

CHAPTER 5

Franchises and Communication Systems

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ARTICLE I

Emergency Telephone System

Sec. 5-1-10. Authority.

Article 11 of Title 29, C.R.S., governs the establishment of emergency telephone service under the familiar 911 emergency assistance. The provision for payment for such services is contemplated by Section 29-11-102, C.R.S., and also by the terms of the intergovernmental agreement to be entered into with the County. The City Council finds that it is in the best interest of the City, its residents and property owners to establish such emergency 911 service, assess such charges and have a service provider collect such fees in order to protect the general health, safety and welfare. (Ord. 97-10 Art. 1; Ord. 04-17 §1)

Sec. 5-1-20. Imposition of service charge.

There is hereby imposed upon every billable service user within the City a monthly emergency telephone service access charge. Telephone service providers supplying telephone service in the City are hereby authorized to collect the emergency telephone access charge imposed by this Article in accordance with Section 29-11-101, C.R.S., et seq. The proceeds of such charge shall be utilized to pay emergency telephone service as provided by the Douglas County Emergency Telephone Service Authority and shall, upon collection thereof by the telephone service provider be remitted to the Douglas County Emergency Telephone Service Authority for services rendered. (Ord. 97-10 Art. 2)

Sec. 5-1-30. Establishment of annual rate.

Service users shall be charged the lesser of: two percent (2%) of the tariff rate as approved by the Public Utilities Commission; or the minimum service charge imposed within any other participating jurisdiction within the County for the same service pursuant to the Intergovernmental Agreement creating the Douglas County Emergency Telephone Service. (Ord. 97-10 Art. 3; Ord. 04-17 §1)

Sec. 5-1-40. Use of funds.

The funds collected hereunder shall be utilized for payment to the Douglas County Emergency Service Authority for the purposes set forth in an Intergovernmental Agreement, and shall only be used to pay for the equipment costs, installation costs and monthly recurring charges billed by the service providers to the Douglas County Emergency Telephone Service Authority. (Ord. 97-10 Art. 4)

Sec. 5-1-50. Administrative fee.

In consideration for the billing, collection and remittance of the fee assessed hereunder, the service supplier for the City shall be entitled to deduct therefrom an amount for the payments of its actual costs of administration for the users within the City. (Ord. 97-10 Art. 5)

ARTICLE II

Cable Television Franchise Instructions

Sec. 5-2-10. Instructions and definitions.

(a) An applicant for a competitive cable franchise ("Applicant") shall include in its franchise application, in writing, the requisite information set forth below in addition to any information required by 47 C.F.R. § 76.41 and applicable state and local laws. The Applicant shall also include with its application the application fee set by resolution of the City.

(b) The City shall accept and review only those applications that include complete responses to every requirement of Sections 5-2-20, 5-2-30, 5-2-40 and 5-2-50 below. Submission of an application that does not include the requisite information set forth in Sections 5-2-20, 5-2-30, 5-2-40 and 5-2-50 below, and the application fee, shall not commence the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d). The Applicant shall submit additional or updated information as necessary to ensure that the information provided is complete and accurate throughout the City's review of the application.

(c) Applications shall be made to the City's Administration Department, 9220 Kimmer Drive, Lone Tree, Colorado 80124.

(d) Upon request, the City shall promptly provide access to documents or information in its possession or control that are necessary for the completion of the application, provided that the Applicant does not otherwise have access to such documents or information and that such documents or information is subject to disclosure under Colorado open records laws.

(e) For purposes of the application, the terms, phrases and their derivations set forth below shall have the meanings given unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, 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.

Affiliated Entity or *Affiliate* means any entity having ownership or control in common with the Applicant, in whole or in part, including, without limitation, the Applicant's Parent Corporations and any subsidiaries or affiliates of such Parent Corporations.

Applicant means any person or entity which applies for a cable franchise pursuant to the provisions of the Competitive Franchise Application Rule ("CFAR") set forth in Part 76 of Title 47, C.F.R. § 76.41, and includes the Parent Corporation and its subsidiaries and Principals.

Control means not only majority stock ownership, but includes actual working control of an entity in whatever manner exercised.

Interest means five percent (5%) or more of the Applicant's outstanding stock or any equivalent voting interest of a partnership or joint venture owned by officers, directors and shareholders.

Parent Corporation means any entity with ownership or control of the Applicant.

Principal means any person, firm, corporation, partnership, joint venture, affiliate or other entity, who or which owns or controls five percent (5%) or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of the Applicant.

Regulatory Authority means any governmental or quasi-governmental organization or entity with jurisdiction over all or any portion of the Applicant or its operations. (Ord. 07-12 Art. 4)

Sec. 5-2-20. Required information.

