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By: **Delegates Valderrama, Patterson, Proctor, Vallario, and Hill**

Introduced and read first time: February 9, 2001

Assigned to: Commerce and Government Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Cable Television - Low Power Television - Universal Access**

3 FOR the purpose of requiring carriage of certain video programming of certain low  
4 power stations on certain cable systems franchised in the State, with certain  
5 exceptions; authorizing a franchising authority to identify certain low power  
6 stations for inclusion in certain cable system programming carriage and to  
7 require carriage on certain terms and conditions; providing certain remedies for  
8 certain violations of this Act, including civil action and injunction; providing  
9 that certain powers of counties and municipal corporations to grant certain  
10 franchises are subject to the requirements of this Act; providing for the  
11 prospective application of this Act; providing that existing obligations or  
12 contract rights may not be impaired in any way by this Act; and generally  
13 relating to cable television systems and low power stations.

14 BY adding to

15 Article - Commercial Law

16 Section 11-1501 through 11-1504, inclusive, to be under the new subtitle

17 "Subtitle 15. Cable Systems - Universal Access by Low Power Stations"

18 Annotated Code of Maryland

19 (2000 Replacement Volume and 2000 Supplement)

20 BY repealing and reenacting, with amendments,

21 Article 23A - Corporations - Municipal

22 Section 2(b)(13)

23 Annotated Code of Maryland

24 (1998 Replacement Volume and 2000 Supplement)

25 BY repealing and reenacting, with amendments,

26 Article 25 - County Commissioners

27 Section 3C(b)

28 Annotated Code of Maryland

29 (1998 Replacement Volume and 2000 Supplement)

1 BY repealing and reenacting, with amendments,  
2 Article 25A - Chartered Counties of Maryland  
3 Section 5(B)  
4 Annotated Code of Maryland  
5 (1998 Replacement Volume and 2000 Supplement)

6 BY repealing and reenacting, without amendments,  
7 Article 25B - Home Rule for Code Counties  
8 Section 13  
9 Annotated Code of Maryland  
10 (1998 Replacement Volume and 2000 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article - Commercial Law**

14 **SUBTITLE 15. CABLE SYSTEMS - UNIVERSAL ACCESS BY LOW POWER STATIONS.**

15 11-1501.

16 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
17 INDICATED.

18 (B) "AFFILIATE" MEANS A PERSON WHO DIRECTLY OR INDIRECTLY  
19 CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH ANOTHER  
20 PERSON.

21 (C) "CABLE OPERATOR" MEANS A PERSON WHO:

22 (1) PROVIDES SERVICE OVER A CABLE SYSTEM AND DIRECTLY OR  
23 THROUGH AN AFFILIATE OWNS A SIGNIFICANT INTEREST IN THE CABLE SYSTEM; OR

24 (2) OTHERWISE CONTROLS OR IS RESPONSIBLE FOR THE MANAGEMENT  
25 AND OPERATION OF THE CABLE SYSTEM.

26 (D) "CABLE SERVICE" MEANS:

27 (1) THE ONE-WAY TRANSMISSION OF VIDEO PROGRAMMING OR OTHER  
28 PROGRAMMING SERVICE TO SUBSCRIBERS; AND

29 (2) ANY SUBSCRIBER INTERACTION REQUIRED FOR THE USE OF THE  
30 VIDEO PROGRAMMING OR OTHER PROGRAMMING SERVICE.

31 (E) (1) "CABLE SYSTEM" MEANS A FACILITY THAT CONSISTS OF A SET OF  
32 CLOSED TRANSMISSION PATHS AND ASSOCIATED SIGNAL GENERATION, RECEPTION,  
33 AND CONTROL EQUIPMENT DESIGNED TO PROVIDE CABLE SERVICE WHICH

1 INCLUDES VIDEO PROGRAMMING AND WHICH IS PROVIDED TO MULTIPLE  
2 SUBSCRIBERS IN A COMMUNITY.

3 (2) "CABLE SYSTEM" INCLUDES A FACILITY OF A COMMON CARRIER  
4 THAT IS SUBJECT TO 47 U.S.C. CHAPTER 5, SUBCHAPTER II TO THE EXTENT THAT THE  
5 FACILITY IS USED IN THE TRANSMISSION OF VIDEO PROGRAMMING DIRECTLY TO  
6 SUBSCRIBERS EXCEPT FOR USE SOLELY FOR INTERACTIVE ON-DEMAND SERVICES.

