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#### § 894.0 Applicability

The provisions of section 894.1 through 894.4 shall apply only to the award of an initial franchise by a municipality that does not qualify for the alternative procedure in section 894.9 and in which no cable system is operating, and no open video system has been certified by the FCC to operate. The provisions of sections 894.5 through 894.8 shall apply to all franchise applications, whether or not requested by a municipality, and to municipal action once an application is received. No cable television franchise shall be effective unless a certificate of confirmation has been issued by the commission pursuant to section 221 of the Public Service Law. An application for a certificate of confirmation shall comply with Part 897 of this Title.

#### § 894.1 Cable television advisory committee

(a) Designation. Upon receipt of a formal request for a franchise, a municipality shall, and at any other time a municipality may, designate a cable television advisory committee (hereinafter referred to as advisory committee) which, insofar as possible, shall be broadly representative of the community.

(b) Notification. Not more than 10 days after designating an advisory committee, the municipality shall:

(1) notify the commission of its action which notification shall include the names of those individuals designated to serve on the advisory committee and the address at which the advisory committee may receive communications;

(2) take such action as it deems appropriate to advise residents of the municipality that it has designated an advisory committee and to ensure that such residents have an opportunity to participate in the franchising process.

(c) Duties of the advisory committee. The advisory committee shall:

(1) undertake to inform itself and the public about cable communications;

(2) determine the communication needs and interests of the residents of the municipality, and the potential services and characteristics of a cable system that will meet such needs and interests; and

(3) prepare and submit to the municipality a final written report pursuant to section 894.2 of this Part.

#### § 894.2 Final report of advisory committee

(a) The advisory committee shall submit a final written report to the municipality within ninety (90) days of its designation containing:

(1) a description of the characteristics of the cable system deemed best suited to the needs and interests of the municipality; and

(2) A "Request for Proposals" in compliance with section 894.3

(b) The advisory committee shall submit a copy of its final report to the Commission upon submitting it to the municipality.

(c) Upon receipt of the final report of the advisory committee, the municipality shall:

(1) make a copy of the report available for public inspection during normal business hours; and

(2) consider the findings and recommendations contained in the report and, at a public session, within 45 days of the receipt of such final report, adopt a formal request for proposals that conforms to the requirements of section 894.3 of this

Part. The request for proposals submitted by the advisory committee as part of its final report is not binding on the municipality and may be modified in whole or in part.

#### § 894.3 Request for proposals

A request for proposals shall contain, but need not be limited to:

- (a) a description of the cable television system desired by the municipality, including any system specifications established by the municipality;
- (b) a statement specifying the form that all applications shall follow;
- (c) a statement indicating the amount of the application fee (if any) to be submitted with the application, and the manner in which such fee is to be submitted;
- (d) a statement that all applications must contain the information required by section 894.5 of this Part;
- (e) the closing date for the submission of applications (which shall be the same as that contained in the public notice); and
- (f) the name, address and telephone number of the municipal official(s) who may be contacted for further information.

#### § 894.4 Invitation of applications; public notice of request for proposals

(a) A municipality shall invite applications for a cable television franchise by means of a public notice advertising the availability of its requests for proposals. The public notice shall contain, but need not be limited to:

- (1) a description of the political or geographic boundaries of the area for which a franchise is sought;
- (2) a statement that a formal request for proposals is available to prospective applicants from a municipal officer whose name, address and telephone number are specified;
- (3) a statement that applications for a franchise must be submitted in writing in the form and manner specified in the request for proposals no later than a day certain (which date shall be not less than 60 days from the date of final publication of the public notice); and
- (4) a statement that all applications will be made available for public inspection during normal business hours at a specified location.

(b) The public notice of request for proposals shall be published in the following manner:

- (1) at least once in each of two different calendar weeks in the official newspaper(s) of the municipality; and
- (2) at least once in any two publications that may reasonably be expected to attract the attention of prospective franchise applicants nationally.

