

ORDINANCE NO. 1998-09-075

**AN ORDINANCE OF THE CITY OF BELLINGHAM RELATING TO CABLE TELEVISION AND AMENDING BELLINGHAM MUNICIPAL CODE CHAPTER 6.17.**

**WHEREAS** the City of Bellingham currently regulates the granting of franchises to cable television service providers pursuant to Municipal Code chapter 6.17; and,

**WHEREAS** it is necessary to amend chapter 6.17 to reflect (a) provisions contained in the cable television franchise granted to TCI Cablevision of Washington and (b) changes which have take place in the telecommunications industry,

**NOW, THEREFORE,** it is hereby ordained that Bellingham Municipal Code chapter 6.17 be and hereby is amended to read as follows:

**BELLINGHAM MUNICIPAL CODE - 6.17 Cable Television**

**6.17.010 - Purpose Of Provisions; interpretation..**

A. This chapter is enacted to provide comprehensive cable television regulations to govern the franchising and operation of cable television systems within the City of Bellingham, Washington.

B. Any conflict between the provisions of any franchise and any other present or future lawful exercise of the city's police powers shall be resolved in favor of that provision which, in the opinion of the city council, provides the greater benefit or protection to the city.

**6.17.020 - Definitions.** For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given in this section. 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 "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. "Ad hoc citizens cable TV committee" also referred to as "citizens committee" or "ad hoc committee" means a citizen committee appointed by the city council or the finance committee of the city council or jointly with another governmental body to assist the council finance committee and the city council in its determination of matters relating to the regulation of

cable TV.

B. "Basic service" means all television broadcast stations required by the FCC to be carried and other signals determined by the company, not less than twelve in the aggregate, which shall include access channels and origination channels, covered by the regular monthly charge paid by all subscribers, excluding optional services for which a separate charge is made.

C. "Cable television system" or "cable system" shall have the same meaning as in the Federal Act.

D. "City" means the city of Bellingham, Washington.

E. "Company" means any cable television company granted a franchise to operate in the city, or its successor, transferee or assignee duly authorized to provide cable television service in the city.

F. "Converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and by an appropriate channel selector also permits a subscriber to view all signals delivered at designated converter dial locations.

G. "Council" means the Bellingham city council.

H. "Council committee" means the finance committee of the city council.

I. "County" means the county of Whatcom, Washington.

J. "Entertainment services" means television services provided on a one-way non-interactive basis, including but not limited to broadcast channels, local origination channels, pay channels, or any other channels supplied to subscribers at a basic or premium charge where the content of the transmitted signals is uniform to all subscribers or individual classes of subscribers and program selection is accomplished by operation of a tuner or converter under the sole control of the subscriber.

K. "Federal Act" means the Communication Act of 1934, as from time to time amended.

L. "Franchise" or "grant of franchise" means either the permission granted pursuant to this chapter or the provisions in the document granting the franchise, as the context requires.

M. "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor thereof.

N. "Gross revenues" means all revenue derived directly or indirectly by the company,

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its affiliates, subsidiaries, parent, and/or any person in which the company has a financial interest, from providing cable television services within the city, including, but not limited to, basic subscriber service monthly fees, payable fees, installation and reconnection fees, leased-channel fees, converter rentals, studio rental, production equipment and personnel fees, and advertising revenues; provided, however, that this shall not include any taxes on services furnished by the company which are imposed directly upon any subscriber or user by the state of Washington, local or other governmental unit and collected by the company on behalf of said governmental unit.

O. "Installation" means the connection of the system from feeder cable to subscribers terminals.

P. "Monitoring" means observing a communications signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever; provided, monitoring shall not include a systemwide, non-individually addressed sweeps of the system for the purposes of verifying system integrity, controlling return path transmissions, or billing for pay services.

Q. "Street" means the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, court, boulevard, parkway, drive or easement now or hereafter held by the city of Bellingham, Whatcom County, or the state of Washington for the purpose of public travel, and shall include other easements or rights-of-way as shall be now held or hereafter held by any of the entities cited above.

R. "Subscriber" means a recipient of cable television service.

S. "User" means a party utilizing a cable television system channel for purposes of production or transmission of material to subscribers, as contrasted with receipt thereof in a subscriber capacity.

