

ORIGINAL

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CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 4673

AN ORDINANCE relating to cable communications; adding a new Chapter 5.30 to Title 5 of the Bellevue City Code.

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

Section 1. A new Chapter 5.30 is hereby added to Title 5 of the Bellevue City Code, to be entitled "Cable Communications" and to read as follows:

Sections:

- 5.30.010 Title
- 5.30.020 Purpose
- 5.30.030 Applicability
- 5.30.040 Definitions
- 5.30.050 Requirement of a Franchise
- 5.30.060 General Franchise Characteristics
- 5.30.070 Franchise as a Contract
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- 5.30.150 Franchise Renewals
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- 5.30.250 Purchase or Transfer of Cable System Required by City
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- 5.30.280 Subscriber Fees and Rates
- 5.30.290 Reports
- 5.30.300 Records
- 5.30.310 Filings
- 5.30.320 System Technical Standards

- 5.30.330 Access and Local Programming
- 5.30.340 Leased Access
- 5.30.350 Public Drops
- 5.30.360 Institutional Services
- 5.30.370 Standby Power
- 5.30.380 Parental Control
- 5.30.390 Emergency Audio Alert System
- 5.30.400 Construction Standards
- 5.30.410 Construction and Installation Work
- 5.30.420 Location of Structures, Lines and Equipment
- 5.30.430 Moving of Buildings
- 5.30.440 Trimming Trees
- 5.30.450 Delays in Construction
- 5.30.460 Repair of Damages
- 5.30.470 Provision of Service
- 5.30.480 Refunds and Service Terminations
- 5.30.490 Service Area
- 5.30.500 Protection of Privacy
- 5.30.510 Tampering of Unauthorized Connections
- 5.30.520 Continuity of Service
- 5.30.530 Transitional Operation
- 5.30.540 Equal Opportunity Employment
- 5.30.550 Additional Consumer Protection
- 5.30.560 Interconnection
- 5.30.570 Cooperation
- 5.30.580 Cable Advisory Board
- 5.30.590 Severability

5.30.010 Title

This Chapter shall be known as the Cable Communications Chapter.

5.30.020 Purpose

The purposes of this Chapter are to:

- A. Provide for the franchising and regulation of cable communications within the City of Bellevue;
- B. Provide for a cable communications system or systems that will meet the current and future needs of the City;

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- C. Provide for the payment of fees and other valuable consideration to the City for the use of the public ways and for the privilege to construct and operate cable communications systems;
- D. Provide, consistent with applicable law, for the regulation by the City of certain rates to be charged to subscribers for certain cable communications services;
- E. Provide for the establishment of construction, maintenance, and operations standards to ensure the safety of the public;
- F. Provide for the development of cable communications as a means to improve communication between and among the members of the public and public institutions of the City; and
- G. Provide remedies and prescribe penalties for violation of this Chapter and any franchise granted hereunder.

5.30.030 Applicability

This Chapter is applicable to any cable communications franchise, including renewals, issued after the effective date of this Chapter.

5.30.040 Definitions

For purposes of this Chapter the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meanings.

- A. "Application" means a proposal seeking authority to construct and/or operate a cable communications system within the City pursuant to this Chapter. Application shall include the initial proposal for a new or renewed franchise plus all related subsequent amendments thereto.
- B. "Basic service" means the cable communications service tier which includes the retransmission or delivery of local television broadcast signals, including PEG access channels, as covered by the regular monthly charge paid by subscribers to the lowest tier.

- C. "Cable Advisory Board" means the board, if any, which the City may establish for the purpose of providing advice and assistance to the City in connection with cable communications matters.
- D. "Cable communications system" or "cable system" means a facility, consisting of a set of transmission paths and associated signal generation, reception, and control equipment that provides or is designed to provide to subscribers cable television services, institutional services or other communications services, but such term shall not include:
1. a facility or combination of facilities that serves only to retransmit the television signals of one or more television broadcast stations;
 2. a facility or combination of facilities that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way;
 3. a facility of a common carrier to the extent that facility is subject to the provisions of Title II of the Communications Act of 1934, Ch 652, 48 Stat. 1064, as amended (47 U.S.C. §§ 151 et seq., §§ 201 et seq.), except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or
 4. facilities of any electric, gas, water, or similar utility used solely for operating its utility system, and not to distribute communications services to subscribers.
- E. "Cable television services" means the one-way transmission of video programming and associated non-video signals to subscribers together with subscriber interaction, if any, which is provided in connection with the video programming.
- F. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of carrying any type of transmission that a grantee is authorized to provide to its subscribers.
- G. "City" means the City of Bellevue, Washington.

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- H. "Connection" means the attachment of the drop to the radio or television set or other communications device of the subscriber.

- I. "Construction." The terms "construction is completed," "construction has been completed," and "construction shall be completed" mean that strand has been put up and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all public ways restored and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplifier housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, energized, and all bonding and grounding has been completed; that all necessary connectors, splitters and taps have been installed; that construction of the headends and/or hubs has been completed and all necessary processing equipment has been installed; and that any and all other construction necessary for the system to be ready to deliver cable service to subscribers in a safe and reliable manner has been completed consistent with the terms of a franchise and industry standards; and proof that performance tests have been successfully conducted on each otherwise completed segment of the cable system shall be provided to the City. It is expected that segments of less than the entire system will be activated and proofed when completed. Construction of any segment or of the entire system will not be considered complete until proof that successful performance tests have been conducted on such segment (or in the case of the entire system, on all segments of the cable system) has been submitted to the City and any problems found during testing have been corrected. The term "completion of construction" does not include marketing and installation of subscriber service.

- J. "Converter" means an electronic tuning device which converts transmitted signals to a frequency which permits their reception on an ordinary television receiver.

- K. "Council" means the City Council of the City of Bellevue.

- L. "Drop" means the cable or cables that connect a subscriber's premises to the nearest feeder line of the cable communications system.

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- M. "Easement" means a public or private easement or right of way, including a public utility easement, to be used for the purposes of constructing and operating a cable communications system.
- N. "Feeder line" means the cables running from the trunk line to line-extenders and taps for the purpose of interconnection to individual subscribers.
- O. "FCC" means the Federal Communications Commission or any legally appointed or designated agent or successor.
- P. "File" means the delivery, by mail or otherwise, to the appropriate office, officer or agent of the City of any document or other thing which this Chapter or a franchise requires a grantee to file with the City. The date of receipt by the City shall be considered the file date. Unless specified to the contrary, the filing shall be with the City Clerk.
- Q. "Franchise" means the non-exclusive right and authority to construct, maintain, and operate a cable communications system through use of the public streets, dedications, public utility easements, or other public way in the City pursuant to a contractual agreement executed by the City and a grantee.
- R. "Grantee" means an entity authorized to construct and/or operate a cable communications system within the City pursuant to this Chapter, including any lawful successor, transferee or assignee of an original grantee.
- S. "Gross Revenues" means all revenues received directly or indirectly by a grantee or any of its affiliated entities in connection with the operation of a grantee's cable communications system in the Cable Service Territory, including but not limited to:
 - 1. revenues from subscribers;
 - 2. revenues from advertising, including the fair market value of in-kind payments (such as barter) received in consideration of advertising time;
 - 3. revenues from any home shopping network or similar programming;

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4. revenues collected in respect of leased channels or PEG programming;

provided, however, that actual uncollectible debts and refundable deposits shall be deducted from Gross Revenues in computing any franchise fee, and provided further, that Gross Revenues shall not include revenues received by affiliated entities of a grantee to the extent that such revenues derive from activities beyond the power of the City to license for revenue. Revenues of affiliated entities are included in this definition in order that a grantee shall not escape or limit its obligation to pay franchise fees through the creation or use of said affiliated entities.

- T. "Installation" means the connection of the cable system at the subscriber's premises.
- U. "Institutional services" means one- and two-way non-entertainment transmission services for public agencies and community institutions. Such services include, but are not limited to, video transmission and voice and data communications.
- V. "Leased channel" or "leased access channel" means any channel, or part of a channel, available for commercial use on a fee basis by persons or entities other than a grantee.
- W. "Maintain" or "maintenance" means the repair, restoration, replacement, renovation and testing of the cable communications system or components thereof so as to ensure that it operates in a safe and reliable manner and as required by a franchise and this Chapter.
- X. "PEG access channel" means any channel set aside for public use, educational use, or governmental use as required by the City and without a channel usage charge.
- Y. "PEG access user" means any person or entity, including a governmental entity, entitled to make use of a PEG access channel consistent with the intended purpose of the channel.
- Z. "Person" means an individual or legal entity, such as a corporation, partnership, or governmental entity.
- AA. "Premium service" means pay television offered on a per-channel, per-program, or pay-per-view basis.

