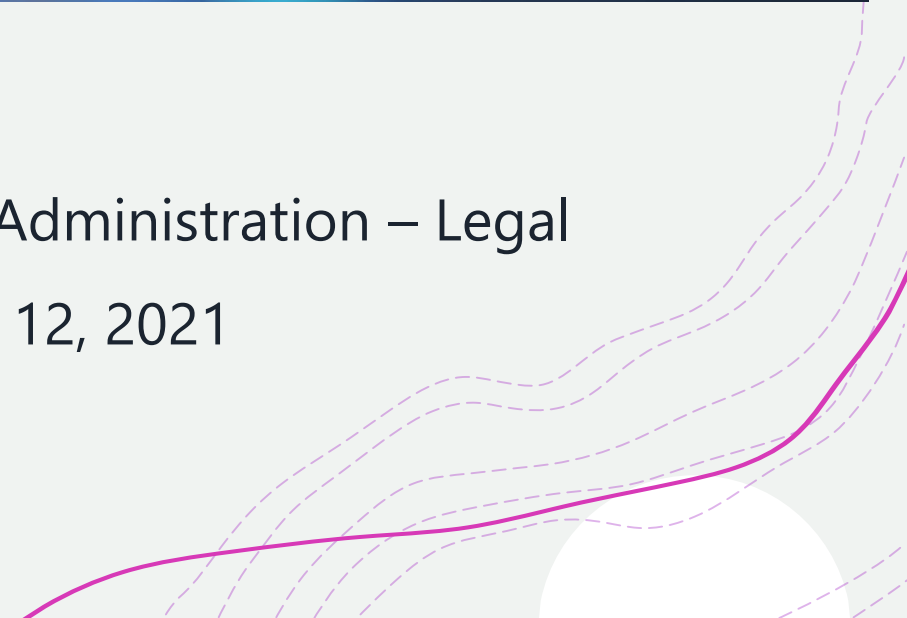




Initial Nonexclusive Cable System Franchise with TDS Metrocom, LLC

City Administration – Legal
April 12, 2021



What is a franchise?

- + A franchise is the special privilege awarded by the state or city to a person or corporation conveying a valuable property right in the streets, highways, and public places that does not belong to citizens generally by common right.
- + See Montana-Dakota Utilities, Co. v. City of Billings, 318 Mont. 407, §13 (2003) citing § 7-13-4201 (3), MCA.

Cable Systems Franchise

+ Under federal law, a cable system provider must obtain a franchise from a local government granting it permission to use the public ROW for area cable services.

+ See 47 U.S.C. § 541.

Applicant

TDS Metrocom, LLC

TDS Metrocom, LLC (TDS Metrocom) is a Madison WI based company and wholly-owned subsidiary of TDS Long Distance Corporation. TDS Long Distance Corporation is a wholly-owned subsidiary of TDS Telecommunications LLC (TDS Telecom), which is a wholly-owned subsidiary of Telephone & Data Systems, Inc. (TDS), a Fortune 1000 company.

As a subsidiary of TDS, TDS Metrocom benefits from the vast technical and financial resources of the overall organization. TDS provides wireless; wireline and cable broadband, TV, and voice; and hosted and managed services to approximately six million customers nationwide through its business units, U.S. Cellular, TDS Telecommunications, OneNeck IT Solutions, and Suttle-Straus. Visit tdsinc.com for further information

- + Technical Ability: TDS Telecom is the seventh largest local exchange telephone company in the U.S. and a growing force in the cable industry. It provides 1.2 million connections to high-speed internet, phone, and TV entertainment services to customers in more than 900 rural, suburban, and metropolitan communities. For residential customers, TDS deploys 1Gig internet access, IPTV service, cable TV options, and traditional wireline services. The company offers businesses advanced solutions, including: VoIP (managedIP Hostedvoice), high-speed internet, fiber optics, data networking, and hosted-managed services. TDS Telecom provides cable television, high-speed internet, and phone service to customers in Colorado, Utah, Arizona, Nevada, New Mexico, Texas, and Oregon, Idaho, and is currently constructing a new competitive cable system in Spokane, Washington.
- + Service Area: TDS Metrocom is seeking a Cable Franchise to serve the area within the municipal boundaries of the City.
- + Legal Qualifications: TDS Metrocom is registered as an active foreign profit corporation in good standing with the State of Montana Secretary of State (E119422).
- + System Description: TDS Metrocom will construct an all fiber, fiber to the home, cable system. TDS Metrocom will provide a cable system that shall be capable of providing a minimum of one hundred twenty (120) channels of video programming to its subscribers in the franchise area. Active and passive devices are capable of delivering high-quality digital video signals meeting or exceeding FCC technical quality standards. Cable system nodes are designed for future segmentation as necessary to maximize shared bandwidth. TDS will also offer high-speed internet and telephone service over its system. During the term of the franchise agreement, TDS will maintain the Cable System in a manner consistent with these specifications or better.
- + Financial Ability: Telephone and Data Systems, Inc. ranks #521 on the 2018 Fortune 1000 list, a reflection of the financial strength of the combined companies. U.S. Cellular; TDS Telecommunications LLC (TDS Telecom and BendBroadband; OneNeck IT Solutions; and Suttle-Straus
- + Construction Schedule: The construction plan is currently in development and will be coordinated with the appropriate City departments in accordance with the City's Municipal Code and, at a minimum, will build out 70% of the service area within the first four years.
- + Community Needs and Interests: TDS Metrocom will bring Billings a competitive, all fiber, cable system that will provide consumers with a new choice of video service providers. The cable system will carry a wide range of programming including the City's PEG access channel(s) as described in the franchise agreement between the City and TDS Metrocom.

