

RESOLUTION # 266

A RESOLUTION APPROVING THE CITY OF CHESTERFIELD COMMUNICATIONS RIGHT-OF-WAY APPLICATION FORM.

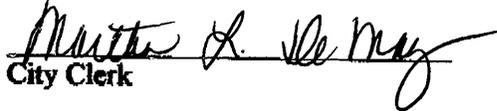
WHEREAS, the City of Chesterfield has determined that those entities that wish to use the City Rights-Of-Way after this date, need to provide information that will allow the City to evaluate the license applications, negotiate terms and conditions as may be appropriate and information in which will allow the City to enforce the terms and conditions of the licenses or other instruments authorizing use of the Rights-Of-Way.

THEREFORE BE IT RESOLVED, that the City of Chesterfield hereby adopts the Communications Right-Of-Way use Application Form, as attached hereto and marked Exhibit "A". The City Administrator is authorized to amend or change the information to be required from time to time in accordance with the needs of the City.

APPROVED THIS 6TH DAY OF Nov. 2000.


Mayor

ATTEST:


City Clerk

CITY OF CHESTERFIELD, MISSOURI COMMUNICATIONS RIGHT-OF-WAY USE APPLICATION FORM

This Application is for a Communications Right-of-Way Use Agreement in the CITY OF CHESTERFIELD for the construction, maintenance and use of telecommunication facilities or cable in the City's rights-of-way. Consistent with state and federal law, the City is in the process of considering and developing Communications and Cable Ordinances related to the management, coordination, and use of the rights-of-way to provide cable, Communications, and other services. The City has joined the St. Louis County Municipal League Rights-of-Way Consortium to assist it in developing appropriate regulations and agreements in an expeditious manner. In order to allow applicants to commence the application process pending final development and adoption by the City of the Communications and Cable Ordinances, the City has approved this application form and process. This application requires payment of a non-refundable application fee of \$5,000 for telecommunications and \$10,000 for cable, which fees shall be utilized to offset the City's costs in developing, negotiating, and administering the Agreement. The Applicant shall be obligated to reimburse the City for its reasonable expenses associated with the review, negotiation and franchise grants that may reasonably exceed the application fee amount, and including any proportional costs of Consortium participation required for developing these agreements and procedures. The application will be used to determine the qualifications and eligibility of the applicant to be granted a right-of-way use agreement under federal and state law, and to assist the City in developing the franchise regulations necessary to facilitate, coordinate and manage the large number of providers using or seeking to use the City's rights-of-way to provide Telecommunication Services.

For the purposes of this Application Form, the term "Communications Service" means "the transmission of writing, signs, signals, pictures, sounds or other forms of intelligence through wire, wireless or other means, including, but not limited to, any "telecommunications service" "enhanced service" "information service," or "Internet service," as such terms are now, or may in the future be, defined under federal law, and including all instrumentalities, facilities, apparatus, conduit, ("Communications Facilities") and services (among other things, the receipt, forwarding, and delivery of Communications) incidental to such transmission." This term does not include "cable television service," but these services shall be subject to separate cable franchising requirements and application. **Any party seeking a cable franchise must also submit an application for Cable Television Franchise. Applicants seeking to provide both Communications Services and Cable Television Services must complete both application forms.**

It is recognized that this application may not fully describe or coincide with all types of Communications Services or facilities that an applicant proposes to offer. If it is believed that certain questions are either not relevant or are inapplicable as a result of system design, law, or other reason, please indicate the basis for such belief. All applicants are also asked to provide any additional information that it believes to be useful to the City in processing this application and granting a use agreement.

Nothing in this application shall be deemed to provide any entitlement to use of the rights-of-way except as specifically authorized by separate agreement and the applicant

acknowledges that the City is developing Communications and Cable Ordinances or related regulations that shall govern the provision of any use agreement applied for by this application.

PART A: GENERAL INFORMATION

1. Name of Applicant, Including All Affiliates of the Applicant:

Applicant:

Date:

Affiliates:

2. Address of Applicant:

3. Name, Telephone Number and E-mail Address of Contact Person for Applicant:

4. This is an Application for (check all that apply and explain):

- a. A use agreement to construct, operate and/or maintain ducts, fiber optic or other cable, conduits or other Communications Facilities in the City's rights-of-way.
- b. A use agreement to utilize the City's rights-of-way to provide any Communications Service.
- c. An expansion, change, or modification of an existing system or amendment of a franchise to change or expand services or facilities.
- d. A franchise for cable television.
- e. Other, describe: _____

5. Please provide any proposed terms, provisions, or requested accommodations, including a proposed franchise term duration and any scheduling constraints of the Applicant.