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- BB. "Service tier" means a specific set of cable subscriber services which are made available as, and only as, a group for purchase by subscribers at a separate rate for the group.
- CC. "Street" or "public way" means the surface of and the space above and below any street, road, highway, path, sidewalk, alley, court, or easement now or hereafter dedicated for utility or other similar public use compatible with cable system operations.
- DD. "Subscriber" means a lawful recipient of cable television services or other services provided over a cable communications system.
- EE. "User" means a party utilizing a cable communications system's facilities for purposes of production or transmission of material or information to subscribers.

5.30.050 Requirement of a Franchise

It shall be unlawful to construct, install, maintain or operate a cable communications system or part of a cable communications system within the City without a valid franchise obtained pursuant to the provisions of this Chapter and subsequent amendments.

5.30.060 General Franchise Characteristics

Any franchise issued pursuant to the provisions of this Chapter shall be deemed to:

- A. Authorize and govern the use of the public ways for installing cables, wires, lines, and other facilities in order to operate a cable communications system, including the terms and conditions appropriate thereto, but shall neither expressly nor impliedly be deemed to authorize a grantee to provide service, or install cables, wires, lines, or any other equipment or facilities upon City property other than public ways, or upon private property without the owner's consent, or to utilize publicly or privately owned utility poles or conduits without a separate agreement with the owners thereof; provided, no grant of use by the City shall extend permission or use outside a purpose, dedication, or reservation granted to or held by the City; provided further, nothing herein shall prohibit the City or a grantee from exercising its rights under Section 621(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. § 541(a)(2).

- B. Be non-exclusive, and shall neither expressly nor impliedly be deemed to preclude the granting to other applicants of subsequent franchises to operate one or more other cable communications systems in the same area within the City, or the ownership or operation of a cable communications system by the City, which powers are expressly reserved to the City; and
- C. Convey no property right to a grantee or right to renewal, except as otherwise provided by applicable law.

5.30.070 Franchise as a Contract

A franchise issued pursuant to the provisions of this Chapter shall be deemed to constitute a contract between a grantee and the City. In the event of a conflict between the provisions of this Chapter and a franchise issued pursuant hereto, the provisions of this Chapter shall govern unless the context clearly shows the parties' intent to deviate from the provisions of this Cable Ordinance. Each party shall be deemed to have contractually committed itself to comply with the terms, conditions and provisions of a franchise, and a grantee shall further comply with all written rules, orders and regulations applicable to and not inconsistent with a franchise, which rules, orders and regulations are issued, promulgated or made pursuant to the provisions of this Chapter or other lawful authority.

5.30.080 Subject to Authority

A grantee shall, at all times during the term of a franchise, be subject to all lawful exercise of the police power by the City and to such lawful regulations as the City shall hereafter enact, provided that the City shall not impair the franchise rights of a grantee without just compensation. A grantee shall construct, operate and maintain the cable system in full compliance with all other applicable rules and regulations now in effect or hereafter adopted by the United States, the State of Washington, or any agency of said governments with jurisdiction over said activities.

5.30.090 No Waiver of Terms

A failure of the City on one or more occasions to insist upon or to seek compliance with any term or condition of this Chapter shall not excuse a grantee from complying with said term or condition on any other occasion. A failure of either the City or grantee on one or more occasions to insist upon or to seek compliance with any term or condition of a franchise shall not excuse the other party from complying with said term or condition on any other occasion.

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5.30.100 Filing of Applications

Applications for a franchise will be considered pursuant to the procedures set forth in Sections 5.30.100 through 5.30.150. For good cause the City Council may elect to waive any requirement set forth in Sections 5.30.100 through 5.30.150, unless otherwise required by applicable law.

- A. An application may be filed at any time or pursuant to a request for proposals (RFP) issued by the City.
- B. The City may request additional information from an applicant for a franchise at any time.
- C. Each application shall be accompanied by a filing fee of five thousand dollars (\$5,000) or such other amount as is set forth in the RFP. The City may apply filing fees received against the costs associated with the City's evaluation of pending application(s) pursuant to Section 5.30.130 of this Chapter.

5.30.110 Content of Applications

An application shall conform to the requirements set forth in an applicable RFP and shall provide all the information specified therein. Where an application is not filed pursuant to an RFP, it shall contain, at minimum, the following information:

- A. Identification of the applicant and proposed cable system owner, and, if the applicant or proposed owner is not a natural person, the names and addresses of all persons with one (1) percent or more ownership interest and of the ultimate controlling natural persons. An application shall also include the identification of all officers and directors and shall state any other primary business affiliation of each.
- B. An indication of whether the applicant, or any person controlling the applicant, or any affiliate of said controlling person including any officer of a corporation or major stockholder thereof, has voluntarily filed for relief under any provision of the bankruptcy laws of the United States (Title 11 of the United States Code), had an involuntary petition filed against it pursuant to the bankruptcy code, been the subject of any state law insolvency proceeding such as a transfer for the benefit of creditors, had a cable franchise revoked, or has been found guilty by any court or administrative agency in the United States of: (1) a violation of a security or antitrust law; or (2) a

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felony or any other crime involving moral turpitude. If so, the application shall identify any such person and fully explain the circumstances.

- C. A demonstration of the applicant's technical, legal and financial ability to construct and operate the proposed cable system, including, at the City's option,
 - 1. a detailed, complete, and audited financial statement of the applicant, duly certified as true and correct by an executive officer of the company, for the three (3) fiscal years last preceding the date of the application hereunder, or
 - 2. a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the City, setting forth the basis of a study performed by such lending institution or funding source, and a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed system in the City, or
 - 3. a statement from an independent certified public accountant, certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed system in the City.
- D. A description of the physical facility proposed, including channel capacity (one-way and two-way if any), the area to be served, a description of technical characteristics, headend and access facilities, and a map of the proposed system service area and distribution scheme.
- E. A description of how any construction will be implemented, identification of areas having above-ground or below-ground cable facilities and the proposed construction schedule.
- F. A description of the services to be provided over the system, including identification of television signals (both broadcast and non-broadcast) to be carried and all non-television services to be provided initially. Where service will be offered by tiers, identification of the signals and/or services to be included on each tier.

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- G. The proposed rates to be charged, including rates for each service tier, as appropriate, and charges for installation, converters, and other services.
- H. Information as necessary to demonstrate compliance with all relevant requirements contained in this Chapter.
- I. A demonstration of how the proposal is reasonable to meet current and future cable-related community needs and interests. In particular, the application should describe how the proposal will satisfy the needs as analyzed in any recent community needs assessment completed or commissioned by the City.
- J. A demonstration that the proposal is designed to be consistent with all federal and state requirements.
- K. Pro forma financial projections for each year of the franchise term. The projections shall include a statement of income, expenses, revenue, balance sheet, statement of sources and uses of funds, and schedule of capital additions. All significant assumptions shall be explained in notes or supporting schedules that accompany the projections.
- L. A complete list of all cable communications systems in which the applicant, controlling entity of applicant, subsidiary or affiliate of applicant or its controlling entity, or a principal thereof, holds an equity interest. For each system listed, provide the following information:
 - 1. Name of cable system operator and location of franchise.
 - 2. Relationship to the applicant.
 - 3. Franchise term.
 - 4. Date of Expiration.
 - 5. Number of subscribers.
 - 6. Number of dwelling units passed.
 - 7. Number of route miles.
 - 8. Channel capacity.

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9. Rate for basic service.
10. Name of franchising authority, including the address, phone number, and name of the person responsible for oversight of the cable system. If a cable system encompasses agreements with more than one franchising authority, provide the requested information for each franchising authority.
- M. An affidavit of the applicant or duly authorized officer thereof, certifying, in a form acceptable to the City, the truth and accuracy of the information contained in the application and acknowledging the enforceability of application commitments.
- N. In the case of an application by an existing grantee for a renewed franchise, a demonstration that said grantee has substantially complied with the material terms of the existing franchise and with applicable law.
- O. Other information that the City, or its agents, may request of the applicant.

5.30.130 Applicant Representatives

Any person who files an application with the City for a franchise shall forthwith, and at all times, disclose to the City, in writing, the names, addresses and occupations of all persons who are authorized to represent or act on behalf of the applicant in those matters pertaining to the application. The requirement to make such disclosure shall continue until the City shall have rejected an applicant's application or until an applicant withdraws its application.

