

CHAPTER 5

Franchises and Communication Systems

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ARTICLE I

Cable Television Franchises

Sec. 5-1-10. Purpose.

The purpose of this Article is to ensure that a franchise is obtained for the construction and operation of all cable systems within the Town. (Ord. O-1 §1, 2009)

Sec. 5-1-20. Definitions.

For purposes of this Article, the following terms shall have the following meanings:

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 an applicant for a cable franchise pursuant to the Competitive Franchise Application Rule ("CFAR") set forth in 47 C.F.R. § 76.41, and includes the parent corporation, its subsidiaries and principals.

Cable operator means any person who provides cable service over a cable system and directly or through one (1) or more affiliates owns a significant interest in such cable system, or otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

Cable service means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable system shall be defined as such term is defined in the Federal Communications Act of 1934, 47 U.S.C. § 521, et seq.

Construct means and includes the installation of lines, fibers or facilities that are in or cross any of the streets, highways or public rights-of-way within the Town for use as part of a cable system or the connection of other facilities directly or indirectly to previously existing lines, fibers or facilities that are in or cross any streets, highways or public rights-of-way within the Town for use as part of a cable system.

Control is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

Franchise means an initial authorization or renewal thereof, issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of a cable system.

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

Multichannel video programming distributor means a person, such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

Other programming service means information that a cable operator makes available to all subscribers generally.

Parent corporation means any entity with ownership or control of the applicant.

Principal means any person, firm, corporation, partnership, joint venture, affiliates 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.

Video programming means programming provided by, or generally considered comparable to programming provided by, a television broadcast system. (Ord. 784 §§1, 2, 3, 1989; Ord. O-19 §1, 2003; Ord. O-1 §1, 2009)

Sec. 5-1-30. Construction.

No person shall construct a cable system to provide cable service in the Town without first obtaining a cable franchise authorizing the construction of such a system from the Town. (Ord. O-1 §1, 2009)

Sec. 5-1-40. Provision of service.

No multichannel video programming distributor shall provide cable service to any person in the Town, unless a franchise from the Town authorizing the provision of cable service is in full force and effect at all times while such service is being provided. (Ord. O-1 §1, 2009)

Sec. 5-1-50. Franchise application.

(a) Application. An application for a cable franchise shall be in writing and shall include:

(1) Identification and ownership information.

a. The name, address, telephone number and website of the applicant and the proposed franchisee, if different from the applicant; and

b. The name, address, telephone number and E-mail address of all individuals authorized to represent the applicant before the Town, including the applicant's primary contact and any additional authorized contacts.

(2) Business structure.

a. If a corporation:

1. A list of all officers and members of the board of directors, their principal affiliations and their addresses;

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

3. 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 include the information required by Subparagraphs 1. and 2. above for the controlling corporation.

b. If a partnership:

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

2. State whether it is controlled directly or indirectly by any corporation or other legal entity. If so, the applicant shall attach an explanatory statement and include the information required by Subparagraphs a.1. and a.2., or b.1. above for the controlling entity.

(3) Experience.

a. Current franchises. A list of all cable systems in which the applicant or any affiliate owns more than five percent (5%) of the system, including, for each system, the name of the system, address, communities served, number of subscribers, number of homes passed, date of system award, start and end date of franchise, status of construction and percent of penetration of homes passed as of the most recently available date.

b. Potential franchises. A list of all communities where the applicant 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, including the community name, date of application and date of expected action.

(4) Management structure. A management/ organizational chart, showing the management structure of the applicant, and a similar chart 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.

(5) Legal qualifications.

a. Media cross-ownership. 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. The 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 and, if so, 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:

1. A national broadcast television network (such as ABC, CBS or NBC, etc.);

2. A television broadcast station whose predicted Grade B contour, computed in accordance with § 73.684 of the FCC's rules, overlaps in whole or in part the Town's service area, or an application for license to operate such a station; or

3. A telecommunications or telephone company whose service area includes any portion of the Town's service area.

b. Franchise violations. The applicant shall state whether it or any affiliate has been found in violation of any franchise ordinance or agreement, contract or regulation governing a cable system. If so, the applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

c. Other violations. The applicant shall state whether it has been found in violation by a regulatory authority of any other ordinance, agreement, permit, contract or regulation. If so, the applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

(6) 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 that 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.

