

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5531

AN ORDINANCE repealing Ordinance No. 4673 and Bellevue City Code Chapter 5.30 and adopting a new Chapter 5.30 governing cable communications and cable franchises.

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

Section 1. Ordinance No. 4673 and Bellevue City Code Chapter 5.30 are hereby repealed.

Section 2. A new Bellevue City Code Chapter 5.30 is hereby adopted as follows:

Chapter 5.30

CABLE COMMUNICATIONS

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**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;
- 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. **"Affiliate"** shall mean any person or entity that directly or indirectly owns or controls, is owned or controlled by, or under common ownership or control with another person, a cable operator, and provides cable service or other service to subscribers in the city.
- B. **"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.

C. **"Cable Communications System"** or **"Cable System"** means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
2. A facility that serves subscribers without using any public right of way;
3. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934 as amended, except that such facility shall be considered a cable system (other than for purposes of Section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
4. An open video system that complies with 47 U.S.C §653.
5. Any facilities of any electric utility used solely for operating its electric utility systems.

D. **"Cable Operator"** means any person or group of persons who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or who otherwise controls or is responsible for, through any arrangement, the management and operation of such cable systems.

E. **"Cable Services"** shall mean (a) the one-way transmission to subscribers of video programming, or other programming service, and (b) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

F. **"Channel"** means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by FCC regulations).

G. **"City"** means the city of Bellevue, Washington.

H. **"Complaint"** shall mean any issue raised by a subscriber that is a violation of the subscriber service standards.

I. **"Construct" or "Construction"** shall mean building, installing, removing, replacing, repairing and maintaining any new or existing cable communications system equipment or facilities and may include, but is not limited to, digging and/or excavating for the purposes of building, installing, removing, replacing, repairing and maintaining any new or existing cable communications system equipment or facilities.

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. **"Customer Service Representative" ("CSR")** means any person employed by the cable operator to assist or provide service to subscribers, whether by answering public telephone lines, writing service or installation orders, answering subscribers' questions, receiving and processing payments, or performing other subscriber service related tasks.

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

N. **"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.

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 cable operator.

R. **"Franchise Area"** means the area within the jurisdictional boundaries of the city, including any areas annexed by the city during the term of a franchise.

S. **"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.

T. **"Gross Revenues"** means all revenues derived directly or indirectly by the grantee or an affiliated entity from the operation of the cable system used to

provide cable services within the franchise area. Gross revenues shall not include (i) bad debt, provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in gross revenues in the period collected; or (ii) any taxes on services furnished by the grantee which are imposed directly on any subscriber or user by the state, city or other governmental unit and which are collected by the grantee on behalf of said governmental unit; or (iii) any access capital contributions as defined by a franchise.

U. **"Installation"** means the connection of the cable system at the subscriber's premises.

V. **"Institutional Services"** means one-way 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.

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. **"Material Breach"** means any substantial or repeated failure of the grantee to comply with subscriber service standards or any other requirement set forth in the franchise agreement, this division or applicable law. A material breach also means any single breach of any term of the franchise agreement that has a substantial and significant effect on the rights of either party to the franchise agreement or to the subscribers in the service area described in the franchise agreement. A material breach shall also include any breach designated as material in the franchise agreement or this division.

Y. **"Normal Business Hours"** means the hours of 9:00 a.m. to 7:00 p.m., Monday through Friday, and 9:00 a.m. to 1:00 p.m., Saturday, excluding legal holidays.

Z. **"Normal Operating Conditions"** means service conditions within the control of the grantee. Those conditions that are not within the control of the grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions that are ordinarily within the control of the grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

AA. **"Other Programming Service"** means information that a grantee makes available to all subscribers generally.

BB. **"PEG Access Facilities"** means channel capacity designated for public, educational or governmental use and/or facilities and equipment for the use of such channel capacity.

CC. **"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.

DD. **"Person"** means an individual or legal entity, such as a corporation, partnership, or governmental entity.

EE. **"Personally Identifiable Information"** means specific information about a subscriber, including, but not limited to, a subscriber's (a) login information, (b) extent of viewing of video programming or other services, (c) shopping choices, (d) interests and opinions, (e) energy uses, (f) medical information, (g) banking data or information, (h) web browsing activities, or (i) any other personal or private information. "Personally Identifiable Information" shall not mean aggregate information about subscribers which does not identify particular persons.

FF. **"Property Owner"** means any individual, association, or business entity that owns or controls an apartment building, condominium, mobile home, duplex, single-family home, or other property.

GG. **"Right(s) of Way"** means all public streets, roads, avenues, alleys and highways of the city as now laid out, platted, dedicated, acquired or improved; and any streets, roads, avenues, alleys and highways that may hereafter be laid out, platted, dedicated, acquired or improved within the current limits of the city and as such limits may be hereafter extended, and all city owned utility easements dedicated for the placement and location of various utilities provided such easement would permit the cable operator to fully exercise the rights granted under a franchise within the area covered by the easement and, including any air rights, subsurface rights or easements related thereto.

HH. **"Service Interruption"** means loss of picture or sound on one or more cable channels.

II. **"Standard Installation"** means (1) for an unwired dwelling unit, an installation of cable service to the subscriber's dwelling unit located up to one hundred twenty-five (125) feet from the distribution system as maybe extended per line extension provisions of a franchise, plus additional inside wire and at least one (1) outlet sufficient to receive cable services; and (2) for a prewired dwelling, the installation of cable service to the federal demarcation point located on the subscriber's property up to one hundred twenty-five (125) feet from the subscriber's property line, sufficient to receive cable services and where the prewired equipment will allow the cable system to meet all Federal Communications Commission (FCC) technical requirements.

JJ. **"Subscriber"** means a customer who is a lawful recipient of cable television services or other services provided over a cable communications system.

KK. **"Transfer"** means any transaction in which all or a substantial portion of any cable communications system equipment or facilities or any right to use or operate the equipment or facilities located in the public right of way are sold,

conveyed, transferred, assigned, encumbered or leased, in whole or in part, directly or indirectly, by one or more transactions to another person, whether voluntarily or by operation of law or otherwise; or there is any change, acquisition or transfer of control of the cable operator, or any person that controls the cable operator, including, without limitation, forced or voluntary sale, merger, consolidation, exchange, receivership; or the rights or obligations under the franchise are sold, conveyed, transferred, assigned, encumbered or leased, in whole or in part, directly or indirectly, by one or more transactions to another person, whether voluntary or by operation of law or otherwise.

