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ORDINANCE NO. 3668

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE PROVISIONS OF CHAPTER 4.68 RELATING TO CABLE ANTENNA TELEVISION SYSTEMS TO ADD A NEW SECTION 4.68.390, 400 AND 410, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, a recent order of the Federal Communications Commission adds a new section to Part 76 of Title 47 of the Code of Federal Regulations, 47 C.F.R. § 76.41 requiring that a request for a Competitive Franchise be handled on an expedited basis by a City with a decision made within a 90-day period for cable franchise applications by an applicant with an existing franchise or within one hundred eighty (180) days for applicants with no existing right of way or franchise authority; and

WHEREAS, the City currently has in place a model franchise which, while valid for three remaining years, is at the end of its useful life, and

WHEREAS, the City Council deems it appropriate to adopt interim regulations to comply with the FCC directive, establishing application requirements and an application fee in anticipation of requests for a competitive franchise, establishing an application fee and providing for an immediate effective date in order to comply with FCC requirements, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. ECC Chapter 4.68 in order to add a new section 4.68.390 Expedited

Review Process - Competitive Franchises.

4.68.390 Expedited Review Process - Competitive Franchises

In accordance with the Competitive Franchise Rule adopted pursuant to part 76 of Title 47 of the Code of Federal Regulations, 47 C.F.R. § 76.41, a process for expedited review of franchise applications for a Competitive Franchise is hereby established

A. APPLICATION OF RULE.

Any application for a cable franchise agreement submitted pursuant to 46 C.F.R.. § 76.41 to the City shall contain the requisite information set forth herein. The Mayor and staff shall evaluate the application and make recommendations to the Edmonds City Council based on the criteria set forth herein.

B. DEFINITIONS.

As used in this local rule, definitions shall be as follows:

1. “Affiliated Entity” or “Affiliate” means any entity having ownership or control in common with the Grantee, in whole or in part, including, without limitation, Grantee’s parent Corporations and any subsidiaries or affiliates of such Parent Corporations.
2. “CFAR Franchise Applicant” or “Applicant” means an applicant for a cable franchise pursuant to the provisions of the Competitive Franchise Application Rule (“CFAR”) set forth in Part 76 of Title 47 of the Code of Federal Regulations, § 76.41, and includes the Parent Corporation, its subsidiaries and Principals.
3. “City” means the City of Edmonds.
4. “Control” is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.
5. “Interest” includes officers, directors and shareholders owning five percent or more of the CFAR Franchise Applicant’s outstanding stock or any equivalent voting interest of a partnership or joint venture.
6. “Model Cable Franchise Template” means Chapter 4.68 ECC Community Antenna Television Systems Franchise containing standard franchise terms and conditions for cable franchises granted in the City, as the same exists or is hereafter

amended through a process that will commence in 2008. Franchises granted under existing Chapter 4.68 shall expire on April 26, 2011 unless an earlier date is established in the review process.

7. “Staff” means the persons or positions designated by the Mayor for review. The term shall include any consultant hired by the City to assist in its review.

8. “Parent Corporation” includes any entity with ownership or control of the CFAR Franchise Applicant.

9. “Principal” includes any person, firm, corporation, partnership, joint venture, affiliates, or other entity, who or which has control of or interest in a CFAR Franchise Applicant.

10. “Regulatory Authority” includes any governmental or quasi-governmental organization or entity with jurisdiction over all or any portion of the CFAR Franchise Applicant or its operations.

C. COMPETITIVE FRANCHISE APPLICATION
SUBMISSION

A CFAR Franchise applicant shall include in its application detailed written responses to the requisite information set forth in Section ECC 4.68.400, in addition to any information required by 47 C.F.R. § 76.41 (hereinafter collectively the “Application”). A CFAR Franchise Applicant shall submit an application fee required under ECC 4.68.410 as part of its Application to the City. A CFAR Franchise Applicant shall also provide any additional information requested by the Staff that is relevant to the evaluation of the Application under the criteria adopted herein and applicable law. Completed Application and the application fee shall be filed with the City Clerk at the following address:

City Clerk
City of Edmonds
121 – 5th Ave. North
Edmonds, WA 98020

The Staff shall accept and review only those Applications that include complete responses to every element of the information required herein. Submission of an Application that does not include the requisite information set forth in Section ECC 4.68.400 and the application fee shall not commence the time period set forth in 47 C.F.R. § 76.41 for granting or denying an Application. If the Staff requests any additional information from the CFAR

Franchise Applicant, the time period set forth in 47 C.F.R. § 76.41 shall be tolled from the date the information is requested until the date such information is received by the staff.