5.30.140 Consideration of Applications

- A. The City will consider each application for a new or renewed franchise where the application is found to be acceptable for filing and in substantial compliance with the requirements of this Chapter and any applicable RFP. In evaluating an application the City will consider, among other things, the applicant's past service record in the City and in other communities, the nature of the proposed facilities and services, proposed area of service, proposed rates, and whether the proposal would adequately serve the public needs and the overall interests of the citizens of the City. The City may elect to undertake an assessment of future cable-related community needs and interests, and may require that the applicant's proposal be

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responsive thereto. Where the application is for a renewed franchise, the City shall consider whether:

1. the applicant has substantially complied with the material terms of the existing franchise and with applicable law;
 2. the quality of the applicant's service, including signal quality, response to consumer complaints, and billing practices (but without regard to the mix or quality of cable television services or other services provided over the system) has been reasonable in light of community needs;
 3. the applicant has the financial, legal and technical ability to provide the services, facilities, and equipment as set forth in the application; and
 4. the applicant's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.
- B. If the City determines that an applicant's proposal, including the proposed service area, would serve the public interest, it may grant a franchise to the applicant, subject to terms and conditions as agreed upon between the applicant and the City. No franchise shall be deemed granted unless and until a franchise agreement acceptable to the parties has been executed. The franchise agreement will constitute a contract, freely entered into, between the City and the grantee. Said franchise agreement shall be subject to the provisions of this Chapter as enforced at the time the franchise is issued, and subsequent amendments as they are consistent with the franchise agreement. Any such franchise must be approved by resolution or ordinance of the City Council in accordance with applicable law.
- C. In the course of considering an application for a renewed franchise, the City Council shall adhere to all requirements of applicable federal law. The public shall be afforded appropriate notice and opportunity to participate in any proceedings undertaken by the City for the purpose of identifying future cable-related community needs and interests, reviewing the applicant's performance during any existing franchise term, and evaluating the application. In the event the City makes a preliminary assessment that the franchise should not be renewed, the City or the City's Hearing Body shall hold a public hearing or hearings, in which the grantee seeking renewal shall be afforded a fair opportunity for full participation, including the right to

testify, to require the production of and to introduce evidence, and to question witnesses. Notice of any such public hearing shall, at least ten (10) days before the date of the hearing, be published in a local newspaper of general circulation in the City and be sent by certified mail to each applicant to be considered. A transcript shall be made of such hearing. Within a reasonable time following the conclusion of such hearing, the Council shall issue a written decision granting or denying the proposal for renewal based on the record of such proceeding and stating the reasons therefor. The City shall transmit a copy of said decision to the applicant. If the proposal is granted, the parties shall proceed to negotiate the terms and conditions of a renewed franchise, based on said proposal. Any denial of an application for a renewed franchise shall be based on one or more adverse findings made with respect to the factors described in Section A. above, pursuant to the requirements of then-applicable federal law. Neither grantee nor the City shall be deemed to have waived any right it may have under federal or state law by participating in a proceeding pursuant to this paragraph.

5.30.140 Acceptance

- A. A franchise and its terms and conditions, if accepted by a grantee, shall be accepted by written instrument, in a form acceptable to the City Clerk, and shall be executed and filed with the City within thirty (30) days after the granting of the franchise by the City. In its acceptance, a grantee shall declare that it has carefully read the terms and conditions of this Chapter and the franchise and accepts all of the terms and conditions of this Chapter and the franchise and agrees to abide by same. In accepting a franchise a grantee shall indicate that it has relied upon its own investigation of all relevant facts, that it had the assistance of counsel, that it was not induced to accept a franchise, and that it accepts all reasonable risks related to the interpretation of the franchise.
- B. In the event a franchise granted pursuant to this Chapter requires payment by the grantee of an administrative fee to the City in addition to any franchise fee, the franchise shall not take effect until said fee is received by the City. Any administrative fee shall be as specified in a franchise agreement, but it shall not exceed the City's direct costs in the franchising process, including any costs associated with the publication of this Chapter and a franchise, the cost of services provided by City staff, and the cost of outside consultants. The City shall provide to a grantee a statement summarizing such costs prior to the execution of the franchise.

5.30.150 Franchise Renewals

Nothing in this section shall authorize the City to impose burdens or apply standards on the applicant beyond those permitted by federal law.

5.30.160 Franchise Term

The term of a franchise shall be as specified in a franchise agreement, but it shall not exceed fifteen (15) years. If a grantee seeks authority to operate a cable system in the City beyond the term of its franchise, it shall file an application for a new franchise not earlier than thirty-six (36) nor later than thirty (30) months prior to the expiration of its franchise.

5.30.170 Franchise Fee

- A. A grantee, in consideration of the privilege granted under a franchise for the use of public ways and the privilege to construct and/or operate a cable system, shall pay to the City an amount set forth in the franchise agreement, not to exceed the maximum allowed by law, for each year during the term of the franchise.
- B. In a form, manner, and at intervals specified by the City, or otherwise as set forth in the franchise agreement, a grantee shall file with the City a written statement upon such form and setting forth such information as the City shall reasonably require, showing the gross revenues received by said grantee during the next preceding interval together with payment of the applicable percentage of said gross revenues. A grantee shall also file, no later than March 31 of each year, the grantee's financial statements for the preceding year, together with any amounts owing as a result of any shortfall in the total periodic payments for the previous year. Adjustments for any overpayment shall be by credit to subsequent payments. If the City reasonably determines, after examination, that a material underpayment of franchise fees may exist, the City may require a grantee to submit a financial statement audited by an independent public accountant. If the City's determination of underpayment is ultimately correct, the grantee shall bear the cost of such audit.
- C. The City shall have the right, upon reasonable notice and consistent with the provisions of Section 5.30.290 of this Chapter, to inspect a grantee's income records, to audit any and all relevant records, and to recompute any amounts determined to be payable under a franchise and this Chapter.

- D. In the event that any franchise payment is not received by the City on or before the applicable date due, interest shall be charged from such date at the rate of twelve percent (12%) per annum, or the statutory rate for judgments, whichever is less.
- E. In the event a franchise is revoked or otherwise terminated prior to its expiration date, a grantee shall file with the City, within ninety (90) days of the date of revocation or termination, a verified or, if available, an audited financial statement showing the gross revenues received by the grantee since the end of the previous year and shall make adjustments at that time for the franchise fees due up to the date of revocation or termination.
- F. Nothing in this Chapter shall limit the City's authority to tax a grantee, or to collect any fee or charge permitted by law, and no immunity from any such obligations shall attach to a grantee by virtue of this Chapter.

5.30.180 Publication Costs

A grantee shall be responsible for all costs of publication of its franchise and any amendments thereto. Such costs shall include, but are not limited to, the cost of publication in any newspaper.

5.30.190 Insurance Bonds, Indemnity

- A. Unless otherwise provided in the franchise agreement, upon the granting of a franchise and following simultaneously with the filing of the acceptance of the franchise and at all times during the term of the franchise, including the time for removal of facilities or management by a trustee as provided for herein, the City may require a grantee to obtain, maintain in full force and effect, and, upon request, deliver to the City a certificate of insurance or other written evidence of, insurance for the following:
 - 1. A comprehensive commercial or general liability insurance policy or policies, issued by an insurance carrier licensed to do business in the State of Washington and reasonably acceptable to the City. Said policy or policies shall pay on behalf of and defend the City, its officials, boards, commissions, agents or employees from any and all claims by any person whatsoever (including the costs, defense costs, attorneys' fees and interest arising therefrom) on account of personal injury, bodily injury or death of a person or persons or damages to property

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occasioned by the operations of a grantee under a franchise herein granted, or alleged to have been so caused or occurred, with a minimum combined single limit of not less than one million dollars (\$1,000,000) per occurrence and five million dollars (\$5,000,000) in the annual aggregate. The City reserves the right to revise policy limits during the term of the franchise as reasonably necessary to provide adequate coverage.

2. A comprehensive automobile liability insurance policy or policies, issued by an insurance carrier licensed to do business in the State of Washington and reasonably acceptable to the City. Said policy or policies shall pay on behalf of and defend the City, its officials, boards, commissions, agents or employees from any and all claims by any person whatsoever (including the costs, defense costs, attorneys' fees and interest arising therefrom) for bodily injury and property damage occasioned by any vehicle operation of a grantee, or alleged to have been so caused or occurred, with a minimum liability of not less than one million dollars (\$1,000,000) per person and five million dollars (\$5,000,000) in any one accident or occurrence. The City reserves the right to revise policy limits during the term of the franchise as reasonably necessary to provide adequate coverage.

