

## Chapter 10.02

# 10.02 CABLE TELEVISION COMMUNICATIONS SYSTEMS REGULATION

### 10.02.010 Definitions

For the purpose of this chapter, unless the context requires otherwise:

- A. ACCESS or PUBLIC ACCESS means the use by various agencies, institutions, organizations, groups and individuals in the community, including the County and its designees, of the cable system to acquire, create, and cable cast programming not under the editorial control of the Grantee. Access also refers to the specific channels (and portions thereof), services facilities, equipment, technical components, maintenance, resources and/or other capital or operating support and all other means by which this right is exercised.
  - B. CABLE OPERATOR means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.
  - C. 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 of such video programming or other programming service.
  - D. CABLE COMMUNICATIONS SYSTEM or CABLE TELEVISION SYSTEM means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:
    - 1. a facility that services only to retransmit the television signals of one or more television broadcast stations;
    - 2. a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-of-way;
    - 3. a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, other than for purposes of Section 621 C, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers;  
or
    - 4. any facilities of any electric utility used solely for operating its electric utility systems.
  - E. FRANCHISE means an initial authorization, or renewal thereof (including renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by a franchising authority, whether such authorization is designated as a
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- franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.
- F. FRANCHISEE means the person, firm or organization to which a franchise is granted to operate a cable communications system pursuant to the authority of this chapter.
- G. FRANCHISE FEE means any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such; but the term "franchise fee" does not include, as per sec. 622 G of the Cable Act:
1. any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers);
  2. in the case of any franchise in effect on the date of the enactment of this chapter, payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of, public, educational, or governmental access facilities;
  3. in the case of any franchise granted after such date of enactment, capital costs which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities;
  4. requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
  5. any fee imposed under Title 17, United State Code.
- H. LEASED ACCESS CHANNEL means any channel or portion of a channel available for programming by persons or entities other than Franchisee for a fee or charge.
- I. PROGRAMMING means the process of causing television programs or other patterns of signals to be transmitted on the cable communications system, and includes all programs or patterns of signals transmitted or capable of being transmitted, on the cable communications system.
- J. PUBLIC RIGHT-OF-WAY means the surface of, and the space above and below, any public street, road, alley, highway, dedicated way, local access road or road easement used or intended to be used by the general public for motor vehicles, and any public utility easement within the County, to the extent the County has the right to allow the Franchisee to use them.
- K. VIDEO PROGRAMMING means programming provided by, or generally considered comparable to programming provided by a television broadcast station.
- [Codified by Ord. 05-2000, 7/13/00]

#### **10.02.020 Authority**

The County of Clackamas recognizes, declares and establishes its authority to regulate the construction, operation and maintenance of cable communications systems (hereinafter "system") for the area located within the unincorporated areas of Clackamas County, and to exercise all powers necessary for that purpose, including, but not limited to, the following:

- A. To grant by resolution, nonexclusive franchises for the development and operation of a system or systems;
- B. To impose different franchise requirements based on reasonable classifications.

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- C. To contract, jointly agree or otherwise provide with other local or regional governments; counties or special districts for the development, operation, and/or regulation of systems, or franchises;
  - D. In the event of unusual circumstances not presently anticipated to occur, the County may purchase, hire, construct, own, maintain, operate or lease a system and to acquire property necessary for any such purpose.
  - E. To regulate, subject to applicable law, all facets of a system, including but not limited to:
    - 1. Consumer service, consumer protection and privacy standards;
    - 2. Disputes among the County, franchisees, and subscribers;
    - 3. The development, management and control of access channels;
    - 4. Rates and review of finances for rate adjustments;
    - 5. Construction timetables, standards, and service extension policies;
    - 6. Modernization and upgrade of technical aspects;
    - 7. Leased access channels;
    - 8. Ensuring adherence to federal, state, and local regulations;
    - 9. Franchise transfer and transfer of control of ownership;
    - 10. Franchise renewal;
    - 11. Franchise revocation;
    - 12. Enforcement of buy-back, leaseback or option-to-purchase provisions;
    - 13. Receivership and foreclosure procedures; and
    - 14. Compliance with County standards for public rights-of-way.
  - F. To reserve the power to exercise this grant of authority to the fullest extent allowed by law.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.02.030 Grant of Franchise, Renewal**

