

**Instructions and Requirements
For Competitive Franchise Applications
Submitted to the Clackamas County Cable Communications Division
Under 47 CFR §76.41**

A. Establishment and Application of Instructions and Requirements

These instructions and requirements are established by the Cable Manager of Clackamas County under the authority of Clackamas County Code section 10.02.030. Any application for a cable franchise agreement submitted to Cable pursuant to 47 CFR §76.41 shall contain the requisite information set forth herein. The Clackamas County Cable Communications Division (hereinafter "Cable") shall evaluate and make recommendations to the Clackamas County Board of County Commissioners (Board) based on the criteria set forth herein.

B. Definitions

For purposes of these instructions and requirements, 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 include the plural number. The word "shall" is always mandatory and not merely directory.

- (a) "Affiliated Entity" or "Affiliate" means any entity having ownership or control in common with the Grantee, in whole or in part including, without limitation, Grantee's Parent Corporations and any subsidiaries or affiliates of such Parent Corporations.
- (b) "Board" means the Clackamas County Board of County Commissioners.
- (c) "CFAR Franchise Applicant" means an applicant for a cable franchise pursuant to the provisions of the Competitive Franchise Application Rule ("CFAR") set forth in Part 76 of Title 47 of the Code of Federal Regulations, §76.41.
- (d) "Cable" means the Clackamas County Cable Communications Division which has regulatory authority to administer the Clackamas County Code, Chapter 10.02, Cable Television Communications Systems Regulation, in unincorporated Clackamas County.
- (e) "Control" is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

- (f) "Interest" includes officers, directors and shareholders owning five percent or more of the CFAR Franchise Applicant's outstanding stock or any equivalent voting interest of a partnership or joint venture.
- (g) "Parent Corporation" includes any entity with ownership or control of the CFAR Franchise Application.
- (h) "Principal" includes any person, firm, corporation, partnership, joint venture, affiliates, or other entity, who or which owns or controls five percent or more of the voting stock (or any equivalent voting interest of a partnership or joint venture) of the CFAR Franchise Applicant.
- (i) "Regulatory Authority" includes any governmental or quasi-governmental organization or entity with jurisdiction over all or any portion of the CFAR Franchise Applicant or its operations.

C. Competitive Franchise Application Requirements

CFAR APPLICATION

I. INSTRUCTIONS AND DEFINITIONS

A CFAR Franchise Applicant shall include the requisite information set forth below, in writing, in its franchise application, in addition to any information required by 47 CFR §76.41 and applicable state and local laws and an application fee in the amount of \$400. A CFAR Franchise Applicant shall also provide any additional information requested by Cable that is relevant to the evaluation of the application under the criteria adopted herein and applicable law.

Cable shall accept and review only those applications that include complete responses to every element of the information required in the application. Submission of an application that does not include the requisite information set forth 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). If Cable requests any additional information from the CFAR Franchise Applicant, the time period set forth in 47 C.F.R. §76.41(d) shall be tolled from the date the information is requested until the date it is received by Cable.

The CFAR Franchise Applicant shall immediately submit additional or updated information as necessary to ensure the requisite information provided is complete and accurate throughout Cable's review of the application.

Upon request, Cable will promptly provide access to documents or information in its possession or control that are necessary for the completion of this application, provided that the CFAR Franchise Applicant does not otherwise have access to such documents or

information and that such documents or information are subject to disclosure under Oregon Public Records laws.

II. REQUISITE INFORMATION

A. IDENTIFICATION AND OWNERSHIP INFORMATION

1. IDENTIFICATION OF APPLICANT AND PROPOSED FRANCHISEE

- a. State the name, address, telephone number and web site (if applicable) of the CFAR Franchise Applicant and the proposed franchisee (if different from CFAR Franchise Applicant).
- b. State the name, address, primary telephone number and primary e-mail address of all individual(s) authorized to represent the CFAR Franchise Applicant before Cable during their consideration of the franchise(s) requested, including the CFAR Franchise Applicant's primary contact and any additional authorized contacts.

