

ARTICLE II. GRANT OF FRANCHISE

Sec. 7.5-20. Franchise required

It shall be unlawful for any person to construct, install, maintain, or operate a cable television system in the unincorporated areas of the county within any street without a franchise awarded pursuant to the provisions of this Chapter.

(Ord. No. 1408, §1)

Sec. 7.5-21. Franchise to Install and Operate

A franchise granted by the board of supervisors under the provisions of this Chapter shall set forth the obligations of a Grantee and shall authorize the Grantee to do the following:

- (a) Engage in the business of providing cable television service, and such other services as may be permitted by law, to subscribers within the designated service area.
- (b) Erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain cable, lines related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of a cable system in, on, over, under, upon, along, and across streets or other public places within the designated service area.
- (c) Operate said franchise property for the origination, reception, transmission, amplification, and distribution of television and radio signals and for the delivery of cable services.

(Ord. No. 1408, §1)

Sec. 7.5-22. Franchise territory

A franchise shall be valid within that unincorporated area of the county described in the franchise agreement, generally adjacent to a specific city.

(Ord. No. 1408, §1)

Sec. 7.5-23. Term of franchise

- (a) A franchise granted hereunder shall be for the term established in the franchise agreement.
- (b) A franchise granted hereunder may be renewed upon application of the Grantee pursuant to the provisions of this Chapter and applicable state and federal law.

(Ord. No. 1408, §1)

Sec. 7.5-24. Geographical coverage

(a) Grantee shall design, construct, and maintain the cable television system to have the capability to pass every dwelling unit presently and hereafter constructed within the defined franchise area of the unincorporated areas of the county, unless otherwise provided in the franchise agreement.

(b) After service has been established by activating trunk and distribution cables for any service area, Grantee shall provide service to any requesting subscriber within that service area within seven (7) working days from the date of a written request; provided, that the Grantee is able to secure all rights-of-way necessary to extend service to such subscriber within such seven (7) working-day period on reasonable terms and conditions.

(Ord. No. 1408, §1)

Sec. 7.5-25. Nonexclusive franchise

Any franchise granted shall be nonexclusive. The Grantor specifically reserves the right to grant, at any time, such additional franchises for a cable television system or any component thereof, as it deems appropriate, subject to applicable state and federal law and this Chapter.

(Ord. No. 1408, §1)

Sec. 7.5-26. Multiple franchises

(a) Grantor may grant any number of franchises on a county-wide or limited-area basis. Grantor may limit the number of the requirements of applicable law and specific local considerations, such as:

(1) the capacity of the public rights-of-way to accommodate multiple coaxial cables in addition to the cables, conduits, and pipes of the utility systems, such as electrical power, telephone, gas and sewerage.

(2) The benefits that may accrue to cable subscribers as a result of cable system competition, such as lower rates and improved service.

(3) The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.

(b) Each Grantee awarded a franchise to serve a defined unincorporated area of the county shall offer service to all residences in that unincorporated area, in accordance with construction and service schedules mutually agreed upon between Grantor and Grantee, and consistent with applicable law.

(c) Grantor may require that any new Grantee be responsible for its own underground trenching and the costs associated therewith, if, in Grantor's opinion, the

rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.

(Ord. No. 1408, §1)

Sec. 7.5-27. Franchise applications

Any person desiring a franchise or to renew a franchise for a Cable Television System shall file an application with the county. A reasonable nonrefundable application fee established by resolution shall accompany the application or renewal application to cover all costs associated with processing and reviewing the application; including, without limitation, costs of administrative review, financial, legal and technical evaluation of the applicant; consultants (including technical and legal experts and all costs incurred by such experts); notice and publication requirements with respect to the consideration of the application and document preparation expenses. In the event such costs exceed the application fee, the selected applicant(s) shall pay the difference to the county within thirty (30) days following receipt of an itemized statement of such costs.