**6.17.030 - Application For Franchise.**

A. Anyone desiring to secure a franchise to provide cable television service within the city is required to file with the city attorney an "application for franchise." Such application must be in conformance with instructions promulgated by the city and in a form specified and published by the city. Such application shall include a statement of the applicant's financial qualifications and technical qualifications, meeting all FCC requirements. Incorporated into its application shall be a statement on the ownership of applicant, including the names and addresses of all persons, partnerships or corporations having a one-percent share or more of the stock or interests of

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applicant. There shall also be included a statement of the ownership interest of applicant or its shareholders of any news media, including newspapers and radio or television stations. There shall be stated a "general plan for CATV construction and service" which shall show where and in what order the applicant proposes to construct facilities and provide service and which shall provide timetables for such construction and service. There shall also be included a sworn statement that upon approval of the application and issuance of a franchise by the city council( applicant agrees to and will comply with all provisions of the franchise and this chapter, and any other lawful directives of the city council; and, applicant further agrees to provide all information which may be requested by the council committee or city council in connection with its application.

B. Each application for a franchise under this chapter shall be accompanied by a fee of five thousand dollars. Said fee shall be used in processing and considering such applications under this chapter and shall be nonrefundable. In addition, it is provided that if the total receipts from such application fees is less than the costs of processing all such applications, payment of the balance of such cost by the successful applicant shall be a condition of award of franchise to it; provided, such payment by the successful applicant shall not exceed twenty thousand dollars.

C. Upon receipt of an "application for franchise," the city attorney shall transmit the same together with such "general plan" and other materials filed by the applicant to the finance committee of the city council. The finance committee shall give full consideration to such application and shall in due course report to the city council its findings and recommendation that the requested franchise either be granted or denied. In the course of its investigation, it shall seek to determine whether the applicant can and will conform to this chapter, and it shall conduct at least one advertised public hearing. In making its recommendation to the city council, the council committee shall consider, and the full council shall consider in passing upon a franchise application, the following factors and such other factors as may seem relevant:

(1) The financial qualifications and capacity of the applicant, and evidence of its commitment to using such financial capacity to provide good local service;

(2) The technical, legal, character and financial qualifications of applicant, as may be shown by its operations in other cities or by other means, and evidence of a commitment to use such capacity to provide good local service;

(3) Whether the applicant offers something new and of value to the community:

(4) The apparent capacity or incapacity of the applicant to conform to the terms of this

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chapter;

- (5) The adequacy of its proposed general plan.

D. The council committee shall be authorized to appoint an ad hoc citizens cable TV committee to assist it in its analysis of such applications.

**6.17.040 - Franchise Grant-General Plan Incorporated-Agreement To Provide Services.**

A. Upon the granting of a franchise, the franchisee shall incorporate therein the general plan included in the application as the same may have been approved or modified by the council committee and/or the city council, and the franchise shall require franchisee to conform to such general plan in all construction and service, and may have such other regulations in addition to those imposed by this chapter as are deemed necessary and may authorize service in all or in some part or parts of the city only.

B. The company agrees to provide all services specifically set forth in its application and to provide cable television service within all the confines of the city.

**6.17.050 - Franchise Territory.** Unless otherwise approved by the city council, any franchise shall be for the territorial limits of the city of Bellingham, Washington, and for any area henceforth added thereto during the term of the franchise, subject to the conditions of RCW 35.13.280.

**6.17.060 - Duration And Acceptance Of Franchise.** Any franchise granted by the city shall continue in force and effect for the term specified in the grant of franchise subject to the terms of this chapter, provided that within fourteen days after the date of final approval of any franchise by the city, the company shall file with the city council its unconditional acceptance of such franchise and promise to comply with and abide by all its provisions, terms and conditions. Such written acceptance and promise shall be in writing and duly executed and shall be accompanied by a certified corporate resolution authorizing such acceptance and by an opinion of the company's counsel as to the company's good standing and due authorization and execution of such acceptance.

**6.17.070 - Franchise Renewal.**

A. A franchise may be renewed by the city upon application of the company pursuant to the procedure established in this section or by either the city or the company implementing the procedures in the Federal Act if so specified in the franchise ordinance.

(1) At least thirteen months prior to the expiration of the franchise, company shall inform the city council in writing of its intent to seek renewal of the franchise.

