county named as an additional insured to protect the county and franchisee from and against any and all claims, injury or damages to persons or property, both real and personal, caused by the construction, erection, operation or maintenance of any aspect of the system. The amount of such insurance shall not be less than that currently required, which amount shall be set from time to time by the county commissioners. The county may require the insurance amounts to be changed from time to time during the term of the franchise. Worker's compensation insurance shall also be provided as required by the laws of the state, as amended. All such insurance coverage shall provide a 30-day notice to the county in the event of material alteration or cancellation of any coverage afforded in such policies prior to the date such material alteration or cancellation shall become effective. A certificate of coverage for all policies required under this section shall be furnished to and filed with the county, prior to the commencement of operations or expirations of prior policies, as the case may be.

(d) *Nonwaiver.* Neither the provisions of this section, nor any bonds accepted by the county pursuant hereto, nor any damages recovered by the county under this chapter, shall be construed to excuse unfaithful performance by the franchisee or limit the liability of the franchisee under this chapter or the franchise for damages, either to the full amount of the bond, or otherwise.

(e) *Faithful performance bond.* A corporate surety bond issued by a responsible insurance company licensed to do business in the state and approved by the county in the currently required amount, renewable annually, and conditioned upon the faithful performance of the grantee of all the provisions of the franchise agreement and this chapter and upon the further condition that if the grantee shall fail to comply with any one or



more of the provisions of the franchise agreement or this chapter, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the county as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the grantee as prescribed hereby, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the bond. Such condition shall be a continuing obligation for the duration of the franchise and any renewal thereof and thereafter until the grantee has liquidated all of its obligations arising out of the acceptance of this franchise or renewal by the grantee or from the exercise of any privileges or right herein granted or the performance of any covenants or obligations imposed hereby. The bond shall provide that at least 30 days' prior written notice of intention not to renew, cancellation or material change, shall be given to the county by filing the same with the county commissioners.

(f) *Letter of credit.* A letter of credit shall be issued in a form approved by the county commissioners to the county in the currently required amount by a lending institution acceptable to the county and payable upon demand by the county. This letter of credit shall be used to protect the county from the same contingencies as enumerated in subsection (e) of this section for a corporate surety bond.

(g) *Waiver of requirements of subsections (e) and (f).* The board of commissioners may waive the requirements of subsections (e) and (f) of this section when it reasonably appears that a television cable company applying for a franchise will serve less than 100 subscribers.
(Ord. of 2-7-1983, § 5)

Sec. 24-6. Conditions on use of roads and system construction.

(a) All transmission and distribution structures, lines, and equipment erected by the company in the county shall comply with all rules and regulations of the state department of transportation or any other federal, state, or county agency regulating the use of roads in the county.

(b) The county shall not assume any responsibility for the securing of any rights-of-way or easements, nor shall the county be responsible for securing any permits or agreements with other persons or utilities.
(Ord. of 2-7-1983, § 6)

Sec. 24-7. Number of channels.

(a) The company shall initially install equipment capable of delivering a minimum of 35 television channels to all subscribers, and the company shall immediately place into operation not less than 11 channels available to the subscribers to this system in the county.

(b) The channels transmitted and services offered shall at all times be at least those channels and services offered to the Town of Tarboro, North Carolina; provided, however, that a company not serving a municipality shall not be required to comply with the terms of this subsection.
(Ord. of 2-7-1983, § 7)

Sec. 24-8. Public service and educational service.

The company shall provide antenna service without monthly service charge to all county municipal



offices and schools, and to all fire, rescue and ambulance stations that are partially funded by the county, provided that the lines of the system pass such facilities in the normal course of business.
(Ord. of 2-7-1983, § 8)

Sec. 24-9. System design provisions.

(a) *Emergency override.* The cable system shall include as "emergency alert" capability which will permit the chair or his designee to access programming in the case of public emergencies. The franchisee shall designate a channel which will be used for emergency broadcasts.

(b) *System standards.* The franchisee shall install and maintain a cable system which shall be in accordance with the highest and best accepted standards of the industry to the end that subscribers shall receive the best possible service. In addition the franchisee shall comply with all requirements of all duly constituted regulatory agencies having jurisdiction over cable television or the operator of the cable system.
(Ord. of 2-7-1983, § 9)

Sec. 24-10. Construction.

(a) *Schedule.* The franchisee shall be diligent in attaining any required permits from the FCC. The franchisee shall provide the county with copies of all filings with the FCC or any other agency or person in connection with such application and shall complete formal submission of all documents required by the FCC for its full consideration of the application no later than four months after the effective date of the franchise agreement. Failure of the franchisee to commence construction of the system promptly or to prosecute it diligently shall be grounds for termination of the franchise.