#### **5.30.050 Requirement of a franchise.**

No grantee may construct, install, operate or maintain cable communications system equipment or facilities in the public right of way or use any cable communications system equipment or facilities installed in the public right of way for the purpose of providing cable service 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 rights of ways for installing cable communications system equipment and 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 rights of 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 franchise clearly states the parties' intent to have the provisions of the franchise control over the provisions of this chapter. 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. 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, the city or any agency of said governments with jurisdiction over said activities.

**5.30.090 Extent of grantee's obligations.**

The obligations imposed upon the grantee by the express terms of the franchise, or implied by the terms of this chapter or any other ordinance affecting the same, shall be deemed to include every employee, nominee or independent contractor of the grantee performing work in the city streets, or other city property, under contract direction, request or authority of the grantee under this franchise, and the grantee, its agent, employee or independent contractor, severally, shall be responsible to the city for any injury or damage to city property or the expense incurred or suffered by the city in correcting defects in work replacing city streets or other improvements damaged by the acts or neglect of such servants, agents or independent contractors of grantee.

**5.30.0100 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.

**5.30.110 Franchise term.**

The term of a franchise shall be as specified in a franchise agreement, but it shall not exceed 10 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 36 nor later than 30 months prior to the expiration of its franchise.

### **5.30.120 Service area.**

A grantee shall offer cable communications service to all residential areas of the city unless specifically authorized in the franchise to serve a lesser area. Service to dwellings along non-public streets shall be offered by a grantee if easements are reasonably available to grantee on terms equivalent to those for easements along public streets. A franchise issued pursuant hereto shall require that all dwelling units within the franchise territory shall be offered service on the same terms and conditions; provided, however, multiple-family dwelling complexes, apartments or condominiums may be served on a master-billed basis and, further, service to motels, hotels, hospitals and similar businesses or institutions may be offered on terms and conditions different from single resident subscribers. A grantee may petition the city for a waiver of this requirement, such waiver to be granted for good cause shown.

### **5.30.130 Annexations and incorporations.**

A. In the event that subsequent to the issuance of a franchise the city annexes additional territory a grantee shall, consistent with its obligations under a franchise, extend its cable communications services into the annexed area upon request of the city.

B. In the event that a grantee already provides cable communications services in the annexed area the grantee shall, within sixty (60) days of receipt of a written notice of the effective date of an annexation or incorporation, update all records to assure proper payment of franchise fees to the city for the annexed franchise area.

### **5.30.140 Force majeure.**

In the event the grantee's performance of any of the terms and conditions or obligations required by this chapter is prevented by a cause or event not within the grantee's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof; provided, however, that shall not relieve a grantee from its general obligations to provide pro rata credits or rebates for interruptions in service. For the purpose of this section, causes or events not within the control of the grantee shall include without limitation acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires, but shall not include financial inability of the grantee to perform or failure of the grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the grantee, or the failure of the grantee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the cable communications system where the grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

**5.30.150 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.

**5.30.160 Filing of applications.**

Applications for a franchise will be considered pursuant to the procedures set forth in BCC 5.30.170 . For good cause the city council may elect to waive any requirement set forth in BCC 5.30.170, 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.

**5.30.170 Content of applications.**

All applications to construct, operate, or maintain any cable system in the incorporated areas or to traverse any portion of those areas for the transmitting or conveying of such service elsewhere, shall be filed with the director of transportation or his or her designee. An application for the grant of an initial franchise may be filed pursuant to a request for proposals issued by the city or on an unsolicited basis. To be acceptable for filing, an original and two (2) copies of the application must be submitted and be accompanied by the application filing fee where required. Each application for an initial franchise shall set forth the following:

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

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

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

2. The names, business addresses, and state of residence of all persons owning or controlling five (5) percent or more of the stock, partnership shares, or assets of the applicant and the respective ownership share of each such person.

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

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

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

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

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

C. A detailed financial plan describing for the first five (5) years of the franchise, projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements, and statement of sources and uses of funds and schedule of all capital additions.

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

1. A detailed map indicating all areas proposed to be served, a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be served, a description of the construction of the proposed system including an estimate of the above and below ground mileage and the projected total cost for construction of the system.

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

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

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

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

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

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

#### **5.30.180 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.

#### **5.30.190 Application fee and costs.**

A. Unless prohibited by applicable law, each application for new franchise; the renewal of an existing franchise; any sale, assignment, merger, transfer or change of control; or any request for modification of or any other relief from the duties and obligations of a franchise shall be accompanied by a non-refundable minimum filing fee of \$5,000. This minimum filing fee is intended to be a charge incidental to the awarding or enforcing of a franchise within the meaning of Section 622(g)(2)(D) of the Cable Act, 47 U.S.C. § 542(g)(2)(D).

B. Unless prohibited by applicable law, where the city's actual out-of-pocket costs in considering the application exceed the \$5,000 minimum application filing fee, such costs shall be paid by the applicant. The city will bill for out-of-pocket costs on a quarterly basis with payment terms of thirty (30) calendar days. If invoices are not paid within the thirty (30) days, the applicant shall be charged and shall pay interest at the rate of twelve percent (12%) per annum of the amount of the unpaid or underpaid costs provided, however, that such rate does not exceed the maximum amount allowed under applicable law. The invoice will provide the method of calculation, documentation and total amounts due less the original credit of the \$5,000 filing fee. The city will submit the final invoice within thirty (30) calendar days from the date of the approval or denial of the franchise by the city council. These out-of-pocket costs are intended to be a charge incidental to the awarding or

enforcing of a franchise within the meaning of Section 622(g)(2)(D) of the Cable Act, 47 U.S.C. § 542(g)(2)(D).

### **5.30.200 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 and safety 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 responsive thereto.

