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§ 895.1 Required contents of franchises

A franchise will be confirmed or approved by the commission only if it contains provisions in substantial compliance with the following:

(a) Recitations indicating that:

(1) the franchisee's technical ability, financial condition, and character were considered and approved in a full public proceeding affording due process;

(2) the franchisee's plans for constructing and operating the cable television system were considered and found adequate and feasible in a full public proceeding affording due process;

(3) the franchise complies with the commission's franchise standards; and

(4) the franchise is nonexclusive.

(b) For an initial franchise, a full description of the system proposed for construction, which shall indicate the specific geographical areas to be wired, and the location of all trunk and feeder plant. The description shall indicate anticipated stages of completion of construction at six-month intervals for the entire franchise area and a specific schedule showing that significant construction will be accomplished and cable television service will be available to a significant number of subscribers within one year after the effective date of the certificate of confirmation of the franchise; or for a renewal, a description of the system as constructed and as will be expanded or enhanced during the term of the renewal. In either case, the provision shall specify the minimum channel capacity of the system and describe any areas where the system will be extended and service made available only in accordance with specific conditions, which requirement may be fulfilled by reference to the minimum standards governing line extension in section 895.5 of this Part.

(c) A provision specifying that the franchisee shall construct and maintain its cable system using materials of good and durable quality and that all work involved in the construction, installation, maintenance, and repair of the cable system shall be performed in a safe, thorough and reliable manner.

(d) A provision stating that access to cable service will not be denied to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides.

(e) A provision stating that the rates and charges imposed by the franchisee for cable television service shall be subject to regulation in accordance with federal law.

(f) A provision describing the channel capacity and facilities, equipment and support for public, educational and governmental (PEG) access which requirement may be fulfilled by reference to the minimum standards set forth in section 895.4 of this Part; provided, however, that if any of the requirements for PEG access exceed such minimum standards, the provision shall state that the channel designation requirements for PEG access shall not be different than the channel designation requirements in any other cable television franchise granted by the municipality and that the provisions for facilities, equipment and support for PEG access shall be competitively neutral when compared to such requirements as may be contained in such other franchise.

(g) A provision specifying the franchise term which shall be up to a maximum of 15 years from the effective date of the certificate of confirmation or approval of a franchise renewal.

(h) A provision prohibiting the abandonment of service in any portion of the franchise area without the written consent of the franchising municipality.

(i) A provision:

(1) requiring the franchisee to indemnify the municipality for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the franchise; and

(2) specifying minimum amounts of liability insurance to be obtained by the franchisee.

(j) A provision stating that any municipal property damaged or destroyed shall be promptly repaired or replaced by the franchisee and restored to serviceable condition.

(k) A provision stating that the franchisee will not refuse to hire or employ, nor bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, color, national origin or sex.

(l) A provision reserving to the municipality the right to adopt, in addition to the provisions contained in the franchise and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power; provided, however, that such regulations are reasonable not materially in conflict with the privileges granted in the franchise and consistent with all federal and state laws, rules, regulations and orders.

(m) A provision reserving to the municipality the right to inspect all pertinent books, records, maps, plans, financial statements, and other like materials of the franchisee, upon reasonable notice and during normal business hours.

(n) A provision indicating by title the office or officer of the municipality that is responsible for the continuing administration of the franchise.

(o) A provision stating:

(1) whether a franchise fee shall be payable by the franchisee to the municipality; and, if applicable,

(2) the precise amount or method of calculation of such franchise fee;

(3) whether any facilities or support for public, educational and governmental access that may be required by the franchise shall be part of such franchise fee. This provision shall also provide that the amount or method of calculation shall be competitively neutral when compared to the amount or method of calculation of a franchise fee contained in any other cable television franchise granted by the municipality.

(p) A severability clause identifying any franchise provisions which the municipality and the franchisee deem to be material and stating that should any other provision of the franchise be held invalid by a court or a regulatory agency of competent jurisdiction, the remaining provisions of such franchise shall remain in full force and effect.

(q) A provision stating that the terms of the franchise are subject to the approval of the Public Service Commission.

(r) A provision requiring the franchisee to file applications for all necessary approvals from the commission and the Federal Communications Commission within 60 days from the date the franchise is granted or amended.

(s) (1) If municipal approval is required for a transfer of ownership or control of any franchise or cable television facilities serving a significant portion thereof, such approval shall be required in addition to any other approval required by applicable state law or regulation. A transfer of ownership or control for purposes of municipal jurisdiction shall mean the transfer of an equity or controlling interest or the equivalent thereof of fifty percent or more of any entity who controls the cable television system serving the municipality, unless otherwise specified in the franchise.