The CFAR Franchise Applicant shall immediately submit additional or updated information as necessary to ensure the requisite information provided is complete and accurate throughout the Staff review of the Application.

Upon request, the Staff will promptly provide access to documents or information in its possession or control that are necessary for the completion of an Application, provided that the CFAR Franchise Applicant does not otherwise have access to such documents or information and that such documents or information are subject to disclosure under Washington public records laws.

Section 2. The Edmonds City Code Chapter 4.68 is hereby amended by the addition of a new Section 4.68.400 CFAR Application Requisites to read as follows:

4.68.400 CFAR Application Requisites

A. IDENTIFICATION AND OWNERSHIP INFORMATION

1. IDENTIFICATION OF APPLICANT AND PROPOSED FRANCHISEE.

a. State the name, address, telephone number and web site (if applicable) of the Applicant and the proposed franchisee (if different from applicant).

b. State the name, address, primary telephone number and primary e-mail address of all individual(s) authorized to represent the Applicant before the Staff during their consideration of the franchise(s) requested, including the Applicant's primary contact and any additional authorized contacts.

2. BUSINESS STRUCTURE

a. Corporation:

i. If Applicant is a corporation, please list all officers and members of the Board of Directors, their principal affiliations and their addresses;

ii. Attach a certified copy of the Articles of Incorporation and Bylaws of the corporation as well as certificates

of good standing from the Secretary of State of the state of incorporation as well as the State of Washington; and

iii. State whether the Applicant is directly or indirectly controlled by another corporation or legal entity. If so, attach an explanatory statement and response to question 2.a (i) and (ii) above concerning the controlling corporation.

b. Partnership:

i. If Applicant is a partnership, please describe the structure of the partnership and the interests of general and limited partners.

ii. State whether the Applicant is controlled directly or indirectly by any corporation or other legal entity. If so, respond to 2.a (i) and (ii) or 2.b (i) above, as applicable, concerning the controlling entity.

3. EXPERIENCE

a. Current Franchises

Please list all cable systems operated by the Applicant in the last five (5) years. For each system, include name of system, address, communities served, number of subscribers, number of homes passed, date of system award, duration (start and end date) of franchise, status of construction, and percent of penetration of homes passed as of most recently available date (include date). Also include name, title, and telephone number of the system manager and authorized representative of the franchising authority.

b. Pending Franchised

List communities where the Applicant or any Affiliate currently has a formal or informal request pending for an initial franchise, the renewal of a franchise, or the approval of a transfer of ownership. Include name of communities, date of application, date of expected action, estimated number of homes. Also include complete contact information of an authorized representative of the franchise authority.

4. MANAGEMENT STRUCTURE.

Attach a management/organizational chart, showing the management structure of the Applicant. Also, provide a similar chart showing the relationship of the Applicant to all general partners, Parent Corporations, subsidiaries, Affiliates and all other

subsidiaries of Parent Corporation, including a brief description of each entity's relationship to the Applicant.

5. MANAGEMENT AGREEMENT.

State whether there are any management agreements existing or proposed between the Applicant and any Parent Corporation or Affiliate related to construction and operation of the Applicant's planned system in Seattle. If yes, attach a copy of any such agreement.

B. LEGAL QUALIFICATIONS

1. MEDIA CROSS-OWNERSHIP

Section 613 of the Cable Communications Policy Act of 1984, 47 U.S.C. §533(a), and applicable FCC rules prohibit certain forms of media cross-ownership. Please state whether the Applicant or an Affiliate directly or indirectly owns, operates, controls or has an interest in any of the following, OR whether the Applicant holds or operates any company or business operating jointly with any of the following:

- a. A national broadcast television network (such as ABC, CBS or NBC, etc.).
- b. A television broadcast station whose predicted Grad B contour, computed in accordance with Section 73.684 of the FCC's rules, overlaps in whole or in part in the City, or an application for license to operate such a station.
- c. A telecommunications or telephone company whose service area includes any portion of the City.

