

Montgomery County Cable Law Challenged Provisions

Sec. 8A-8. Application for grant, renewal, modification, or transfer of a franchise.

(a) A person seeking a franchise or a current franchisee must apply to the County for a new franchise, renewal of a franchise under the formal or informal procedures in Section 626 of the Cable Act, modification of a franchise agreement, transfer of a franchise, or a transfer of an interest in a franchise if the transfer is subject to County approval. An applicant has the burden to demonstrate compliance with all application requirements of this Chapter.

(b) An applicant must:

(1) submit the number of copies of the application required by the County;

(2) pay the application filing fee specified in regulations;

(3) meet the requirements of any applicable request for proposals;

(4) identify in writing the name and address of any person authorized to act on behalf of the applicant with respect to the application; and

(5) certify to the County that the application includes all information required by this Chapter for the appropriate type of application.

(c) A person may apply for a new franchise in response to the County's request for proposals or on an unsolicited basis. The County may issue a request for proposals when the County receives an unsolicited application or at any other time. If the County elects to issue a request for proposals after receiving an unsolicited application, the applicant may submit an amended application in response to the request for proposals, may inform the County that its unsolicited application should be considered as its response to the request for proposals, or may withdraw its unsolicited application. The County may reject without further consideration an application that is unresponsive to a requirement of a request for proposals.

(d) An application for a new franchise must contain the following information:

(1) Identification of the persons who own or control the applicant, including:

(A) the names, addresses, and percentage interest of the 10 largest holders of an ownership interest in the applicant and all persons with an ownership interest of 5 percent or more;

(B) any other persons who control the applicant;

(C) all officers and directors of the applicant; and

(D) any other business affiliation and cable system ownership interest of each identified person.

(2) A statement addressing whether the applicant, or any other person controlling the applicant, or any officer or majority stockholder of the applicant;

(A) has been adjudged bankrupt;

(B) has had a cable franchise revoked; or

(C) has been found by any court or administrative agency to have violated a security or antitrust law or convicted of a felony or any crime involving moral turpitude.

Any statement under this paragraph must identify each person involved and explain the circumstances.

(3) A demonstration of the applicant's technical, legal, and financial ability, including financing sources and commitments, to construct and operate the proposed cable facility, identifying key personnel.

(4) A detailed description of the geographic area to be served by the cable system.

(5) If the applicant seeks a limited franchise under this Chapter, a description of how the proposal meets the requirements for a limited franchise, including the justification for any waiver of the minimum requirements.

(6) A detailed description of the physical facility proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities and equipment.

(7) A description of the construction of the proposed system, including an estimate of above-ground and below-ground mileage and its location, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space on poles and conduits including an estimate of the cost of any necessary rearrangement of facilities.

(8) A description of the services to be provided initially, including all broadcast and non-broadcast signals to be carried and all non-television services, and if

services will be offered by tiers, identification of the signals or services, or both, to be included on each tier.

(9) The proposed rate structure, including charges for each service tier, installation, converters,

and other equipment or services.

(10) A demonstration of how the proposal will reasonably meet the future cable-related needs and interests of the community, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted for the County.

(11) Pro forma financial projections for the first 10 years of the franchise term, including a statement of income, a balance sheet, sources and uses of funds, and schedule of capital additions, with all significant assumptions explained in notes or supporting schedules.

(12) An affidavit of the applicant or an authorized officer that:

(A) certifies the truth and accuracy of the information in the application;

(B) acknowledges the enforceability of application commitments; and

(C) certifies that the proposal meets all applicable federal and state requirements.

(13) If an applicant proposes to construct a cable system which would constitute an overbuild, the identification of the area where the overbuild would occur, the potential subscriber density in the area to be served by competing cable systems, and other information necessary for the County to make its determination under section 8A-9(e).

(14) A certification that the applicant has served a copy of its application on all existing franchisees.

(15) Any other information necessary to demonstrate compliance with this Chapter, and any other information that the County requests from the applicant.

(e) An application to modify a franchise agreement must include the following information:

(1) The specific modification requested.

(2) The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the impact on the applicant if the modification is not approved.

(3) A statement whether the modification is sought pursuant to Section 625 of the Cable Act, and, if so, a demonstration that the requested modification meets the legal standards of the Cable Act.

(4) Any other information necessary for the County to decide whether to approve the modification.

