

BOARD OF COUNTY COMMISSIONERS

KLAMATH COUNTY, OREGON

IN THE MATTER OF PROVIDING FOR)
THE ESTABLISHMENT AND GRANTING) ORDINANCE NO. 67
OF FRANCHISES FOR THE CONSTRUCTION,)
MAINTENANCE AND OPERATION OF)
CABLE COMMUNICATION SYSTEMS)
_____)

WHEREAS, Congress enacted the Cable Television Consumer Protection and Competition Act of 1992 (Cable Act); and

WHEREAS, under the Cable Act and the Federal Communications Commission (FCC) rules implementing the Act, local franchising authorities and the FCC share authority for regulating cable rates; and

WHEREAS, the FCC will not regulate basic service except in very limited circumstances; and

WHEREAS, Klamath County has become certified with the FCC to regulate basic service rates; and

WHEREAS, Cable operators will be able to raise rates without justification if Klamath County fails to regulate basic service rates;

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS ORDAINS AS FOLLOWS:

CHAPTER 604
CABLE COMMUNICATION SYSTEMS

604.001 Purpose and Intent. It is in the public interest and necessary for the promotion of the safety, convenience, comfort, prosperity and general welfare of the citizens of Klamath County to have an ordinance which identifies the conditions upon which the County will grant a franchise or franchises to construct, maintain, and operate a cable communications system within public rights-of-way located outside of incorporated cities within the County.

604.005 Definitions. For the purpose of this ordinance, unless the context requires otherwise:

(1) "Access" means the availability for use by various agencies, institutions, organizations, groups and individuals in the community, including the County and its designees, of the cable communications system to acquire, create, and distribute programming not under the Franchisee's editorial control,

including, but not limited to public, educational and government programming.

(2) "Cable Communications Systems" means a system of antennas, cables, amplifiers, towers, microwave links, cable-casting studios, and any other conductor, converters, equipment or facilities designed and constructed for the purpose of producing receiving, amplifying, storing, processing, or distributing audio, video, digital or other forms of electronic or electrical signals.

(3) "Franchise" means the privilege conferred upon a person, firm or organization by the County to operate a cable communications system under the terms and provisions of this Ordinance.

(4) "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 Ordinance.

(5) "Lease Access Channel" means any channel or portion of a channel commercially available for programming for a fee or charge by persons other than the Franchisee.

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

- (1) Consumer complaints;
- (2) Disputes among the County, franchisees, and consumers;
- (3) The development, management and control of a government access channel as well as development of other access channels;
- (4) Rates and review of finances for rate adjustments;
- (5) Construction timetables and standards;
- (6) Modernization of technical aspects;
- (7) Ensuring adherence to federal and state regulations;
- (8) Franchise transfer and transfer of control of ownership;
- (9) Franchise renewal and/or franchise revocation;
- (10) Enforcement of buy-back, lease-back or option-to-purchase provisions;
- (11) Receivership and foreclosure procedures;
- (12) Compliance with County standards for public rights-of way;
- (13) Regulate direct broadcast satellite service;

604.200 Grant of Franchise, Renewal.

In the event that the Board finds it in the best interest of the County to consider granting a franchise for a system, the procedures set forth in this Ordinance shall be followed.

(1) By order of the Board, the Contract/Purchasing Officer shall 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 regulations of a system, including but not limited to the following:
 1. The length, renewal and transfer or assignment of the franchise, including foreclosure and receivership provisions;
 2. A description of the franchise territory and the extension of service;
 3. Access requirements;
 4. Fees, records and reporting;
 5. Indemnification, insurance, and liability for damages; and
 6. 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 Contract/Purchasing Officer shall be directed to prepare a proposed franchise, containing at least the requirements listed in (1)(b) above, for presentation to the operator.

(3) The Board, by order, may:

- a. Approve the RFP, or proposed franchise, as proposed, or modify or otherwise make amendments thereto as it deems necessary;
- b. Authorize the Contract/Purchasing Officer to seek bids for a system pursuant to the RFP, or enter discussions with a current operator on the award of a franchise.

(4) 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 (10) 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 may award the franchise, modify the proposed franchise and award, or take no action.

(5) 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.

(6) A request for renewal of a franchise will be considered and processed in conformance with Federal Law.

604.300 Administration of Cable Communications Ordinance.

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 Ordinance;
- (2) Act on applications 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, at the Board's discretion, require the preparation and filing of information additional to that required by the franchise;
- (9) Conduct evaluations of the system and the franchisee's compliance with franchise requirements at least every three years;
- (10) Adopt and amend regulations and procedures necessary to enforce franchises and to clarify terms thereof; and
- (11) Any other actions the Board deems necessary to carry out the purpose of this Ordinance.

604.400 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.

604.500 Violation, Penalties and Remedies. Any person, firm or organization violating any of the provisions of this Chapter shall, upon conviction thereof, be punished by a fine not to exceed five hundred dollars (\$500.00). Each day that a violation of this Chapter is committed or permitted to continue shall constitute a separate offense.

The penalties imposed by this section are in addition to and not in lieu of any remedies available to the County under this chapter or the laws of the State.


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.

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 Ordinance.

604.600 Franchise Fee. The franchise fee shall be as determined by the Board of County Commissioners but not to exceed the amount allowed by the Federal law as stated in 47 U.S.C. § 542.

604.700 Severability. The provisions of this Ordinance are severable, and any invalid section, subsection, sentence, clause, phrase or portion of this Ordinance if for any reason is held invalid or unconstitutional in a Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and shall not effect the validity of the remaining portions of the Ordinance.

DONE and dated this 1st day of June, 1994.



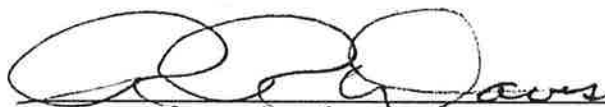
Wes Sine
Chairman



Ed Kentner
Commissioner



F. Jean Elzner
Commissioner



Approved as to form - County Counsel