If the response to any of the above is affirmative, state the name of the Applicant or Affiliate, the nature and percentage of ownership or interest and the company that is owned or in which the interest is held.

2. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION.

Federal Law requires cable system operators to be certified by the Federal Communications Commission (FCC) as being in compliance with the equal employment opportunity requirements of § 634(e) of the Cable Communications Policy Act of 1984, 47 U.S.C. § 554(e). The Applicant shall attach any current FCC

certification(s) for its existing cable system holdings, if any, or indicate its intention to apply for and abide by same.

3. FRANCHISE VIOLATIONS

State whether the Applicant or any Affiliate has been found in violation by a Regulatory Authority or franchising authority of any franchise ordinance or agreement, contract or regulation governing a cable system. If so, identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

4. OTHER VIOLATIONS

State whether the Applicant or any Affiliate has been found in violation of any franchise, ordinance, agreement, permit, contract or regulation by a Regulatory Authority of any other type (e.g. public utility commission). If so, identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

C. FINANCIAL QUALIFICATIONS

1. For applicants with existing operations: provide audited financial statements, including statements of income, balance sheets and cash flow statements, together with any notes necessary to the understanding of the financial statements for the last three fiscal years for the Applicant and any Parent Corporation. Please provide associated operating statistics including distribution plant miles, homes passed, number of basic cable service subscribers, number of subscribers to other tiers or services, including digital services, internet access services, telephone services and number of premium units, for the operations corresponding to the financial statements.

2. For all Applicants: provide detailed pro forma projections for both Applicant's operations in the City and any regional or national planned operations of which the City is a part, for the next five (5) fiscal years from the date of the Application, including balance sheets, income statements, and statements of cash flows, or, alternatively, at a minimum, detailed projected income and cash flow statements. Please include associated operating statistic assumptions for these projections including distribution plant miles, homes passed, number of basic cable service subscribers, number of subscribers to other tiers or services (e.g., digital service, high speed internet access service, telephone service, etc.), and number of premium units. Also, describe any other

assumptions reflected in the projections, including (1) revenue assumptions, such as service rates, (2) expense assumptions, such as direct costs of service, staffing levels, or anticipated cost inflation, (3) capital expenditure assumptions, such as miles of plant to be built and costs per mile of construction or per subscriber, and (4) financing assumptions, such as funds to be borrowed and from whom, interest rates, and timing of repayment, or equity infusions and distributions. Please provide these projections in electronic (Excel spreadsheet) form as well as in printed form.

D. TECHNICAL QUALIFICATIONS, PLANNED SERVICES AND OPERATIONS

1. Describe the Applicant's planned initial and proposed geographic cable service area, including a map and proposed dates for offering service to each area;
2. If the Applicant has or asserts existing authority to access the public right of way in any of the initial or proposed service areas listed in D.1. above, state the basis for such authority or asserted authority and attach the relevant agreements or other documentation of such authority;
3. Describe with particularity the Applicant's planned residential cable services, including basic cable services, cable programming service tiers, and any additional pay-per-view, on-demand or digital services; and the projected rates for each category or tier or service;
4. Describe with particularity the Applicant's planned system technical design, upstream and downstream capacity and speed, provision for analog or digital services or packages, distribution of fiber, and planned count of households per residential note;
5. Describe with particularity the Applicant's planned non-residential cable services;
6. Describe the Applicant's planned construction and extension or phase schedule, as applicable, including system extension plans or policy; describe current status of the Applicant's existing or proposed arrangements with area utilities, including pole attachments, vault, or conduit sharing agreements as applicable;
7. Describe the Applicant's plan to ensure that the safety, functioning and appearance of property and convenience and safety of other persons not be adversely affected by installation or

construction of the Applicant's facilities, and that property owners are justly compensated for any damages caused by the installation, construction, operation or removal of the facilities; also state the proposed allocation of costs of installation, construction, operation or removal of facilities between the Applicant and the subscriber;

8. Describe the availability and cost of a device to enable a subscriber to block obscene or indecent programming; and

9. Describe the Applicant's plan to comply with the subscriber privacy protections set forth in 47 U.S.C. § 551.

E. MINIMUM FRANCHISE OBLIGATIONS

Please state the Applicant's intention to meet each of the following minimum cable franchise standards:

1. Model Franchises. The Applicant shall comply with all provisions of Chapter 4.68 ECC.

2. Right of Way ("ROW") Regulations. The Applicant shall stipulate in writing that it will at all times comply with all applicable and lawful City laws and regulations related to use of the public ROW within the boundaries of the City.

