

CABLE TELEVISION AND OTHER  
ELECTRONIC COMMUNICATIONS SYSTEMS

Chapter 72

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**[HISTORY: Adopted by the Board of Trustees (now Mayor and Town Council) of the Town of Frisco 11-23-82, Ord. 82-20. Repealed and readopted 11-5-96, Ord. 96-21, Repealed and readopted 06-19-01, Ord. 01-13]**

**§ 72-1. Definitions.**

For the purposes of this Chapter, the following terms, phrases, words, abbreviations and their derivations shall have the meaning herein given. 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 number include the plural number.

Words not defined shall be given their common and ordinary meaning, or where applicable, the definitions of Title VI of the Communications Act of 1934, 47 U.S.C. §521 *et. seq.*, as amended, and regulations promulgated there under, shall apply.

*Applicant* means a natural person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind that applies for a franchise to provide cable services.

*Application* means all written proposals, in whatever form, made by the Applicant to the Town concerning construction, rendition of services, maintenance, or any other matter pertaining to permission to construct and operate a cable or OVS system to provide cable services as contemplated herein.

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*Cable Service* means:

- A. The one-way transmission to subscribers of:
  - 1. video programming, or
  - 2. other programming service, and
- B. Subscriber interaction, if any, which is required for the selection and use of such video programming or other programming service.

To the extent consistent with applicable law, Cable Service shall include Cable Internet Service and other interactive services such as, but not limited to, game channels, information services and enhanced services made available to subscribers by a company that holds a cable franchise in the Town.

*Cable System or Cable Television System* means any 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 (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (ii) a facility that serves subscribers without using any public right of way; (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 101, *et. seq.*, as amended, except that such facility shall be considered a Cable System (other than for the purposes of Section 621(c) of Title VI of the Communications Act of 1934 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; (iv) an open video system that complies with Section 653 of Title VI of the Communications Act of 1934; or (v) any facilities of any electric utility used solely for operating its electric utility systems.

*Code* means the Code of the Town of Frisco, Colorado.

*Company* means a successful applicant awarded a franchise by the Town of Frisco for purposes of operating a cable system within the Town, or the successor, transferee, or assignee of the original Applicant for such franchise.

*Council* means the Town Council of the Town of Frisco, Colorado.

*Franchise* means the nonexclusive rights granted pursuant to applicable federal, state and local law to construct and operate a cable system or OVS along the streets, alleys, and public ways of the Town.

*Franchise Fee* means that fee paid to the Town as compensation for the grant of permissions to utilize public rights of way for private business purposes. A Franchise fee is not a tax.

*Open Video System (OVS)* means a facility consisting of a set of 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, provided that the Federal Communications Commission has certified that such system complies with all applicable federal regulations.

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*Person* means any person, firm, partnership, association, corporation, company or organization of any kind.

*Public Property* means any real property owned by the town other than a street, highway, sidewalk, easement or dedication.

*State* means the State of Colorado.

*Street* shall have the same meaning as set forth in Chapter 155 of this Code, and shall in addition include both above and below any street, right of way, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, communications or utility easement, now or hereafter existing as such within the Franchise area.

*Subscriber* means any person who or which elects to subscribe to, for any purpose, services of a Franchisee described herein, and whose premises are physically wired and lawfully activated to receive Cable Service from a Franchisee's system.

*System* means a Cable System, an Open Video System, or both, as the context requires.

*Town* means the Town of Frisco, Colorado.

*Town Manager* means the chief administrative officer of the Town of Frisco, Colorado or his designee.

### **§ 72-2. Title.**

This Chapter shall be known and may be cited as the Cable Television and Open Video System Franchise Ordinance of the Town of Frisco.

### **§ 72-3. Grant of Authority.**

- A. Any initial or renewal Franchise granted pursuant to applicable law shall take effect and be in force from and after the effective date of the ordinance granting said Franchise, provided, that on or before said date and no later than thirty (30) days thereafter, the successful Company shall:
1. File with the Town Clerk an unconditional acceptance of the Franchise grant and enter into and execute such documents as required by the Town consistent with the terms and provisions of this Chapter and the Franchise. Said acceptance shall be in a form as prescribed by the Town. In the event of conflict between any Franchise and the provisions of this Chapter, the provision that provides the greatest benefit to the Town, in the opinion of the Council, shall prevail. Any acceptance filed by the Company pursuant to this Section shall be in writing, duly executed and sworn to, by or on behalf of the Company, before a notary public or other officer authorized by law to administer oaths.
  2. File such bonds, letters of credit and/or other sureties as required by the Franchise.
- B. In the event that the Company fails to comply in full with subsection (A) hereof, then it shall be conclusively considered that the Company has abandoned its Application and rights to

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such grants and award of the Franchise, and any such rights that the Company may have acquired under this Chapter or the grant of the Franchise shall immediately terminate, and the Company shall have no right, privilege or authority whatsoever under this Chapter. In any event, the provisions of subsection 72-5(D) shall apply with respect to the application fee and the Company's responsibility for expenses related to its Application.

