

Franchise 12132
Paragraph 4.
2002 265

Equipment and Services); 17 (Channels, Facilities, Equipment and Services for Public, Educational, and Governmental Use); and 19 (Conditions on Use of Rights-of-Way).

(b) Effect of Change in Law. In the event that state or federal laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then, subject to the parties' rights under Section 3(a) of this section, the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event such state or federal law, rule, or regulation is subsequently repealed, rescinded, amended, voided, or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of either party.

4. Transfers.

All rights granted under the Franchise are for personal services. Therefore, the rights granted under the Franchise may not be transferred, assigned, sublet or subdivided in any way or through any mechanism, including a sale or lease of all or substantially all of the Cable System or a sale or change in the control of the Franchisee (all referred to below as "transfers") without the express prior permission of the County by Ordinance, except as otherwise provided under the Cable Ordinance, the Cable Rules, or federal law.

(a) Control. The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

A change in control includes any of the following:

(1) If Franchisee is a publicly traded partnership or corporation, the sale or transfer of five percent (5%) of the Franchisee's stock or general partnership interest;

(2) If Franchisee is a closely held partnership or corporation or an individual, transfer of twenty-five (25%) of the ownership interest or the voting stock interest in Franchisee or transfer of 50% or more of the ownership interest or the voting stock interest in any legal parent or entity directly or indirectly controlling or managing Franchisee;

(3) Any other transaction which has the practical consequence of transferring to a new entity or legal person the actual working control of the Franchisee, the Franchise, or all or substantially all of the Cable System.

(b) Application for Transfer. An entity which seeks approval of a proposed transfer (hereafter, the "Applicant") shall file an application for approval of that transfer no later than one hundred twenty (120) days prior to the proposed effective date of the transfer. The application shall meet the requirements of the Cable Ordinance and applicable law.

(c) Notice of Transfer. The Franchisee shall notify the Cable Office in writing as soon as any agreement or contract is executed for a transfer that is subject to the approval of the County.

(d) Review of Transfer. In determining whether to grant an application submitted under this Section 4, the County shall apply the standards set forth in the Cable Ordinance. As it determines necessary in evaluating the application, the County may require the Franchisee and Applicant to submit information in addition to that

(e) Mandatory conditions.

(1) No application shall be granted unless the Applicant agrees in writing that it will:

(i) Abide by and accept the terms of the Cable Ordinance, Cable Rules, this Agreement and any additional terms and conditions that the County reasonably determines are needed to protect the public interest; however, except as the County reasonably determines the proposed transfer increases the risk of nonperformance or partial performance of any franchise obligation, the County agrees that it will not seek modifications to the terms of this Agreement as a condition of approval of a transfer which occurs within two years of the effective date of this Agreement; and

(ii) Assume and be responsible for the obligations and liabilities of the Franchisee, known and unknown, under this Agreement and applicable law.

(iii) Provide performance guarantees to the County that the County considers sufficient and adequate to guarantee the full and faithful performance of all franchise obligations by the Franchisee.

(2) No application shall be granted unless the Applicant agrees that approval by the County of the transfer shall not constitute a waiver or release of any rights of the County under this Franchise Agreement or applicable law, whether arising before or after the effective date of the transfer.

(3) No application shall be granted unless the Applicant posts all required bonds, securities, and the like in its own name at least 30 days prior to the closing date of the transfer.

(f) Other Changes in Ownership. Franchisee shall notify the County of any substantial changes in ownership in Franchisee or in any entity which directly or indirectly controls Franchisee at least one hundred twenty (120) days prior to the proposed effective date of the change. If the County concludes the proposed change is a transfer as defined in this Agreement, Franchisee shall immediately comply with the requirements of this Section 4 and agrees not to complete the proposed change without prior County approval. This provision shall not apply to publicly traded stock transactions of which the Securities and Exchange Commission does not require notice.

