

CHAPTER 20
Cable Franchises

20.005 Purpose and Intent. The Benton County Board of County Commissioners has determined that it is in the public interest and necessary for the promotion of the safety, convenience and general welfare of the citizens of the County to have a chapter which authorizes the County to grant nonexclusive franchises and regulate the use of rights of way, and identifies the conditions upon which the County will grant a franchise or franchises allowing the construction, maintenance and operation of a cable communications system within public rights of way located outside of incorporated cities within the County. [Ord. 2000-0164]

20.010 Definitions. For the purposes of this chapter, unless the context requires otherwise:

(1) **"Access"** means (A) channel capacity designated for public, educational or governmental use; and (B) facilities and equipment for the use of channel capacity.

(2) **"Cable Communications System"** means a facility, consisting of a set of closed transmission, and control equipment 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 (A) a facility that serves only to transmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right of way; (C) a facility of a common carrier which is subject, in whole or in part, to the provision of Title II of the federal Communications Act, 47 U.S.C. 201 et seq., except that such facility shall be considered a cable system (other than for purposes of section 47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive

on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

- (3) **"Cable Service"** means (A) The one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- (4) **"Franchise"** means an agreement between the County and Franchisee for a non-exclusive authorization or renewal thereof for the construction or operation of a Cable System within the jurisdiction of the County, that may include terms and conditions in addition to those set forth in this chapter, provided that such terms and conditions shall be consistent with applicable state and federal law and regulations..
- (5) **"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.
- (6) **"Leased Access Channel"** means any channel, or portion of a channel, commercially available for programming by persons other than the Franchisee for a fee or charge in accordance with section 47 U.S.C. 532, as amended.
- (7) **"Programming"** means (A) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and (B) "Other Programming Service" means information that a cable operator makes available to all subscribers generally.
- (8) **"Public Rights of Way"** shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-

way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the County in the Franchisee's service area which shall entitle the Franchisee to the use thereof for the purpose or installing, operating, repairing, and maintaining the Cable System. Public Rights of Way shall also mean any easement now or hereafter held by the County within the Franchisee's service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchisee to the use thereof for the purposes of installing and operating the Franchisee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System. [Ord. 2000-0164]

20.015 Authority. The Board of County Commissioners of Benton County recognizes, declares and establishes the authority to regulate the construction, operation and maintenance of cable communications systems (hereinafter "systems") for the unincorporated area of the County and to exercise all powers necessary for that purpose, including, but not limited to, the following:

- (1) To grant by order nonexclusive franchises for the development and operation of a system or systems;
- (2) To impose different franchise requirements based on reasonable classifications.
- (3) 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 therefor, notwithstanding the fact that the systems extend beyond the jurisdiction of the County;
- (4) To purchase, hire, construct, own, maintain, operate or lease a system and to acquire property necessary for any such purpose;

- (5) Subject to applicable federal regulations, to regulate and supervise all facets of a system, including, but not limited to:
- (a) Consumer service, consumer protection and privacy standards.
 - (b) Disputes among the County, franchisees, and subscribers.
 - (c) Franchisee fair employment practices.
 - (d) The development, management and control of access channels.
 - (e) Programming, channel capacity and system interconnections.
 - (f) Rates and review of finances for rate adjustments.
 - (g) Construction timetables, standards, and service extension policies.
 - (h) Modernization and upgrade of technical aspects.
 - (i) Leased access channels.
 - (j) Ensuring adherence to Federal, State and local regulations.
 - (k) Franchise transfer and transfer of control of ownership.
 - (L) Franchise renewal.
 - (m) Franchise revocation.
 - (n) Enforcement of buy-back, lease-back or option-to-purchase provisions.
 - (o) Receivership and foreclosure procedures.
 - (p) Compliance with County standards for public rights of way.

- (q) Regulate telecommunications utilities which operate a cable communications system.
- (r) Regulate direct broadcast satellite service.
- (6) To reserve the power to exercise this grant of authority to the fullest extent allowed by law, and in a manner that is consistent with superior law.
- (7) To the extent the County has authority to regulate direct broadcast satellite systems, it elects to do so and will require the granting of a franchise prior to a person providing such service. [Ord. 2000-0164]

20.020 Grant of Franchise; Renewal. In the event that the Board finds it in the best interests of the County to consider granting a franchise for a system, the procedures set forth in this chapter shall be followed.