(a) Identification and ownership information. The application shall include:

(1) The name, address, telephone number and web site (if applicable) of the Applicant and the proposed franchisee (if different from the Applicant); and

(2) The name, address, primary telephone number and primary e-mail address of all individuals authorized to represent the Applicant before the City during its consideration of the franchise(s) requested, including the Applicant's primary contact and any additional authorized contacts.

(b) Business structure.

(1) If the Applicant is a corporation, it shall provide:

a. The names of all officers and members of the corporation's board of directors and their principal affiliations and addresses;

b. A certificate of good standing indicating that the Applicant is licensed to do business in the State; and

c. A statement indicating whether the Applicant is directly or indirectly controlled by another corporation or legal entity. If so, the Applicant shall attach an explanatory statement and respond to Subparagraphs (1)a and b above concerning the controlling corporation.

(2) If the Applicant is a partnership, it shall:

a. Describe the structure of the partnership and the interests of general and limited partners; and

b. State whether the Applicant is controlled directly or indirectly by any corporation or other legal entity. If so, the Applicant shall attach an explanatory statement and respond to Subparagraphs (1)a and b or (2)a above, as applicable, concerning the controlling entity.

(c) Experience.

(1) Current franchises. An Applicant shall list all cable systems in which it or any Affiliate owns more than five percent (5%) of the system. For each system, the Applicant shall include the name of the system, address, communities served, number of subscribers, number of homes passed, date of system award, duration (start and end date) of franchise, status of construction and percent of penetration of homes passed as of the most recently available date (indicate date).

(2) Potential franchises. An Applicant shall list communities where it or any Affiliate currently has a formal or informal request pending for an initial franchise, the renewal of a franchise or the approval of a transfer of ownership. The Applicant shall include the names of communities, date of application and date of expected action.

(d) Management structure. Every application for a competitive franchise shall include a management and organizational chart showing the management structure of the Applicant. A similar chart shall also be provided showing the relationship of the Applicant to all general partners, Parent Corporations, subsidiaries, Affiliates and all other subsidiaries of Parent Corporations, including a brief description of each entity's relationship to the Applicant. (Ord. 07-12 Art. 5)

Sec. 5-2-30. Legal qualifications.

(a) Media cross-ownership.

(1) Section 613 of the Cable Communications Policy Act of 1984, 47 U.S.C. § 533(a), and applicable FCC rules prohibit certain forms of media cross-ownership. An Applicant shall state whether it or an Affiliate directly or indirectly owns, operates, controls or has an Interest in any of the following, or whether the Applicant holds or operates any company or business operating jointly with any of the following:

a. A national broadcast television network, such as ABC, CBS or NBC.

b. A television broadcast station with predicted Grade B contour computed in accordance with Section 73.684 of the FCC's rules that overlaps in whole or in part with the City's service area, or an application for a license to operate such a station.

c. A telecommunications or telephone company with a service area that includes any portion of the City's service area.

(2) If the response to any of Subparagraphs (1)a through (1)c above is affirmative, the Applicant shall state the name of the Applicant or Affiliate, the nature and percentage of ownership or interest and the company that is owned or in which the interest is held.

(b) Franchise violations. An Applicant shall state whether it or any Affiliate has been found in violation by a Regulatory Authority or franchising authority of any franchise ordinance or agreement, contract or regulation governing a cable system. If so, the Applicant shall identify the judicial or administrative proceeding, the date of the proceeding, the name of the tribunal and the result or disposition of the proceeding.

(c) Other violations. An Applicant shall state whether it has been found in violation by a Regulatory Authority of any other type (e.g., utility) of franchise, ordinance, agreement, permit, contract or regulation. If so, the Applicant shall identify the judicial or administrative proceeding, the date of the proceeding, the name of the tribunal, and the result or disposition of that proceeding. (Ord. 07-12 Art. 6)

Sec. 5-2-40. Financial qualifications.

(a) Unless SEC Forms 10K and 10Q are available on the EDGAR database, Applicants with existing operations shall provide audited financial statements, including statements of income, balance sheets and cash flow statements, together with any notes necessary to the understanding of the financial statements for the last three (3) fiscal years for the Applicant and any Parent Corporation.

(b) Applicants which are new (start-up) entities shall provide pro forma projections for the next five (5) fiscal years, if available, but at a minimum the next three (3) fiscal years from the date of the application. (Ord. 07-12 Art. 7)

Sec. 5-2-50. Technical qualifications, planned services and operations.

(a) The application shall describe the Applicant's planned initial and proposed cable services geographic area, including a map of all areas proposed to be served and proposed dates for offering service to each area. The application shall additionally state whether the Applicant proposes to provide cable services to the entire franchise area and, if so, a proposed timetable for meeting that goal.

