



COLORADO CABLE TELECOMMUNICATIONS ASSOCIATION

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Comments of

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Rules Concerning Campaign and Political Finance, 8 CCR 1505-6

July 22, 2009

I am here today to suggest additional language to the proposed rules defining “sole-source contracts” under Amendment 54. That language is as follows (amending Preliminary Draft of Proposed Rules, May 29, 2009):

1.16.3 A NON-EXCLUSIVE CABLE TELEVISION FRANCHISE GRANTED OR RENEWED UNDER THE TERMS OF THE FEDERAL CABLE ACT.

RATIONALE

Cable TV companies must, under Federal law, secure a franchise from local governments to operate. Those franchises – which by law are non-exclusive – give cable operators the permission to operate in the rights-of-way of the local government. Nearly all franchises require cable operators to pay to the city up to 5% of its gross revenues.

For reasons I will review, it is clear that cable TV franchises are not “sole-source contracts” – under either the letter or the spirit of Amendment 54. Nevertheless, some local governments have taken the position that Amendment 54 does apply to cable franchises. Given the extreme limitations on the First Amendment rights of political participation for any company deemed to be a “sole-source contractor” under Amendment 54, we ask you amend the proposed rules to explicitly exempt “A non-exclusive cable television franchise granted or renewed under the terms of the federal Cable Act.”

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Specifically, cable television franchises clearly are – to quote from the proposed rules – “a contract for which there is no legal requirement or authority for a competitive bidding process.”

- The original grant of cable TV franchises by local governments – which took place in the 1970’s and 1980’s – were actually very competitive. Many companies aggressively bid to secure franchises from local governments. Those original franchises lasted for terms ranging from 10 to 20 years, at which time they were renewed. Most existing franchises in Colorado have been renewed at least once.
- Federal law controls the terms of the renewal of cable franchises. A local government must renew a cable franchise unless one of three specific tests are met – which essentially boil down to the inability of a cable company to fulfill the terms of the contract. Therefore, no “bidding” is done during a cable franchise renewal because federal law in fact prohibits it.
- Maybe more importantly, the plain language of Amendment 54 makes clear that it was never intended to apply to cable franchises.
 - Amendment 54 was sold to voters as a way to limit corruption in the acquisition of goods and services by a governmental entity. The Blue Book’s Summary and Analysis is clear that the amendment addresses only the situation where “[g]overnment entities purchase goods and services from private-sector vendors.” The plain and ordinary meaning of a “sole-source contract” invariably refers to a contract for the purchase of goods or services by a government entity.
 - Cable franchises, on the other hand, exist to regulate the cable TV system and the government’s rights-of-way – not to provide any good or service to the government.
 - To further illustrate this point, the flow of money in a cable franchise is the exact opposite of that contemplated by Amendment 54. Whereas the government pays the contractor in a “sole-source” situation, the cable TV company actually pays the government under a franchise agreement. That payment represents many things, including the use of the government’s rights-of-way and compensation to the city for the expense of administering a cable regulatory regime.
 - Cable franchises are, by federal law, non-exclusive. Any entity can apply for a cable franchise at any time and federal law prohibits the unreasonable denial of a franchise by a local government. There is no “solicitation” process – competitive or otherwise.

I have included with these comments a memo from our outside counsel that analyzes in more detail the reason why cable TV franchises are not sole source contracts.

For the foregoing reasons, we respectfully ask you to specifically include cable TV franchises in the list of items excluded from the definition of “sole source government contract” under Amendment 54.

Thank you.