(Ord. No. 1408, §1)

Sec. 7.5-28. Applications - contents

An application for a franchise or renewal of a franchise for a Cable Television System shall contain:

- (a) A statement as to the proposed franchise and service area.
- (b) Resume of prior history of applicant, including the expertise of applicant in the cable television field.
- (c) List of partners, general and limited, of the applicant, if a partnership; or the percentage of stock owned or controlled by each shareholder to the extent known by the corporation, if a corporation.
- (d) List of officers, directors and managing employees of applicant, together with a description of the background of each such person.
- (e) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling applicant in whole or in part, or owned or controlled in whole or in part by applicant.
- (f) A current financial statement of applicant verified by a CPA audit or otherwise certified to be true, complete, and correct to the reasonable satisfaction of the county.
- (g) Proposed construction and service and/or system upgrade schedule.
- (h) Proposed public, educational or governmental access facilities.

(i) Any additional information that the county reasonably deems applicable.

(Ord. No. 1408, §1)

Sec. 7.5-29. Consideration of applications for franchise

(a) Upon receipt of any application for a franchise, the director of general services shall prepare a report and make recommendations respecting such application to the board of supervisors.

(b) A public hearing shall be set prior to any franchise grant, at a time and date approved by the board of supervisors. Within thirty (30) days after the close of the hearing, the board of supervisors shall make a decision based upon the evidence received at the hearing as to whether or not the franchise should be granted and, if granted, subject to what conditions. The board of supervisors may grant one or more franchises, or may decline to grant any franchise.

(Ord. No. 1408, §1)

Sec. 7.5-30. Franchise renewal

Franchise renewals shall be in accordance with applicable law, including, but not necessarily limited to, the Cable Communications Policy Act of 1984. Grantor and Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. Grantee shall reimburse Grantor for costs associated with its renewal application as provided in Section 7.5-27.

(Ord. No. 1408, §1)

Sec. 7.5-31. Franchise non-transferable

(a) Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the franchise or any of the rights or privileges therein granted, without the prior written consent of the board of supervisors and then only upon such terms and conditions as may be prescribed by the board, which consent shall not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise without the consent of the board of supervisors shall be null and void. The granting of a security interest in any Grantee assets, or any mortgage or other hypothecation, shall not be considered a transfer for the purposes of this section.

(b) A change in control of Grantee shall be deemed a transfer of the franchise and subject to the requirements of subsection (a). "Change in control," as used herein is not limited to change in major stockholders or partnership interests, but includes actual working control in whatever manner exercised. In the event that Grantee is a corporation, prior approval of the board of supervisors shall be required where ownership or control of more than ten percent (10%) of the voting stock of Grantee is acquired by a person or group of persons acting in concert, none of whom own or

control the voting stock of the Grantee as of the effective date of the franchise, singularly or collectively.

(c) Grantee shall notify the board of supervisors in writing of any foreclosure or any other judicial sale of all or a substantial part of the franchise property of the Grantee or upon the termination of any lease or interest covering all or a substantial part of said franchise property. Such notification shall be considered by the board of supervisors as notice that a change in control of ownership of the franchise has taken place and the provisions of this Section governing the consent of the board of supervisors to such change in control of ownership shall apply.

(d) For the purpose of determining whether it shall consent to such a sale, transfer, assignment, sublet, disposition or other change of control, Grantor may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist the board of supervisors in any such inquiry. In seeking the board's consent to any change of ownership or control, Grantee shall have the responsibility to insure that the prospective transferee or controlling party completes an application in form and substance reasonably satisfactory to Grantor, which application shall include the information required under subsections (a) through (i) of Section 7.5-28 of this Chapter. An application shall be submitted to the board of supervisors not less than sixty (60) days prior to the date of transfer or change of control. The transferee or controlling party shall be required to establish that it possesses the financial, legal, and technical ability and qualifications to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If, after considering the application, the board of supervisors finds that such transfer is in the public interest, the board shall transfer and assign the rights and obligations of such franchise to the applicant. The consent of the Grantor to such transfer shall not be unreasonably denied or delayed.

(e) Any financial institution having a pledge of the Grantee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the Grantor that it or its designee satisfactory to the Grantor shall take control of and operate the Cable Television System, in the event of a Grantee default in its financial obligations. Further, said financial institution shall also submit a plan for such operation within thirty (30) days of assuming such control that will insure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall operate the franchise subject to the revocation provisions of Section 7.5-91, and shall not exercise control over the system for a period exceeding one (1) year unless extended by the board of supervisors in its discretion. During said period of time, the financial institution shall have the right to petition the board of supervisors to transfer the franchise to another Grantee.