(2) In considering an application for the transfer of ownership or control of a franchise or cable television facilities serving a significant portion thereof, a municipality may consider the applicant's:

(i) technical ability;

(ii) the financial ability;

(iii) good character; and

(iv) other qualifications necessary to continue to operate the cable television system consistent with the terms of the franchise.

(t) A provision that any valid reporting requirements contained in the franchise may be satisfied with system-wide statistics, except for reporting requirements related to franchise fees and customer complaints.

§ 895.2 Additional terms and conditions permitted

Any franchise may contain such additional terms and conditions as the municipality and the franchisee deem appropriate, provided such additional terms and conditions are consistent with all Federal and State laws, rules, regulations and orders.

§ 895.3 Level playing field

No municipality may award or renew a franchise for cable television service which contains economic or regulatory burdens which when taken as a whole are greater or lesser than those burdens placed upon another cable television franchise operating in the same franchise area.

§ 895.4 Minimum standards for public, educational and governmental (PEG) access

(a) Definitions. (1) The term public access channel means a channel designated for noncommercial use by the public on a first-come, first-served, nondiscriminatory basis.

(2) The term educational access channel means a channel designated for noncommercial use by school districts and not-for-profit educational institutions chartered or licensed by the New York State Education Department or Board of Regents.

(3) The term government access channel means a channel designated for noncommercial use by municipal, county and State government, or agencies thereof.

(4) The term public, educational, or governmental (PEG) access facilities means (i) channel capacity designated for noncommercial public, educational or governmental use; and (ii) facilities and equipment for noncommercial the use of such channel capacity.

(5) The term local use means use by residents of the State of New York including school districts and not-for-profit educational institutions and municipal, county and State governments, or agencies thereof.

(6) The term access cablecast day means a day or part thereof during which public, educational or governmental access facilities are available for PEG use.

(b) Designation of channels. Every cable television franchisee shall designate channel capacity for PEG access as follows:

(1) The franchisee of a cable television system with a channel capacity of 36 or more channels shall designate (i) at least one full-time activated channel for public access use; (ii) at least one full-time activated channel for educational and governmental use; and (iii) one additional full-time activated channel for educational/governmental use whenever the first channel so designated shall have been used for such educational and governmental programming on the average of at least 12 hours per day during any 90-day period; provided, however, that the calculation of such average shall not include any day when the unavailability of PEG access facilities precludes achieving such programming level. In the event that two channels for educational and governmental use are required by this subdivision, one channel shall be designated the educational access channel and one channel shall be designated the governmental access channel; provided, however, that either channel may be used for either purpose if necessary to satisfy the demand for channel time.

(2) The franchisee of a cable television system with a channel capacity less than 36 channels shall designate at least one full-time activated channel for public, educational and governmental use.

(c) Administration and use. The use of the channel capacity for PEG access shall be administered as follows:

(1) The public access channel shall be operated and administered by the entity designated by the municipality or, until such designation is made, by the cable television franchisee; provided, however, that the municipality may designate such entity at any time throughout the term of a franchise by a resolution duly adopted by the legislative body thereof.*

* If a single public access channel is shared by two or more municipalities, the joint designation of a single entity is encouraged.

(2) The educational and governmental access channel shall be operated and administered by a committee or a commission appointed by local government and shall include appropriate representation of local school districts within

the service area of the cable television system and may include for purposes of coordination an employee or representative of the cable television franchisee.** ** Where an educational or a governmental channel is shared by more than one school district or local government or combination thereof, administration of such channel(s) on a cooperative basis is encouraged.

(3) The entity responsible for administering and operating the public access channel shall provide notice to the general public of the opportunity to use such channel which notice shall include (i) periodic message transmitted on such channel and (ii) written notice to subscribers at least annually. Notices shall include the name, address and telephone number of the entity to be contacted for use of the channel. All PEG access programming shall be identified as such.

(4) Channel time shall be scheduled on the public access channel by the entity responsible for the administration thereof on a first-come, first-served, nondiscriminatory basis.

(5) Local use of educational and governmental access channels shall have preferred status in the event of competing requests for channel time. Priority may be afforded to local governments within the service area of the system.

(6) Channel time for PEG access programming shall be without charge to the user.

(7) The designation of PEG access facilities shall include the provision by the cable television franchisee of the technical ability to play back prerecorded programming and to transmit programming information consistent with the designated uses of PEG access channels.