- B. Unless otherwise provided in the franchise agreement, and in accordance with Section 14.30.150 of the City's Right-Of-Way Use Code, if a grantee undertakes any construction with regard to the cable system, including extension or expansion of an existing cable system, the City may require the grantee to maintain, at its sole cost and expense, a corporate surety bond for said construction issued by a surety company authorized to do business in the State of Washington and reasonably acceptable to the City.

1. Said construction bond shall assure the City of recovery of any and all liability damages, losses, costs, and expenses sustained or suffered by the City as a result of the grantee's construction of the cable communications system or the failure of grantee to satisfactorily and timely complete its planned construction. In no event shall the amount of the construction bond be construed to limit any liability of a grantee.
2. The amount of the construction bond shall be up to one hundred percent (100%) of the estimated cost of the planned

construction, such amount to be set by the City. In the event that there is a dispute over the estimated cost of the planned construction, the City's reasonable estimate shall be final and binding for purposes of this subsection.

- a. When a grantee can show to the satisfaction of the City that twenty-five percent (25%) of the planned construction has been completed, the grantee may reduce the amount of the construction bond by an amount equal to twenty-five percent (25%) of the original amount of the bond, upon written approval from the City.
 - b. When a grantee shows to the satisfaction of the City that fifty percent (50%) of the planned construction has been completed, the grantee may further reduce the amount of the construction bond by an amount equal to twenty-five percent (25%) of the original amount of the bond, upon written approval by the City.
 - c. When a grantee further shows to the satisfaction of the City that seventy five percent (75%) of the planned construction has been completed, the grantee may further reduce the amount of the construction bond by an amount equal to twenty-five percent (25%) of the original amount of the bond, upon written approval of the City.
 - d. When the planned construction is completed to the satisfaction of the City and written notice of such satisfaction has been received by a grantee, the construction bond need no longer be maintained.
3. The construction bond shall contain the following endorsement:
"It is hereby understood and agreed that this bond shall not be canceled by the surety, nor the intention not to renew be stated by the surety, until sixty (60) days after receipt by the City, by registered mail, of a written notice of such intent to cancel or not to renew.
- C. Unless otherwise set forth in the franchise agreement, all bonds and insurance policies called for herein shall be in a form satisfactory to the City's Risk Manager or other City official as designated by the City Manager. The City may at any time, if it reasonably deems itself insecure, require a grantee to provide additional sureties to any and all bonds or to replace existing bonds or insurance policies with

new bonds or insurance policies with good and sufficient sureties or insurers approved by the City. The City shall not be required to approve a bond or insurance policy that is cancelable during its term without establishment of another surety device approved by the City.

- D. A grantee shall, at its sole cost and expense, indemnify, defend and hold harmless the City, its officials, boards, commissions, agents and employees against any and all damages, costs, expenses, losses, taxes, claims, suits, causes of action, proceedings, liabilities and judgments (collectively the "indemnified liabilities"), arising out of the operation and construction of the cable communications system under a franchise, including the use, generation, transportation, storage treatment or disposal of any hazardous or dangerous substances, wastes, or materials, except that no such requirement shall apply where such indemnified liabilities are occasioned solely by the negligence, gross negligence or intentional misconduct of the City or its officials, boards, commissions, agents and employees while acting on behalf of the City. These indemnified liabilities shall include, but not be limited to, the cost of any required or necessary repair, cleanup, or detoxification, natural resource damage claims, and any penalties arising out of copyright infringements and damages arising out of any failure by a grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the grantee's cable communications system whether or not any act or omission complained of is authorized, allowed, or prohibited by the franchise. Indemnified expenses shall include, but not be limited to, all out-of-pocket expenses, such as costs, attorneys', and accountants' fees, and shall also include the reasonable value of any services rendered and separately billed by the Office of the City Attorney or any outside consultants employed by the City.
- E. No grantee shall permit any policy or bond to expire and a grantee, not less than thirty (30) days prior to its expiration, shall deliver to the City a substitute, renewal or replacement policy or bond conforming with the provisions of this Chapter.

5.30.200 Letter of Credit

- A. In the event that a letter of credit is required pursuant to the franchise agreement, a grantee shall deposit with the City a letter of credit from a financial institution chosen by the grantee and reasonably approved by the City in the amount set by the City. The

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letter of credit may be replaced by the grantee, but may not otherwise be revoked or terminated during the term of a franchise plus an additional sixty (60) days except with written approval of the City. The form and content of such letter of credit shall be approved by the Director of Finance, Information, and Personnel Services and the City Attorney. The letter of credit shall be used to insure the faithful performance by a grantee of all provisions of the franchise and this Chapter, compliance with all orders, permits, and directions of any agency, commission, board, department, division, or office of the City having jurisdiction over its acts or default under the license, and the payment by the grantee of any fees, costs, claims, liens, liquidated damages, and taxes due the City which arise by reason of the construction, operation, or maintenance of the system, or breach or termination of a franchise.

- B. The letter of credit shall be maintained at or restored to the amount designated by the City during the entire term of the franchise, as the City may require, even if funds are drawn against it pursuant to this Chapter.
- C. The letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit may not be canceled by the surety nor the intention not to renew be stated by the surety until sixty (60) days after receipt by the City Clerk, by certified mail, of a written notice of such intention to cancel or not to renew."
- D. At it's option, the City may draw against the letter of credit for any unpaid liquidated damages, franchise fees or other amounts owing to it under a franchise which are 30 days or more past due.
- E. The rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether reserved by this Chapter or related documents or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the City may have.

5.30.210 Liquidated Damages

Because a grantee's failure to comply with the provisions of this Chapter and its franchise will result in damage to the City and because it will be

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impractical to determine the actual amount of such damages, the City and any grantee may agree upon and specify in a franchise certain amounts which represent both parties' best estimate of the damages.

5.30.220 Revocation and Termination

- A. In addition to all other rights and powers retained by the City under this Chapter and any franchise issued pursuant thereto, the City Council reserves the right to revoke and terminate a franchise and all rights and privileges of a grantee in the event of a substantial violation or breach of its terms and conditions. A substantial violation or breach by a grantee shall include, but shall not be limited to, the following:
1. An uncured violation of any material provision of this Chapter or an uncured breach of any material provision of a franchise issued thereunder, or any material rule, order or regulation of the City made pursuant to its power to protect the public health, safety and welfare;
 2. An intentional evasion or knowing attempt to evade any material provision of a franchise or practice of any fraud or deceit upon the Cable Communications System customers and subscribers or upon the City;
 3. Failure to begin or substantially complete any system construction or system extension as set forth in a franchise;
 4. Failure to provide the services promised in the application or specified in a franchise, or a reasonable substitute therefor;
 5. Failure to restore service after ten (10) consecutive days of interrupted service, except when approval of such interruption is obtained from the City;
 6. Misrepresentation of material fact in the application for, or during negotiations relating to, a franchise;
 7. A continuous and willful pattern of grossly inadequate service and failure to respond to legitimate subscriber complaints;
 8. Failure to provide insurance, construction bond, letter of credit, or indemnity as required by a franchise or this Chapter; or

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9. An uncured failure to pay franchise fees as required by the Franchise Agreement.
- B. None of the foregoing shall constitute a substantial violation or breach if a violation or breach occurs which is without fault of a grantee or occurs as a result of circumstances beyond a grantee's reasonable control. A grantee shall not be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, agents or employees; provided, however, that damage to equipment causing service interruption shall be deemed to be the result of circumstances beyond a grantee's control if it is caused by any negligent act or unintended omission of its employees (assuming proper training) or agents (assuming reasonable diligence in their selection), or sabotage or vandalism or malicious mischief by its employees or agents. A grantee shall bear the burden of proof in establishing the existence of such conditions.
- C. Prior to any termination or revocation, the City shall provide a grantee with detailed written notice of any substantial violation or material breach upon which it proposes to take action. A grantee shall have a period of sixty (60) days following such written notice to cure the alleged violation or breach, demonstrate to the City's satisfaction that a violation or breach does not exist, or submit a plan satisfactory to the City to correct the violation or breach. If, at the end of said sixty-day period, the City reasonably believes that a substantial violation or material breach is continuing and a grantee is not taking satisfactory corrective action, the City may declare a grantee in default, which declaration must be in writing. Within twenty (20) days after receipt of a written declaration of default from the City, a grantee may request, in writing, a hearing before a "Hearing Examiner" as described in Chapter 3.68 of the Bellevue City Code. The Hearing Examiner shall conduct a full public proceeding in accordance with the applicable procedures of "Process VI," as set forth in Section 20.35.600, et seq., of the Bellevue Land Use Code, and a grantee may appeal a decision of the Hearing Examiner to any court of competent jurisdiction, said court to apply the same standards as would apply pursuant to Section 20.35.630 of said Code. The City may, in its discretion, provide an additional opportunity for a grantee to remedy any violation or breach and come into compliance with this Chapter so as to avoid the termination or revocation.