(f) Grantee shall reimburse Grantor for Grantor's reasonable processing and review expenses in connection with a transfer of the franchise or of control of the franchise including, without limitation, costs of administrative review, financial, legal and technical

evaluation of the proposed transferee, consultants (including technical and legal experts and all reasonable costs incurred by such experts), notice and publication costs and document preparation expenses, as set forth in Section 7.5-27 and the franchise agreement.

(Ord. No. 1408, §1)

Sec. 7.5-32. Receivership and foreclosure

(a) A franchise granted hereunder shall, at the option of Grantor, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, unless:

(1) such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Chapter and the franchise granted pursuant hereto; and the receivership or trustees, within said one hundred twenty (120) days, shall have remedied all Grantee's defaults under the franchise or provided a plan for the remedy of such faults which is satisfactory to the Grantor; and

(2) such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision, and limitation of the franchise granted.

(b) In the case of a foreclosure or other judicial sale of the franchise property, or any material part thereof, Grantor may serve notice of termination upon Grantee and the successful bidder at such sale, in which event the franchise granted and all rights and privileges of the Grantee shall cease and terminate thirty (30) days after service of such notice, unless:

(1) Grantor shall have approved the transfer of the franchise, pursuant to Section 7.5-31; and

(2) Such successful bidder shall have covenanted and agreed with Grantor to assume and be bound by all terms and conditions of the franchise.

(Ord. No. 1408, §1)

Sec. 7.5-33. Federal or state jurisdiction

(a) This Chapter and any franchise granted pursuant thereto shall be construed in a manner consistent with all applicable federal and state laws and regulations. Whenever the Federal Communications Commission (FCC) or Public Utilities Commission (PUC) of the State of California or any other federal or state agency shall now or hereafter exercise any paramount jurisdiction over any specific provisions of this Chapter, such paramount jurisdiction shall preempt or preclude the exercise of like jurisdiction by the county. Any modification of such federal or state law shall, to the extent applicable, be considered a part of this Chapter as of the effective date of such modification.

(b) In the event that the state or federal government discontinues preemption in any area of cable communications over which it exercises paramount jurisdiction in such manner as to allow local regulation, the board of supervisor may, if it so elects, adopt rules and regulations in these areas; provided, that such rules and regulations shall not apply to any franchise issued pursuant to this Chapter prior to the adoption of such rules and regulations to the extent they materially adversely affect such franchise by establishing additional or more stringent requirements with respect to system rebuilds; channel capacity; system design and construction; public, educational or governmental access facilities; support for any such facilities; interconnect commitments; or activation of interactive capability or institutional networks. Such new local rules and regulations may, however, affect existing franchises with respect to franchise renewal procedures, franchise fees, consumer protection provisions, regulation of rates, technical standards and related provisions.

(c) This Chapter shall apply to all franchises granted or renewed after the effective date of this Chapter.

(Ord. No. 1408, §1)

Sec. 7.5-34. Rates

The Grantee shall establish rates for its services that shall be applied fairly and nondiscriminatorily to all subscribers in the franchise area. The Grantor retains the right to institute rate regulation to the extent permitted by applicable law, and to reinstitute such regulation in the event that currently preemptive deregulation ceases to exist.

(Ord. No. 1408, §1)

Sec. 7.5-35. Rate change procedure

(a) To the extent local regulation of rates is permitted under federal and state law, existing rates may be changed from time to time pursuant to this section. Failure to enforce this section by the Grantor shall not amount to a waiver of its provisions.

(b) If rate regulation by Grantor is permitted in the future, and Grantor exercises such authority, Grantor may establish additional requirements for information to be provided as part of any rate change request. Grantor may require Grantee to submit any information so long as the information is reasonably necessary to permit Grantor to

make its decision as to whether to approve the rate change in whole or in part. Grantor shall arrive at its decision within ninety (90) days after all such requested information has been received, or the request shall be deemed to be approved.

(Ord. No. 1408, §1)