- C. The Company shall have no recourse against the Town for or on account of any loss, cause, expense or damage arising out of any provisions or requirements of this Chapter and/or the grant of any Franchise except as may otherwise be provided in any Franchise and/or by applicable law.
- D. The Company, by acceptance of any Franchise award pursuant to applicable law, acknowledges that it has relied upon its own investigation and understanding of the power and authority of the Town to grant such Franchise.
- E. Any Franchise to be granted by the Town pursuant to this Chapter shall grant to the Company the right and privilege to erect, construct, operate and maintain in, upon, along, across, above, over and under the streets, and public places now laid out or dedicated and all such extensions thereto and additions thereto in the Town; poles, wire, cables, underground conduit, manholes, and other television and data conductors and fixtures necessary for the maintenance and operation of a cable television system or OVS for the interception, sale, transmission and distribution of Cable Services and the right to transmit the same to the inhabitants of the Town.

Non-Exclusive Grant. The rights herein granted for the purposes herein set forth shall be non-exclusive, and the Town reserves the right to grant a similar use of said streets, alleys, and public places to any person at any time during the period of any Franchise, provided, however, that such grant is not incompatible with any existing Franchise's authority pursuant to its Franchise, and further that nothing contained herein shall be deemed to require the granting of additional Franchises if, in the opinion of the Council, it is in the public interest to restrict such Franchises to one or more.

### **§ 72-4. Franchise Required.**

No person shall be permitted to operate a cable system or OVS to provide cable services in the Town without first being granted a Franchise by the Town.

### **§ 72-5. Application.**

- A. Applications for a cable or OVS Franchise shall be filed with the Town Manager and shall contain at least the following:
  - 1. The name and business address of the Applicant, date of Application, and signature of the Applicant or appropriate corporate officer.
  - 2. A general description of the Applicant's proposed operation including, but not limited to: business hours, operating staff, a general statement of services to be provided, and a description of the system design.
  - 3. A description of the Applicant's organization and structure including:

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- a) If the Applicant is an individual, partnership, or unincorporated association, it shall state the names and address of all persons, including corporations, having a proprietary or equitable interest in and to the Applicant's business operation, and in and to the prospective Franchise, if awarded. The term "equitable interest" shall include all assignments or value, as well as all contingent assignments of any right or privilege under the prospective Franchise, and shall also include any benefit, payment, or emolument whatsoever resulting from the grant of a Franchise pursuant to applicable law.
  - b) If the Applicant is a non-public corporation, the Application shall state additionally the names and addresses of all officers, directors and shareholders of said corporation, together with the number of shares held by each shareholder, the date of incorporation, the date of the last annual report, and a statement as to whether or not the corporation is licensed to do business in the State of Colorado.
  - c) If the Applicant is a publicly held corporation as defined by the rules and regulations of the Securities and Exchange Commission, the statement shall contain the states in which it is incorporated and/or qualified to do business, the names and addresses of the officers and directors of the corporation, and the names and addresses and number of shares owned of all stockholders, both nominal and beneficial, owning ten percent (10%) or more of the outstanding stock of the Applicant.
  - d) A full disclosure of the ownership of the facilities to be used in providing the cable service.
4. A statement describing all intra-company relationships of the Applicant, including, for example, parent, subsidiary or affiliated companies.
  5. A statement setting forth all agreements and understandings, whether written or oral, existing between the Applicant and any other person, firm, group or corporation with respect to any Franchise awarded, and the conduct of the operation thereof existing at the time the Application is made.
  6. Audited financial statements for the Applicant's two latest fiscal years unless the Applicant has not been in existence for at least two years, in which case the Applicant shall furnish audited financial statements for such lesser period of time covering the period that the Applicant has been in existence.
  7. Additional financial information, in the discretion of the Applicant, to show that the Applicant has the financial ability to provide cable services within the Franchise area. At the Town's sole discretion, the Applicant may be required to provide supplemental financial information to assist the Town in its evaluation.
  8. A technical description of the type of network proposed by the Applicant, including, but not necessarily limited to, network configuration, network capacity, two-way operation capability and service to be provided, and a description of the public, educational and government support proposed to be made available to government, public and/or educational institutions or agencies.
  9. A statement of existing Franchises held by the Applicant indicating, with particularity, when the Franchises were issued or awarded and when the Systems were constructed,