(2) After giving public notice, the city council shall proceed to determine whether the company has satisfactorily performed its obligations under the franchise. To determine satisfactory performance, the council shall consider (to the extent permitted by applicable Federal and State law) technical developments and performance of the system, programming, other services offered, cost of services, and any other particular requirements set out in this chapter; also, the council shall consider the company's annual reports made to it and the FCC. Industry performance on a national basis shall also be considered. Provision shall be made for public comment.

(3) The council shall diligently proceed to determine the company's eligibility for renewal.

(4) The city council shall prepare and approve any amendments to this chapter that it believes necessary.

(5) If the city council finds, after public hearing, that the company's performance has been satisfactory, a new franchise may be granted pursuant to this chapter, as amended, for a period specified in such renewal.

(6) In the event the company is determined by the city council to have performed unsatisfactorily, new applicants shall be sought and evaluated and a franchise award may be made by the city according to the terms of this chapter.

B. The council shall also be authorized to allow any existing franchises to expire and refrain from seeking new franchise proposals if it determines that to be in the best interests of the city.

C. Pursuant to Section 11.08 of the Bellingham City Charter, no franchise ordinance shall be granted, altered or renewed until the same has been filed with the finance director and published once a week for four successive weeks in the city official newspaper before being considered for first reading by the council.

**6.17.080 - Police Powers.** In accepting a franchise, the company acknowledges that its rights thereunder are subject to the police power of the city to adopt and enforce general ordinances it finds necessary for the health, safety and welfare of the public; and, it agrees to comply with all applicable general laws and ordinances so enacted by the city.

**6.17.090 - Operation Without Franchise Prohibited.** No cable system shall be allowed to occupy or use the streets of the city or be allowed to operate without a franchise.

**6.17.100 - Use Of Company Facilities.** The city shall have the right, during the life of a franchise, to install and maintain free of charge upon the poles owned by the company any wire and pole fixtures that do not unreasonably interfere with the operations of the company. A reasonable charge for rearrangement or other costs incurred by the company as a result of such use by the city may be assessed.

**6.17.110 - Costs To Be Borne By Company.** Costs to be borne by company, in addition to the costs imposed by section 6.17.030(B), shall include, but shall not be limited to, all costs of publications of notices prior to any public meeting provided for pursuant to this chapter and all other publications required by law, and any incurred by the city in its evaluation of any franchisee under any applicable provision of this chapter.

**6.17.120 - Notices And Maintenance Of Local Office.** All notices from company to the city pursuant to a franchise shall be to the city attorney, unless otherwise expressly provided. Company shall maintain with the city, throughout the term of its franchise, an address for service of notices by mail. Company shall also maintain within the city a local office and a local telephone number for the conduct of matters related to the franchise during normal business hours.

**6.17.130 - Franchise, Grant -- Letter Of Credit or Security Fund Requirements.**

A. Within ten days after adoption of the franchise ordinance, the company shall deposit with the finance director a letter of credit from or establish a security fund in an acceptable financial institution in an amount specified in the franchise ordinance. The form and content of a letter of credit shall be approved by the city attorney. The letter of credit or security fund shall be used to insure the faithful performance by the company of all provisions of the franchise and this chapter; and 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 defaults under the franchise or this chapter, and the payment by the company of any claims, liens and taxes due the city or other governmental entities which arise by reason of the construction, operation or maintenance of the system.

B. Within 30 days after notice to it that any amount has been withdrawn by the city from the security fund pursuant to subsection A of this section, the company shall deposit a sum of money sufficient to restore such security fund to the original amount in the account at the time of withdrawal.

C. If the company fails, after 10 days' notice to pay the city any delinquent fees, taxes

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or other amounts due and unpaid according to the terms of this grant of franchise; or, fails to repay to the City, after such 10 days' notice, any damages, costs or expenses which the city has been compelled to pay by reason of any act or default of the company in connection with the franchise; or fails, after 45 days' notice of such failure by the city to comply with any provision of the franchise which the city reasonably determines can be remedied by an expenditure of the security, the city may immediately withdraw the amount thereof, with interest and any penalties, from the security fund or execute upon the letter of credit, as the case may be. Upon such withdrawal, the city shall notify the company of the amount and date thereof.

D. The rights reserved to the city with respect to the letter of credit or security fund are in addition to all other rights of the city, whether reserved by the franchise or authorized by law. and no action, proceeding or exercise of a right with respect to such letter of credit or fund shall affect any other right the city may have.