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5.30.230 Foreclosure

Upon the foreclosure or other judicial sale of all or a substantial part of the cable communications system facilities, or upon the termination of any lease covering all or a substantial part of the cable communications system, or upon the occasion of additional events which effectively cause termination of the system's operation, a grantee shall notify the City of such fact, and such notification or the occurrence of such terminating events shall be treated as a notification that a change in control of the grantee has taken place, and the provisions of this Chapter governing the consent of the City to such change in control of the grantee shall apply.

5.30.240 Receivership

- A. The City shall have the right to cancel a franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:
 - 1. Within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all of the provisions of this Chapter and a franchise and remedied any defaults thereunder; and
 - 2. Within said one hundred twenty (120) days, such receiver or trustee shall have executed an agreement, duly approved by the court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Chapter and a franchise granted to the grantee except where expressly prohibited by Washington law.

- B. A grantee shall immediately notify the City in writing if it:
 - 1. files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors;
 - 2. files an answer admitting the jurisdiction of the Court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or

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3. is adjudicated bankrupt, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver or trustee of all or any part of its property including all or any part of its cable system.

5.30.250 Purchase or Transfer of Cable System Required by City

- A. Unless otherwise set forth in the franchise agreement, and in the event the City decides not to renew an expiring franchise, the City shall have the right to purchase or effect a transfer to another person of ownership in the cable system at its fair market value; except no value shall be assigned to the franchise itself.
- B. In the event the City revokes, forfeits or terminates a franchise for cause, it shall have the right to purchase or effect a transfer to another person of ownership in the cable system for an equitable price. An equitable price takes into account the nature of a grantee's breach or malfeasance and the resulting harm to the community; it is not based on fair market value or going concern value.
- C. In the event the parties are unable to agree upon a price pursuant to subsections A. or B. above, whichever is applicable, said price shall be fixed and determined through an action brought by either party in any court of competent jurisdiction, unless the parties agree to a different method of determining the appropriate price.

5.30.260 Removal of Cable Communications System

Upon termination or non-renewal of a franchise as provided herein, a grantee shall forthwith, upon notice by the City, vacate and remove at its own expense all designated portions of the cable communications system from all streets and public ways within the City and shall restore said streets and public ways to their former condition; provided, however, a grantee shall have the right to sell its physical plant to a subsequent grantee or the City, subject to City approval, in which case said plant need not be removed. If a grantee fails to remove its facilities upon request, the City may perform the work at the grantee's expense. The requirements of this section shall not apply to underground cable that has been de-energized and for which an accurate map ("as built") has been provided to the City describing in detail the location of such cable; except that the City may continue, in its sole discretion, to require removal where necessary to avoid congestion or, at its option, remove such cable.

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5.30.270 Transfer of Ownership or Control

- A. A franchise issued pursuant to this Chapter and any cable communication system operated pursuant thereto shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, or otherwise hypothecated in any manner, nor shall title thereto, either legal or equitable, control thereof, or any right, interest, or property therein pass to or vest in any person or entity, nor shall the controlling interest in any corporation holding a franchise hereunder be changed in a manner reasonably anticipated to diminish substantially grantee's ability or likelihood of performing its obligations under the franchise, without the prior consent of the Council, such consent not to be unreasonably withheld, or only under such conditions as may be required by the Council; provided, however, such transfer of control shall not include transfer to a parent, subsidiary, or affiliate of a grantee, except when such transfer is intended to avoid application of this section. Every change, transfer, or acquisition of control of a grantee shall make a franchise subject to cancellation unless and until the City shall have consented. Such consent shall not be unreasonably withheld.**
- B. A grantee shall promptly notify the City of any proposed change in control of the grantee. A formal application for approval of a proposed transfer of control shall be filed within 30 days of such notification. The application shall include, among other things, a copy of any and all documents relating to the sale or transfer and any filings by any party to the transaction at any state or federal agency including, but not limited to, the FCC, the Department of Justice, the Federal Trade Commission, and the Securities and Exchange Commission. An original of the text of the application shall be filed with the City.**
- C. The proposed purchaser, transferee, or assignee must show financial responsibility as determined by the City and must agree to comply with all provisions of a franchise, including any provisions which the City may amend or add prior to approval of the transfer.**
- D. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City may inquire into all qualifications of the prospective controlling party, and a grantee shall assist the City in any such inquiry. The City may require any reasonable conditions which it deems necessary at the time of review to ensure that the proposed cable system purchase will**

satisfy the public interest of the City and its citizens for the balance of the term of the franchise.

- E. Section 5.30.130 of this Chapter shall apply to any transfer as if the transferee were an applicant for a new franchise. The City shall act on said transfer application within 120 days of receipt.
- F. Nothing in this provision shall preclude a grantee from pledging, mortgaging, or hypothecating its interests to a recognized financial institution to secure borrowed funds. Said institution may foreclose on, hold, sell, assign or transfer such interests, but only to the extent that the mortgagee, pledgee, assignee, or transferee undertakes to assume, and has the ability to perform, all of grantee's obligations under the franchise agreement and this Chapter; and provided further that said mortgage, pledge, sale or assignment shall not relieve grantee of any obligations under the franchise agreement or this Chapter.

5.30.280 Subscriber Fees and Rates

- A. The grantee shall provide the City with current copies of its list of charges to subscribers for all services, including installation fees and other one-time charges
- B. The City reserves the right to regulate rates for any service within the limits of federal and state law, to enforce rate regulations prescribed by the FCC, and to establish procedures for said regulation or enforcement.
- C. Rates shall be just and reasonable, shall not discriminate against or give any undue or unreasonable preference or advantage to any subscriber or class of subscribers, and shall comply with applicable law.
- D. Rates and charges not subject to regulation by the City under state or federal law or regulation may be changed by a grantee following a minimum thirty (30) days prior written notice to the City and each subscriber.

5.30.290 Reports

To facilitate timely and effective enforcement of this Chapter and any franchise and to develop a record for purposes of determining whether to renew

any franchise, the City may, upon reasonable notice, require reports as specified in this section.

- A. Annual report. Unless otherwise set forth in the franchise agreement, no later than March 31st of each year, if requested by the City, a grantee shall file a written report with the City, which may include:
1. A summary of the previous calendar year's activities in development of its system, including but not limited to services begun or dropped, number of subscribers (including gains and losses), dwelling units passed, and miles of cable distribution plant in service (including different classes if applicable).
 2. A verified or, if available, an audited financial statement, which may include at the City's request a statement of income, a statement of retained earnings, a balance sheet, a statement of sources and applications of funds, a fixed asset statement showing for each account or category, the original cost and accumulated depreciation balances and activity, and a depreciation statement showing the detailed calculation of depreciation expense for the year. The statement shall include notes that specify all significant accounting policies and practices upon which it is based (including, but not limited to, depreciation rates and methodology, overhead and intrasystem cost allocation methods, and basis for interest expense). A summary shall be provided comparing the current year with previous years since the beginning of a franchise. The statement shall contain a summary of franchise fee payments and any adjustment thereto as specified in Section 5.30.170 of this Chapter. In any year the City requires an audited financial statement pursuant to this subsection, and an audited financial statement in compliance with this subsection is provided by a grantee, that grantee shall not be required to submit another audited financial statement for that year which otherwise may be required by Section 5.30.170 of this Chapter.

If reasonably deemed necessary by the City, it may request additional financial information reviewed or prepared by an independent auditor approved by the City. If the City's determination of a financial error is ultimately correct, the Grantee shall bear the cost of such audit.