2. BUSINESS STRUCTURE

- a. Corporation:
 - i. If CFAR Franchise Applicant is a corporation, please list all officers and members of the Board of Directors, their principal affiliations and their addresses;
 - ii. Attach a certified copy of the Articles of Incorporation and Bylaws of the corporation; and
 - iii. State whether the CFAR Franchise Applicant is directly or indirectly controlled by another corporation of legal entity. If so, attach an explanatory statement and respond to questions 2.a.(i)-(ii) or 2.b(i) above concerning the controlling corporation.
- b. Partnership:
 - i. If CFAR Franchise Applicant is a partnership, please describe the structure of the partnership and the Interests of general and limited partners.
 - ii. State whether the CFAR Franchise Applicant is controlled directly or indirectly by any corporation or other legal entity. If so, respond to 2.a. (i)-(ii) or 2.b. (i) above, as applicable, concerning the controlling entity.

3. EXPERIENCE

a. Current Franchises

Please list all cable systems in which the CFAR Franchise Applicant or any Affiliate owns more than five percent of the system. For each

system include name of 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 most recently available date (indicate date). Also include name, title, and telephone number of system manager.

b. Potential Franchises

List communities where the CFAR Franchise 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. Include name of communities, date of application, date of expected action, estimated number of homes.

4. MANAGEMENT STRUCTURE

Attach a management/organizational chart, showing the management structure of the CFAR Franchise Applicant. Also, provide a similar chart showing the relationship of the CFAR Franchise 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 CFAR Franchise Applicant.

5. MANAGEMENT AGREEMENT

State whether there are any management agreements existing or proposed between the CFAR Franchise Applicant and any Parent Corporation or Affiliate related to construction and operation of the CFAR Franchise Applicant's planned system in the Cable service area. If yes, attach a copy of any such agreement.

6. MANAGEMENT FEES

List all entities entitled to receive management or other fees for the income produced by the CFAR Franchise Applicant's planned systems. Identify amounts or percentages of fees for each such entity.

B. LEGAL QUALIFICATIONS

1. 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. Please state whether the CFAR Franchise Applicant or an Affiliate directly or indirectly owns, operates, controls or has an Interest in

any of the following, OR whether the CFAR Franchise 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, etc.).
- b. A television broadcast station whose predicted Grace B contour, computed in accordance with Section 73.684 of the FCC's rules, overlaps in whole or in part with the Cable service area, or an application for license to operate such a station.
- c. A telecommunications or telephone company whose service area includes any portion of the Cable service area.

If the response to any of the above is affirmative, state the name of the CFAR Franchise Applicant or Affiliate, the nature and percentage of ownership or Interest and the company that is owned or in which the Interest is held.

2. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Federal Law requires cable system operators to be certified by the Federal Communications Commission (FCC) as being in compliance with the equal employment opportunity requirement of §634(e) of the Cable Communications Policy Act of 1984, 47 U.S.C. § 554(e). The CFAR Franchise Applicant shall attach any current FCC certifications(s) for its existing cable system holdings, if any, or indicate its intention to apply for abide by same.

3. FRANCHISE VIOLATIONS

State whether the CFAR Franchise Applicant 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, identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

4. OTHER VIOLATIONS

State whether the CFAR Franchise Applicant 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, identify the judicial or administrative proceeding, giving the date, name of tribunal and results or disposition of that proceeding.

C. FINANCIAL QUALIFICATIONS

1. For CFAR Franchise Applicant with existing operations: provided 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 fiscal years for the CFAR Franchise Applicant and any Parent Corporation.
2. For CFAR Franchise Applicant who are new (start-up) entities: provide pro forma projections for the next five fiscal years, if available, but at a minimum the next three fiscal years from the date of the application.