(8) The cable television franchisee shall not exercise any editorial control over any public, educational or governmental use of channel capacity designated for PEG purposes provided, however, that this subparagraph shall not be applied to prevent a cable television company from taking such measures as may be authorized by Federal or state law to prohibit obscenity or other content unprotected by the *First Amendment of the United States Constitution*.

(9) A municipality shall not exercise any editorial control over any use by the public of a public access channel except as may be permitted by law.

(10) The entity responsible for the administration of a public access channel shall maintain a record of the use of such channel which shall include the names and addresses of all persons using or requesting the use of any such channel and which record shall be available for public inspection for a minimum of two years.

(11) Channels designated for PEG use shall be included in the lowest level of service offered by the cable television franchisee, provided, however, if the number of PEG channels exceeds the minimum number of channels required by this Part, then the cable television franchisee and the local franchising authority may agree to carriage of additional PEG channels on a tier other than the lowest level of service; where a system does not include sufficient unused channel capacity to accommodate a second educational/governmental access channel resulting from the operation of subdivision (b) of this section, the cable television franchisee may elect one time to defer the obligation to provide such additional channel until additional channel capacity becomes available.

(12) A cable television franchisee shall be permitted to use time on one or more PEG access channels whenever there are no blank channels available on the same level of service which includes the PEG channel(s) and whenever such PEG channel(s) is not scheduled for use at least 72 hours in advance of such time or times desired by the cable television franchisee; provided that any use of such PEG channel(s) by the franchisee shall at all times be subordinate to designated PEG use and shall terminate or be preempted by PEG programming scheduled at least 72 hours in advance. All nonaccess programming on PEG channels shall be identified as such by an appropriate announcement made prior to and following each nonaccess use. Notwithstanding the foregoing, at such time as any PEG channel on a cable television system with a channel capacity in excess of 40 channels has been programmed for a daily average of eight hours or 50 percent of the hours of access cablecast days, whichever is less, during any 90-day period, use of such channel by the cable television franchisee shall be suspended for such time as such minimum PEG use of such channel is maintained.

(d) Applicability. (1) Subdivisions (a), (c) and (f) of this section shall apply to the use of channel capacity designated for PEG access as of September 9, 1990.

(2) The minimum channel designation requirements in subdivision (b) of this section shall be required by, and shall be a condition to, the exercise of every franchise and certificate of confirmation granted or renewed after September 9, 1990.

(3) Notwithstanding the foregoing, nothing contained herein shall impair the enforcement of any provision of any franchise in effect on September 9, 1990 concerning the designation and use of channel capacity, facilities and equipment for PEG access or otherwise diminish the obligations of a cable television franchisee with respect to PEG access.

(e) General. Any cable television franchise granted, renewed or amended after the effective date of this section (September 9, 1988) may include additional provisions concerning the designation and use of public, educational and governmental access facilities as follows:

(1) a provision specifying facilities and equipment to be made available by the franchisee for use in connection with the designated PEG channels; and

(2) any other provision concerning the designation and use of channel capacity for public, educational and governmental access consistent with Federal and State law.

(f) Waivers and rulings. (1) A cable television franchisee, a municipality or an entity designated to administer a public access channel may seek a waiver of one or more provisions of this section.

(2) Any interested person may seek a ruling from the commission concerning the applicability or implementation of any provision of this section or any provision of a franchise concerning PEG access upon the filing of a petition.

(3) Notwithstanding paragraphs (1) and (2) of this subdivision, the commission shall not grant any waiver or ruling, or enter any order that constitutes the exercise of editorial control over the content of public access programming except as may be permitted by law.

(4) Waiver requests regarding section 895.4(b)(1) shall be submitted by joint petition of the franchising authority and the cable television franchisee. Any such petition may seek permission to substitute a commitment not required by this Part in lieu of one or more standards that are required.

(g) Severability. If any provision of this section or the application of such provision is held invalid by a court of competent jurisdiction, the remainder of this section or the application of the provision to other circumstances shall not be affected thereby.

§ 895.5 Requirements for construction of cable television plant and provision of cable television services

(a) Definitions. (1) Primary service area shall include each of the following within the franchised area:

(i) those areas where the cable television plant has been built without a contribution-in-aid-of-construction by subscribers;

(ii) those areas where the cable television company is obligated by the terms of its franchise to provide cable television service without a contribution-in-aid-of-construction by subscribers;

(iii) any area adjoining an area described in subparagraph (i) or (ii) of this paragraph and which contains dwelling units at a minimum rate of 35 dwelling units per linear mile of aerial cable;

(iv) any area adjoining an area described in subparagraphs (i) and (ii) of this paragraph and which contains at least the same number of dwelling units per linear mile of aerial cable as is the average number of dwelling units per linear mile of cable in areas described in subparagraphs (i) and (ii) of this paragraph. The average is to be determined by dividing the sum of the dwelling units in areas described in subparagraphs (i) and (ii) of this paragraph by the number of linear miles of cable in the same areas.