E. The letter of credit shall contain the following endorsement:

"It is hereby understood and agreed that this letter of credit shall not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City Attorney, by registered mail, of a written notice of such intention to cancel or not to renew."

**6.17.140 - Performance Bond Requirements.**

A. Within thirty days after the award of a franchise, but in no event sooner than the final reading of the franchise ordinance, the company shall submit to the city attorney, which shall be filed with the city finance director, a performance bond (or equivalent acceptable to the city) in the amount of two hundred and fifty thousand dollars in favor of the city. This bond shall be approved by the city attorney and shall be maintained throughout the construction of the entire system or until such time as the city council may require. In the event a company is awarded a franchise which has a system in place acceptable to the city, the performance bond requirement shall be twenty-five thousand dollars.

B. In the event the company fails to comply with any law, ordinance or regulation governing the franchise, or fails to well and truly observe, fulfill, and perform each term and condition of the franchise, including the company's proposal which is incorporated into the franchise, there shall be recoverable, jointly and severally, from the principal and surety of the bond, any damages or loss suffered by the city and the citizens of the city by virtue of the

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unavailability of cable TV service within the city, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the company, plus a reasonable allowance for attorney's fees, up to the full amount of the bond. This section shall be an additional remedy to that contained in Section 6.17.130.

C. The city council may, upon completion of construction of the full cable system, waive or reduce the requirement of the company to maintain said bond. However, the council may require a performance bond to be posted by the company for any construction subsequent to the completion of the initial construction, in a reasonable amount and upon such terms as determined by it.

D. The bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond shall not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City Attorney, by registered mail, of a written notice of such intent to cancel or not to renew.

**6.17.150 - Liability and Insurance.**

A. (1) The company shall maintain and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, liability insurance insuring the city, and the company, in the minimum amount of:

(a) \$1,000,000 for personal injury or death to any one person and \$3,000,000 aggregate for personal injury or death per single accident or occurrence;

(b) \$1,000,000 for property damage to any one person and \$3,000,000 aggregate for property damage per single accident or occurrence; and,

(c) \$1,000,000 for all other types of liability including claims for damages for invasion of the right of privacy; for defamation of any person, firm, or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark or patent; or, for damage to any other person, firm, or corporation arising out of or alleged to arise out of failure to comply with the provisions of any statute, regulation or resolution of the United States, State of Washington, or any local agency with jurisdiction.

(2) The city may at its option review all insurance coverage. If it is determined by the city risk manager (or other appropriate official) that circumstances require and that it is reasonable and necessary to increase insurance coverage and liability limits to adequately cover the risks of the

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city and the company, the city may require additional insurance to be acquired or limits increased. The city shall provide the company with written notice should it exercise its right to require additional insurance.

B. Any insurance policy obtained by the company in compliance with this section must be approved by the city attorney. Such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the finance director during the term of the franchise. The company shall immediately advise the city attorney of any litigation that may develop that would affect this insurance.

C. Neither the provisions of this section, nor any recovery by the city under the insurance provided thereunder, shall be construed to limit or actually limit the liability of the company under any franchise issued pursuant to this chapter or for damages otherwise recoverable by the city from the company.

D. All insurance policies maintained pursuant to this franchise shall contain the following endorsement:

"It is hereby understood and agreed that this insurance policy shall not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City Attorney, by registered mail, of a written notice of such intention to cancel or not to renew."

**6.17.160 - Indemnification Against Claims And Actions.**

A. Company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the city, its officers, and the city employees against any and all claims, suits, actions, liability and judgments for damages or other relief (including but not limited to expenses for reasonable legal fees and disbursements and liabilities) assumed by the city in connection with its regulation of the company and by virtue of its grant of the franchise:

(1) To persons or property, in any way arising out of or through the acts or omissions of company, its servants, agents or employees, or to which company's negligence shall in any way contribute; or

(2) Arising out of any claim for invasion of the right of privacy, for defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation (excluding claims arising out of or relating to city programming); or

3) Arising out of company's failure to comply with the provisions of any federal, state, or local statute, ordinance or regulation applicable to company in its business hereunder.

B. The foregoing indemnity is conditioned upon the following: The city shall give company reasonable notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the city from cooperating with company and participating in the defense of any litigation by its own counsel at its sole cost and expense. No recovery by the city of any sum by reason of the letter of credit required in Section 6.17.130 shall be any limitation upon the liability of the company to the city under the terms of this section. Any sum drawn upon the letter of credit and received by the city shall be deducted from any recovery which the city might have against the company under the terms of this section. provided that such a deduction is based upon the same incident for which the city seeks damages.