- (1) By order of the Board, the County Administrator may be directed to prepare a request for proposal (hereafter referred to as an "RFP") containing at least the following:
 - (a) Information and instructions relating to the preparation and filing of bid proposals;
 - (b) Requirements 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;
- (c) Criteria to be used in evaluating applicant proposals.
- (2) When a person is operating an existing system without a franchise, by order of the Board, the Administrator shall be directed to prepare a proposed franchise, containing at least the requirements listed in paragraph (1)(b) hereof for presentation to the operator.
 - (3) When a person seeks to operate a cable communications system, a proposed franchise containing at least the requirements listed in paragraph (1)(b) hereof may be submitted to the Administrator.
 - (4) The Board, by order, may:
 - (a) Approve or deny the RFP, or proposed franchise, as proposed, or modify or otherwise make amendments thereto as it deems necessary;
 - (b) Authorize the County Administrator to seek bids for a system pursuant to the RFP, or enter discussions with a current operator, or proposed operator on the award of a franchise.
 - (5) The Board 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 at least ten days before the date of the hearing, provided, however, that no defect in the notice or failure to notify shall invalidate the franchise awarded. The Board may award the franchise, modify the proposed franchise and award or take no action.

- (6) No franchise or award thereof shall be deemed final until adoption of an 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.
- (7) A request for review, modification, or renewal of a franchise will be considered and processed as set forth above and pursuant to federal regulations for the granting of a franchise. [Ord. 2000-0164]

20.025 Administration of Cable Communications Chapter and Franchise. The Board shall have the power to carry out any or all of the following functions:

- (1) Employ the service of a technical consultant, to assist in the analysis of any matter related to any franchise, RFP or proposed franchise under this chapter;
- (2) Act on application for franchises;
- (3) Act on matters which might constitute grounds for revocation or termination of a franchise pursuant to its terms;
- (4) Resolve disagreements among franchisees and public and private users of the system;
- (5) Consider requests for rate settings or adjustments;
- (6) Coordinate and facilitate the use of access channels;
- (7) Act in intergovernmental matters relating to systems, cooperate with regulators and operators of other systems, and supervise interconnection of systems;
- (8) Review all franchisee records required by the franchise and, in the Board's discretion, require the preparation and filing of information additional to that required by the franchise;

- (9) Performance Evaluation Sessions:
- (A) The County may hold performance evaluation sessions at least every three years but not more than annually on the anniversary date of the effective date of the franchise. The County shall conduct all such evaluation sessions in a fair manner.
 - (B) The County may hold special evaluation sessions at any time during the term of the Franchise Agreement, which may or may not be open to the public.
 - (C) All regular evaluation sessions shall be open to the public and announced at least one week in advance in a newspaper of general circulation in the franchise area, and the County shall provide at least one week advance written notice to the Franchisee.
 - (D) Evaluation sessions shall deal with the Franchisee's performance of the terms and conditions of the Franchise and compliance with applicable local, state and federal laws and regulations.
 - (E) At the request of the County and for the purpose of regular evaluation sessions only, Franchisee shall submit to the County a plant survey, report, or map, in a format mutually acceptable to the County and Franchisee, which include a description of the portions of the franchise area that are cabled and have all Cable Services available, including those areas where the system has been upgraded. Such report shall also include the number of miles and location of overhead and underground cable plant, and the number of miles (overhead and underground). If the County reasonably believes that a portion or all of the Cable System does not meet the applicable FCC technical standards, the County, at its sole expense, reserves the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.
 - (F) During evaluations under this section, Franchisee shall fully cooperate with the County and shall provide such information and documents as necessary and reasonable for the County to perform the evaluation. This section shall sunset and be of no further force and effect during any period,

and only during such period, that the Franchisee is subject to effective competition as such term is defined in 47 C.F.R. §76.905.

- (G) At the conclusion of a regular evaluation session, the County may prepare its proposed written findings and recommendations and shall provide a copy thereof to the Franchisee. Within 30 days after receipt of the County's proposed written findings and recommendations, the Franchisee may submit its written response to the County. The County shall give due and full consideration of the Franchisee's written response, and may adopt the findings and recommendations with or without modification.

(10) Adopt and amend regulations and procedures necessary to enforce franchises and to clarify terms thereof;

(11) Any other actions the Board deems necessary to carry out the purpose of this chapter. [Ord. 2000-0164]

20.030 Intergovernmental Agreements. The Board 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 Board to an entity provided for in the intergovernmental agreement, except for the powers to enter into or revoke a franchise agreement. [Ord. 2000-0164]

20.035 Violation; Penalties and Remedies.

(1) Violation and Penalties.

- (a) Any person, firm or corporation, other than the County, whether as principal, agent, employee or otherwise, violating or causing the violation of any provision of this chapter or performing any of the acts or functions set forth in this chapter, which defines a cable communications system, without having been awarded a franchise to perform said acts or functions pursuant to the terms of this

chapter, shall be deemed to have committed an infraction.

(b) Violation by a franchisee of any provision of a franchise granted pursuant to this chapter is an infraction.

(c) Each violation occurring on a separate day is considered a separate violation of this chapter.

(2) 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.

(3) Injunctive Relief. Upon authorization by the Board, the County Counsel may commence an action in the Circuit Court or other appropriate court to enjoin the continued violation of any provision of this chapter. [Ord. 2000-0164]

20.040 Severability. Invalidity of a section or part of this chapter shall not affect the validity of the remaining sections or parts of sections. [Ord. 2000-0164]