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3. A current statement of cost of any construction by component category.
 4. Information reasonably requested by the City for the purpose of enforcing any consumer protection and customer service requirements applicable to grantees, including a summary of complaints by subscribers and users, identifying the number and nature of complaints and their disposition.
 5. If a grantee is a corporation, a list of officers and members of the board and the officers and board members of any parent corporation.
 6. A list of all partners or stockholders holding ten percent (10%) or more ownership interest in a grantee and any parent corporation; provided, however, that when any parent corporation has in excess of 1,000 shareholders and its shares are publicly traded on a national stock exchange, then a list of the twenty largest stockholders of the voting stock of such corporation shall be disclosed.
 7. A copy of all a grantee's written customer service rules and regulations, as well as technical requirements applicable to subscribers and users of the cable system.
 8. Any additional information related to operation of the Cable Communications system as reasonably requested by the City based on demonstrated legitimate need.
- B. Unless otherwise set forth in the franchise agreement, the City may specify the form and details of all reports, with grantee given an opportunity to comment in advance upon such forms and details. The City may change the filing dates for reports upon reasonable request of a grantee.
- C. A grantee shall, annually, make available to the City for inspection a construction plan and schedule for the next following twelve (12) months.
- D. A grantee shall submit to the City within ten (10) working days of its completion of the report, a copy of the final report on each proof of performance test of each technical parameter defined in Part 76 of the rules and regulations of the FCC, as said rules may be modified from time to time. A grantee shall continue to conduct such tests at

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least once each calendar year and shall provide a copy of each final report to the City within ten (10) working days of its completion, and shall maintain the resulting test data on file at its local office for at least five years. The City subsequently may require a full report on any deficiencies as disclosed by the proof of performance test within such reasonable period of time as it may designate. Additional tests shall be performed on terms agreed between the City and the grantee.

- E. Unless otherwise specified in the Franchise Agreement, a grantee shall make available to the City for inspection and copying, as the City may request, a copy of all maps and charts of cable locations prepared by or for the grantee during the duration of the franchise.
- F. The City shall have the right to inspect all construction and installation work performed by a grantee subject to this Chapter as it shall find necessary to insure compliance with governing ordinances and the franchise, and shall have the right to inspect a grantee's cable communications system during normal business hours and upon reasonable advance notice to the grantee.

5.30.300 Records

A grantee shall maintain a complete set of books and records relating to operation of its cable system and make them available to the City of Bellevue. Upon reasonable notice to a grantee, the City will have the right to inspect all records reasonably relating to the cable operations during normal business hours.

5.30.310 Filings

Upon the City's request, grantee shall promptly mail or deliver to the City a copy of any filing made with state and/or federal agencies that may materially affect the ability of a grantee to perform its obligations under this Chapter or a franchise. "Filings" shall include, but shall not be limited to, replies to notices of violations, and responses to letters of inquiry.

5.30.320 System Technical Standards

The cable system to be installed by a grantee shall comply in all respects with the minimum standards established and updated periodically by the FCC relating to cable systems' technical operation and signal quality. The City reserves the right, in its sole discretion, to impose more stringent standards

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than those prescribed by the FCC to the extent it seeks and obtains a waiver from the FCC permitting it to do so.

5.30.330 Access and Local Programming

- A. The City believes that local programming can play a distinctive, valuable, and essential role as part of a cable television system. A successful community programming operation requires the cooperation and support of a grantee, the City, and the public over an extended period of time. Applications for a franchise may include, and the City may require, that proposals include the provision of public, education, and local government access channels without charge, including facilities and support services sufficient to meet community needs. Applicants are encouraged to provide for local origination programming in their franchise proposals. All local programming equipment, facilities, and support services -- whether supplied directly by a grantee or through grant funds provided by the grantee -- shall be available for noncommercial use to all users in the community including a grantee. If supported by its assessment of future cable-related community needs and interests, the City may require that a proposal conform to one or more of the following conditions.
1. A grantee shall provide equipment, directly or through grants, for local program production by all cable users and live and video-taped presentation over the cable television system in addition to automated services.
 2. The City may require a grantee or a nonprofit corporation or other entity selected to manage the access program to establish reasonable rules for the use of access channels consistent with the requirements of this Chapter, a franchise, other applicable law and the intended purpose of such channels. Such rules shall be subject to review and approval by the City.
 3. A public access channel shall be made available to members of the public on a nondiscriminatory basis at nominal or no charge for channel or equipment use, except as otherwise provided by law.
 4. Any education access channel(s) shall be made available free of charge to all qualified users for the transmission of local educational programming.

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5. Any local government access channel(s) shall be made available free of charge for the transmission of government related programming.
- B. The City may promulgate rules under which channel capacity dedicated to access use may be used by a grantee when it is not being used for access purposes.

5.30.340 Leased Access

A grantee shall make channels available for leased or commercial use as specified in a franchise and as consistent with federal requirements.

5.30.350 Public Drops

Unless otherwise set forth in the franchise agreement, grantee shall provide without charge within the franchise area one (1) drop activated for basic subscriber cable television service to each fire station, public school, police station, public library, City Hall, and other public buildings as may from time to time be designated by the City. A grantee may petition the City for a waiver of this requirement, such waiver to be granted for good cause shown. A grantee shall be permitted to recover, at the grantee's actual cost, for any additional converters required, and for the grantee's direct cost of installing, when requested to do so, more than one (1) outlet, concealed inside wiring, or a service outlet requiring more than five hundred (500) aerial feet or two hundred fifty (250) underground feet of cable. Nothing in this section shall be construed to prohibit the City and a grantee from reaching an agreement whereby the grantee would bear the burden for all or a portion of the cost of installing any equipment (including wiring) necessary to cablecast meetings of the City Council.

5.30.360 Institutional Services

A grantee may be required to provide institutional services over the cable system without charge, subject to the terms specified in the franchise, and shall be so required with respect to public and governmental entities and buildings that are passed on institutional cable trunk or feeder line.

5.30.370 Standby Power

A grantee shall maintain equipment capable of providing standby power for the headends and transportation and trunk amplifiers as reasonably required in the franchise. The standby power equipment shall engage automatically in the event of a power failure. A grantee shall comply with all safety regulations

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to prevent standby generators from "back feeding" or otherwise powering the "dead" utility line.

5.30.380 Parental Control

- A. A grantee shall provide subscriber controlled "lock-out" devices (audio and visual) upon a subscriber's request. A grantee shall notify all subscribers in writing of the availability of these devices at the time of initial connection, and at least annually thereafter.
- B. To the extent required by federal law, if a grantee plans to provide a premium channel without charge to a subscriber who does not subscribe to such premium channel, the grantee shall provide at least 30 days' prior written notice thereof to said subscriber, and upon the subscriber's request, shall block entirely the subscriber's reception of said channel. For purposes of this section, a "premium channel" shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association as X, NC-17, or R.

5.30.390 Emergency Audio Alert System

To the extent practicable, the cable system shall be engineered, constructed and maintained to provide for an audio alert system which would allow authorized officials or designated representatives of the City to override the audio signal on all channels and to transmit and report emergency information. In the case of any sudden, unforeseen event, potentially causing significant damage, destruction, or loss of life, a grantee shall make the audio alert system available without charge to the City or any other governmental or civil defense agency that the City shall designate for the duration of such emergency or disaster.

5.30.400 Construction Standards

- A. Any cable system constructed within the City shall meet or exceed all technical standards consistent with this Chapter, a franchise agreement, and a grantee's application.
- B. In addition to the requirements of Section 5.30.290.D. of this Chapter, the City may require additional reasonable proof of performance tests not more often than annually and within ninety (90) days of the completion of the construction of a new system or the upgrading or reconstruction or repair of an existing system. In the event that the City requires proof of performance testing under

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this section, the grantee shall conduct such tests under the standards set forth in Part 76 of the FCC's Rules and Regulations. The City may observe the testing performed under this section, and may provide a list of locations and/or areas where the tests specified are to be performed. To the extent provided in the franchise, the City shall be entitled to recover from the franchisee its costs associated with defining tests and procedures, observation of said tests, and evaluation of test findings.

5.30.410 Construction and Installation Work

- A. Before commencing any construction in, above, over across, under, through or in any way connected with the streets or public ways of the City, a grantee shall first obtain a right-of-way use permit from the City's Transportation Department. A grantee may commence construction upon issuance of all permits and licenses necessary to do the work.
- B. A grantee shall maintain all wires, conduits, cables, and other real and personal property and facilities in good condition, order and repair. If a grantee fails to comply with this requirement after reasonable notification by the City, the City may cause such work to be stopped or corrected at the grantee's expense.
- C. All construction, installation and maintenance must comply with the National Electrical Safety Code and the Washington State Electrical Construction Code as adopted by the City, all federal, state and local regulations, and good and accepted industry practices.

5.30.420 Location of Structures, Lines and Equipment

- A. A grantee shall utilize existing poles, conduit systems and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduit systems, or other facilities whether on public property or on privately owned property until approval of the property owner or appropriate governmental authority is obtained. Such governmental approval shall not be unreasonably withheld if said approval complies with that authority's regulations, codes and policies. However, the location of any pole or wire-holding structure by a grantee shall not constitute a vested interest, and such poles, structures, or facilities shall be removed, replaced or modified by the grantee at its own expense whenever the Council or other governmental authority reasonably determines that the public interest so necessitates.