7 (3) "CABLE SYSTEM" DOES NOT INCLUDE:

8 (I) A FACILITY THAT ONLY RETRANSMITS THE TELEVISION  
9 SIGNALS OF ONE OR MORE TELEVISION BROADCAST STATIONS;

10 (II) A FACILITY THAT SERVES SUBSCRIBERS WITHOUT USING A  
11 PUBLIC RIGHT-OF-WAY;

12 (III) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,  
13 A FACILITY OF A COMMON CARRIER THAT IS SUBJECT TO 47 U.S.C. CHAPTER 5,  
14 SUBCHAPTER II;

15 (IV) AN OPEN VIDEO SYSTEM THAT COMPLIES WITH 47 U.S.C. § 573;  
16 OR

17 (V) A FACILITY OF AN ELECTRIC UTILITY THAT IS USED SOLELY  
18 FOR OPERATING ITS ELECTRIC UTILITY SYSTEM.

19 (F) (1) "FRANCHISE" MEANS AN AUTHORIZATION OR RENEWAL OF  
20 AUTHORIZATION TO CONSTRUCT OR OPERATE A CABLE SYSTEM THAT IS ISSUED BY A  
21 FRANCHISING AUTHORITY.

22 (2) "FRANCHISE" INCLUDES A PERMIT, LICENSE, RESOLUTION,  
23 CONTRACT, CERTIFICATE, AGREEMENT, OR OTHER DESIGNATION.

24 (G) "FRANCHISING AUTHORITY" MEANS A GOVERNMENTAL UNIT THAT  
25 FEDERAL, STATE, OR LOCAL LAW AUTHORIZES TO GRANT A FRANCHISE.

26 (H) "QUALIFIED LOW POWER STATION" HAS THE MEANING STATED IN 47 U.S.C.  
27 § 534.

28 (I) "VIDEO PROGRAMMING" MEANS PROGRAMMING PROVIDED BY, OR  
29 GENERALLY CONSIDERED COMPARABLE TO PROGRAMMING PROVIDED BY, A  
30 TELEVISION BROADCAST STATION.

31 11-1502.

32 (A) A FRANCHISING AUTHORITY THAT GRANTS A FRANCHISE FOR A CABLE  
33 SYSTEM SHALL REQUIRE THE CABLE OPERATOR TO CARRY IN ITS ENTIRETY, AS A  
34 CONDITION OF EXERCISING THE FRANCHISE, VIDEO PROGRAMMING BY:

35 (1) QUALIFIED LOW POWER STATIONS THAT BROADCAST TO THE AREA  
36 COVERED BY THE FRANCHISING AUTHORITY; AND

1           (2)     OTHER LOW POWER STATIONS, BROADCASTING IN OTHER AREAS,  
2 THAT THE FRANCHISING AUTHORITY IDENTIFIES IN ACCORDANCE WITH THIS  
3 SECTION.

4     (B)     A FRANCHISING AUTHORITY MAY IDENTIFY A LOW POWER STATION FOR  
5 INCLUSION IN THE VIDEO PROGRAMMING AVAILABLE ON A CABLE SYSTEM ON ITS  
6 OWN INITIATIVE, OR IN RESPONSE TO PETITION OF POTENTIAL USERS OF THE CABLE  
7 SYSTEM IN THE FRANCHISED AREA, IN ACCORDANCE WITH PROCEDURES ADOPTED  
8 BY THE FRANCHISING AUTHORITY.