- A. In the event that a cable television operator seeks a franchise the procedures set forth in this chapter shall be followed subject to applicable law.
  - B. The Cable Manager of Clackamas County shall have authority to establish and provide:
    - 1. Information and instructions relating to the preparation and filing of proposals to provide cable communications service;
    - 2. Requirements for proposals to be referred to the Board of County Commissioners regarding the development, operation and regulation of a system, including but not limited to the following:
      - a. The length, renewal and transfer or assignment of the franchise, including foreclosure and receivership provisions;
      - b. A description of the franchise territory and the extension of service;
      - c. Access requirements;
      - d. The system design;
      - e. Technical performance standards;
      - f. Fees, records and reporting;
      - g. Indemnification, insurance, and liability for damages; and
      - h. Provision of an option for the County to acquire the system upon revocation or expiration of the franchise.
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- C. Subject to the provision of 10.02.100, it shall be unlawful to commence or engage in the construction, operation or maintenance of a cable communications system without a franchise issued under this chapter.
  - D. The Board of Commissioners by Board Order may:
    - 1. Approve and award the submitted franchise, as proposed, or modify or otherwise make amendments thereto as it deems necessary;
    - 2. Authorize the Cable Manager to seek bids for a system pursuant to a Request For Proposal.
  - E. The Board of Commissioners may award a franchise only after a public hearing on the proposed franchise, notice of which shall be published in a local newspaper of general circulation in the County at least ten days prior to the date of the hearing. The potential Franchisee shall be notified by mail of the public hearing; provided, however, that no defect in the notice or failure to notify shall invalidate the franchise awarded. The Board of Commissioners may award the franchise, modify the proposed franchise and award or take no action.
  - F. No franchise or award thereof shall be deemed final until adoption of a Board Order containing the terms and conditions thereof. The franchisee shall bear the costs of all publications and notices given in connection with the award of the franchise, and the costs incurred by the County in evaluating the proposed franchise.
  - G. A request for renewal of a franchise will be considered and processed in conformance with Federal Law.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.02.040 Administration of Cable Communications**

The Board of County Commissioners, (BCC) or its designee, shall have the power to carry out any or all of the following functions:

- A. Employ the service of a consultant, to assist in the analysis of any matter related to any franchise, Request For Proposal or proposed franchise under this chapter;
- B. Act on applications for franchises;
- C. Act on matters which might constitute grounds for revocation or termination of a franchise pursuant to its terms;
- D. Attempt to resolve disagreements among Franchisees and public and private users of the system;
- E. Consider requests for rate settings or adjustments, as permitted by Federal Law;
- F. Coordinate and facilitate the use of access channels;
- G. Act in intergovernmental matters relating to cable systems;
- H. Review all Franchisee records required by the franchise;
- I. Conduct evaluations of the system and the Franchisee's compliance with franchise requirements;
- J. Adopt and amend regulations and procedures necessary to enforce franchises and to clarify interpretation thereof;
- K. Appoint advisory committees to assist the County in exercising its authority concerning Public Access.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.02.050 Customer Service**

A cable operator shall be subject to the customer service standards, set forth in Federal law (Section 8 of the Cable Television Consumer Protection and Competition Act of 1992; 47

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U.S.C. §§552; 47 C.F.R. Section 76.309) and as herein detailed:

- A. Cable system office hours and telephone availability.
1. The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.
    - a. Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.
    - b. After normal business hours, a service or an automated response system, including an answering machine may answer the access line. A trained company representative must respond to inquiries received after normal business hours on the next business day.
  2. Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.
  3. The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
  4. Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.
  5. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.
- B. Installations, outages and service calls: Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:
1. Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.
  2. Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.
  3. The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time blocks during normal business hours (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.).
  4. An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
  5. If a cable operator representative is running late for an appointment with customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
- C. Communications between cable operators and cable subscribers:
1. Notifications to subscribers:
    - a. The cable operator shall provide written information on each of the
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following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions of programming carried on the system; and,
- (6) Billing and complaint procedures, including the address and telephone number of the local franchise authorities cable office.

b. Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and/or in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

2. Billing

- a. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- b. In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.