(2) Line extension area shall be any area within the franchised area which is not the primary service area.

(b) Where a cable television franchise is awarded, renewed or amended after October 1, 1982, the franchise will be confirmed or the amendment will be approved by the commission only if the franchise contains the following additional minimum franchise standards:

(1) That, within five years after receipt of all necessary operating authorizations, cable television service will be offered throughout the authorized area to all subscribers requesting service in any primary service area.

(2) That cable television service will not be denied to potential subscribers located in line extension areas who are willing to contribute to the cost of construction in accordance with the following formula:

$$C - CA = SC$$

$$LE - P$$

C equals the cost of construction of new plant; CA equals the average cost of construction per mile in the primary service area; P equals the lower of 35 or the average number of dwelling units per linear mile of cable in areas described in subparagraphs (a)(1)(i) and (ii) of this section; LE equals the number of dwelling units requesting service in the line extension area; and SC equals subscriber contribution-in-aid-of-construction in the line extension area.

(i) Whenever a potential subscriber located in a line extension area requests service, the cable television company shall, within 30 days of the request, conduct a survey to determine the number of potential subscribers located in the line extension area, and shall inform each of the potential subscribers of the contribution-in-aid-of-construction that may be charged. The cable television company may require prepayment of the contribution-in-aid-of-construction. The cable television company shall apply for pole attachment agreements within 30 days of its receipt of the contribution-in-aid-of-construction. Cable television services must be made available to those who made a contribution-in-aid-of-construction within 90 days from the receipt of pole attachment agreements by the cable television company.

(ii) The contribution-in-aid-construction shall be in addition to the installation rate set forth in the franchise.

(iii) During a five-year period commencing at the completion of a particular line extension, pro rata refund shall be paid to previous subscribers as new subscribers are added to the particular line extension; the amount of the refund, if any, shall be determined by application of the formula annually. The refunds shall be paid annually to subscribers, or former subscribers, entitled to receive them. The company shall not be required to provide refunds to any previous subscriber otherwise entitled to a refund, who is no longer at that same address and who has not informed the company of the subscriber's address.

(3) That cable television service will be provided to any subscriber who demands service within seven business days of the request for service and who is located within 150 feet of aerial feeder cable, and that the charge for the installation for any subscriber so situated will not be in excess of the standard installation charge.

(4) Nothing in paragraph (1) of this subdivision shall be construed to preclude:

(i) the provision of cable television services by the franchisee in a line extension area without assessing a contribution-in-aid-of-construction; or

(ii) the inclusion in a cable television franchise of a provision establishing a primary service area which includes at least all of those area which are in the primary service area as defined in subdivision (a) of this section.

(5) Nothing in paragraph (2) of this subdivision shall be construed to preclude:

(i) the discounting or the waiver of the maximum contribution-in-aid-of-construction charge a cable television company can charge a subscriber pursuant to paragraph (2) of this subdivision; or

(ii) the inclusion of a provision in a cable television franchise establishing a formula to be used to determine the contribution-in-aid-of-construction charge, which formula is different than the formula set forth in paragraph (2) of this subdivision, provided that the formula included in the franchise does not require payment by the subscriber in a line extension area of a higher contribution-in-aid-of-construction charge than would result from the use of the formula set forth in paragraph (2) of this subdivision.

(c) All cable television companies operating in the State of New York shall make cable television service available to all potential subscribers requesting service who are located in a primary service area as defined in paragraph (a)(1) of this section, and shall make services available in line extension areas as defined in paragraph (a)(2) of this section at charges which may not exceed those provided for in paragraph (b)(2) of this section within the following schedule of compliance:

(1) prior to January 1, 1984 in any franchise area for which the original certificate of confirmation of the franchise was granted by this commission prior to January 1, 1979;

(2) within five years from the date the certificate of confirmation was granted by this commission, in any franchise area for which the original certificate of confirmation of the franchise was granted by this commission after January 1, 1979.

(d) The provisions of this section may be waived by the commission if the commission determines that compliance with the section would not be possible within the limitations of economic feasibility.