B. If the city determines that an applicant's proposal for a new franchise, 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. 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 subscriber 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's use or occupation of the right of way presents an unreasonable or unacceptable risk to public health, safety or welfare and whether the applicant's construction, installation, operation or maintenance practices for the cable communications system are or have been conducted in an unsafe or dangerous manner.

4. The applicant has the financial, legal and technical ability to provide the services, facilities, and equipment as set forth in the application; and

5. 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.

D. 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 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 subsection 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.

#### **5.30.210 Acceptance.**

A franchise and its terms and conditions shall be accepted by written instrument, in a form acceptable to the city clerk, and shall be executed and filed with the city within 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.

#### **5.30.220 Franchise fee.**

A. In consideration of the costs which must be incurred by the city in regulating the franchise and for the use of the public right of way for the construction and operation of a cable system, grantee shall pay quarterly the amount set forth in the franchise agreement as a percent of the grantee's gross revenues. Payment shall be payable to the city of Bellevue Treasurer and shall be submitted to the city treasurer.

B. Payment shall be received within forty-five (45) days of the close of the grantee's calendar or tax quarter for which revenue was received. Payment shall be accompanied by a report showing the basis of the computation and any relevant information that may be reasonably requested by the treasurer or required in the franchise agreement.

C. 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.

D. In addition, if any payment due is not paid by the due date, the city shall add a penalty of five percent (5%) of the amount due; and if the payment is not received on or before the last day of the month following the due date, the city shall add a total penalty of ten percent (10%) of the amount due; and if the payment is not received on or before the last day of the second month following the due date, the city shall add a total penalty of twenty percent (20%) of the amount due.

E. If the FCC, federal law or other legislative body with appropriate authority or court of competent jurisdiction changes the maximum franchise fee, the city's franchise fee shall change accordingly upon city council approval.

F. In the event a franchise is revoked or otherwise terminated prior to its expiration date, a grantee shall file with the city, within 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.

G. 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

H. No acceptance of any payment by the city shall be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable as a franchise fee or for the performance of any other obligation of the grantee.

### **5.30.230 Periodic Audit.**

A. Upon thirty (30) days written notice from the city, the city shall have the right to inspect, examine or audit grantee's records that are necessary to verify that the grantee or any affiliate(s) has paid the correct amount with respect to the grantee's payment of franchise fees consistent with the franchise agreement, and applicable federal and state law.

B. Grantee shall keep and preserve for a period of three (3) calendar years plus the current calendar year, all records necessary to determine the amount

of franchise fee owed the city. A transferor, in the event of a transfer, or a grantee of a franchise that has terminated shall retain such records for three (3) calendar years after the effective date of the transaction or date of termination.

C. If the city's audit determines that there is a material underpayment of three percent (3%) or more then the grantee shall bear the cost of such audit. Any underpayment determined by the audit shall be considered late and such payment shall be subject to the interest and penalty provisions described above in 5.30.220 (C) and 5.30.220 (D).

D. In the event of any overpayment of franchise fees to the city, the grantee may file a claim with the city.

### **5.30.240 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 shall, require reports as specified in this section.

#### **Quarterly**

Unless otherwise set forth in a franchise agreement, the grantee shall submit reports to the city quarterly. The quarterly reports shall be submitted according to the following schedule: January - March reports due May 15 ; April - June reports due August 15; July - September reports due November 15, and October - December reports due February 15 of each year. The report shall include, but not be limited to:

A. Telephone reports indicating the number of calls received, number of calls abandoned, percentage of calls receiving a busy signal, average length of time each caller waits before speaking directly to a customer service representative, and number of calls answered by a customer service representative within 30 seconds;

B. The number of total standard installations performed, the number of standard installations performed within seven (7) days, the number of service interruptions reported, the number of service interruptions responded to within twenty-four (24) hours, the number of other service problems reported, the number of other service problems responded to within twenty-four (24) hours, and all other information necessary to monitor the grantee's compliance with the subscriber standards of this chapter.

C. 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.

## **Annually**

In addition to the above, unless otherwise set forth in a franchise agreement, the grantee shall file the following information with the quarterly report due May 15 of each year:

A. An accurate accounting statement of all gross revenue amounts for the city franchise area for the preceding year ending December 31. Such statement shall be verified by an officer of the grantee and shall certify that the information provided therein is complete and accurate. If reasonably deemed necessary by the city, it may request additional financial information reviewed or prepared by an independent auditor.

B. Operating statistics for the preceding year ending December 31 for the city franchise area, including: aerial and underground plant miles, homes passed, basic subscribers (including residential, bulk, and commercial accounts with notation indicating if these statistics are equivalent basic units), pay or premium units by pay service, digital subscribers, Internet service subscribers and telephone service subscribers.

C. A current copy of the subscriber service agreement, a current list of all rates, charges and available services, a current channel list, a copy of all the grantee's published rules and regulations applicable to subscribers and users of the cable system, and a summary of the grantee's hours of operation.

D. Information reasonably requested by the city for the purpose of enforcing any consumer protection and customer service requirements applicable to grantees, including an annual summary of complaints by subscribers and users, identifying the number and nature of complaints and their disposition.

E. For information purposes only, a copy of updated route or strand maps depicting the approximate location of all cable communications equipment and facilities within the franchise area.

F. 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 least once each calendar year and shall provide a copy of each final report to the city 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.

G. Any additional information related to the operation of the cable communications system as reasonably requested by the city based on demonstrated legitimate need.

H. 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.

**5.30.250 Books and records.**

The city shall have access, at all reasonable hours, to books, records, maps, plans, contracts, engineering, accounting, financial, statistical, subscriber and service records relating to the property and operation of the grantee's cable communication system in the franchise area and to such other records as may be required by the city to perform its regulatory responsibilities under this chapter and any franchise issued pursuant hereto. Such records shall be made available upon reasonable notice at the grantee's local office. If the grantee shall fail to obtain books or records not kept in the local office, and if the city shall determine that an examination of such records is necessary or appropriate to the performance of any of the city's duties, then all travel and maintenance expenses necessarily incurred in making such examination shall be paid by the grantee. The city shall have the right to inspect and audit such records as it deems appropriate for the proper administration of this chapter or any franchise issued pursuant to this chapter.