3. Nondiscrimination. The Applicant shall stipulate that it shall not deny cable service to any group of potential residential cable subscribers in the cable service area proposed by Applicant based on their income.

4. Franchise Fees. The Applicant shall pay franchise fees on a monthly basis, unless otherwise agreed to by the City, at the franchise fee rate established by ordinance for all cable service providers in Seattle.

F. CITY EXPECTATIONS

The Applicant will provide a detailed proposal as part of its application regarding each of the below provisions to enable the City to determine whether the Application meets the cable-related needs and interests of the City.

1. Build-out. The City expects that all residents within a specified cable service area will have access to Applicant's cable services consistent with all applicable local, state and federal laws and regulations. The Applicant shall provide a proposal to provide access to cable services to all residents in Applicant's proposed cable service area within a reasonable time period. Maps of

existing franchise districts are on file with the staff's office or available by contacting the City at 425-775-2525. The staff may reconsider cable service areas proposed by Applicant that overlap the geographic boundaries of existing Edmonds cable franchise districts. Applicant shall clearly specify all build-out criteria and exceptions.

2. PEG Channel Capacity. The Applicant shall provide the same channel capacity as available under existing incumbent City cable franchise agreements. Channel capacity is not limited to channels currently in use but shall include all available channels under existing franchise agreements.

G. PROPOSED FRANCHISE TERMS

The City's Model Cable Franchise Template, Attachment A to this rule, reflects terms and conditions required of other cable operations in Edmonds as of the effective date of the CFAR. The Applicant shall list any proposed amendments to the Model Cable Franchise Template and an explanation as to why the amendment should be considered by the City. These proposed amendments may either be included in this section of Applicants CFAR Franchise Application or shown directly on the Model Cable Franchise Template. An electronic copy of the Model Cable Franchise Template may be obtained by calling staff at 425-775-2525 or on the City's website: ci.edmonds.wa.us.

H. MISCELLANEOUS PROVISIONS

1. State whether the Applicant contemplates the provision of any cable services on its system under an Open Video Systems ("OVS") regulatory regime, within the meaning of Section 653 of the 1934 Communications Act (47 U.S.C. § 573).

III. AFFIDAVIT OF APPLICANT

Each application shall be accompanied by an affidavit substantially in the form set forth below.

This application of the Applicant is submitted by the undersigned who has been duly authorized to make the representations within on behalf of the Applicant and certifies the representations are true and correct.

The Applicant recognizes that all representations are binding on it and that material misrepresentations or omissions, or failure to adhere to any such representation may result in a negative staff

recommendation to the Edmonds City Council, or denial of a CFAR Franchise Application by the Edmonds City Council.

Consent is hereby given to the staff and their representatives or agents to make inquiry into the legal character, technical, financial and other qualifications of the Applicant by contacting any persons or organizations named herein as references, or by any other appropriate means.

The Applicant recognizes that information submitted is open to public inspection and subject to the Washington Public Records Law. We advise the Applicant to be familiar with the Washington Public Records Act at Chapter 42.56 RCW. The Applicant should specifically identify any information which the Applicant has deemed proprietary, the Staff, as appropriate, will tender to the Applicant the defense of any request to compel disclosure. By submitting information which the Applicant deems proprietary or otherwise exempt from disclosure, the Applicant agrees to defend and hold harmless the City of Edmonds and the staff from any claim for disclosure including but not limited to expenses including out-of-pocket costs and attorneys' fees, as well as any judgment entered against the City of Edmonds or the staff for the attorney fees of the party requesting disclosure.

Name of Applicant's Authorized Representative: _____
_____.

Affiant's Signature:

Official Position:

Date:

NOTARIZATION

Subscribed and sworn before me this _____ of _____, 20____,

Notary Public for Washington:

My Commission expires: _____

D. APPLICATION FEE.

The application fee to cover the reasonable cost of processing application is set forth in ECC 4.68.400. The fee shall be equal to the actual, reasonable costs of review, and the application fee shall

be considered a deposit against payment or reimbursement of the City's costs.