PART B: DESCRIPTION OF PROPOSED CONSTRUCTION PLANS, THE SYSTEM AND SERVICES

1. Describe in Detail:

- a. The geographic area within the City in which the Applicant proposes to construct its facilities and/or offer Communications Service and a schedule for build-out.
- b. Type(s) of facilities to be installed, constructed or utilized (e.g., reinforced conduit, duct banks, fiber, co-axial cable, copper twisted pair, wireless radio transceivers) and the proposed location within the public rights-of-way or other locations where such facilities will be placed.
- c. To the extent known, the location of all facilities, including the use of existing overhead and underground public utility, conduit, Communications cable, water, sewer drainage, poles, light stands and other facilities, in the public rights-of-way along the proposed route, or other locations.
 - (1) If the facilities are proposed to be installed overhead, identify the space available for locating Communications facilities on existing utility poles or city facilities along the proposed route and identify ownership of such poles and the type of existing lines (telephone, electric, cable, etc).
 - (2) If the facilities are to be installed underground in existing ducts or conduits, identify:
 - (i) The available capacity in such ducts or conduits before installation of Applicant's facilities.
 - (ii) The capacity that will remain after the Applicant's facilities are installed.
 - (iii) The number and location of additional manholes or handholes required.
 - (3) If Applicant is proposing to install new ducts or conduits underground in the public rights-of-way, identify:
 - (i) The proposed location(s).
 - (ii) The excess capacity that will exist after installation.
 - (iii) The number, size and location of vaults, manholes and handholes required.
 - (iv) Other equipment and facilities to be installed.

- (v) The type or design of conduit (provide specification or diagram if available) and method of installation.
 - (vi) Any collocation proposed or joint applicant for use of the facilities.
- d. If known, the specific trees, structures, improvements, facilities, and obstructions, if any, that Applicant proposes to temporarily or permanently remove or relocate.
 - e. Provide a scaled blueprint map of the proposed service area visually indicating the same information.
 - f. **In addition to all routes generally identified above, please identify (by narrative and map) all facilities planned to be installed by you in the City Right-of-Way within the next six months that involves proposed installation overhead or by new excavation (do not include use of existing conduit). Please note that the City will require notification of local utilities and other potential users of the right-of-way of the proposed construction/installation to determine and or coordinate joint trenching or collocation opportunities.**
2. Assuming that the Applicant obtains permission to use the public rights-of-way for the construction proposed by the Applicant, describe the types of facilities and/or services that the Applicant plans to provide upon approval of a separate franchise for use of the rights-of-way for providing services. This information is necessary for the City to assess the proper fee.
- a. Does the Applicant plan to offer private switched telephone services to customers?
 - b. Does the Applicant plan to offer local switched telephone service to City residents? If so, will the Applicant use its own facilities?
 - c. Does the Applicant plan to offer long-distance services through its own facilities or as a resale carrier?
 - d. Does the Applicant plan to offer any type of video programming service to its customers, including cable television, open video system service, or video dial tone service?
 - e. Does the Applicant intend to lease or sell dark fiber on its system to other entities?
 - f. Does the Applicant intend to lease or sell transmission capacity on its system to other entities?