**5.30.260 Filings.**

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 any franchise issued pursuant to this chapter. "Filings" shall include, but shall not be limited to, replies to notices of violations and responses to letters of inquiry.

**5.30.270 Permanent franchise performance and payment bond.**

The grantee shall within thirty (30) days of the effective date of any franchise granted under this chapter or within thirty (30) days of the granting of a renewal or the transfer of a franchise, furnish to the city a franchise performance bond. The franchise performance bond amount shall be based on the number of total homes passed by the cable system in the following amounts:

0 to 5,000 homes passed	\$ 50,000
5,001 to 10,000 homes passed	\$100,000
10,001 to 20,000 homes passed	\$150,000
20,001 to 35,000 homes passed	\$350,000
35,001 and up homes passed	\$500,000

The franchise performance bond shall be used to guarantee compliance with the terms and conditions of the franchise and payment of all sums which may become due to the city under this chapter or franchise issued pursuant hereto. The franchise performance bond shall be maintained in the full amount specified in the franchise, throughout the term of the franchise and for one (1) year after the franchise expires

or is terminated, without reduction or allowances for any amounts which are withdrawn or paid pursuant to this chapter.

This section in no way impairs the city's ability to require bonds in accordance with BCC 14.30 as from time to time amended.

#### **5.30.280 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 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 60 days except with written approval of the city. 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 contain an endorsement that provides that the 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.

C. At its option, the city may draw against the letter of credit for any unpaid liquidated damages, penalties, franchise fees or other amounts owing to it under a franchise which are thirty (30) days or more past due.

D. 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.

#### **5.30.290 Insurance.**

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 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 \$1,000,000 per occurrence and \$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 \$1,000,000 per person and \$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.

#### **5.30.300 Acceptability and cancellation of surety.**

All bonds, insurance policies, letters of credit or other surety devices 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 require that a grantee provide additional surety devices or replace existing bonds, insurance policies or letters of credit with new surety devices approved by the city. No grantee shall permit any bond, policy or letter of credit 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 bond, policy or letter of credit conforming with the provisions of this chapter.

#### **5.30.310 Indemnification.**

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, 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.

#### **5.30.320 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 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.

#### **5.30.330 Civil penalties and additional relief.**

A. Any person, and the officers, directors, managing agents, or partners of any grantee violating or failing to comply with any of the provisions of this title or any franchise issued pursuant thereto shall be subject to a civil penalty in the manner and to the extent provided for in Chapter 1.18 BCC. A monetary penalty in an amount not less than \$100 nor more than \$1,000 per day for each day of violation may be assessed and abatement required as provided therein.

B. In addition to any penalty which may be imposed by the city, any person violating or failing to comply with any of the provisions of this title or any franchise issued pursuant thereto shall be liable for any and all damage to city property or rights of way arising from such violation, including the cost of restoring the affected area to its condition prior to the violation.

C. Notwithstanding any other provision in this title, the city may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this title or any franchise issued pursuant thereto when civil or criminal penalties are inadequate to effect compliance.

D. In addition to the penalties set forth in this section, violation of any provision of this title or any franchise issued pursuant thereto may also result in the revocation and termination of any franchise, permit, or other agreement or authorization.

#### **5.30.340 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, any of the following acts or omissions:

1. An uncured substantial violation of any material provision of this chapter or an uncured breach of any material provision of a franchise issued hereunder, or any material rule, order or regulation of the city made pursuant to its power to protect the public health, safety and welfare;
2. Any default in the performance of any of grantee's material obligations under any other documents, agreements and other terms and provisions entered into by and between the city and the grantee;
3. 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, subscribers or upon the city;
4. Failure to begin or substantially complete any system construction or system extension as set forth in a franchise;
5. Failure to provide the services promised in the application or specified in a franchise, or a reasonable substitute therefor;
6. Any use or occupation of the right of way that presents a risk to public health or safety or the construction, installation, operation or maintenance of the cable communications system in an unsafe or dangerous manner;
7. The willful violation of any orders or rulings of any regulatory body having jurisdiction over grantee relative to the franchise;
8. Misrepresentation of material fact in the application for, or during negotiations relating to, a franchise;
9. A continuous and willful pattern of inadequate service or failure to respond to legitimate subscriber complaints;
10. Failure to provide insurance, bonds, letter of credit, or indemnity as required by a franchise or this chapter;
11. 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 the grantee is without fault or if the violation or breach occurs as a result of circumstances beyond a grantee's reasonable control. A grantee shall bear the burden of proof in establishing the existence of such circumstances. However, a grantee's substantial violation or breach shall not be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, employees, agents or, contractors.

### **5.30.350 Procedures for termination.**

A. Any franchise issued pursuant to this chapter may be terminated in accordance with the following procedures:

1. The city manager, or other person designated by the city manager, shall notify the grantee in writing of the exact nature of the alleged substantial violation or breach constituting a ground for termination. Said notice shall provide that the grantee shall have sixty (60) days from the date of receipt of notice to correct and cure such alleged substantial violation or breach or to present facts and argument in refutation of the alleged substantial violation or breach. A copy of said notice of substantial violation or breach shall be mailed to the surety on any performance bond.

2. If a grantee corrects any alleged substantial violation or breach within the sixty (60) day cure period, then in no event shall the violation be weighed against such grantee in any subsequent review of franchise performance.

3. If a grantee does not correct and cure the alleged substantial violation or breach within the sixty (60) day cure period then the city council shall, within forty-five (45) days of the last day of the sixty (60) day cure period designate the hearing examiner as the hearing officer to conduct a public hearing to determine if the revocation and termination of the franchise is warranted and to make a recommendation to the city council. That recommendation shall be transmitted to the city council for final action on a closed record. The city council shall act as the final decisionmaker.

4. At least twenty (20) days prior to the public hearing, the city clerk, shall issue a public hearing notice and order that shall: establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the city shall hear any persons interested therein; and provide that the grantee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses.

5. The hearing examiner shall hear testimony, take evidence, hear oral argument and receive written briefs. The hearing examiner shall create for the city council a complete record of the public hearing including all exhibits introduced at the hearing and an electronic sound recording.