(7) Technical qualifications, planned services and operations. The application shall describe with particularity:

a. 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, including a statement as to 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 asserts existing authority to access the public right-of-way in any of the initial or proposed service areas listed in Subparagraph a. hereof, the basis for such authority and the relevant agreements or other documentation of such authority;

c. The applicant's planned residential cable service, including basic cable service, other cable programming service tiers and any additional pay-per-view, on-demand or digital services and the projected rates for each category or tier of service;

d. The applicant's 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 areas;

e. The applicant's planned nonresidential cable service;

f. The applicant's planned construction and extension or phase schedule, as applicable, including system extension plans or policy and 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's plan to ensure that the safety, functioning and appearance of property and convenience and safety of other persons not be adversely affected by installation or construction of the applicant's facilities, and that property owners are justly compensated for any damages caused by the installation, construction, operation or removal of the facilities; and

h. The applicant's plan to comply with the subscriber privacy protections of 47 U.S.C. § 551 and the privacy protections of the Town's local cable customer service standards.

(8) Affidavit. Each application shall be signed by an authorized representative of the applicant and accompanied by a notarized affidavit including the following statement:

"This application is submitted by the undersigned who has been duly authorized to make the representations within on behalf of the applicant and certifies the representations are true and correct. The applicant recognizes that all representations are binding on it, that all application commitments are enforceable and that material misrepresentations or omissions, or failure to adhere to any such representation, may result in a denial of an application by the Town. The applicant agrees to comply with all applicable local laws. Consent is hereby given to the Town and its representatives to make inquiry into the legal, character, technical, financial and other qualifications of the applicant by contacting any persons or organizations named herein as references, or by any other appropriate means."

(b) Access. Upon request, the Town shall promptly provide access to documents or information in its 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 are subject to disclosure under Colorado open records laws.

(c) Open records and confidentiality. Unless otherwise provided by law, information submitted with an application is open to public inspection and subject to the Colorado Open Records Act, Section 24-72-201, et seq., C.R.S., and it is the applicant's responsibility to be familiar with such Act. The applicant may specifically identify in writing any information it considers proprietary. If the Town receives a request from another party to disclose any information which the applicant has identified as proprietary, the Town shall tender to the applicant the defense of any request to compel disclosure. By submitting an application, the applicant agrees to defend and hold harmless the Town from any claim for disclosure, including but not limited to any expenses, including out-of-pocket

costs and attorney fees, as well as any judgment entered against the Town for the attorney fees of the party requesting disclosure.

(d) Fee. The Board of Trustees shall, by resolution, set an application fee sufficient to cover the reasonable cost of processing applications under this Section. Upon request of the applicant, the Board of Trustees may reduce or waive the application fee. In evaluating such a request, the Board of Trustees shall 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 or the applicant's ability to pay the fee.

(e) Procedure.

(1) Submission. Application shall be made to the Town Clerk.

(2) Acceptance.

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

b. If the application is not complete, the Town 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) will not begin to run until such information is received.

c. When the application is complete, the Town shall so notify the applicant in writing.

(3) Review. The Town shall review all completed applications based on the review criteria set forth in this Section. If, during the review of an application, the Town reasonably requires additional information from the applicant, staff will promptly request the information from the applicant, in writing, along with a notification that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will be tolled until such information is received by the Town.

(4) Negotiations. Within the time period set forth in 47 C.F.R. § 76.41(d), the Town shall attempt to negotiate a cable franchise agreement with the applicant and, within that time period, schedule the application for public hearing.

(f) Public hearing. The Board of Trustees shall hold a public hearing on the application, affording participants a process substantially equivalent to that required by 47 U.S.C. § 546(c)(2).