Cable Systems Franchise Fee

- + Pursuant to the Montana Supreme Court, in *MDU v. City of Billings, supra*, a city may not impose a franchise fee based on annual gross revenues generated by a utility that occupies the public rights-of-way; this is considered an illegal tax on services.
- + Pursuant to federal law, under the Communications Act (47 U.S.C. § 542), local governments are empowered to charge cable system operators up to a maximum of 5% of the annual gross revenues from their local service area operations. This is called a "franchise fee".

BUILD OUT

Pursuant to 47 U.S.C. § 541 (a)(4), in awarding a cable system franchise, the franchising authority must allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area.

- + Proposed Reasonable Build Out Term:
- + Initial Coverage Area build out of 70% of Dwelling Units (total number of residential single-family or multi-family homes or units within Billings) in the City within 4 years of the construction start date.
- + After completion of Initial Coverage Area, the City may annually require TDS to expand its coverage by 7%, dependent upon the Penetration Level being 35% or greater. The Penetration Level is calculated as follows:
 - + Percentage Level $\% = X$ divided by Y (X/Y)
 - X= the total number of Dwelling Units in Service Area
 - Y= the total number of TDS Subscribers

After 95% buildout, TDS Metrocom will make extension available when the density of Dwelling Units is seven (7) Dwelling Units per one-quarter (1/4) mile of cable contiguous to its cable system.

PEG Access Channels

- +Community Seven is the City's PEG access provider
- +TDS Metrocom will provide 2 High-Definition Channels and fiber links dedicated to PEG
- +PEG support for Capital Costs

Non-Discrimination

- + TDS Metrocom shall make its services and rates available on a non-discriminatory basis, pursuant to Sec. 7-1803 (l), BMCC.

Promote Competition

Charter/Spectrum

- + 5% Maximum Franchise Fee
- + Peg Support Fee \$0.25 up to \$0.85 per Subscriber
- + 2 PEG Channels (HD and Standard)
- + Build Out: None
- + Density Extension: extension of cable when 10 residential units would be passed by one quarter mile of cable contiguous to the distribution cable
- + Liquidated damages: 2008 dollars
- + The City has enacted a cable system franchise with Charter/Spectrum (transfer from Bresnan Communications, LLC), in effect through December 2021. See Article 7-900, BMCC. Negotiations for the renewal of this Franchise are ongoing.

TDS Metrocom, LLC

- + 5% Maximum Franchise Fee
- + PEG support fee \$0.25 up to \$0.85 per Subscriber
- + 2 PEG Channels (both HD)
- + Build Out: New Entrant
- + Density Extension: extension of cable when 7 residential units would be passed by one quarter mile of cable contiguous to distribution cable
- + Liquidated damages: 2021 dollars
- + The terms of the proposed cable system franchise generally follow the currently enacted Charter/Spectrum franchise. However, Sec. 7-1802 (d), provides that, in the event, the City issues, or has issued, a Franchise to another, the City agrees to engage in good faith discussions with TDS regarding any modifications to their Franchise proposed by the City to ensure that the terms and conditions imposed on TDS will be neither less favorable nor more burdensome than those governing another such entity or give such other entity an unfair competitive advantage over TDS.

When evaluating whether to grant applicant TDS Metrocom an initial cable franchise, the City shall consider:

Criteria to Consider

The completeness of TDS responses to questions regarding its application.

Whether TDS has the financial, technical, and legal qualifications to hold a cable franchise.

Whether TDS satisfies minimum requirements established by the City to meet the community's future cable-related needs and interests, taking into account the cost of meeting such needs and interests.

Whether TDS is able and willing to provide adequate public, educational, and governmental (PEG) use capacity, facilities, or financial support.

Whether granting the franchise will result in redlining (failure to serve certain areas on economic or racial grounds), discrimination in the provision of services, or grant TDS an unfair competitive advantage.

Whether the schedule for building out is reasonable.

Whether approving the franchise would eliminate or reduce competition in the delivery of cable service.

Criteria Met to Grant Franchise

TDS has been thorough in its application.

TDS has the financial, technical, and legal qualifications to hold a cable franchise.

TDS satisfies minimum requirements established by the City to meet the community's future cable-related needs and interests, taking into account the cost of meeting such needs and interests.

TDS is able and willing to provide adequate PEG use capacity, facilities or financial support.

Granting of the franchise will not result in redlining, discrimination in the provision of services or grant TDS an unfair competitive advantage.

The schedule for building out is reasonable.

Approving the franchise would not eliminate or reduce competition in the delivery of cable service.

City Council Action

- + If the City finds that it is in the public interest to issue a cable franchise to applicant TDS Metrocom considering the factors described above, the City shall tender applicant TDS Metrocom a cable franchise, and applicant TDS Metrocom shall be entitled to exercise the franchise rights provided therein upon its acceptance of the terms and conditions of such franchise.
- + If the City denies a cable franchise to applicant TDS Metrocom the City shall issue a written decision explaining its denial.
- + See §7-1619 (b) and (f), BMCC.