6. The grantee carries the burden of proof and must demonstrate that a preponderance of the evidence supports the conclusion that there is not an uncured substantial violation or breach or that the substantial violation or breach is a result of circumstances beyond a grantee's reasonable control.

7. Within ten (10) working days after the close of the record, the hearing examiner shall issue a written decision that shall include the recommendation of the Hearing Examiner on the revocation and termination of the

grantee's franchise; a findings of facts upon which the recommendation is based, and the conclusions derived from those facts.

B. The city council shall, at a public meeting, consider and take final action on the recommendation of the hearing examiner. The city council shall not accept new information, written or oral, but shall consider the complete record developed before the hearing examiner and the recommendation of the hearing examiner.

C. At the public meeting the city council shall either:

1. Accept the recommendation of the hearing examiner; or
2. Reject the recommendation of the hearing examiner; or;
3. Remand the decision to the hearing examiner and the director for an additional hearing limited to specific issues identified by the council.

D. The city council shall adopt an ordinance which accepts or rejects the recommendation of the hearing examiner by a majority vote of the membership of the council. If the action by the city council will result in the revocation and termination of a grantee's franchise then the ordinance shall declare that the franchise of such grantee shall be revoked and terminated, any security fund or bonds are forfeited, and shall include findings of fact and conclusions derived from those facts which support the decision of the council. The city council may by reference adopt some or all of the findings and conclusions of the hearing examiner.

#### **5.30.360 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.

#### **5.30.370 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

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.

#### **5.30.380 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 a Washington State Court of competent jurisdiction in King County or the U.S. District Court for the Western District of Washington, unless the parties agree to a different method of determining the appropriate price.

#### **5.30.390 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.

#### **5.30.400 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 type of sale, assignment change, transfer, or acquisition of control of a franchise issued pursuant to this chapter and any cable communication system operated pursuant thereto 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 sale, assignment, transfer or lease or any merger, consolidation, or change in control. A formal application for approval of a proposed sale, assignment, transfer or lease or any merger, consolidation, or change in 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 transaction 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 provisions of this chapter governing applications for new franchises shall apply to any proposed sale, assignment, transfer or lease or any merger, consolidation, or change in control. For the purpose of determining whether it shall consent to such sale, assignment transfer, lease or change 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, including the commitment from the prospective controlling party to assume responsibility for any past violation or failure to comply with any of the provisions of this title or any franchise issued pursuant thereto and the duty and obligation to cure the same.

D. The city shall act within one hundred twenty (120) days of receipt of a completed application. The proposed purchaser, transferee, or assignee or any person or entity assuming controlling interest in a change of control must show that it has the financial, legal and technical ability as determined by the city to provide the services, facilities, and equipment as set forth in this chapter or any franchise issued pursuant thereto and must agree to comply with all provisions of any franchise, including any provisions which the city may amend or add prior to approval of the transfer.

E. 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.

#### **5.30.410 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 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 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. 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.

**5.30.420 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.

**5.30.430 Subscriber fees and rates.**

A. 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.

B. Rates shall be just and reasonable and shall comply with applicable law. A grantee shall not discriminate against or give any undue or unreasonable preference or advantage in rates to any cable subscriber or class of cable subscribers including those who only subscribe to cable services offered by the grantee in favor of subscribers who subscribe to cable services and one or more other types of service(s) the grantee might offer.

C. 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.

**5.30.440 Performance evaluation.**

A. The city may conduct periodic performance evaluations of a grantee. A grantee shall cooperate with these evaluations. If the city implements a survey of cable subscribers in connection with a performance evaluation, the city may require a grantee to distribute the city's questionnaire to its subscribers at the grantee expense. Upon request and upon reimbursement of city copying charges, the grantee may receive copies of all individual responses to the survey.

B. At the conclusion of the evaluation, the city shall issue a report of the results of any performance evaluation together with, if necessary, any recommendations for methods to improve a grantee's performance under the franchise or this chapter. Such report and recommendations shall be delivered and provided to grantee at no charge.

**5.30.450 Parental control.**

A. A grantee shall provide subscriber controlled "lock-out" devices (audio and visual) by which the subscriber can prohibit viewing of a particular cable service during the period selected by that subscriber. 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. Upon request, a grantee shall, without charge, fully scramble or otherwise block the audio and video of a channel so that a non-subscriber does not receive even a partially viewable or audible signal.

C. 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 thirty (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, including those which offer movies rated by the Motion Picture Association as X, NC-17, or R and other programming designed to be viewed by adults with a TV Parental Guidelines rating of TV-M.

#### **5.30.460 Cable subscriber service standards.**

A grantee will first resolve subscriber inquiries and complaints without delay and without involvement of the city. Where a given complaint is not addressed by the grantee to the subscriber's satisfaction, the city may intervene.

These standards are intended to be of general application. A grantee is free to exceed these standards to the benefit of its subscribers. However, the grantee shall be relieved of obligations hereunder if it is unable to perform due to a force majeure event affecting a significant portion of the franchise area.

##### **A. Availability and Accessibility.**

###### **In Person**

1. The grantee must maintain, at a minimum, one (1) customer service location located in the city. This customer service location shall at all times allow subscribers to make payments, return equipment or get assistance from a customer service representative or other knowledgeable staff. The customer service center shall be open Monday through Saturday, excluding legal holidays, with sufficient hours necessary to meet subscriber demand. However, the above requirement will be met if the grantee provides at least one (1) full service customer service center, conveniently located on the Eastside, that is staffed to meet all customer needs with on-site customer service representatives (CSR) offering the following services to subscribers: payments (including the ability to provide change and transaction receipts), equipment exchange, processing of change of service requests, and response to subscriber inquiries and requests.

###### **On the Telephone**

1. A CSR will be available to respond to subscriber inquiries during normal business hours. The grantee shall maintain local or toll free telephone access lines that shall be available during normal business hours for service/repair requests and billing inquiries.

2. The grantee shall retain sufficient CSR and telephone line capacity to ensure that telephone calls to service/repair and billing inquiry lines are answered within thirty (30) seconds or less, and that any transfers are made within thirty (30) seconds. During normal operating conditions the subscriber should be able to speak with a CSR within five (5) minutes. These standards shall be met no less than ninety (90) percent of the time, measured on a quarterly basis under normal operating conditions.