(g) Criteria. The Board of Trustees may deny an application if it finds that, based on the information provided in the application, at the public hearing or in the proposed franchise agreement:

(1) The applicant does not have the financial, technical or legal qualification to provide cable service in the Town;

(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 Town.

(h) Non-CFAR franchise applications. Notwithstanding any other provisions of this Section, any person may elect to submit a cable franchise application to the Town or engage in cable franchise negotiations without regard to the CFAR. In such cases, the Town will negotiate the terms of the cable franchise without regard to 47 C.F.R. § 76.41 and the other provisions of this Section. Agreement by an applicant to negotiate a franchise without regard to 46 C.F.R. § 76.41 and the other provisions of this Section shall not be deemed by the Town to effect a waiver of an applicant's right under applicable law to trigger application of 47 C.F.R. § 76.41 and this Section. (Ord. O-1 §1, 2009)

ARTICLE II

Gas and Electric Franchise

Sec. 5-2-10. Definitions.

For purposes of this Article, *gas or electric service* means the provision or delivery of natural gas or electricity to the Town via gas and electric facilities. (Ord. 93-O-2 §1.0, 1993; Ord. O-1 §1, 2009)

Sec. 5-2-20. Provision of service.

No person shall provide gas or electric service to any person in the Town unless a franchise from the Town authorizing the provision of such service is in full force and effect at all times while such service is being provided. (Ord. O-1 §1, 2009)

ARTICLE III

Emergency Telephone Charge

Sec. 5-3-10. Boulder Regional Emergency Telephone Service Authority.

The Boulder Regional Emergency Telephone Service Authority has been created by an Intergovernmental Agreement among the Town and the County of Boulder, the City of Boulder, the City of Lafayette, the City of Longmont, the City of Louisville, the Town of Erie, the Town of Jamestown, the Town of Lyons, the Town of Nederland, the Town of Superior, the Regents of the University of Colorado, Allenspark Fire Protection District, Berthoud Fire Protection District, Big Elk Meadows Volunteer Fire Department, Boulder Mountain Fire Authority, Boulder Rural Fire Protection District, Rocky Mountain Fire District, Coal Creek Fire Protection District, Four Mile Fire Protection District, Gold Hill Fire Protection District, High Country Fire Protection District, Hygiene

Fire Protection District, Indian Peaks Fire Protection District, Jamestown Volunteer Fire Department, Lefthand Fire Protection District, Mountain View Fire Protection District, Louisville Fire Protection District, Lyons Fire Protection District, Nederland Fire Protection District, Pinewood Springs Fire Protection District, Sugarloaf Fire Protection District, Sunshine Fire Protection District and North Metro Fire Protection District, as approved by Resolution No. 658 on September 14, 1987, as such Agreement has been amended since by the Authority Board as authorized by Section 29-11-101, et seq. C.R.S. (Ord. 658 §1, 1987; Ord. O-7 §1, 2003; Ord. O-1 §1, 2009)

Sec. 5-3-20. Charge imposed.

There is hereby imposed, upon all telephone exchange access facilities within the Town, an emergency telephone charge in an amount not to exceed the statutory limit. The actual amount of the charge shall be as determined periodically by the Authority Board in accordance with the Intergovernmental Agreement and the Act referred to in this Article. (Ord. 818 §1, 1989; Ord. O-7 §2, 2003; Ord. O-1 §1, 2009)

Sec. 5-3-30. Collection authorized.

Telephone service suppliers providing telephone service in the Town are hereby authorized to collect the emergency telephone charge imposed by this Article in accordance with Section 29-11-101, et seq., C.R.S. (Ord. 658 §3, 1987; Ord. O-7 §3, 2003; Ord. O-1 §1, 2009)

Sec. 5-3-40. Use of emergency telephone charge proceeds.

The proceeds from the emergency telephone charge shall be collected and administered by the Authority Board according to the terms of the Intergovernmental Agreement and the Act referred to in this Article. (Ord. O-7 §4, 2003; Ord. O-1 §1, 2009)