(c) Promptly upon the submission of its notice of request for proposals for publication, the municipality shall furnish the commission with true and complete copies of (1) the public notice; and (2) the formally adopted request for proposals, if materially different from the recommended request for proposals submitted to the municipality by the advisory committee true copies of proofs of publication shall also be provided to the commission.

#### § 894.5 Application for franchise

Every application submitted to a municipality for a cable television franchise shall include, in addition to such other information as may be required by the municipality by a request for proposals or otherwise:

(a) A description of the cable television system proposed to be constructed which description shall contain, but need not be limited to, information regarding:

- (1) channel capacity, including both the total capability of the proposed system and the number of channels to be energized immediately;

- (2) television and radio broadcast signals which the applicant intends to carry on its system initially;
  - (3) extent and type of any origination cablecasting to be undertaken, and the facilities, equipment and staff to be employed therein; and
  - (4) system layout or design, including where applicable:
    - (i) location of antennae and headend(s);
    - (ii) plans for two-way capability, including a proposed schedule indicating when two-way capability will become available from particular points;
    - (iii) location of origination points and origination facilities;
    - (iv) extent and type of automated services to be provided; and
    - (v) number of channels to be utilized for access cablecasting, and the facilities, equipment staff and other support to be available to access users including access utilization or production costs.
  - (b) The terms and conditions under which service is to be provided to educational and governmental entities.
  - (c) Terms concerning rates and construction schedules which satisfy the requirements of Part 895 of this Title.
  - (d) If an application seeks a franchise for an area for which an existing franchise is in effect, the applicant shall indicate specifically whether it will provide service on the same terms and conditions as contained in such existing franchise and may include a proposed franchise consistent therewith.
  - (e) A statement of the applicant's experience in the cable television field including, if applicable, the names and professional experience of the persons or organizations who will be responsible for the construction, installation and operation of the proposed system.
  - (f) A statement indicating whether the applicant or any of its principals owns or operates any other cable television system, directly or indirectly, and a statement indicating the name of any such operation(s) and the name and address of the chief executive officer(s) of the franchising authority(s) in which such system or station is located.
  - (g) A documented plan for financing the proposed system, which plan shall indicate specifically every significant anticipated source of capital and any and all limitations or conditions with respect to the availability of the indicated sources of capital.
  - (h) A statement indicating whether the applicant or any of its principals (which, in the case of a corporation, shall include all officers, directors and persons having a legal or equitable interest in ten percent or more of the voting stock):
    - (i) has ever been convicted of a crime involving moral turpitude (including criminal fraud) or is presently under an indictment charging such a crime;
    - (ii) has ever been held liable by any court of competent jurisdiction in any civil action based on fraud, deceit or misrepresentation; or
    - (iii) has ever been punished or censured in any jurisdiction for any violation or attempted violation of any law, rule or order relating to cable television operations.
- If the statement is affirmative with respect to any of the above-mentioned adverse considerations, the applicant should include in the statement such explanatory material as it deems appropriate.
- (i) The applicant shall mail a copy of the application to each person that holds an existing franchise from, or provides cable service in, the municipalities. Such mailing shall be made on or before the date the applicant submits its application to the municipality.

#### § 894.6 Investigation and due diligence required

The municipality shall use due diligence to investigate and assess the technical ability, financial condition, and character of every applicant and, in particular, to ascertain the operating record and reputation of any applicant who owns or operates, or whose principals own or operate cable television system elsewhere.

#### § 894.7 Public hearing

The municipality shall conduct a public hearing prior to awarding any cable television franchise. The hearing shall be preceded by reasonable notice to each of the franchise applicants, to the public, and to each person that holds a franchise from, or provides cable service in the municipality, to be franchised, and shall be conducted by the legislative body of the municipality or other duly authorized body in accordance with the following procedures:

(a) There shall be an agenda for the hearing which shall specify the proposal(s) to be considered at the hearing.