(f) An application to renew a franchise must comply with Section 8A-22.

(g) An application to transfer a franchise or an interest in a franchisee must comply with Section 8A-23.

(h) An applicant must certify that the application contains all required information.

(i) Within 10 business days after receiving an application for a new franchise for an overbuild, the County Executive must decide whether to accept or reject the application for filing.

(1) If the Executive rejects the application for filing, the Executive must specify the additional information required to accept the application for filing. The applicant may resubmit or supplement the application with the additional information, and the Executive must reconsider, within the 10-day deadline, whether the application is acceptable for filing.

(2) When the Executive accepts the application for filing, the Executive must make the application available for public inspection and forward the application to the Telecommunications Advisory Committee for review and comment.

This subsection does not limit the Executive's authority to request additional information later or to recommend, based on any grounds after full review of the application, that the Council deny the application. (FY 1991 L.M.C., ch. 3, § 1; 1998 L.M.C., ch. 18, § 2; 2005 L.M.C., ch. 24, § 1.)

Sec. 8A-9. Grant of franchise.

(a) The County may grant a franchise for a period not to exceed 15 years to serve all or any specified geographic areas of the County.

(b) The County may grant a limited franchise for a period not to exceed 10 years to serve a geographic area that meets both of the following criteria:

(1) the geographic area involves no overbuild; and

(2) the geographic area is one where the cable will pass at the time the franchise is granted an average of fewer than 30 dwelling units per cable mile.

(c) The County may condition the grant of a franchise on the completion of construction within a specified time or the performance of other specific obligations and specify that the failure of the franchisee to comply with the condition will void the franchise without further action by the County.

(d) The Executive must conduct a public hearing on an application for a new franchise. The Executive must conduct the hearing on an application for a new franchise for an overbuild within 90 days after the Executive accepts the application for filing. The Executive must give public notice of the hearing at least 15 calendar days before the hearing. At the public hearing, the Executive may accept

written and oral testimony and any other material relevant to the application. The Executive may consider multiple applications in a single proceeding.

(e) In evaluating an application for a new franchise, the County must consider:

(1) the applicant's character;

(2) the applicant's technical, financial, and legal qualifications to construct and operate the proposed system;

(3) the nature of the proposed facilities, equipment, and services;

(4) the applicant's record of cable performance in other communities, if any; and

(5) whether the proposal will serve the public interest.

(f) Where an applicant proposes to overbuild an existing cable system, the County must consider the factors in subsection (e) and:

(1) the beneficial effects of competition, including any reduced rates to consumers, higher technical standards, or more varied programming offerings; and

(2) the effect of the overbuild on the public.

(g) The Executive must propose to grant or deny the franchise application and must notify the applicant of the proposed action. Before proposing action, the Executive must consider the application, the written and oral testimony and other material presented at the hearing, and any other information relevant to the application. For an application for a new overbuild franchise, the Executive must make the proposal within 120 days after accepting the application for filing.

(h) If the Executive proposes to grant a franchise application, the Executive and the applicant must agree on the terms of a franchise agreement within 60 days after the applicant receives the notice of the proposed grant. The Executive and the applicant may extend this period for up to 60 more days. If the two parties do not reach agreement by the end of the original or any extended period, the notice of proposed grant is void.

(i) As required by State law, the County must advertise the terms of a proposed franchise agreement, including the proposed compensation to the County, for three successive weeks in one or more newspapers of general circulation in the County to allow the public to comment on the proposed franchise agreement.

(j) If the Executive and the applicant agree on a proposed franchise agreement, the Executive must submit the proposed agreement to the Council for approval. For an application for a new overbuild franchise, the Executive must submit the proposed franchise agreement to the Council within 10 days

after the end of the advertising period.

(k) (1) When the Executive submits a proposed franchise agreement to the Council for approval, the Council may, within the applicable time provided in Section 8A-29(d):

(A) grant the franchise;

(B) grant the franchise with conditions, which may modify or override any provision of the proposed franchise agreement;

(C) remand the franchise agreement to the Executive with specific recommendations to renegotiate any provision of the proposed franchise agreement and submit a revised agreement to the Council for approval; or

(D) deny the application for a franchise.