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together with the name, address and telephone number of a government official knowledgeable of the Applicant and its performance in each such Franchise area. This statement shall include reference to any Franchises that have previously been awarded to the Applicant, but which were revoked, not constructed or abandoned by the Applicant. Specific information with regard to the dates, locations, and reasons for revocation, non-construction or abandonment shall be included. In the sole discretion of the Town, in the case of large multi-system operators, the Applicant may be permitted to submit a partial list of its existing Franchises.

10. A statement as to whether the Applicant or any of its officers, directors, or shareholders of ten percent (10%) or more of its voting stock has in the past been convicted of a felony.
  11. A statement describing the prior experience in the operation of cable systems of the Applicant, including that of the Applicant's officers, management and staff to be associated with the proposed operation.
  12. If an Application is for renewal of the Franchise, the proposal must include, in addition to the information required in Subsections 1 through 11 above:
    - a) A summary of the technical, financial and programming history of the System since the granting of the previous Franchise.
    - b) A statement and timetable that outlines all proposed changes, expansion, improvements, or upgrades in the network as to services, programming or technical specifications during the forthcoming proposed term of renewal.
- B. Fifteen (15) copies of the Application shall be filed. Supplementary, additional or other information that the Applicant deems reasonable for consideration may be submitted at the same time as its Application, but must be separately bound and submitted in the above number of copies. The Town may, at its discretion, consider such additional information as part of the Application.
- C. The Town Council reserves the right to require such supplementary, additional or other information that it deems reasonably necessary for its determination of whether to grant a Franchise.
- D. Notwithstanding any other requirement, each Applicant for a Franchise to provide Cable Services must accompany its Application with an application fee in the form of a certified check for FIVE THOUSAND DOLLARS (\$5,000) in the case of a Franchise renewal, and TWENTY THOUSAND DOLLARS (\$20,000) in the case of a new Franchise, made payable to the Town of Frisco, Colorado. No Application for a Franchise will be considered without the accompaniment of said application fee.
1. All sums received will be deposited to an account of the Town and will serve to recover all expenses incurred by the Town in the consideration of the Franchise Application and the granting of any Franchise. Said expenses for Franchise renewals shall be limited to reasonable value of services performed by the Town's employees and costs of publication and any election required for the granting of said Franchise. With respect to applications for new Franchises, said expenses shall additionally include the Town's reasonable costs incurred for consulting and legal services.

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2. Any funds remaining after all expenses have been paid will be refunded to the Applicant. The Town shall not guarantee any amounts to be refunded.
3. In the event the expenses exceed the total amount of the fees collected from the Applicant, and if a Franchise is granted, then the Company shall pay to the Town the excess amount within thirty (30) days after the award of the Franchise as certified to the Company by the Town.

Upon receipt of an Application for a new Franchise, Town staff shall review the substance of the application, and thereafter recommend to the Town Council whether to proceed with negotiations for a new Franchise. Should Town Council direct staff to commence Franchise negotiations, upon completion of negotiations, Town Council shall determine whether to accept the Franchise. With respect to a renewal Franchise, upon receipt of an Application, the Town shall consider the request in accordance with federal law, and any other requirements of the Franchise.

### **§ 72-6. Terms.**

The duration, conditions, obligations and any other matters deemed by the Town Council to be pertinent to the issuance of any Franchise granted under this Chapter shall be set forth in the Franchise. Any Franchise granted shall be subject to the conditions and restrictions of this Chapter.

### **§ 72-7. Police Power.**

In accepting any Franchise granted under this Chapter, the Company acknowledges that its rights as the Franchisee are subject to the police power of the Town to adopt and enforce general ordinances necessary to the safety and welfare of the public; and the Company, by accepting the Franchise, agrees to comply with applicable general laws and ordinances enacted by the Town pursuant to such power.