3. The total number of calls receiving busy signals shall not exceed three (3) percent of the total telephone calls. This standard shall be met ninety (90) percent or more of the time measured on a quarterly basis under normal operating conditions.

B. Responsiveness.

1. Seven-day standard installation and service. The grantee shall complete all standard installations and service repairs requested by a subscriber within seven (7) business days after an order has been placed, unless otherwise requested by the subscriber. This standard must be met ninety-five (95) percent of the time under normal operating conditions as measured on a quarterly basis. If the subscriber requests a non-standard installation, or the grantee determines that a non-standard installation is required, the grantee shall provide the subscriber in advance with a total installation cost estimate and an estimated date of completion.

2. Under normal operating conditions all temporary cable drops shall be converted to a permanent drop within no more than three (3) calendar weeks from the initial installation or at a time mutually agreed upon between the grantee and subscriber.

3. Residential installation and service appointments. Subscribers requesting installation of cable service or repair service to an existing installation may choose any available four (4) hour block of time for the installation appointment during normal business hours.

4. The grantee shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time. If the subscriber is absent when the technician arrives, the technician shall verify the appointment with his/her dispatcher by telephone while at the subscriber's door and leave written notification of timely arrival. A copy of that notification shall be kept by the grantee. In the event that a technician arrives without a prior appointment, and the subscriber must be present for service to proceed, and the subscriber is absent, it shall not be deemed that the grantee has responded to a request for service.

5. If a grantee representative fails to keep an installation or service appointment for any reason, the grantee will contact the subscriber before the end of the scheduled appointment and reschedule the appointment at a time convenient for the subscriber.

6. The grantee shall respond in writing or by telephone to a written inquiry, complaint, general question or comment within one week of the date of receipt of the letter. The grantee shall respond to a subscriber's inquiry, complaint, general question, or comment made by telephone or e-mail within forty-eight (48) hours.

7. Any difficulties that cannot be resolved by the CSR shall be referred to the appropriate supervisor who shall make best efforts to contact the subscriber within four (4) hours of initial contact and resolve the problem within forty-eight (48) hours or within such other time frame as is acceptable to the subscriber and the grantee.

C. Reception and Outages.

1. The grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions that the grantee anticipates will last more than four (4) hours shall be preceded by at least twenty-four (24) but not more than seventy-two (72) hour's written notice to affected subscribers, and shall occur during periods of minimum use of the system as reasonably determined by the grantee.

2. If a subscriber experiences poor signal quality or interruptions attributable to the grantee's equipment, the grantee shall respond and repair the problem no later than the day following the subscriber's call provided that the subscriber is available or at such later time as is convenient to the subscriber. If an appointment is necessary, the subscriber may choose a four (4) hour block of time during normal business hours. At the subscriber's request, the grantee shall repair the problem at a later time convenient to the subscriber.

3. Upon receipt of the first phone call reporting a service outage the grantee must proactively investigate whether this is a single home outage or multiple customer outages.

4. If the outage affects multiple customers, the grantee shall initiate repairs within two (2) hours, under normal operating conditions. The grantee shall initiate repairs to all other service interruptions resulting from grantee equipment failure within twenty-four (24) hours.

5. A grantee shall initiate repairs to subscriber reported outages and service interruptions, for any cause beyond the control of the grantee, within twenty-four (24) hours after the conditions beyond its control have been corrected.

6. When a subscriber contacts the grantee to report that the subscriber has been affected by an outage or service interruption, then the subscriber shall receive a credit, or such other compensation as the grantee and the subscriber shall mutually agree, for the appropriate portion of the day(s) for which the subscriber was without service. The subscriber is not required to specifically request a credit. Notice of the availability of credits and the appropriate contact phone number(s) shall be displayed on the monthly bill of all subscribers in the Franchise Area.

7. The grantee will track and record all outages that occur within the franchise area that affect two (2) or more homes.

8. The grantee shall notify the city the next business day of any outage of at least one (1) continuous hour that affects at least 100 or more of its subscribers.

D. Billings, Credits, Refunds, and Deposits.

1. The grantee shall provide a clear and concise bill every month.

2. If a subscriber requests disconnection of any or all services, billing for affected services shall end on the same day as the request, or on the future date for which the disconnect is ordered. However, subscriber may continue to be billed for equipment until returned to grantee. The grantee shall issue a credit or refund to a subscriber within thirty (30) business days after the close of the billing cycle following the return of the equipment and request for disconnection. If subscriber was required to provide a deposit, that deposit must also be returned with any addition interest accrued from deposit.

E. Treatment of Property Owner's Property.

1. Trees and shrubs or other landscaping on a subscriber's property that are damaged by the grantee, or any employee or agent during installation or construction for the subscriber or in the process of serving adjacent structures, shall be restored to their prior condition or replaced. Trees and shrubs on private property shall not be removed without the prior permission of the owner of the property. Removal or trimming of trees and shrubs in the right of way will be subject to the terms of the permit.

2. The grantee shall, at its own cost and expense, and in a manner approved by the property owner, repair any damage or restore any private property to as good condition as before the work causing such damage or disturbance was initiated. The grantee shall repair, replace or compensate all property owners for damages resulting from the grantee's installation, construction, service or repair activities.

3. Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, the grantee shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed; provided that, in the case of planned construction operations such notice shall be delivered or provided at least twenty-four (24) hours prior to entry. All work done in the right of way shall be subject to time requirements of the permit.

4. Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law.

5. For the installation of pedestals or other major construction or installation projects, property owners and property owners adjacent to right of way work shall be notified by mail or door hanger notice at least one (1) week in advance. In the case of an emergency, the grantee shall attempt to contact the property owner or legal tenant in person, in the event personal contact is not made the grantee shall leave a door hanger notice.

6. The grantee shall clean all areas surrounding any work site of debris caused by the grantee's activities and ensure that all cable materials are disposed of properly.

F. Services for Subscribers with Disabilities.

1. For any subscriber with a disability, the grantee shall at no charge deliver and pick up converters at the subscriber's home. In the case of malfunctioning equipment, the grantee's service technician shall provide and install substitute equipment, ensure that it is working properly, and recover the defective equipment for the grantee at that time.