3. Refunds

Refund checks will be issued promptly, but no later than 30 days after:

- a. Resolution of the request, or
- b. Return of all company equipment to the cable operator if service is terminated.

4. Credits

Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

D. Definitions

1. NORMAL BUSINESS HOURS means the term "normal business hours" are those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.
  2. NORMAL OPERATING CONDITIONS means the term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to: natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to: special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.
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3. SERVICE INTERRUPTION means the term "service interruption" is the loss of picture or sound on one or more cable channels.

This section does not preclude the County from requiring more stringent customer service standards in franchise agreements.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.02.060 Consumer Protections**

- A. The County reserves the right to enforce customer service and consumer protection standards as such standards are established by State or Federal law or regulation as applicable to cable system operations. In addition the County reserves the right to establish additional specific customer service and consumer protection standards and procedures to the extent permitted by applicable law.
- B. Negative Option Marketing: Franchisee shall not engage in "negative option" marketing, prohibited by State or Federal Law or regulation.
- C. Billing Credit for Service Interruptions: Franchisee shall make provision for subscriber credit for service interruptions or poor watchable cable reception, as per written company policy filed in the County Cable Office.

[Codified by Ord. 05-2000, 7/13/00]

#### **10.02.070 Compensation for Franchise**

- A. Franchise Fee
1. As compensation for the franchise to be granted, and in consideration of permission to use the streets and public ways of the County for the construction, operation, and maintenance of a cable communications system within the franchise area and to defray the costs of franchise regulation, the cable operator shall pay to the County five percent (5%) of the gross receipts generated through the operation of the cable system in the area franchised by Clackamas County, as permitted by Federal law.
  2. In the event Federal law limits franchise fees below the five percent (5%) of gross receipts required herein, the Franchisee shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, the Franchisee shall pay the higher amount up to the maximum allowable by Federal law.
- B. Payment of Franchise Fees
1. Payments due under this provision shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after the dates listed in the previous sentence. A quarterly report shall be made as hereinafter provided which shall contain the relevant facts necessary for the County to verify the amounts of franchise fee payments.
  2. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim, the County may have further or additional sums payable under the provisions of the franchise. All amounts paid shall be subject to audit and re-computation by the County, not to exceed three (3) years from date of payment.

[Codified by Ord. 05-2000, 7/13/00]

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**10.02.080 Intergovernmental Agreements**

The Board of County Commissioners may enter into intergovernmental agreements as authorized by Oregon law, with any other jurisdiction to provide for the cooperative regulation and control of any aspect of a cable communications system. Such agreements may provide for the delegation of any and all powers of the BCC to an entity provided for in the intergovernmental agreement, except for the powers to enter into or revoke a franchise agreement.

[Codified by Ord. 05-2000, 7/13/00]

**10.02.090 Violation, Penalties, and Remedies**

- A. Violation and Penalties: Any violation of the terms of this chapter is punishable by a fine in an amount set by resolution of the Board of County Commissioners.
- B. Injunctive Relief: Upon authorization by the Board of County Commissioners, the County may commence an action in the Circuit Court or other appropriate court to enjoin the continued violation of any provision of this chapter.
- C. Violation by a franchisee of any provision of a franchise granted pursuant to this chapter is:
  - 1. Subject to the enforcement provisions of the franchise;
  - 2. Punishable by fines set forth above; and
  - 3. Subject to injunctive relief as set forth above.
- D. Cumulative Remedies: The rights, remedies and penalties provided in this section are cumulative and not mutually exclusive and are in addition to any other rights, remedies and penalties available to the County under any other Ordinance or law.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03]

**10.02.100 New and Existing Agreements**

- A. This chapter shall govern all new applications, transfers and renewal requests for franchises.
- B. Terms and conditions in existing franchise permit agreements are not amended with the exception of 10.02.050, Customer Service; 10.02.060, Consumer Protection, 10.02.070, Compensation for Franchise, and 10.02.080, Intergovernmental Agreements.

[Codified by Ord. 05-2000, 7/13/00]

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