**6.17.170 - Service--Rights Of Individuals.**

A. Company shall not deny service, deny access, or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin, age or sex. Company shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination.

B. Company shall strictly adhere to the equal employment opportunity requirements of the FCC, state statutes and local regulations, and as amended from time to time.

C. No signals transmitted from a subscriber terminal shall be monitored by the company in order to determine patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provision. Such written permission shall be for a limited period of time not to exceed one year, which shall be renewable at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such an authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. The preceding statements shall be in any and all authorization forms. Such authorization is required for each type or classification of cable television activity planned; provided however, that the company shall be entitled to conduct systemwide or individually addressed "sweeps" for the purpose of verifying system integrity, controlling return path transmission, or billing for pay services.

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D. The company, or any of its agents or employees, shall not sell, or otherwise make available to any party:

- (1) Lists of the names and addresses of subscribers; or
- (2) Any list which identifies the viewing habits of individual subscribers.

E. This section does not prohibit the company from providing composite ratings of subscriber viewing to any party.

**6.17.180 - Meetings--Public Notice Requirements.** Minimum public notice of any public meeting for the purpose of granting, renewing, or modifying any franchise shall be by publication at least once in a local newspaper of general circulation in compliance with Washington State statutes and by announcement on at least one local origination channel of the company's cable system between the hours of seven p.m. and nine p.m., for two consecutive days prior to the meeting.

**6.17.190 - Severability Of Chapter Provisions.** If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

**6.17.200 - Service Availability -- Record Of Requests For Service.** The company shall provide cable television service throughout the city pursuant to the provisions of this chapter and shall keep a record for at least three years of all requests for service received by it. This record shall be available for public inspection at the local office of the company during regular office hours.

**6.17.210 - Construction Of Cable System.**

A. Construction Timetable. In the event a franchise is awarded to a company not having an acceptable system in place, system construction shall be accomplished in accordance with the terms of the city's request for proposals and as subsequently embodied in the grant of franchise.

B. Line Extensions, Subsequent to initial construction, the company shall be required to extend its system pursuant to the following requirements:

- (1) Company must extend and make cable television service available to every dwelling unit within any area reaching the minimum density of at least thirty-two dwelling units per street mile, or four dwelling units within six hundred and sixty feet, as measured from the existing

system, whichever provides greater service.

(2) Company must extend and make cable television service available to every dwelling unit in all unserved, developing areas having at least thirty-two dwelling units planned per street mile, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines.

(3) Company must extend and make cable television service available to any isolated resident requesting connection at the standard connection charge if the connection to the isolated resident would require no more than a standard one hundred and fifty foot aerial drop line.

(4) With respect to requests for connection requiring an aerial drop line in excess of one hundred and fifty feet, the company must extend and make available cable television service to such residents at a connection charge not to exceed the actual installation costs incurred by the company for the distance exceeding one hundred and fifty feet.

(5) Whenever the company shall have received written requests for services from at least fifteen assured subscribers within thirteen hundred cable feet of its aerial trunk cable, it shall extend its system to such subscribers solely for the usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible. The thirteen hundred cable feet shall be measured in extension length of company's cable required for service located within the public way or easement and shall not include the length of necessary drop to the subscriber's house or premises.

(6) The company, in its application, may propose a line extension policy which will result in serving more residents of city than as required.

C. Any violation of this section shall be considered a violation and a substantial breach of the terms of this chapter:

**6.17.220 - Construction And Technical Standards.**

A. Compliance with Construction and Technical Standards. Company shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances, state and municipal construction standards, FCC technical and construction standards, and any other standards the company commits itself to comply with as part of its application. In addition, company shall provide the city, upon request, with a written report of the results of company's annual proof-of-performance tests conducted pursuant to FCC standards and requirements.

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B. Additional Specifications.

(1) Construction, installation and maintenance of the cable communications system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and be bundled with due respect for engineering considerations.

(2) Company shall at all times comply with:

- (a) National Electrical Safety Code (National Bureau of Standards);
- (b) National Electrical Code (National Bureau of Fire Underwriters);
- (c) Bell System Code of Pole Line Construction; and
- (d) Applicable FCC or other federal, state and local regulations.