2. The grantee shall provide TDD/TYY service with trained operators who can provide every type of assistance for any hearing-impaired subscriber at no charge.

3. Any subscriber with a disability may request the special services described above by providing the grantee with a letter from the subscriber's physician stating the need, any other official certification of disability or by making the request to the grantee's installer or service technician, where the need for the special services can be visually confirmed.

G. Subscriber Information.

1. Upon installation and annually thereafter or at any time the subscriber requests, the grantee shall provide the following information, in clear, concise written form.

a. A written notice of these standards or a summary approved by the city shall be provided to subscribers at installation and annually thereafter.

b. Installation and service maintenance policies, including the subscriber's responsibilities for equipment.

c. Billing and complaint procedures, including the address and telephone number of the grantee's offices, the grantee's policies on deposits, credit balances and returned check charges.

d. Policies concerning protection of subscriber privacy. The grantee shall include a postage paid self-addressed mail back postcard for opt-out purposes.

e. The availability of parental control/lock out device and the procedures for channel blocking.

f. Special services for subscribers with disabilities.

g. Days, hours of operation, and locations of service centers;

h. Information on how to contact the city's franchise administrator including, the address, telephone number and e-mail address.

2. A sample of all required notices provided to the subscriber shall be filed concurrently with the city.

3. The grantee shall provide subscribers with written notification of any changes in programming, services or channel positions as soon as possible in writing. Subscribers shall be given a description of the changes, their options for changing services they receive, phone number for questions and effective date. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the grantee. In addition, the grantee shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding subsection.

4. All officers, agents, and employees of the grantee, its contractors and subcontractors who are in personal contact with subscribers shall have visible identification cards bearing their name and photograph. The grantee shall account for all identification cards at all times.

5. Every vehicle of the grantee used for providing services to subscribers shall be clearly visually identified to the public as working for the grantee.

#### H. Safety.

1. The grantee shall install and locate its facilities, cable system, and equipment in compliance with all federal, state, local, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property.

2. Whenever the grantee receives notice that an unsafe condition exists with respect to its equipment, the grantee shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

#### I. Complaint Procedure.

1. The grantee shall establish written procedures for receiving, acting upon, and resolving subscriber complaints, and crediting subscriber accounts

in accordance with company policies, and shall publicize such procedures through printed documents at the grantee's sole expense.

2. The written procedures shall prescribe a simple process by which any subscriber may submit a complaint in person or by telephone, electronic mail or in writing to the grantee regarding an alleged violation of any provision of these subscriber service standards, any terms or conditions of the subscriber's contract with the grantee, or reasonable business practices.

3. The grantee will make best efforts to resolve subscriber concerns or complaints at the first contact.

4. The grantee shall also notify the subscriber of the subscriber's right to file a complaint with the city in the event the subscriber is dissatisfied with the grantee's decision.

5. Complaints to the city. Any subscriber shall be entitled to lodge any complaint directly with the city. The subscriber may lodge the complaint either by calling the city or by filing a written complaint, by letter or in electronic form.

6. If the city decides that further action is warranted, the city may intercede and attempt to help reach a resolution and/or require the grantee address the inquiry within twenty-four (24) hours, and correct the situation within a reasonable time frame determined in each situation at the city's sole discretion. In all circumstances, the grantee shall notify the city of the status of the inquiry within forty-eight (48) hours and any subsequent resolution.

7. The grantee shall maintain, in a manner consistent with the privacy rights of subscriber, an accurate and comprehensive file of (1) complaints regarding the cable system or the grantee's operation of the cable system, by number and type and their disposition; (2) service request, identifying the number and nature of the requests and their disposition; (3) service interruptions and their disposition; and (4) subscriber privacy information.

8. Overall quality of service. The city may evaluate the overall quality of subscriber service provided by the grantee to subscriber, at its sole discretion, based on the number of subscriber complaints received directly by the city or reported by the grantee in its quarterly reports.

J. Protection of Privacy.

1. Notice to subscriber regarding personally identifiable information; definitions.

2. At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of:

a. the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

b. the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

c. the period during which such information will be maintained by the cable operator;

d. the times and place at which the subscriber may have access to such information in accordance with subsection d of this section; and

e. the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections f and g of this section to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

2. For purposes of this section, other than subsection g of this section -

a. the term "personally identifiable information" does not include any record of aggregate data which does not identify particular persons;

b. the term "other service" includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and

c. the term "cable operator" includes, in addition to persons within the definition of cable operator in 47 U.S.C. §522 , any person who

i. is owned or controlled by, or under common ownership or control with, a cable operator, and

ii. provides any wire or radio communications service.

B. Collection of personally identifiable information using cable system.

1. Except as provided in paragraph 2, a cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

2. A cable operator may use the cable system to collect such information in order to:

- a. obtain information necessary to render a cable service or other service provided by the cable operator to the subscriber; or
- b. detect unauthorized reception of cable communications.

C. Disclosure of personally identifiable information.

1. Except as provided in paragraph 2, a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.

2. A cable operator may disclose such information if the disclosure is -

- a. necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the cable operator to the subscriber;
- b. subject to subsection g of this section, made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed; or
- c. a disclosure of the names and addresses of subscribers to any cable service or other service, if -
  - i. the cable operator has provided the subscriber the opportunity to prohibit or limit such disclosure, and
  - ii. the disclosure does not reveal, directly or indirectly, the -
    - (a) extent of any viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or
    - (b) the nature of any transaction made by the subscriber over the cable system of the cable operator.

D. Subscriber access to information.

A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator. A

cable subscriber shall be provided reasonable opportunity to correct any error in such information.

E. Destruction of information.

A cable operator shall destroy personally identifiable information in a reasonable time but no later than ninety (90) days if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection d of this section or pursuant to a court order.

F. Civil action in United States district court; damages; attorney's fees and costs; nonexclusive nature of remedy.

1. Any person aggrieved by any act of a cable operator in violation of this section may bring a civil action in a United States district court.

2. The court may award -

a. actual damages but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;

b. punitive damages; and

c. reasonable attorneys' fees and other litigation costs reasonably incurred.