(b) *Approval of proposed construction.* A franchisee shall first obtain the approval of the county before commencing construction on the streets, alleys, public grounds or places of the county. Applications for approval of construction shall be in writing to the county. A franchisee shall give the county written notice of proposed construction at least 30 days prior to such construction so as to coordinate all work between the county and the franchisee.
(Ord. of 2-7-1983, § 10)

Sec. 24-11. Franchise area and extension of service.

(a) *Franchise territory.* The franchisee may be for all or a portion of the present boundaries of the county, excluding the corporate limits of all municipalities and for any area henceforth added thereto during the terms of this franchise.

(b) *Annexation by municipalities.* Upon the annexation of any territory to a city, the right and franchise hereby granted shall be cancelled to the territory annexed and all facilities owned, maintained or operated by the franchisee located within, under or over streets of the territory so annexed shall thereafter not be subject to all terms hereof.

(c) *Service.* The franchise agrees to make available CATV service to all areas of the county covered by the franchise with a minimum residential density of 35 per mile and the length of the drop from the cable at the road to the residence is 300 feet or less. The franchisee may charge its actual labor and material costs as an



installation fee if the drop is longer than 300 feet. The franchisee shall accomplish significant construction within one year after the date hereof and shall thereafter equitably and reasonably extend energized trunk cables into a substantial percentage of its franchise area each year; subject percentage to be not less than:

- (1) Fifty percent at the end of two years;
- (2) Seventy percent at the end of three years;
- (3) Eighty percent at the end of four years;
- (4) Ninety percent at the end of five years.

(d) *Service extension.* The franchisee agrees to extend cable to one or more customers that does not meet the density criteria if the customers share equally with the company the cost of the extension. As additional customers hook up after the cable is extended, refunds to the original contributing customers shall be made by the franchisee.

(Ord. of 2-7-1983, § 11)

Sec. 24-12. Service standards.

(a) The company shall maintain and operate the system and render efficient service so that there will be no interference with television reception, radio reception, telephone communications or other installations which are now or may hereafter be installed and in use by the county or any person in the county.

(b) The community antenna television system's:

- (1) Distribution system shall conform to the requirements of the Federal Communications Commission.
- (2) Antenna, receiving and distribution equipment shall be installed and maintained so as to provide pictures on subscriber receivers throughout the system essentially of the same quality as those received at the antenna site.

(c) The company shall be responsible for installation and maintenance of the service wiring from the cable entry point to the TV set in the subscribers' homes.

(d) The company shall investigate and resolve all subscriber complaints regarding the quality of service, equipment malfunctions and similar matters expeditiously and in accordance with the following procedure:

- (1) The company shall, during normal working hours, having qualified personnel available to investigate and resolve subscriber complaints.
- (2) Upon notification of a service complaint, the company shall dispatch a qualified employee to investigate the complaint and adjust, repair or replace company equipment as necessary to resolve the complaint. The company shall not be responsible for malfunctions in any subscribers



radio or television receiver.

- (3) Complaints shall be investigated and resolved within 24 hours of notification and the company shall maintain a service log in which entries of each complaint, the date received, the nature of the complaint and the date and means by which it was resolved shall be kept.
- (4) The company shall maintain a business office or agent in the county and maintain a listed telephone for performing services and meeting all requirements provided in this article.

(Ord. of 2-7-1983, § 12)

Sec. 24-13. Company rules.

The company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonable and necessary to enable the company to exercise its rights and to perform its obligations under this chapter and to ensure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof and shall be filed with the county and be approved by the county.

(Ord. of 2-7-1983, § 13)

Sec. 24-14. Additional rules; control of rates and payments.

The right is hereby reserved to the county to adopt, in addition to the provisions contained in this chapter and in existing applicable ordinances, such additional regulations and ordinances as the county may find reasonably necessary, including provisions governing installation fees and monthly rental charges.

(Ord. of 2-7-1983, § 14)

Sec. 24-15. Fee required in lieu of occupational license fees and service charges; company subject to ad valorem taxes.

The company shall pay annually a franchise fee as determined in section 24-17 in lieu of any occupational licenses, fees and service charges as shall be appropriate to this general classification of business as set forth by law and shall be subject to payment of ad valorem taxes.

(Ord. of 2-7-1983, § 15)

Sec. 24-16. Rates to customers.