(3) In any event, the system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the company may have equipment located.

(4) Any antenna structure used in the cable communication system shall comply with all construction, marking, and lighting of antenna structure requirements of the United States Department of Transportation.

(5) All working facilities, conditions and procedures used during construction, installation and maintenance of the system shall comply with the standards of the Occupational Safety and Health Administration.

(6) Rf leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. FCC Rules and Regulations shall govern.

(7) The company shall maintain equipment capable of providing standby power for headend, transportation and trunk amplifiers for a minimum of two hours.

**6.17.230 - Use Of Streets.**

A. Interference with Persons and Improvements. The company's system, poles, wires and appurtenances shall be located, erected and maintained so that none of its facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the city, county or state may deem proper to make, or unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, easements or public property.

B. Minimum Interference with Public Ways. All transmission and distribution structures, lines and equipment erected by the company within the city shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and as to cause minimum interference with the rights or reasonable convenience of property owners who are adjacent to any of the said streets, alleys or other public ways and places.

C. Undergrounding of Distribution Facilities. Underground placement of cable is the preferred method of distribution and shall be required in all areas currently receiving underground telephone and electric service. If the telephone or electric wires are placed underground in the future, the cable company must also place its wires underground. Should the city require that all utility wires be underground, the company shall be required to place its facilities underground pursuant to the same time and construction schedule adopted for other utilities.

D. Restoration to Prior Condition. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the company shall, at its own cost and expense and in a manner approved by the city, replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed, in as good condition as before said work was commenced and in accordance with standards for such work set by the city and the Bellingham Municipal Code.

E. Erection, Removal, and Common Uses of Poles.

(1) No poles or other wire holding structures shall be erected by the company within the public right of way without prior approval of the city with regard to the location, height, types, and any other pertinent aspect of such structures. However, no location of any pole or wire holding structure of the company shall be a vested interest, and such poles or structures shall be removed or modified by the company at its own expense whenever the city determines that the public convenience would be enhanced thereby.

(2) Where poles or other wire holding structures already existing for use in serving the city are available for use by the company, but it does not make arrangements for such use, the city may require the company to use such poles and structures if it determines that the public convenience would be enhanced thereby and that the terms of the use available to the company are just and reasonable.

(3) Where the city, or a public utility serving the city, desires to make use of the poles or other wire holding structures of the company, but agreement thereof with the company cannot be reached, the city may require the company to permit such use for such consideration and upon such

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terms as the city council shall determine to be just and reasonable, if the city council determines that the use would enhance the public convenience and would not unduly interfere with the company's operations.

F. Relocation of the Facilities. In the event that at any time during the period of the franchise, the city, county or state shall lawfully elect to alter or change the grade of any street, alley or other public ways, the company, upon reasonable notice by the proper governmental entity, shall remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and other fixtures within the public right of way at its own expense.

G. Cooperation with Building Movers. The company shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the company shall have the authority to require such payment in advance. The company shall be given not less than forty-eight hours' advance notice to arrange for such temporary wire changes.

H. Tree Trimming. The company shall not remove any tree or trim any portion, either above, at or below ground level, of any tree within any public place without the prior consent of the city; provided, that the company may so remove or trim when necessary to permit immediate repair of the system in order to restore its signal so long as it gives the city notice thereof as promptly as is reasonably practical.. Regardless of who performs the work requested by the company, the company shall be responsible, and shall defend and hold city harmless for any and all damages to any tree as a result of trimming, or to the land surrounding any tree, whether such tree is trimmed or removed or for any personal injury or property damage resulting from said activities.

**6.17.240 - Operational Standards.**

A. The company shall put, keep and maintain all parts of the system in good condition throughout the entire franchise period.

B. Upon the reasonable request for service by any person located within the city, the company shall, within sixty days, furnish the requested service to such person within terms of the line-extension policy. A request for service shall be unreasonable for the purpose of this subsection if no trunk line installation capable of servicing that person's block has as yet been installed.

C. The company shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as

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possible, shall be preceded by notice and shall occur during periods of minimum system use.

D. Company shall not allow its cable or other operations to interfere with television reception of persons not served by company, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of the city.