E. REVIEW PROCESS

1. Acceptance of Application.

Within ten (10) business days of receipt of an application, staff shall review the application to ensure all requisite information is included in the application.

(a) If the application is not complete, staff will notify the applicant in writing within ten (10) business days, listing the requisite information that is required to complete the application and notifying the Applicant that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41 will not begin to run until such information is received.

(b) If the application is complete, staff will notify the Applicant in writing within five (5) business days by certified mail that all requisite information has been received.

2. Staff Review.

Staff shall review all completed applications based on the review criteria set forth herein. If, during the review of an application, staff requires additional information from the Applicant, staff will promptly request the information from the Applicant, in writing, along with a notification that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41 will be tolled until such information is received by the staff. After completing the review, staff shall provide an analysis of the application and recommendations to the Edmonds City Council.

3. Public Notification and Opportunity to Comment.

The Edmonds City Council may hold a public hearing to provide the applicant and residents in the proposed cable service area prompt notice and an opportunity to comment on any CFAR Franchise Application. Notice requirements for public hearings shall be provided ten (10) business days in advance, provided, however, that the City Clerk may shorten or alter these requirements as needed to meet the deadline for a Council decision set forth in 47 C.F.R. § 76.41, unless the Applicant and the staff agree to extend the deadline.

4. Review Criteria.

The staff may recommend to the City Council denial of an application of any of the following exists:

- (a) The Applicant does not have the financial, technical, or legal qualifications to provide cable service; or
- (b) The Applicant will not provide adequate public, educational, and governmental access channel capacity, facilities, or financial support, as evidenced by the most recent needs ascertainment conducted by or on behalf of the staff or other relevant study of community needs; or
- (c) The Applicant will not meet the City's minimum reasonable build-out requirements; or
- (d) The Applicant's proposed terms do not comply with applicable federal, state and local laws and regulations including, but not limited to, local customer service standards or relevant existing City contractual obligations; or
- (e) Applicant has made material misrepresentations or omissions, or has failed to adhere to any such representations.

5. Length of Franchise.

A franchise granted under these provisions shall expire on the date established in the review process, in no event later than April 26, 2011. the same date as any underlying, non-exclusive cable franchise previously granted by the City. This franchise length has been established in order to permit full assessment of the needs of the City and its citizens as permitted by 47 U.S.C. § 521, et seq; and the regulations promulgated thereunder as Chapter 4.68 is revised

Section 3. The Edmonds City Code Chapter 4.68 is hereby amended to add a new section 4.68.410 CFAR Application Fee to read as follows:

4.68.410 CFAR Application Fee; Deposit Required.

The application shall be accompanied by a casher check or similar instrument in the amount of Five Thousand Dollars (\$5,000.00). This fee is a deposit against the actual reasonable cost of processing the application. The applicant agrees, by its submittal, to pay the actual reasonable costs of review, either by City staff or a consultant, on a time and materials basis. If the deposit is not adequate to pay the costs incurred, written notice to supplement the deposit shall be provided by staff. If the applicant fails to

supplement the deposit, processing shall halt and the time limit for review stayed until the deposit is supplemented in an amount equal to the estimated cost of completing review. Any unused portion of the deposit shall be returned to the applicant.

Section 4. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:

MAYOR GARY HAAKENSON

ATTEST/AUTHENTICATED:

CITY CLERK, SANDRA S. CHASE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____
W. SCOTT SNYDER

FILED WITH THE CITY CLERK: 11/02/2007
PASSED BY THE CITY COUNCIL: 11/05/2007
PUBLISHED: 11/11/2007
EFFECTIVE DATE: 11/16/2007
ORDINANCE NO. 3668

SUMMARY OF ORDINANCE NO. 3668

of the City of Edmonds, Washington

On the 5th day of November, 2008, the City Council of the City of Edmonds, passed Ordinance No. 3668. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE PROVISIONS OF CHAPTER 4.68 RELATING TO CABLE ANTENNA TELEVISION SYSTEMS TO ADD A NEW SECTION 4.68.390, 400 AND 410, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

The full text of this Ordinance will be mailed upon request.

DATED this 6th day of November, 2008.

CITY CLERK, SANDRA S. CHASE