

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5922

AN ORDINANCE amending the Bellevue City Code Chapter 5.30 by 1) requiring any applicant seeking an initial franchise with the City to meet service obligations for the entire ten (10) year term of the initial franchise; 2) requiring, over a reasonable period of time, the construction of a cable system throughout the City upon renewal of the franchise; and 3) authorizing the service of a lesser area provided cable service is constructed throughout this lesser area.

WHEREAS, the City adopted Resolution No. 5591 with the goal of creating and implementing a "Smart City" with state-of-the-art communications and technology to better position Bellevue to compete in the global economy; and

WHEREAS, the Comprehensive Plan states that the City supports the increased availability of improved telecommunications services in Bellevue; and

WHEREAS, the 1992 Cable Act contains provisions that encourage competitive franchises; and

WHEREAS, Section 621(a)(1), 47 U.S.C. § 541(a)(1), was amended to prohibit cities from granting exclusive franchises or from unreasonably refusing to award an additional competitive franchise; and

WHEREAS, Bellevue City Code Section 5.30.120 provides that a grantee shall offer cable communications service to all residential areas of the city unless specifically authorized in the franchise to serve a lesser area; and

WHEREAS, a grantee may petition the City of Bellevue for a waiver of this requirement, such waiver to be granted for good cause shown; and

WHEREAS, Bellevue City Code Section 5.30.550 provides that a grantee may be required to provide an institutional network as part of the cable communication; and

WHEREAS, Bellevue City Code Section 5.30.560 provides that a grantee shall provide equipment, directly or through grants, for local Public, Education and Government (PEG) access facilities and production; and

WHEREAS, in December 2006, the Federal Communications Commission (FCC) issued an order which was published in March 2007, finding a city's refusal to grant a competitive cable-TV franchise because of an applicant's unwillingness to

agree to "unreasonable build-out mandates" constitutes an unreasonable refusal to award a competitive franchise; and

WHEREAS, the FCC rules also stated an unreasonable refusal to award a competitive franchise exists if a city denied an application based upon a new entrant's refusal to undertake certain obligations relating to public, educational, and government ("PEG") and institutional networks ("I-Nets"); and

WHEREAS, Council desires to reconcile the ruling of the FCC with the applicable provisions of the Bellevue City Code; and

WHEREAS, in order to reconcile this ruling, Council believes that it is necessary to amend the existing City Franchise Code; and

WHEREAS, amending the City Code to grant a franchise without an initial build out but requiring a build-out for any subsequent renewal will reconcile the Bellevue City Code with the FCC ruling; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES
ORDAIN AS FOLLOWS:

Section 1. Section 2 of Ordinance No. 5531 codified in part as Bellevue City Code 5.30.120 is hereby amended as follows:

5.30.120 Service area.

Any applicant seeking its initial franchise with the City shall meet the service obligations set forth in the franchise agreement and under this Section 5.30.120 for the entire ten (10) year term of its initial franchise. In addition, while not required for the initial franchise, upon renewal of the franchise, grantee shall be required to construct its cable system throughout the entire City. To the extent the City requires a grantee to construct its cable system throughout the City, the City and grantee may negotiate (in any subsequent franchise agreement) either (i) a reasonable time period to allow grantee to offer its cable communications service to all residential areas of the city; or (ii) authorization for grantee to serve a lesser area; provided however, if grantee is authorized to serve a lesser area, grantee is required to construct its cable service throughout this lesser area. Service to dwellings along nonpublic streets shall be offered by a grantee if easements are reasonably available to grantee on terms equivalent to those for easements along public streets. A franchise issued pursuant hereto shall require that all dwelling units within the franchise territory shall be offered service on the same terms and conditions; provided, however, multiple-family dwelling complexes, apartments or condominiums may be served on a master-billed basis and, further, service to motels, hotels, hospitals and similar businesses or institutions may be offered on terms and conditions different from single resident subscribers. A grantee may petition the city for a waiver of this requirement, such waiver to be granted for good cause shown.

Section 2. Section 2 of Ordinance No. 5531, codified in part as Bellevue City Code 5.30.170 is hereby amended as follows:

5.30.170 Content of applications.

All applications to construct, operate, or maintain any cable system in the incorporated areas or to traverse any portion of those areas for the transmitting or conveying of such service elsewhere shall be filed with the director of transportation or his or her designee. An application for the grant of an initial franchise may be filed pursuant to a request for proposals issued by the city or on an unsolicited basis. To be acceptable for filing, an original and two copies of the application must be submitted and be accompanied by the application filing fee where required. Each application for an initial franchise shall set forth the following:

A. The name, address and telephone number of the applicant.

B. A detailed statement of the corporate or other business organization of the applicant, including but not limited to the following:

1. The names, business addresses, and state of residence of all general partners and corporate officers of the applicant.