(b) If the Applicant has or asserts existing authority to access the public right-of-way in any of the initial or proposed service areas listed in Subsection (a) above, the Applicant shall state the basis for such authority or asserted authority and attach the relevant agreements or other documentation of such authority.

(c) The Applicant shall describe with particularity its planned residential cable services, including basic cable services, other cable programming service tiers, any additional pay-per-view, on-demand or digital services, and the projected rates for each category, tier or service.

(d) The Applicant shall describe with particularity its planned system technical design, upstream and downstream capacity and speed, provision for analog or digital services or packages, distribution of fiber, planned count of households per residential node and any other information necessary to demonstrate that the Applicant's technology will be deployed so as to be able to successfully offer cable services in the proposed locations.

(e) The Applicant shall describe with particularity its planned nonresidential cable services.

(f) The Applicant shall describe its planned construction and extension or phase schedule, as applicable, including system extension plans or policy, and describe the current status of the Applicant's existing or proposed arrangements with area utilities, including pole attachments, vault or conduit sharing agreements as applicable.

(g) The Applicant shall describe its plan to ensure that the safety, functioning and appearance of property and convenience and safety of other persons will not be adversely affected by installation or construction of the Applicant's facilities, and that property owners will be justly compensated for any damages caused by the installation, construction, operation or removal of the facilities.

in connection with a request to disclose information deemed proprietary by the Applicant, including but not limited to any expenses, including out-of-pocket costs and attorneys' fees, as well as any judgment entered against the City for the attorneys' fees of the party requesting disclosure. (Ord. 07-12 Art. 10)

Sec. 5-2-80. Application fee.

The City shall, by resolution, set an application fee sufficient to cover the reasonable cost of processing applications under this Article. Upon request of the Applicant, the City may reduce or waive the application fee. In evaluating such a request, the City will consider the following factors: (1) the size of the proposed franchise area; (2) the number of potential subscribers in the proposed franchise area; (3) the financial hardship to the Applicant (including any Parent Corporation or Affiliate); and (4) other information relevant to the cost of processing the application and the Applicant's ability to pay the fee. (Ord. 07-12 Art. 11)

Sec. 5-2-90. Review process.

(a) Acceptance of application.

(1) Within five (5) business days of receipt of an application, the City shall review the application to ensure that all requisite information is included in the application.

(2) If the application is not complete, the City shall notify the Applicant in writing, listing the requisite information that is required to complete the application and notifying the Applicant that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) shall not begin to run until such information is received.

(3) If the application is complete, the City shall notify the Applicant in writing that all requisite information has been received.

(b) City review. The City, through its staff, shall review all completed applications based on the review criteria set forth herein. If, during the review of an application, City staff reasonably requires additional information from the Applicant, City staff shall, in writing, promptly request the information from the Applicant and notify the Applicant that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) shall be tolled until such information is received by the City. After completing the review, City staff shall provide an analysis of the application to the City Council.

(c) Franchise negotiations. Within the time period set forth in 47 C.F.R. § 76.41(d), the City shall attempt to negotiate a cable franchise agreement with the Applicant and, within that time period, schedule the application and any proposed franchise for public hearing as set forth in Section 5-2-100 below. (Ord. 07-12 Art. 12)

Sec. 5-2-100. Public hearing.

The City shall hold a public hearing before acting on the application, affording participants a process substantially equivalent to that required by 47 U.S.C. § 546(c)(2) governing renewal of cable franchises. (Ord. 07-12 Art. 13)

Sec. 5-2-110. Review criteria.

The City may deny an application if, based on the information provided in the application or at the public hearing, or on any terms of a proposed franchise agreement:

- (1) The Applicant does not have the financial, technical or legal qualifications to provide cable service;
- (2) The Applicant will not provide adequate public, educational and governmental access channel capacity, facilities or financial support; or
- (3) The Applicant's proposed terms do not comply with applicable federal, state and local laws and regulations, including but not limited to local customer service standards or relevant existing contractual obligations of the City. (Ord. 07-12 Art. 14)

Sec. 5-2-120. Non-CFAR franchise applications.

Notwithstanding any other provisions of this Article, any Applicant may elect to submit a cable franchise application to the City and engage in cable franchise negotiations to which the provisions of the CFAR shall not apply. In the event that the Applicant makes such an election, the City shall negotiate the terms of a competitive cable franchise to which the provisions of 47 C.F.R. § 76.41 and this Article shall not apply. Agreement by any Applicant to negotiate a franchise to which the provisions of 47 C.F.R. § 76.41 and this Article do not apply shall not be deemed a waiver of the Applicant's right under applicable law to trigger future application of the provisions of 47 C.F.R. § 76.41 and this Article, where appropriate. (Ord. 07-12 Art. 15)