9     (C)     CRITERIA FOR IDENTIFYING A LOW POWER STATION UNDER THIS  
10 SECTION MAY INCLUDE:

11           (1)     THE PRESENCE OF A SIGNIFICANT ETHNIC OR MINORITY  
12 COMMUNITY IN THE FRANCHISE AREA THAT MAY BE SERVED BY THE VIDEO  
13 PROGRAMMING OF THE LOW POWER STATION;

14           (2)     RELEVANCE OF THE VIDEO PROGRAMMING OF THE LOW POWER  
15 STATION TO ISSUES AND COMMUNITIES IN THE FRANCHISE AREA;

16           (3)     ABSENCE OF SIMILAR CONTENT IN THE VIDEO PROGRAMMING  
17 OTHERWISE CARRIED BY THE CABLE OPERATOR;

18           (4)     PROMOTION OF DIVERSITY IN VIDEO PROGRAMMING AVAILABLE ON  
19 THE CABLE SYSTEM, INCLUDING MULTICULTURAL PROGRAMMING ELEMENTS; AND

20           (5)     ANY OTHER CRITERIA THAT THE FRANCHISING AUTHORITY  
21 CONSIDERS PERTINENT.

22     (D)     THE FRANCHISING AUTHORITY MAY REQUIRE THE CABLE OPERATOR TO  
23 CARRY VIDEO PROGRAMMING UNDER THIS SECTION ON THE SAME OR SIMILAR  
24 TERMS AND CONDITIONS AS THOSE ON WHICH THE CABLE OPERATOR CARRIES  
25 OTHER SPECIFIC VIDEO PROGRAMMING.

26     (E)     NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION:

27           (1)     A QUALIFIED LOW POWER STATION OR OTHER LOW POWER STATION  
28 IDENTIFIED UNDER THIS SECTION MAY NOT BE REQUIRED TO PROVIDE VIDEO  
29 PROGRAMMING FOR CARRIAGE ON A CABLE SYSTEM WITHOUT CONSENT OF THE  
30 LOW POWER STATION; AND

31           (2)     A CABLE OPERATOR MAY NOT BE REQUIRED TO CARRY VIDEO  
32 PROGRAMMING OF A LOW POWER STATION THAT DOES NOT CONSENT TO CARRIAGE  
33 OF ITS VIDEO PROGRAMMING ON THE CABLE SYSTEM.

34 11-1503.

35     (A)     A QUALIFIED LOW POWER STATION OR OTHER LOW POWER STATION  
36 IDENTIFIED UNDER § 11-1502 OF THIS SUBTITLE THAT HAS BEEN DENIED ACCESS TO  
37 CARRIAGE OF ITS VIDEO PROGRAMMING ON A CABLE SYSTEM IN VIOLATION OF THIS

1 SUBTITLE MAY BRING A CIVIL ACTION TO ENFORCE ITS RIGHTS UNDER THIS  
2 SUBTITLE AND TO SEEK OTHER APPROPRIATE RELIEF, INCLUDING MONETARY  
3 DAMAGES AND INJUNCTION.

4 (B) IN A CIVIL ACTION UNDER THIS SECTION, THE COURT MAY AWARD COSTS  
5 AND REASONABLE ATTORNEY'S FEES TO THE PREVAILING PARTY.

6 11-1504.

7 (A) IN ADDITION TO ANY OTHER AVAILABLE PENALTIES OR ENFORCEMENT, A  
8 FRANCHISING AUTHORITY MAY BRING AN ACTION TO ENFORCE THE REQUIREMENTS  
9 OF THIS SUBTITLE AND TO SEEK APPROPRIATE RELIEF, INCLUDING INJUNCTION.

10 (B) THE FRANCHISING AUTHORITY MAY REQUIRE THE CABLE OPERATOR AND  
11 THE LOW POWER STATION TO SUBMIT TO MEDIATION OR BINDING ARBITRATION OF  
12 A DISPUTE UNDER THIS SUBTITLE.

13 **Article 23A - Corporations - Municipal**

14 2.