### **§ 72-8. Compliance with State, Federal and Local Laws.**

- A. Notwithstanding any other provision in this Chapter to the contrary, the Company shall at all times comply with all laws, regulations and ordinances of the state and federal government, or of any administrative agencies thereof, or of the Town. Provided, however, if any state, federal or local law, regulation or ordinance shall prohibit the Company from performing any service, in conflict with the terms of this Chapter, of the Franchise, or of any other law or regulation of the Town then as soon as possible following knowledge thereof, the Company shall notify the Town in writing of the point of conflict believed to exist between such regulation, law or ordinance and the laws, regulations, and ordinances of the Town or this Chapter, or of the Franchise.
- B. Any Franchise granted shall contain an obligation to pay a Franchise Fee to the Town as consideration for the use of public rights of way. The amount of the Franchise Fee shall be set in each Franchise agreement, but shall not exceed the maximum amount set by applicable law.

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No party receiving a Franchise from the Town shall evade or avoid the obligation to pay Franchise Fees by allocating revenues to non-cable services so as to result in an allocation of revenue to cable services that is less than the fair market value of those services.

### **§ 72-9. Supervision by Town.**

The Town Manager, or his designee, shall be appointed and act in the Town's behalf as Cable Communications Officer and his responsibilities and duties shall include, but not be limited to, the following:

- A. Liaison between the Town and the Company.
- B. Supervision and monitoring of the Company's adherence to Franchise provisions.
- C. To assure compliance with applicable laws, ordinances and regulations.

### **§ 72-10. Franchise Award Procedure.**

The Council shall award a Franchise to an Applicant only after a public hearing on the application and proposal, notice of said public hearing to be published at least once in a local newspaper of general circulation. The decision to grant any Franchise shall be at the sole discretion of the Council within the requirements of this Chapter and applicable law, and any such decision thereon shall be final subject to any rights of judicial review granted by applicable law. Any Franchise that is granted shall be authorized by ordinance of the Council.

### **§72-11. Company not to Challenge Validity of Ordinance of Franchise.**

By acceptance of the grant of any Franchise pursuant to applicable law for the provision of cable service, the Company covenants and agrees that it will not at any time or in any manner or proceeding set up against the Town any claim or proceeding challenging this Chapter or the grant of a Franchise as being unreasonable, arbitrary, voidable or void, nor that the Town did not have the power or authority to make such term or condition. By accepting the grant of any such Franchise the Company accepts the validity of this Chapter in its entirety.

### **§72-12. Telecommunications Providers.**

Any telecommunications provider as that term is defined in C.R.S. § 38-5.5-102(3), offering, or proposing to offer, Cable Services within the Town shall comply with the terms of this Chapter prior to construction and commencement of operation, and maintain compliance thereafter, whether or not such provider is otherwise authorized to use the Streets or other Public Property for telecommunications services.

### **§72-13. Filing.**

When not otherwise prescribed in this Chapter or the Franchise, all matters required to be filed with the Town shall be filed with the Town Clerk.

### **§72-14. Violations.**

- A. From and after the effective date of this Chapter, it shall be unlawful for any person to construct, install or maintain within any Street or Public Property of the Town, or within any

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privately-owned area within the Town which has not yet become a public Street but is designated or delineated as a proposed public Street, any System, or part of a System, unless a Franchise authorizing such use of the Street, property or area has first been obtained from the Town, and unless the Franchise is in full force and effect.

- B. It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the System under any Franchise within this Town for the purpose of enabling himself or others to receive any programming of services provided by the System, without payment to the operator of the System.
- C. It shall be unlawful for any person, without consent of the Company, to willfully tamper with, remove or injure any cables, wires or other equipment constituting part of a System permitted pursuant to this Chapter.

### **§72-15. Penalties.**

Any person violating or failing to comply with Sections 72-4, 72-12, or 72-14 of this Chapter shall be guilty of a misdemeanor, and/or each day of violation or failure to comply, may be punished by a fine not to exceed \$1,000.00 and/or one year in jail.

### **§72-16. Severability.**

If any provision of this Chapter or the application of this Chapter to any person or circumstances is held invalid, such invalidity shall not affect any other provision of this Chapter. The provisions of this Chapter are intended to be severable.

### **§72-17. Scope and Applicability.**

Except for the provisions of Sections 72-4, 72-12, 72-14 and 72-15, the provisions of this Chapter shall apply to applicants filing applications for new or renewal franchises after the effective date of this Chapter.