E. The company shall continue, through the term of the franchise, to maintain the technical standards and quality of service set forth in this chapter. Should the council determine that the company has failed to maintain these technical standards and quality of service, or breached any other applicable provision of this chapter, it shall direct the city attorney to notify the company in writing of its obligation to comply; provided, however, the company need only make such improvements where they are reasonably necessary to return the company's operation to the standards set forth herein and the improvements are not prevented by circumstances beyond the company's control. The company's failure to make necessary improvements within thirty days of its receipt of written notice from the city attorney shall automatically subject the company to the penalties set forth in Section 6.17.41O(D). The company's obligation to incur capital expense as a result of this provision shall not be construed to extend the company's right to operate beyond the limits set forth in Section 6.17.060.

**6.17.250 - Continuity Of Service Mandatory.**

A. It shall be the right of all subscribers to continue receiving service so long as their financial and other obligations to the company are fulfilled. In the event that the company elects to overbuild, rebuild, modify or sell the system, or the council gives notice of intent to terminate or fails to renew this franchise, the company shall act so as to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances.

B. In the event of a change of franchisee, or in the event a new operator acquires the system, the company shall cooperate with the city, new franchisee or operator in maintaining continuity of service to all subscribers. During such period, company shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

C. In the event company fails to operate the system for seven consecutive days without prior approval of the city council or without just cause, the city may, at its option, operate the system or designate an operator until such time as company restores service under conditions

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acceptable to the city council or a permanent operator is selected. If the city is required to fulfill this obligation for the company, the company shall reimburse the city for all reasonable costs or damages in excess of revenues from the system received by the city that are the result of the company's failure to perform.

**6.17.260 - Complaint Procedure.**

A. The office of the Information Technology Department is designated as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures. Complaints shall be forwarded first to the City-County Cable Advisory Board for investigation and report to the City.

B. During the term of this franchise, and any renewal thereof, the company shall maintain a local business office for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters. The office must be reachable by a local, toll-free telephone call to receive complaints regarding quality of service, equipment malfunctions and similar matters. The local office shall be open to receive inquiries or complaints from subscribers during normal business hours, and in no event less than nine a.m. to five p.m., Monday through Friday, excluding legal holidays. Company shall provide the means to accept complaint calls twenty-four hours a day, seven days a week. Any service complaints shall be investigated by the company within forty-eight hours of receipt. The company shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint, and the time and date thereof. This log shall be made available for periodic inspections by the city.

C. As subscribers are connected or reconnected to the system, the company shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the city office responsible for administration of the franchise with the address and telephone number of the office.

D. Complaint procedure shall be as follows:

(1) When there have been similar complaints made, or where there exists other evidence, which, in the judgment of the city council, casts doubt on the reliability or quality of cable service, the city shall have the right and authority to require company to test, analyze, and

report on the performance of the system. The company shall fully cooperate with the city in performing such testing, and shall prepare results and a report, if requested, within thirty days after notice. Such report shall include the following information:

- (a) The nature of the complaint or problem which precipitated the special tests;
- (b) What system component was tested;
- (c) The equipment used and procedures employed in tests;
- (d) The method, if any, in which such complaint or problem was resolved;
- (e) Any other information pertinent to said tests and analysis which may be required.

(2) The city may require that tests be supervised, at company's expense, by a professional engineer, not on the permanent staff of the company. The engineer should sign all records of special tests and forward to the city such records with a report interpreting the results of the tests and recommending actions to be taken.

(3) The city's right under this section shall be limited to requiring tests, analyses and reports covering specific subjects and characteristics based on said complaints or other evidence when and under such circumstances as the city has reasonable grounds to believe that the complaints or other evidence require that tests be performed to protect the public against substandard cable service.

**6.17.270 - Company Rules And Regulations.** The company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the company to exercise its rights and perform its obligations under the franchise, and to assure an uninterrupted service to each and all of its customers; provided, however, such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations.

**6.17.280 - Franchise Fees And Reports.**

A. Because the streets of the city to be used by the company in the operation of its system within the boundaries of the city are valuable public properties acquired and maintained by the city at great expense to its taxpayers, and because the grant to the company of a franchise to use the said streets is of economic value without which the company would be required to invest substantial capital in right-of-way costs and acquisitions, the company shall pay to the city an amount as a franchise fee which shall not to exceed the amount permissible under federal and state

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law. Such fee may be based upon a percentage of company's gross annual revenue from all sources attributable to the operations of the company. This payment shall be in addition to any other tax or payment owed to the city, county or other taxing jurisdiction of the company.