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- B. All transmission and distribution structures, lines, and equipment installed by a grantee within the City shall be located in accordance with plans and permits as approved by the City's Transportation Department and in accordance with the City's Right-Of-Way Use Code.
- C. In those areas of the City where telephone and electric utility lines have been placed underground, a grantee shall place its lines and installations underground. A grantee may petition the City for a waiver of this requirement, such waiver to be granted for good cause shown where that waiver is consistent with adopted regulations, codes and policies. Trunk and feeder amplifiers, trunk and feeder splitters and other passives, and subscriber taps may be placed in low profile pedestals in accordance with approved permits. In new housing developments where service would normally be required, and upon sufficient notice, a grantee shall install distribution cables at the same time utility facilities are being installed. A grantee may petition the City for a waiver of this requirement, such waiver to be granted for good cause shown, such as inconsistency with a grantee's capital construction program.
- D. A grantee shall, at its sole cost and expense, protect, support, temporarily disconnect, relocate in the same street or other public way, or remove from said street or other public way, any of its property when required to do so by the City because of: street or other public excavation; construction; repair; regrading or grading; traffic conditions; installation of sewers, drains or water pipes; City-owned power or signal lines; tracks; vacation or relocation of streets or any other type of structure or improvement of a public agency, or any other type of improvement necessary for the public health, safety or welfare.
- E. If so specified in the franchise agreement, the City shall have the right, during the term of a franchise, to install and maintain free of charge upon the poles and conduit systems of the grantee any wire and pole fixtures and appurtenances. The City's use of a grantee's poles and conduit systems shall not unreasonably interfere with the use or enjoyment of such poles and conduits by the grantee.
- F. Unless otherwise specified in the franchise agreement, a grantee shall provide at no charge a list of all its underground facilities and equipment, and subscribe, to any available "one number locator service," as defined by Chapter 19.122 of the Revised Code of Washington, RCW 19.122.020(13). A grantee shall, before

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commencing excavation, provide notice of the scheduled commencement of excavation through the one-number locator service.

- G. On request to a grantee by any person who is authorized to perform work on any public right of way which has been used by a grantee for erection of a cable communications system, a grantee shall provide information regarding the type, location, height, and other pertinent information of poles, conduits, and other structures which the grantee has placed on said right-of-way. If requested by the City, the cost of providing information in accordance with this section shall be borne by the grantee; if other authorized parties make such a request, the reasonable cost shall be borne by the person making the request.

5.30.430 Moving of Buildings

A grantee shall, on the request of any person holding a valid house-moving permit, temporarily raise or lower its wires or cables to permit the moving of buildings or other large objects. The expense of such temporary raising or lowering of wires shall be paid by the person making the request, and a grantee shall have the authority to require such payment in advance. A grantee shall be given not less than seven (7) days advance notice to arrange for such temporary wire changes, except in case of emergency. Any interruption in service occasioned by this activity shall take place, as far as is practicable, outside of prime time (7:00 p.m. to 11:00 p.m. local time).

5.30.440 Trimming Trees

Subject to prior approval by the City Manager or designee, a grantee may trim trees on public property or which overhang streets, alleys, sidewalks and public ways of the City so as to prevent the branches of such trees from coming in contact with wires and cables and other television conductors and fixtures of the grantee, provided that the grantee gives prior written notice for such activity to the City and takes full responsibility for removing debris when the work is complete. All trimming is to be done at the sole expense and responsibility of a grantee. A grantee is solely responsible for property or tree damage caused by it, and must fully restore any such property or tree damage when so requested by the City.

5.30.450 Delays in Construction

- A. The franchise may provide for liquidated damages or other consequences upon failure by a grantee to complete, in timely

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fashion, any construction, including replacements and upgrades, as set forth in the franchise. Depending upon the degree of delay, such consequences may include:

1. Forfeiture of all or a portion of the construction bond.
 2. Termination of a franchise.
 3. Assessment of liquidated damages for causing delays in City construction projects.
- B. The City shall provide the grantee with a detailed written notice of any alleged failure to complete construction upon which it proposes to take action, and a sixty (60) day period within which the grantee may demonstrate to the City's satisfaction that construction has been completed, or to complete the construction, or if the construction cannot be completed within sixty (60) days, to submit a plan satisfactory to the City to complete the construction.
- C. If a grantee is delayed at any time in the progress of construction by the failure of the appropriate public utility company or companies to diligently process pole attachment agreements or applications or to make such poles ready for attachment, or the failure of the City or other governmental authorities to diligently process applications for approval as may be required in connection with the construction of the cable system, or by labor disputes, fire, unusual delays in transportation, inability of a grantee to procure materials, act of God, war, riots, insurrection or any causes beyond a grantee's control, and which could not have been reasonably anticipated, then a grantee shall be granted an extension of time to complete construction, such extension to be of a duration commensurate with the amount of delay caused by the Force Majeure event. If an extension is granted, subsection A. shall not apply for that period of time by which a grantee was delayed by reason of events beyond its control.

5.30.460 Repair of Damages

A grantee, its successors and assigns shall promptly repair any damage of every type and nature to City property or City improvements caused by the grantee's negligent or substandard work during the term of a franchise.

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5.30.470 Provision of Service

A grantee shall provide subscriber service on the following basis:

- A. A grantee shall not deny service, access, or otherwise discriminate against any person, including subscribers and users, on account of race, color, religion, national origin, age, sex, physical disability, or any other basis protected by law. A grantee shall comply at all times with all other applicable federal, state, and local laws and regulations.

- B. In providing service a grantee shall adhere to such minimum customer service standards as are prescribed by applicable federal or state law or regulation. In addition, a grantee shall:
 - 1. Operate a local office open during normal business hours Monday through Friday, excluding legal holidays as set out in RCW 1.16.050.
 - 2. Provide a local toll-free telephone service capable of receiving subscriber service complaints, on a seven days a week, 24 hours a day basis.
 - 3. Generally provide service for new installations, reconnections, and relocations within seven (7) business days of receipt of such requests where a grantee's distribution system is already in place.
 - 4. Establish a maintenance service capable of promptly locating and correcting system malfunctions. Service trucks shall be equipped for communication with a grantee's dispatcher. In order to permit a rapid response to any system wide outage a grantee shall have service trucks available for emergency duty to repair system outages during non-business hours.
 - 5. Make every attempt to respond to service complaints upon receipt, but in no case later than the next working day. Service complaints, with the exception of service interruptions, shall be resolved within fourteen (14) days. A grantee, whenever reasonably practicable, shall make system repairs and testing (which would result in any interruption of service to subscribers) at times which will least affect typical subscriber television viewing habits; provided, however, a grantee shall

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not be required to conduct such system repairs and testing during non-business hours.

6. Restore service interruptions within twenty-four (24) hours of notice. In those cases where service is not restored within twenty-four (24) hours due to unusual circumstances, the reasons for the delay shall be fully documented in a complaint log. If after twenty-four (24) hours, service is not restored to a subscriber, a grantee shall, upon a subscriber's written request, provide a refund or credit to such subscriber as hereinafter set forth. For each full twenty-four (24) hour period and subsequent fractions thereof, the refund or credit shall be in the amount of one-thirtieth (1/30) the monthly charge for each tier of service and each premium service which is unavailable to the subscriber.
7. Give subscribers the option to be billed on a monthly basis. Billing complaints shall be responded to promptly, but in no event later than within fourteen (14) days of receipt. To the extent allowed by state and federal laws pertaining to privacy, a record of such complaints shall be maintained for inspection upon reasonable notice by the City, and the log shall include the following information: name of complainant, nature of complaint, date and time received, disposition, and time and date of disposition. Such logs shall be maintained for a period of not less than two (2) years.
8. Provide the City, upon request, information pertaining to specific customer complaints. A grantee shall keep a continuing record for at least two (2) years of all formal customer complaints concerning billing or service matters received by the grantee. To the extent allowed by state and federal laws pertaining to privacy, the record shall include, at a minimum, the following information: name of complainant, nature of complaint, date and time-received, disposition, and time and date of disposition, and this record shall be available for inspection upon reasonable notice by authorized City representatives at the local office of the company during regular office hours. A grantee shall also comply with all requests by City officials to deliver such record to the City for inspection. Delivery shall be made to the official(s) requesting such inspection.