3. The remedy provided by this section shall be in addition to any other lawful remedy available to a cable subscriber.

G. Disclosure of information to governmental entity pursuant to court order.

1. A governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order -

a. such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

b. the subject of the information is afforded the opportunity to appear and contest such entity's claim.

**5.30.470 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.

**5.30.480 Technical standards.**

A. Cable systems shall be installed and maintained in accordance with the technical standards and specifications established by the FCC, as periodically updated, and all applicable state and local laws and regulations.

B. Any antenna structure used in the cable system shall comply with all construction, marking and lighting requirements of federal, state or local laws and regulations and accepted industry standards.

C. All construction, installation, grounding, and maintenance shall comply with the current versions of the National Electrical Safety Code, the National Electrical Code, and requirements of federal, state or local laws and regulation and accepted industry standards.

D. Systems shall be maintained in such a manner as to prevent signal leakage from the facilities in excess of the limits specified in applicable rules and regulations of the FCC. The grantee may disconnect any person who, in the grantee's judgment, is contributing to a signal leakage problem. Upon written request from the city, grantee shall provide a copy of the Cumulative Leakage Index (CLI) report for grantee's cable communications system serving the city franchise area.

E. Underground construction in streets shall be of such quality as to assure continuity of service without the necessity of frequent street or pavement cutting and shall contain a self-sealing device to insure all such cables against leakage.

F. All cables and wires shall be installed, where possible, parallel with electric and telephone lines.

G. The city reserves the right, in its sole discretion, to impose more stringent standards than those prescribed by the FCC to the extent it seeks and obtains a waiver from the FCC permitting it to do so.

**5.30.490 Inspection and performance tests.**

A. The city shall have the right, upon reasonable notice, to make such inspections as it shall find necessary to insure compliance with the technical standards and specifications established by the FCC, as periodically updated, and all applicable state and local laws and regulations.

B. The grantee shall advise the city ten (10) days prior to the date of all FCC proof of performance tests scheduled so that the city may have an observer present. The grantee shall maintain test points as required by federal law and shall allow the city to have access to those test points upon reasonable notice and at intervals not more frequently than required by federal law, except for good and substantial cause shown.

C. 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 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 grantee its costs associated with defining tests and procedures, observation of said tests, and evaluation of test findings.

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

**5.30.510 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.

**5.30.520 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. 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.

**5.30.530 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.

B. All cable communications system 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 electrical and telephone utility wiring is aerial and a grantee's existing cable communications system lines and facilities are aerial, the grantee may construct, install, operate and maintain the existing cable communications system aerially. When existing aerial electrical and telephone utility wiring and equipment in an area of the city is subsequently relocated to underground the grantee shall, at the same time, relocate its existing aerial cable communications system lines and facilities to underground, at no cost or expense to the city. In those areas of the city where existing electrical or telephone utility wiring is aerial and the grantee needs to construct or install new cable communications system lines or facilities, the grantee may request consent from the city for such aerial construction, such consent will be granted on a case by case basis and will not be unreasonably withheld. In those areas of the city where existing or new electrical or telephone utility wiring is underground, the grantee shall construct, install, operate and maintain its cable communications system underground.

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. A grantee shall at all times subscribe to any available "one number locator service" as defined by RCW 19.122.020(13). A grantee shall, before commencing excavation, provide notice of the scheduled commencement of excavation through the one number locator service.

F. 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 construction 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.

#### **5.30.540 Public drops.**

Unless otherwise set forth in the franchise agreement the grantee shall provide without charge, within the franchise area, one drop activated for basic cable television service to each fire station; public school; police station; public library; City Hall; and other public buildings that are either owned and occupied or leased and occupied by the city, as may from time to time be designated by the city, provided that the buildings are either already served or are within one hundred twenty-five (125) aerial feet of its Cable System. 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 outlet, concealed inside wiring, or a service drop requiring more than one hundred twenty-five (125) 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.

#### **5.30.550 Institutional services.**

A grantee may be required to provide an institutional network as part of the cable communication system subject to the terms specified in the franchise.

#### **5.30.560 Access and local programming.**

A. As supported by its ascertainment of future cable-related community needs and interests, the city may require that a proposal for a new franchise or the renewal of an existing franchise conform to one or more of the following conditions.

1. A grantee shall provide equipment, directly or through grants, for local PEG access facilities and program production by all PEG access users for live and video-taped presentations over the cable television system.

2. The city may require a grantee or a nonprofit corporation or other entity selected to manage the PEG access facilities and to establish reasonable rules for the use of the PEG access facilities consistent with the requirements of this chapter, a franchise, other applicable law. Such rules shall be subject to review and approval by the city.

3. The city may require that one or more public access channel(s) 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. The city may require that one or more education access channel(s) be made available free of charge to designated qualified users for the transmission of local educational programming.

5. The city may require that one or more local government access channel(s) be made available free of charge for the transmission of government related programming.

B. The city may promulgate rules under which dedicated PEG access facilities may be used by a grantee when not being used for PEG access purposes.

**5.30.570 Leased access.**

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

**5.30.580 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).

**5.30.590 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.

**5.30.600 Delays in construction.**

A. The franchise may provide for liquidated damages or other consequences upon failure by a grantee to complete, in timely fashion, any construction, including any upgrades or rebuilds of the cable communications

system, as set forth in the franchise. Depending upon the degree of delay, such consequences may include:

1. Forfeiture of all or a portion of any bond or other form of surety.
2. Termination of a franchise.
3. Assessment of civil penalties or 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.

#### **5.30.610 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.

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

**5.30.630 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.

**5.30.640 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.

**5.30.650 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.

**5.30.660 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 3. This ordinance shall take effect and be in force thirty (30) days after passage and legal publication.

Passed by the City Council this 21<sup>st</sup> day of July,  
2004, and signed in authentication of its passage this 21<sup>st</sup> day of July,  
\_\_\_\_\_, 2004.

(SEAL)

Connie Marshall  
Connie B. Marshall, Mayor

Approved as to form:

Richard L. Andrews, City Attorney

Lori M. Riordan  
Lori M. Riordan, Deputy City Attorney

Attest:

Myrna L. Basich  
Myrna L. Basich, City Clerk

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