15 (b) In addition to, but not in substitution of, the powers which have been, or  
16 may hereafter be, granted to it, such legislative body also shall have the following  
17 express ordinance-making powers:

18 (13) To grant franchises as provided under existing public general or  
19 public local laws; to grant one or more exclusive or nonexclusive franchises for a  
20 community antenna system or other cable television system that utilizes any public  
21 right-of-way, highway, street, road, lane, alley, or bridge, to impose franchise fees,  
22 and, SUBJECT TO TITLE 11, SUBTITLE 15 OF THE COMMERCIAL LAW ARTICLE, to  
23 establish rates, rules, and regulations for franchises granted under this section.

24 **Article 25 - County Commissioners**

25 3C.

26 (b) The county commissioners may grant one or more exclusive or  
27 nonexclusive franchises for a community antenna system or other cable television  
28 system that utilizes any public right-of-way, highway, street, road, lane, alley, or  
29 bridge, may impose franchise fees, and, SUBJECT TO TITLE 11, SUBTITLE 15 OF THE  
30 COMMERCIAL LAW ARTICLE, may establish rates, rules, and regulations for  
31 franchises granted under this subsection.

32 **Article 25A - Chartered Counties of Maryland**

33 5.

34 The following enumerated express powers are granted to and conferred upon  
35 any county or counties which hereafter form a charter under the provisions of Article  
36 XI-A of the Constitution, that is to say:

1

(B)

2 To provide for the protection of the county property; to provide for the  
3 acquisition by purchase, lease, or otherwise, and condemnation of property required  
4 for public purposes in the county; to dispose of any real or leasehold property  
5 belonging to the county, provided the same is no longer needed for public use; to  
6 provide for the financing of any housing or housing project in whole or in part,  
7 including the placement of a deed of trust, mortgage, or other instrument upon the  
8 property to ensure repayment of funds used to purchase, construct, rehabilitate, or  
9 otherwise develop the housing project; to grant any franchise or right to use the same,  
10 or any right or franchise in relation to any highway, street, road, lanes, alley or  
11 bridge; to grant one or more exclusive or nonexclusive franchises for a community  
12 antenna system or other cable television system that utilizes any public right-of-way,  
13 highway, street, road, lane, alley, or bridge, to impose franchise fees, and, SUBJECT TO  
14 TITLE 11, SUBTITLE 15 OF THE COMMERCIAL LAW ARTICLE, to establish rates, rules,  
15 and regulations for franchises granted; and to provide for the leasing as lessor to the  
16 State or any political subdivision or other agency thereof, or to any county agency, or  
17 to any person, any property belonging to the county or any agency thereof, in  
18 furtherance of the public purposes of such county or agency, upon such terms and  
19 compensation as said county may deem proper, and after such disposition, grant or  
20 lease shall have been advertised once a week for three successive weeks in one or  
21 more newspapers of general circulation published in said county, stating the terms  
22 thereof and the compensation to be received therefor, and giving opportunity for  
23 objections thereto. Provided, however, that easements for public utilities may be  
24 granted without advertisement.

25

**Article 25B - Home Rule for Code Counties**

26 13.

27 If a county adopts code home rule status under the provisions of Article XI-F of  
28 the Constitution of the State and this article, it may exercise those powers  
29 enumerated in § 3 of Article 25, in subtitle "Draining Lands" of Article 25, and in § 5  
30 of Article 25A, except for subsections (A), (P) and (S) of § 5 of Article 25A, of the  
31 Annotated Code of Maryland, 1957 Edition as amended; and no county adopting code  
32 home rule status shall be excepted. These powers are in addition to any powers any  
33 county may now have under any public general or local law applicable to the county.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
35 construed only prospectively and may not be applied or interpreted to have any effect  
36 on or application to any cable television franchising agreement in effect before the  
37 effective date of this Act.

38 SECTION 3. AND BE IT FURTHER ENACTED, That a presently existing  
39 obligation or contract right may not be impaired in any way by this Act.

40 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
41 October 1, 2001.