(a) The grantee may initially charge subscribers and users of the CATV system for services up to the amounts specified in its schedule of rates and charges as proposed in its franchise application and approved by the county commissioners. Such maximum rates shall be in effect for a minimum period of two years from the effective date of the franchise or until grantee has completed all construction as proposed in its franchise application for the first and second years of construction.

(b) Thereafter, the company may make such charges for its services as are reasonable provided such charges have the prior approval of the board of commissioners of the county which approval shall be given only after an appropriate public hearing has been held affording due process to all interested parties. The company shall not charge in excess of the amount so approved and shall not require a customer to continue to receive or



pay for the services of the company any longer than the customer may desire.
(Ord. of 2-7-1983, § 16)

Sec. 24-17. Franchise fee.

(a) The company shall pay to the county a franchise fee of three percent of the gross subscriber revenue per year. All payments as required by the company to the county shall be made semiannually and shall be due within 60 days after the close of the preceding six-month period.

(b) The currently required application fee shall be made by each franchise applicant, which fee shall be in the form of cash, check, or money order, to defer the cost of studying, investigating and otherwise processing such application and which shall be in consideration thereof and not refundable or returnable in whole or in part.

(c) Applications for the granting of a franchise shall be on forms prescribed by the county manager.
(Ord. of 2-7-1983, § 17)

Sec. 24-18. Duration of franchise.

(a) Any initial franchise granted pursuant to this chapter may be granted for a period not to exceed ten years, and the county shall have no obligation to extend or renew the term of a franchise granted.

(b) The county may terminate any franchise agreement and all rights under this chapter at any time upon the determination by the commissioners that the company has:

- (1) Breached any terms or conditions of this chapter or the franchise agreement whether by act or omission.
- (2) Made an assignment for the benefit of creditors, been adjudicated bankrupt or insolvent, or filed a petition under the bankruptcy laws of the United States.
- (3) Failed to provide services to the citizens of the county under the terms of the franchise granted.

(c) Such a determination shall be made after the county has given the company 15 days' written notice that it is considering the same; and the county may call a public hearing on the question of termination of the franchise and call witnesses and present evidence at the public hearing. At such public hearing the company shall be entitled to call witnesses, present evidence and cross examine witnesses called by the county. The cost of any litigation incurred by the county to enforce this chapter or the franchise granted pursuant thereto or in relation to any cancellation or termination of the franchise shall be reimbursed to the county by the company. Such costs shall include, but not be limited to, court costs and reasonable attorney fees.
(Ord. of 2-7-1983, § 19)

Sec. 24-19. Assignment for financing.

The company may assign or hypothecate its interest in this franchise to a financial institution for the purpose of obtaining financing; provided, however, that funds obtained from such financing shall be utilized in



the construction and operation of the cable television system.
(Ord. of 2-7-1983, § 20)

Sec. 24-20. Renegotiation.

The field of cable communications is a relatively new and rapidly changing field which shall no doubt see many regulatory, technical, financial, marketing and legal changes during the term of a franchise period. Therefore, in order to provide for a maximum degree of flexibility in a franchise and to help achieve a continued advanced and modern system for the county, the company shall be subject to the following renegotiation provisions:

- (1) The county and the company shall hold renegotiation sessions at the request of either within 30 days of such request, provided that there shall be no obligation to hold such a session more frequently than every two years.
- (2) The following topics shall be discussed at such renegotiation sessions: Service rate structure, the state of the arts, free or discounted services, application of new technologies, system performances, services provided, programming offered, customer complaints, privacy in human rights, judicial and FCC rulings, and other topics as may be deemed appropriate.

(Ord. of 2-7-1983, § 21)

Sec. 24-21. Recourse against county.

The franchisee shall have no recourse whatsoever against the county or its officers, board, commission, agents or employees for any loss, cost, expense or damages arising out of any provision or requirement of this franchise or because of its enforcement.

(Ord. of 2-7-1983, § 22)

Sec. 24-22. Separability of chapter provisions.

If any section or part of this chapter or the franchise, shall be held invalid or in conflict with mandatory FCC regulations, such part shall be deemed to be of no effect and such invalidity shall not affect the remaining sections or portions of this chapter.

(Ord. of 2-7-1983, § 23)

Sec. 24-23. Necessity of franchise.

It shall be unlawful for any person to own, operate, or construct a cable television system in the county except pursuant to a franchise agreement granting the right to do so between the county and the company, which agreement shall be subject to the terms of this chapter, as amended from time to time.

(Ord. of 2-7-1983, § 24)