2. The names, business addresses, and state of residence of all persons owning or controlling five percent or more of the stock, partnership shares, or assets of the applicant and the respective ownership share of each such person.

3. The names and addresses of any parent corporation, parent entity, or holding company that owns or, by ownership of other entities, controls the applicant.

4. The names and addresses of any business entities owned or controlled by the applicant, including, but not limited to, SMATV or cable operations.

5. A detailed and complete financial statement of the applicant, prepared by a certified public accountant, for the five fiscal years immediately preceding the date of the application, or a letter or other acceptable evidence in writing from a responsible lending institution or funding source, addressed to both the applicant and the city, setting forth a clear statement of its intent to provide the capital required to construct and operate the proposed system. If the corporate or business entity organization of the applicant has not been in existence for a full five years, the applicant shall submit a certified financial statement for the period of its existence.

6. A detailed description of all previous experience of the applicant in providing cable services or related or similar services which includes a statement identifying, by place and date, all other cable television licenses or franchises awarded to the applicant, its parent or subsidiary, the status of the licenses or franchises with respect to completion, the total cost of completion of such systems, and the amount of applicant's and its parent's or subsidiary's resources committed to such systems.

7. An indication of whether the applicant, or any person controlling the applicant, or any officer or major stockholder of the applicant, has been adjudged bankrupt; had a cable license or franchise revoked, or been found guilty by any court or administrative agency of a violation of a security or antitrust law, felony, or any crime involving moral turpitude; and, if so, identification of any such person and a full explanation of the circumstances.

C. Where the applicant and the City are negotiating a subsequent franchise to the initial ten (10) year franchise agreement, the applicant shall provide a detailed

financial plan describing, for the first five years of the renewed franchise, projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements, and statement of sources and uses of funds and schedule of all -capital additions.

D. A detailed description of the proposed plan of operation of the applicant, which shall include, but not be limited to, the following:

1. Where the applicant and the City are negotiating a subsequent franchise to the initial ten (10) year franchise agreement, the applicant shall provide a detailed map indicating all areas proposed to be served, a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served, a description of the construction of the proposed system including an estimate of the above and below ground mileage and the projected total cost for construction of the system.

2. For informational purposes, a statement or schedule setting forth all proposed initial classifications of rates and charges to be made against subscribers and all rates and charges for each classification, including installation charges, service charges or other charges. The purchase price, terms, and nature of any optional or required equipment, device, or other thing to be offered for sale to any subscriber shall be described and explained in detail.

3. A detailed statement describing the physical facility proposed, including channel capacity, technical design, the actual equipment, and the operational and technical standards proposed by the applicant.

4. A description of the services to be provided initially, including the broad categories of programming and all broadcast and nonbroadcast signals to be carried and all nontelevision services to be delivered over the cable system, and if services will be offered by tiers, identification of the signals and/or services to be included on each tier.

5. A description of how the proposed system will reasonably meet the future cable-related needs and interests of the community, including how the proposed system will meet the needs described in any recent community needs assessment conducted by or for the city.

E. Any other information reasonably requested by the city which is deemed necessary to evaluate the technical, financial and legal qualifications of the applicant or which could materially affect the granting of the franchise.

F. The city at its discretion may decide to accept less than the documentation above if it can establish through other sources that the applicant can meet the technical, financial and legal qualifications and that the applicant is competent to operate a cable communications system.

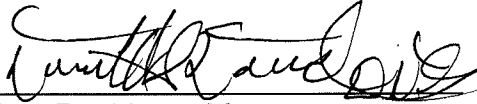
Section 3.

This ordinance shall take effect and be in force five (5) days after passage and legal publication.

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01/04/10

Passed by the City Council this 4th day of January, 2010
and signed in authentication of its passage this 4th day of January,
2010.

(SEAL)

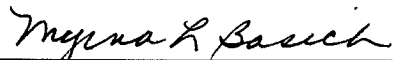

Don Davidson, Mayor

Approved as to form:

Lori M. Riordan, City Attorney


Jerome Roaché, Assistant City Attorney

Attest:


Myrna L. Basich, City Clerk

Published January 7, 2010