5. Franchise Fee.

(a) Payment to County. As financial compensation for use of Public Rights-of-Way for the offering of Cable Services, the Franchisee and its affiliates shall pay the County a Franchise fee in an amount equal to five (5) percent of the Gross Revenues. "Gross Revenues" means the annual gross revenue of the franchisee or its affiliates from all sources derived from the operation of the Cable System in providing Cable Services, excluding any bad debt, sales tax, excise tax, or other taxes collected for direct pass-through to local, state or federal government. Notwithstanding, any portion of franchise fees and the Capital Grant in Section 17.(b) which Franchisee passes through to subscribers as external costs, as that term is defined by the FCC at 47 C.F.R. 922(d)(3), as amended, shall not be included in the term Gross Revenues. "Affiliate" as used in this paragraph means any affiliate or joint venture or partner of the Franchisee directly involved in the offering of Cable Services

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(a) Control. The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. A change in control includes any of the following:

(1) If Franchisee is a publicly traded partnership or corporation, the sale or transfer of five percent (5%) of the Franchisee's stock or general partnership interest;

(2) If Franchisee is a closely held partnership or corporation or an individual, transfer of twenty-five (25%) of the ownership interest or the voting stock interest in Franchisee or transfer of 50% or more of the ownership interest or the voting stock interest in any legal parent or entity directly or indirectly controlling or managing Franchisee;

(3) Any other transaction which has the practical consequence of transferring to a new entity or legal person the actual working control of the Franchisee or the cable system.

(b) Application for Transfer. An entity which seeks

approval of a proposed transfer (hereafter, the "Applicant") shall file an application for approval of that transfer no later than one hundred twenty (120) days prior to the proposed effective date of the transfer. The application shall meet the requirements of the Cable Ordinance and applicable law.

(c) Notice of Transfer. The Franchisee shall notify the Cable Office in writing as soon as any agreement or contract is executed for a transfer that is subject to the approval of the County.

(d) Review of Transfer. In determining whether to grant an application submitted under this Section 4, the County shall apply the standards set forth in the Cable Ordinance. As it determines necessary in evaluating the application, the County may require the Franchisee and Applicant to submit information in addition to that provided as part of the application.

(e) Mandatory Conditions.

(1) No application shall be granted unless the Applicant agrees in writing that it will:

(i) Abide by and accept the terms of the Cable Ordinance, this Agreement and any additional terms and conditions that the County reasonably determines are needed to protect the public interest or to meet the community's current or future cable-related needs and interests; however, except as the County reasonably determines the proposed transfer increases the risk of nonperformance or partial performance of any franchise obligation, the County agrees that it will not seek modifications

to the terms of this Agreement as a condition of approval of a transfer which occurs within two (2) years of the effective date of this Agreement;

(ii) Assume and be responsible for the obligations and liabilities of the Franchisee, known and unknown, under this Agreement and applicable law; and

(iii) Provide performance guarantees to the County that the County considers sufficient and adequate to guarantee the full and faithful performance of all franchise obligations by the Franchisee.

(2) No application shall be granted unless the Applicant agrees that approval by the County of the transfer shall not constitute a waiver or release of any rights of the County under this Franchise Agreement or applicable law, whether arising before or after the effective date of the transfer.

(3) No application shall be granted unless the Applicant posts all required bonds, securities, and the like in its own name at least thirty (30) days prior to the effective date of the transfer.

(f) Limitation on Transfer. Except as provided by law, no successor Franchisee may transfer a Cable System within three (3) years following either the acquisition or initial construction of such system by the Franchisee.

(g) Other Changes in Ownership. Franchisee shall notify

the County of any substantial changes in ownership in Franchisee or in any entity which directly or indirectly controls Franchisee at least one hundred twenty (120) days prior to the proposed effective date of the change. If the County concludes the proposed change is a transfer as defined in this Agreement, Franchisee shall immediately comply with the requirements of this Section 4 and agrees not to complete the proposed change without prior County approval. This provision shall not apply to publicly traded stock transactions of which the Securities and Exchange Commission does not require notice.

5. Franchise Fee.

(a) Payment to County. As compensation for use of public right-of-way, the Franchisee and its affiliates shall pay the County a Franchise fee in an amount equal to five (5) percent of the Gross Revenues as that term is defined in the Cable Ordinance, as amended, derived from the operation of the cable system. Notwithstanding, any portion of franchise fees and the Capital Grant in Section 16(b) which Franchisee passes through to subscribers as external costs, as that term is defined by the FCC at 47 C.F.R. Section 922(d)(3), as amended, shall not be included in the term Gross Revenues.

(b) Not in Lieu of Any Other Assessments, Tax or Fee. The Franchise fee is in addition to all other fees, assessments, taxes or payments that the Franchisee may be required to pay under any federal, state, or local law, subject to any