(2) If the Executive proposed to deny the franchise application or cannot reach agreement with the applicant on a proposed franchise agreement within the time specified in subsection (h), the Executive immediately must recommend to the Council that the Council deny the application and explain the reasons for the recommendation. The Council may, within the applicable time provided in Section 8A-29(d):

(A) deny the application;

(B) remand the franchise application to the Executive with recommendations or instructions for further action; or

(C) grant the franchise with any conditions that the Council determines are necessary to protect and promote the public interest.

(l) Every franchise grant is subject to a franchise acceptance fee in an amount not exceed the County's costs to consider the application, less the amount that does of the filing fee. Within 30 days after the Council grants a franchise under this Chapter, the County must notify the approved applicant of the amount of the franchise acceptance fee and how the County calculated the amount. If the approved applicant does not pay the franchise acceptance fee within 30 days after the County notifies the applicant, the grant is void. The franchisee must not act under the franchise until the franchisee complies with the bond, insurance, and other prerequisites of the franchise agreement. (FY 1991 L.M.C., ch. 3, § 1; 1993 L.M.C., ch. 15, § 1; 1998 L.M.C., ch. 18, § 2; 2001 L.M.C., ch. 28, §§ 3, 15 and 16.)

Editor's note-The effective date of the amendment made to this section by 2001 L.M.C., ch. 28, § 3, is the same effective date as 1998 L.M.C., ch. 18, § 2.

Sec. 8A-10. Insurance; bond; indemnification.

(a) A franchisee must have the following insurance coverage in force at all times during the franchise period:

- (1) workmen's compensation insurance to meet all state requirements;
- (2) general comprehensive liability insurance;
- (3) automobile liability insurance covering all vehicles as specified in the franchise but not less than \$250,000 per person, \$500,000 per occurrence, and \$100,000 for property damage; and
- (4) any additional types of insurance and coverage amounts as the County may require.

All insurance policies must be with sureties qualified to do business in Maryland and in a form approved by the County Attorney. The County may accept a self-insurance plan that assures comparable protection in lieu of these insurance policies.

(b) To ensure the franchisee's performance of franchise obligations, a franchisee must have in force at all times during the franchise period a bond in a form approved by the County Attorney, consisting of cash, an irrevocable letter of credit, or a performance bond. A performance bond must be provided by a surety qualified to do business in Maryland. The bond must be to the benefit of the County or to other parties named in a franchise agreement. The bond must be of a type and in a sum specified in the franchise agreement as necessary to ensure the faithful performance and discharge of obligations imposed by law and the franchise agreement. Except for a limited franchise, the minimum bond amount must not be less than \$250,000.

(c) A franchisee must, at its sole cost and expense, indemnify, hold harmless, and defend the County, its officials, boards, commissions, agents, and employees, against any claims, suits, causes of action, proceedings and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its cable system regardless of whether the act or omission complained of is authorized, allowed or prohibited by the franchise. This requirement includes claims arising out of copyright infringement or a failure by the franchisee to secure consent from the owner, authorized distributor, or licensee of a program to be delivered by the cable system.

(d) In an overbuild situation the County may require franchisees to indemnify each other for any damage to facilities and services caused by construction or maintenance of their respective cable systems. (FY 1991 L.M.C., ch. 3, § 1.)

Sec. 8A-11. Minimum facilities and services.

(a) The following minimum requirements for facilities and services apply to all franchises:

- (1) A cable system must have a minimum capacity of 54 video channels available for

immediate or potential use.

(2) A cable system must provide at least 6 access channels, which will be individually designated by the County for public, educational or governmental access. The County may require the franchisee to contribute to capital costs for access studios and related equipment and facilities.

(3) A cable system must provide leased access channels as required by federal law. The franchisee must provide information on all leased access channels in its annual report under Section 8A-13(a). This information must include a description of any applications to lease access channels that are pending consideration or which have been denied by the franchisee.

(4) Service to all public buildings may be required without charge as set forth in the franchise agreement.

(5) Upon the directive of the County, a franchisee must interconnect the cable system access channels with those of other cable systems in the Washington and Baltimore metropolitan areas and Frederick County or as otherwise provided in the franchise agreement.

(6) A franchisee must design its system to allow the County to interrupt cable service in an emergency to deliver necessary information to subscribers.

(b) The County may require that a franchise exceed the minimum requirements set forth in subsection (a).

(c) The County may waive minimum requirements set forth in subsection (a) for limited franchises where the applicant demonstrates that a waiver is in the public interest. (FY 1991 L.M.C., ch. 3, § 1.)