(b) Every person who has applied for a cable television franchise shall appear at the hearing either in person or by authorized representative. The application of any applicant not so appearing shall not be further considered, except for good cause shown.

(c) All persons, entitled to notice pursuant to this section, shall be given full opportunity to participate in the hearing and to ask questions of any applicant or participant in the hearing, but nothing contained herein shall limit the power of the presiding officer to establish reasonable time limits and otherwise limit repetitive statements or questions.

(d) The notice of hearing shall:

(1) conform to all relevant State and local laws and ordinances;

(2) describe the agenda to be considered at the public hearing; and

(3) indicate that copies of all franchise applications are available for public inspection during normal business hours at a place to be specified in the notice.

(e) Notwithstanding the number of applications for a cable television franchise which have been received, the hearing required by this section shall be convened within 60 days of the later of the following dates:

(1) the date upon which the application to be considered was filed or, if multiple franchise applications are pending, the last date upon which a pending application was filed;

(2) the closing date specified in a request for proposals for the filing of such applications; or

(3) the earliest date upon which the municipality may convene such a hearing pursuant to local law or charter.

(4) Notwithstanding paragraphs (1) - (3) of this subdivision, if the municipality has received a single application for a second or additional franchise and the applicant has stated its willingness to provide cable service on the same terms and conditions as those contained in an existing franchise, the hearing shall be held within thirty (30) days of the receipt of the application and the municipality may grant the franchise upon conclusion of such hearing.

#### § 894.8 Timing and manner of award of franchise

(a) A municipality may award one or more franchises within its jurisdiction. A municipality may not unreasonably refuse to award an additional competitive franchise.

(b) Notwithstanding the number of applications for a cable television franchise which have been received, the municipality shall either award or deny each application within a period of six months from the public hearing held pursuant to section 894.7 of this Part. The failure of the municipality to act within this period shall be deemed a denial of all cable television franchise applications before such municipality at such time.

(c) A municipality shall exercise due diligence to prepare a franchise agreement consistent with the needs and interests of the residents of the municipality and the standards of section 895.1.

(d) If a franchise application is denied the municipality shall include in the resolution the reasons for denial.

#### § 894.9 Alternative franchising procedure

(a) Notwithstanding anything to the contrary in this Part, compliance with the provisions of sections 894.1 through 894.4 of this Part will not be required of any municipality and cable television company authorized to use the alternative franchising procedure. Such authorization shall be granted by the secretary or, in the secretary's absence, the counsel to the commission, upon a showing that the criteria set forth in subdivision (b) of this section have been satisfied.

(b) In order to be eligible for the alternative franchising procedure described in subdivision (a) of this section there must be no existing cable system serving the proposed franchise area and the municipality must have contacted all cable television companies (if any) serving municipalities within a 25-mile radius of the proposed service area and determined that only one company is interested in providing the service, and the municipality must have served notice on all contiguous municipalities of its intention to grant a franchise pursuant to the alternative franchising procedure if authorized to do so by the commission.

(c) In the event the municipality is authorized to and does employ the alternative franchising procedure, the following requirements shall be met:

(1) The municipality shall cause a notice to be published in the official newspaper(s) of the municipality, within 30 days of receipt of authorization from the commission to utilize the alternative franchising procedure, stating:

(i) that the municipality has received approval from the commission to utilize the alternative franchising procedure; and

(ii) that an application for a franchise containing the information specified in section 894.5 of this Part must be submitted by any interested cable television company by a date certain which shall be at least 15 days prior to the public hearing held pursuant to section 894.7 of this Part; and

(2) The municipality shall mail a copy of the public notice required by paragraph (1) of this subdivision to each company holding an existing franchise to serve any portion of the geographic area sought to be franchised through the alternative franchising procedure. Such mailing shall be made on or before the date of the publication required by paragraph (1) of this subdivision.

(d) A municipality authorized to use the alternative franchising procedure shall comply with sections 894.5 through 894.8 of this Part.