- C. As subscribers are connected or reconnected to the system, a grantee shall, by appropriate means such as a card or brochure, furnish general subscriber information (including, but not limited to, terms of service and procedures for making inquiries or complaints, including the name, address, and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed) and furnish information concerning the City office responsible for the administration of the franchise, including the address and telephone number of said office.
- D. When similar complaints have been made by a number of subscribers, or where other evidence exists which, in the reasonable judgment of the City, casts doubt on the reliability or quality of the cable service, the City, notwithstanding any other provisions of this Chapter, shall have the right and authority to require that a grantee test, analyze, and report on the performance of the system. A grantee shall fully cooperate with the City in performing such testing and shall prepare a written report of the results, if requested, within thirty (30) days after notice. In the event that the City requires proof of performance testing under this section, such testing shall be conducted in accordance with FCC technical standards. The City may observe the testing performed under this section, and may provide a list of locations and/or areas where the tests specified are to be performed. If a grantee is found to be in compliance with applicable standards, the cost of such testing and report shall be borne by the City.

5.30.480 Refunds and Service Terminations

- A. A grantee shall establish and conform to policies regarding refunds to subscribers and users as set forth in regulations adopted by the FCC or the City, whichever applies. In the absence of any applicable regulations on the subject, the following rules shall apply:
1. A grantee may not require advance charges greater than the charge for one month's service, and may not collect a deposit for use of equipment greater than the actual value of the equipment. If a grantee collects a deposit or installment thereof or advance charge on any service or equipment requested by a subscriber or user, the grantee shall provide such service or equipment within thirty (30) days of the collection of the deposit or installment thereof or charge or it shall refund such deposit or installment thereof or charge within five (5) business days thereafter. Nothing in this section shall be construed: (1)

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to relieve a grantee of any responsibility it may have under separately executed contracts or agreements with subscribers or users; (2) as limiting a grantee's liability for liquidated damages, if any, which may be imposed under a franchise for the violation or breach of any provisions thereof; or (3) to limit a grantee's liability for damages, if any, because of its failure to provide the service for which the deposit or installment thereof or charge was made.

2. In the event that a subscriber terminating service because of the failure of a grantee to render service substantially in accordance with the requirements set forth in this Chapter and its franchise has made any additional advance payment, the amount so advanced shall be refunded to such subscriber within thirty (30) days of service termination. Nothing in this provision shall be construed to relieve a grantee of any liability established under any other provisions of this Chapter or a franchise issued pursuant thereto.
3. If a subscriber decides to reinstate service, a grantee may impose a reconnection charge, such charge not to exceed the fee for a new installation.

B. The following requirements shall apply to subscriber disconnection:

1. Subscribers shall have the right to disconnect a service installation or outlet at any time, subject to any reasonable contractual obligation. If a subscriber wishes to have a grantee disconnect an installation service or outlet, all cable communications equipment owned by grantee shall be removed within a reasonable time from the subscriber's property upon the subscriber's request, such time not to exceed thirty (30) days from the date of request.
2. If any subscriber fails to pay a properly due monthly subscriber's fee, or any other properly due fee or charge, a grantee may disconnect the subscriber's service; provided, however, that such disconnection shall not be effected until thirty (30) days after the due date of the monthly subscriber fee or charges and shall include a minimum ten (10) days written notice to the subscriber of the intent to disconnect. After disconnection, upon payment in full of all proper fees or charges, including the payment of any reconnection charge (which shall not exceed the fee for a new installation), a

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grantee shall upon request of the subscriber promptly reinstate the service. Any interest charged for delinquent payments shall be at a rate no greater than twelve percent (12%) per annum, or the statutory rate for judgments, whichever is less.

3. Subsection B.2. above shall not apply to subscribers who previously have been disconnected for non-payment in accordance with the provisions of this Chapter.

5.30.490 Service Area

A grantee shall offer full cable communications service to all residential areas of the City unless specifically authorized in the franchise to serve a lesser area. Service to dwellings along non-public streets shall be offered only 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. In the event that subsequent to the issuance of a franchise the City annexes additional territory, consistent with its obligations under a franchise, a grantee shall extend its cable communications services into the annexed area upon request of the City. A grantee may petition the City for a waiver of this requirement, such waiver to be granted for good cause shown.

5.30.500 Protection of Privacy

Protection of subscriber privacy shall be assured consistent with the provisions of federal and state law.

5.30.510 Tampering or Unauthorized Connections

- A. It shall be unlawful for any person to make any connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a franchised cable communications system within the City for the purpose of enabling anyone to receive any television signal or other information transmitted over the cable communications system, without the consent of a grantee.
- B. It shall be unlawful for any person, without the consent of a grantee, willfully to tamper with, remove or injure any cables, wires or other cable communications system equipment except, however, a

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subscriber may disconnect a television receiver from the cable system at any time.

5.30.520 Continuity of Service

- A. Where a grantee rebuilds or modifies its system, it shall ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances, unless otherwise authorized by an authorized representative of the City; provided, however, that a grantee may interrupt service to any subscriber for periods of up to seventy-two (72) hours during a rebuild or upgrade of the cable system without the approval of an authorized representative of the City, as long as every subscriber to be affected receives five (5) days prior written notice.

- B. So long as it receives revenues from the operation of the cable system, a grantee shall maintain continuity of service during any temporary transition in the franchise, provided that it obtains a temporary franchise from the City during such transition. As used in this Chapter, a "temporary transition in a franchise" or a "transitional period" shall include but not limited to the following circumstances:
 - 1. Revocation of the franchise;
 - 2. Non-renewal of the franchise; or
 - 3. Transfer of the cable system to the City or another entity.
 - 4. Temporary Extensions of the term of the franchise during negotiation for any revisions, amendments or extensions thereof.

5.30.530 Transitional Operation

In the event a grantee continues to operate the system in a transitional period, with City consent, and subject to such conditions as the City may impose, it shall be bound by all the terms, conditions and obligations of the franchise as if it were in full force and effect. A terminating grantee shall cooperate with the City and any subsequent grantee in maintaining and transferring service responsibility. The City has the right to operate a system if a grantee abandons the system or fails to use the system.

5.30.540 Equal Opportunity Employment

Equal opportunity in employment shall be afforded by a grantee to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, national origin or sex. A grantee shall establish, maintain, and carry out a positive, continuing program of specific practices designed to assure equal opportunity in every aspect of company employment policy and practice. A grantee shall immediately comply with all federal, state and local equal opportunity employment requirements and practices.

5.30.550 Additional Consumer Protection

The City reserves the authority to take any reasonable action, including amendments to this Chapter, to protect consumers of cable communications services.

5.30.560 Interconnection

A grantee's system shall be designed and constructed, insofar as technically and economically feasible, so as to be capable of interconnection with any systems existing in areas contiguous to the City and with any such systems anticipated for future construction. Upon request by the City, grantee shall interconnect its PEG channels with those of other cable television systems in adjacent areas, unless grantee can demonstrate that such interconnection is not technically or economically feasible, or is beyond the power of the grantee to implement. Any interconnection shall be accomplished in a manner consistent with FCC standards.

5.30.570 Cooperation

A grantee shall cooperate with any interconnection corporation, regional interconnection authority, or county or state regulatory agency which may be hereafter established for the purpose of regulating, facilitating, financing, or otherwise providing for the interconnection of cable communications systems beyond the boundaries of individual political jurisdictions.

5.30.580 Cable Advisory Board

The City may establish a citizen's Cable Advisory Board or users' group to provide advice and assistance to the City on cable communications matters. The City may delegate to the Cable Advisory Board or users' group certain duties such as (1) hearing and resolving complaints and disagreements between grantees and subscribers or users, (2) determining the operation and use of access and leased access channels (if any), with a view to maximizing the

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diversity and usefulness of programs and services to subscribers, and (3) assisting the Council in its needs assessment and its consideration of applications for new, transfer, and renewal franchises. Board or group members shall be broadly representative of the City's population with diverse backgrounds and a reasonable knowledge of cable communications.

5.30.590 Severability

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, neither the remainder of this Chapter nor the application thereof to other persons or circumstances shall be affected thereby.

Section 2. This ordinance shall take effect and be in force thirty (30) days after its passage.

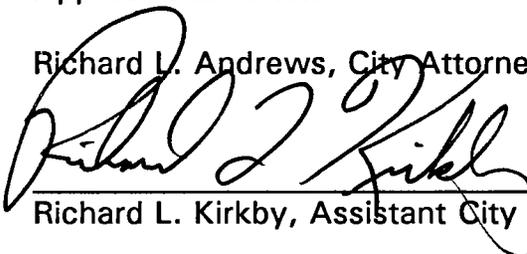
PASSED by the City Council this 18th day of July, 1994, and signed in authentication of its passage this 18th day of July, 1994.

(SEAL)


Donald S. Davidson, DDS, Mayor

Approved as to form:

Richard L. Andrews, City Attorney


Richard L. Kirkby, Assistant City Attorney

Attest:


Myrria L. Basich, City Clerk

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