D. TECHNICAL QUALIFICATIONS, PLANNED SERVICES AND OPERATIONS

1. Describe the CFAR Franchise Applicant's planned initial and proposed cable services geographic area, including a map and proposed dates for offering services to each area;
2. If the CFAR Franchise Applicant has or asserts existing authority to access the public right of way in any of the initial or proposed service areas listed in D.1. above, state the basis for such authority or asserted authority and attach the relevant agreements or other documentation of such authority;
3. Describe with particularity the CFAR Franchise Applicant's planned residential Cable services, including basic cable services, cable programming service tier, and any additional pay-per-view, on-demand or digital services; and the projected rates for each category or tier or service;
4. Describe with particularity the CFAR Franchise Applicant's planned system technical design, upstream and downstream capacity and speed, provision for analog or digital services or packages, distribution of fiber, and planned count of households per residential node;
5. Describe with particularity the CFAR Franchise Applicant's planned non-residential cable services;
6. Describe the CFAR Franchise Applicant's planned construction and extension or phase schedule, as applicable, including system extension plans or policy; describe current status of the CFAR Franchise Applicant's existing or proposed arrangements with area utilities, including pole attachments, vault, or conduit sharing agreements as applicable;
7. Describe the CFAR Franchise 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 CFAR Franchise Applicant's facilities, and that property owners are justly compensated for any damages caused by the installation, construction, operation or removal of the facilities; also state the proposed allocation of costs of installation, construction, operation or removal of facilities between the CFAR Franchise Applicant and the subscriber;

8. Describe the availability and cost of a device to enable a subscriber to block obscene or indecent programming; and
9. Describe the CFAR Franchise Applicant's plan to comply with the subscriber privacy protections set forth in 47 U.S.C. § 551.

E. PROPOSED FRANCHISE TERMS

State the franchise terms proposed by the CFAR Franchise Applicant for each of the following:

1. Terms of Franchise;
2. With respect to PEG:
 - a. PEG access, including channel capacity, programming, a description of proposed services, facilities and equipment, and the CFAR Franchise Applicant's plan for interconnections with existing PEG facilities and designated PEG providers in existing cable franchise areas to provide PEG programming of adequate technical quality; and
 - b. PEG Capital support;
3. With respect to Institutional Networks:
 - a. Capacity and services to be provided, including a description of the network and equipment to be installed, activated, maintained or interconnected with existing institutional networks, potential sites to be served, and proposed technical means of interconnection, where applicable; and
 - b. Institutional network capital support;
4. Franchise fee payments, including a statement of all planned categories of cable revenue included in "gross revenues" for purposes of the fee (or a detailed description of the fee base if not based on gross revenues), and any proposed limitation on Cable's access to relevant books and records to verify timely and accurate payments;
5. Amount of insurance coverage planned for CFAR Franchise Applicant operations, service and activities; additional insured endorsements for the protection of Clackamas County and its officer and employees; and the length of time the policy is planned to be effective;
6. Amount of performance bond in favor of Clackamas County whose boundaries the CFAR Franchise Applicant proposes to provide service to ensure the CFAR Franchise Applicant observes, fulfills and performs each term and condition of the franchise; any limitations on the exercise of the bond; and length of time the bond is planned to be effective;
7. Terms of indemnity to be provided to Clackamas County and its officers and employees;
8. Existing right of way authority, in any, and terms of use of the rights of way in unincorporated Clackamas County in whose boundaries the CFAR Franchise Applicant proposes to provide service;

9. Technical and operational standards, including performance testing and appropriate sanctions for failure to meet standards; and
10. Customer service and consumer protection standards or policies, including but not limited to telephone, billing and repair response times, customer service representative (CSR) ratio to subscriber base, the method of evaluating the adequacy of customer service, reporting procedures and penalties for failure to meet standards.

For each item listed above, the CFAR Franchise Applicant shall provide a summary with sufficient detail to demonstrate the manner in which each term proposed by the CFAR Franchise Applicant compares to corollary and reasonably related terms in any cable franchise currently in effect in Clackamas County, the most recent needs ascertainment conducted by or on behalf of Clackamas County, and local customer service standards.

F. MISCELLANEOUS PROVISIONS

1. State whether the CFAR Franchise Applicant contemplates the provision of any cable services on its system under an Open Video Systems ("OVS") regulatory regime, within the meaning of Section 653 of the 1934 Communications Act (45 U.S.C. §573).
2. Provide a short narrative describing the CFAR Franchise Applicant's experience in and plans for providing Equal Employment Opportunity, Affirmative Action and Minority Business Enterprise utilization.
3. Provide a short narrative describing the CFAR Franchise Applicant's experience in and/or goals for satisfactory cable subscriber customer service.