- g. Does Applicant intend to lease or sell space in ducts or conduits for use by other entities?
 - h. Does Applicant intend to lease or sell Internet access services, enhanced information services, security services, energy-related services or any other Communications Services not previously listed in this section? If services not previously listed, provide a list of all services to be provided.
3. If any of the questions in paragraph 2 of this Application were answered "yes," please describe in detail to whom, how, and when such services or facilities will be offered. Please note separate facilities owned by another but utilizing Applicant's facilities, including conduits, are subject to the Application requirements and fees imposed by the City.
 4. Please provide a schedule and completion dates for development and construction of the Applicant's proposed facilities, Communications System or Open Video System.
 5. Please describe the Applicant's proposed maintenance plan.
 - a. If leasing access to ducts or conduits by third-party Communications Service providers, please explain the installation and maintenance procedures for such third-party Communications facilities. Please provide lease terms/arrangements.
 6. If the Applicant proposes to provide any Communications Service, has it obtained all required federal, state and local permits, licenses, certificates and franchises and met all other legal requirements? If yes, please attach all relevant documentation.
 7. If the Applicant has not yet complied with all relevant legal requirements, provide detailed documentation of the steps that the Applicant has taken, or intends to take, toward that end.
 8. Will the Applicant have a local office in the City and if so, where will it be located? If so, how many employees will it office? In what capacity will the employees serve? Will such employees perform construction and maintenance on the system? Will such employees serve as a local contact for the City regarding the interim construction agreement and any subsequent franchise agreement?
 9. If applicant intends to provide open video service, provide a description of services that Applicant will offer or make available to the City and other public, educational, and governmental institutions.
 10. Provide a detailed estimate of construction costs for the Initial System with respect to the use of the City's rights-of-way, including excavation and right-of-way restoration, or if this Application relates to a request to expand the type, scope, or geographical location of services, a detailed estimate of the right-of-way construction costs of such expansion. This information will be subject to independent verification by the City.

11. The City may need to have additional conduit installed at the locations you may propose for your system. Please provide the cost of adding additional conduit (4" conduit, or multiple smaller conduit of aggregate equivalent) at each location where you are proposing new conduit installation. If you provide the cost per foot for each additional conduit, include only the additional cost you would incur in installing such additional conduit (do not prorate cost of installing the conduit proposed by the Applicant).

PART C: APPLICANT

1. Please provide the names and titles of each general or limited partner, officer, or director if the Applicant. Also provide the names of any shareholder of the Applicant owning more than 5% of the Applicant's outstanding common stock (if the Applicant is a corporation).
2. Please list any subsidiaries, or other entities in which the Applicant owns a controlling equity interest.
3. Please provide an organizational chart of the Applicant's operations.
4. Please provide the City with contact names, addresses, and phone numbers of three municipalities where the Applicant has been granted permission to use the public rights-of-way to provide any Communications Service.
5. Has the Applicant obtained the right to provide a Communications Service in any other municipality and transferred such right to another entity within five (5) years of obtaining it?

PART D: LEGAL BACKGROUND OF APPLICANT

1. Has the Applicant ever been engaged in any litigation with a municipality with respect to the use of rights-of-way? If so, please describe the nature of the dispute, the municipalities involved, the amount of damages, if any, paid by either party and whether the dispute has been finally resolved.
2. The Telecommunications Act of 1996 (Act) modified the regulatory authority of the city over telecommunications providers and also imposed new requirements on telecommunications providers. Please discuss the Applicant's interpretation of how the Act affected the City's powers to regulate your business in the City.
3. Is the Applicant currently involved in any disputes before any federal, state, or local regulatory agency that would impact the ability of the Applicant to legally construct, maintain or provide facilities or services in the City? If so, please describe.

PART E: FINANCIAL BACKGROUND OF APPLICANT

1. Please provide the City with a copy of the Applicant's audited financial statements for each of the past three (3) fiscal years, including an income statement, balance sheet, statement of cash flows, and statement of owner's equity. This information is required to determine whether the applicant can insure the costs of all rights-of-way related costs, and liabilities.
2. What will the cost be for the construction in the rights-of-way of the proposed facilities or services?
3. How will the Applicant finance the cost of the rights-of-way construction for the proposed facilities or services? Please provide proof of the availability of such financing.
4. Please submit a proposal for a security fund of some kind adequate to protect the City's interest in ensuring that all construction and related right of way costs for the proposed facilities or services are covered and can be completed once the work has begun.
5. Has the Applicant ever been placed in a receivership, declared bankruptcy, been declared insolvent, or had property foreclosed upon by a creditor? If so, please explain in detail the circumstances behind each instance.

I certify that I am authorized to execute this Application and any subsequent Agreement on behalf of the Applicant. I further understand that if there are material omissions of information requested by this Application or deliberately false answers given to questions on this Application, the City may revoke any franchise, permit, or license it has granted in reliance on the answers provided by Applicant to this Application. Further, such actions shall be punished as provided pursuant to City Code or other applicable law.

Dated: _____

By: _____

Notary Public