

CHAPTER 1036
Cable Franchises

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CROSS REFERENCES

Theft of communications services - see ORS 164.125

Lines and poles - see ORS 758.020

Telecommunications Advisory Committee - see ADM. Ch. 286

1036.01 PURPOSE AND INTENT.

The Jackson 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. 94-10. Passed 3-30-94.)

1036.02 DEFINITIONS.

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

- (a) 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.

- (b) Cable Communications System - means a system of plant, facilities, equipment, and closed signal transmission paths, including, without limitation, antennas, cables, amplifiers, towers, microwave links, studios, real and personal property, direct broadcast satellite service, and any and all other conductors, home terminals, converters, remote control units, and all associated equipment or facilities designed and constructed for the purposes of distributing cable service to subscribers and of producing, receiving, amplifying, storing, processing or distributing audio, video, voice, digital, analog or other forms of electronic or optical signals, whether processed by or owned, rented, leased, leased-purchased or otherwise controlled by or within the responsibility of the franchisee.
- (c) Cable Service - means programming, in any combination, provided on the cable communications system to subscribers.
- (d) 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 chapter.
- (e) 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.
- (f) Leased 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.
- (g) Programming - means the process of causing television programs or other patterns of signals in video, voice or data formats 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 system.
- (h) Public Rights 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 utility easement within the County, to the extent the County has the right to allow the franchisee to use them.

(Ord. 94-10. Passed 3-30-94.)

1036.03 AUTHORITY.

The Board of County Commissioners of Jackson 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:

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- (a) To grant by order nonexclusive franchises for the development and operation of a system or systems;
- (b) To impose different franchise requirements based on reasonable classifications.
- (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 therefor, notwithstanding the fact that the systems extend beyond the jurisdiction of the County;
- (d) To purchase, hire, construct, own, maintain, operate or lease a system and to acquire property necessary for any such purpose;
- (e) To regulate and supervise 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) Franchisee fair employment practices.
 - (4) The development, management and control of access channels.
 - (5) Programming, channel capacity and system interconnections.
 - (6) Rates and review of finances for rate adjustments.
 - (7) Construction timetables, standards, and service extension policies.
 - (8) Modernization and upgrade of technical aspects.
 - (9) Leased access channels.
 - (10) Ensuring adherence to Federal, State and local regulations.
 - (11) Franchise transfer and transfer of control of ownership.
 - (12) Franchise renewal.
 - (13) Franchise revocation.
 - (14) Enforcement of buy-back, lease-back or option-to-purchase provisions.
 - (15) Receivership and foreclosure procedures.

- (16) Compliance with County standards for public rights of way.
 - (17) Regulate telecommunications utilities which operate a cable communications system.
 - (18) Regulate direct broadcast satellite service.
- (f) 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.
- (g) 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. 94-10. Passed 3-30-94.)

1036.04 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.

- (a) By order of the Board, the County Administrator shall be directed to prepare a request for proposal (hereafter referred to as an "RFP") containing at least the following:
- (1) Information and instructions relating to the preparation and filing of bid proposals;
 - (2) 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;
- (3) Criteria to be used in evaluating applicant proposals.
- (b) 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 (a) (2) hereof for presentation to the operator.
- (c) The Board, by order, may:
- (1) Approve the REP, or proposed franchise, as proposed, or modify or otherwise make amendments thereto as it deems necessary;
 - (2) Authorize the County Administrator to seek bids for a system pursuant to the REP, or enter discussions with a current operator on the award of a franchise.
- (d) 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, 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.
- (e) 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.
- (f) A request for renewal of a franchise will be considered and processed in conformance with Federal law.

(Ord. 94-10. Passed 3-30-94.)

1036.05 ADMINISTRATION OF CABLE COMMUNICATIONS CHAPTER AND FRANCHISE.

The Board shall have the power to carry out any or all of the following functions:

- (a) 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;
- (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) Resolve disagreements among franchisees and public and private users of the system;
- (e) Consider requests for rate settings or adjustments;
- (f) Coordinate and facilitate the use of access channels;
- (g) Act in intergovernmental matters relating to systems, cooperate with regulators and operators of other systems, and supervise interconnection of systems;
- (h) 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;
- (i) Conduct evaluations of the system and the franchisee's compliance with franchise requirements at least every three years;
- (j) Adopt and amend regulations and procedures necessary to enforce franchises and to clarify terms thereof;
- (k) Any other actions the Board deems necessary to carry out the purpose of this chapter.

(Ord. 94-10. Passed 3-30-94.)

1036.06 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. 94-10. Passed 3-30-94.)

1036.07 VIOLATION; PENALTIES AND REMEDIES.(a) Violation and Penalties:

- (1) 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 itemized under Section 1036.02(b) of 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 violation.
- (2) Violation by a franchisee of any provision of a franchise granted pursuant to this chapter is a violation.
- (3) Each violation occurring on a separate day is considered a separate violation of this chapter.

(b) 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.

(c) 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. 94-10. Passed 3-30-94.)

1036.08 SEVERABILITY.

Invalidity of a section or part of this chapter shall not affect the validity of the remaining sections or parts of sections.

(Ord. 94-10. Passed 3-30-94.)