III. AFFIDAVIT APPLICANT

Each application shall be accompanied by an affidavit substantially in the form set forth below:

"This application of the CFAR Franchise Applicant is submitted by the undersigned who has been duly authorized to make the representations within on behalf of the CFAR Franchise Applicant and certifies the representations are true and correct.

"The CFAR Franchise Applicant recognizes that all representations are binding on it and that material misrepresentations or omissions, or failure to adhere to any such representation may result in a negative Cable recommendation to the Board, or denial of a CFAR franchise application by the Board.

"Consent is hereby given to Clackamas County and its officers, employees, and representatives, to make inquiry into the legal, character, technical, financial and other qualifications of the CFAR Franchise Applicant by contacting any persons or organizations named herein as references, or by any other appropriate means.

“The CFAR Franchise Applicant recognizes that information submitted may be open to public inspection and subject to the Oregon Public Records Law. The CFAR Franchise Applicant should specifically identify any information it considers proprietary. The Applicant recognizes that in the event that Cable and/or the Board receive a request from another party to disclose any information which the CFAR Franchise Applicant has deemed proprietary, Cable and/or the Board, as appropriate, will tender to the CFAR Franchise Applicant the defense of any request to compel disclosure. By submitting information which the CFAR Franchise Applicant deems proprietary or otherwise exempt from disclosure, CFAR Franchise Applicant agrees to defend and hold harmless Cable and the Board from any claim for disclosure including but not limited to any expense including out-of-pocket costs and attorneys’ fees, as well as any judgment entered against Cable or the Board for the attorney fees of the party requesting disclosure.

“Name of CFAR Franchise Applicant’s Authorized Representative:

“Affiant’s Signature:

“Official Position:

“Date:

“NOTARIZATION

“Subscribed and sworn before me this ____ day of ____, 200__.

“Notary Pubic of Oregon:

“My Commission expires: _____.”

D. Application Fee

The application fee to cover the reasonable cost of processing applications under these instructions and requirements is \$400. Upon request of the CFAR Franchise Applicant, Cable may reduce or waive the application fee. In evaluating such a request, Cable 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 CFAR Franchise Applicant (including any parent corporation or affiliate); and (4) other information relevant to the cost of processing the application and/or the CFAR Franchise Applicant's ability to pay the fee.

E. Review Process

I. Acceptance of Application.

Within 5 business days of receipt of an application, Cable staff shall review the application to ensure all requisite information is included in the application.

- A. If the application is not complete, staff will immediately notify the CFAR Franchise Applicant in writing, listing the requisite information that is required to complete the application and notifying the CFAR Franchise Applicant the that 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.
- B. If the application is complete, staff will immediately notify the CFAR Franchise Applicant in writing that all requisite information has been received.

II. Staff Review.

Cable staff shall review all completed applications based on the review criteria set forth herein. If, during the review of an application, staff requires additional information from the CFAR Franchise Applicant, staff will promptly request the information from the CFAR Franchise 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 Cable. After completing the review, staff shall provide an analysis of the application to the Board.

III. Public Hearing.

The Board shall hold a public hearing affording to participants a process substantially equivalent to that required by 47 U.S.C. §546(c)(2) governing renewal of cable franchises.

IV. Review Criteria.

Cable may recommend to the Board that they deny and the Board may deny an application if, based on the information provided in the application, at the public hearing and/or any terms of a proposed franchise agreement:

- A. The CFAR Franchise Applicant does not have the financial, technical, or legal qualifications to provide cable service;

- B. The CFAR Franchise Applicant will not provide adequate public, educational, and governmental access channel capacity, facilities, or financial support, as evidenced by the most recent needs ascertainment conducted by or on behalf of Cable, or other relevant study of community needs; or
- C. The CFAR Franchise 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 obligations of the Clackamas County Code.

Debbie McCoy
Cable Manager

Date