B. It is the intent of the city to utilize franchise fees, as the city council determines necessary, to defray the costs of local regulation of a franchise, support and development of the community access channels, and for any other purposes deemed appropriate.

C. If the city increases the local taxing rate or unilaterally imposes any tax, free or other payment on the company in excess of that imposed at the date of issuance of the franchise, the company shall be authorized to modify basic subscriber rates without the express authorization of the city only to the extent necessary to generate additional revenue in order to meet this additional obligation .

D. The franchise fee and any other cost or penalties assessed shall be payable monthly and the company shall file a complete and accurate statement of all gross receipts within the city during the period for which said payment is made. Said payment shall be made to the finance director not later than forty-five days after the end of the previous month.

E. Quarterly Reports.

(a) Within 45 calendar days after the end of each fiscal quarter of the company, it shall submit to the city along with its franchise fee payment a financial report showing the basis for computation of such fees. This report shall separately indicate revenues received by the company within the city from such items as basic service, pay TV service, and other sources of revenue.

(b) Within 60 days after the end of each of the company's fiscal quarters, it shall submit a written report to the city, verified by an officer of the company, which shall contain:

(1) A statement of all revenues earned by company or any parent or affiliate (other than a programming affiliate), related to operation of the cable system in the franchise area, identified by source or type, e.g., basic, premium, pay per view, installation, advertising, etc. The statement shall be signed by an officer of company with an explicit certification by the officer that the reported amounts are an accurate reflection of the books and records of the company and are consistent with all provisions in the franchise;

(2) An identification and explanation of any adjustment in the amount of gross revenues made in determining the franchise fee calculation base; and

(3) A calculation establishing the franchise fee due and owing.

F. Annual Report. On an annual basis, no later than five months following the end of the company's fiscal year, it shall present a written report to the city which shall include:

(1) A summary of gross revenue and franchise fee calculations for the previous year;

(2) An audited financial statement for its immediate parent company, if any;

(3) A summary of the previous year's activities for the franchise area served by the company including, but not limited to, the total number of subscribers for each category of service, the number of homes passed, miles of overhead and underground cable plant, other system facilities and equipment constructed, any services added or dropped, and any technological changes occurring in the system; and,

(4) A description of all significant changes and modifications to the system or services anticipated to occur in the ensuing five year period.

G. (1) The company shall manage all of its operations in accordance with a policy of keeping books and records open and accessible to the city. The city shall have the right as necessary or desirable for effectively administering and enforcing the franchise, to inspect at any time during normal business hours upon reasonable notice, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records required to be kept by the company and any parent company pursuant to the rules and regulations of the FCC and other regulatory agencies, and other like materials of the company and any parent company which relate to the operation of the franchise. Access to the aforementioned records shall not be denied by company to representatives of the city on the basis that said records contain "proprietary" information. However, to the extent allowed by Washington law, the city shall protect the trade secrets and other confidential information of the company and any parent company. All books and records relating to company's activities under the franchise shall be, or upon request be made, available in the City of Bellingham.

(2) The company agrees to meet with representative of the city upon request to review its methodology of record-keeping, financial reporting, computing franchise fee obligations, and other procedures the understanding of which the city deems necessary for understanding the meaning of reports and records.

(3) The city or its authorized agent may at any time and at the city's own expense conduct an independent audit of the revenues of company in order to verify the accuracy of franchise fees paid to the city. The company and each parent company shall cooperate fully in the conduct of

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such audit. In the event it is determined through such audit that the company has paid franchise fees in a lesser amount than was due the city, then it shall reimburse the city for the entire cost of the audit within 30 days of the completion and acceptance of the audit by the city.

(4) The city agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary for the enforcement and administration of the franchise.

(5) The city shall have the right to inspect the company's income records and the right to recompute any amounts determined to be payable under this chapter; provided, however, that such audit shall take place within thirty-six months following the close of each of the company's fiscal years. Any additional amount due to the city as a result of the audit shall be paid within thirty days following written notice to the company by the city, which notice shall include a copy of the audit report.

H. In the event that any franchise payment or recomputed amount, cost or penalty, is not made on or before the applicable dates heretofore specified, interest shall be charged daily from such rate at the annual rate at 12% per annum or 2% above prime lending rate as quoted by major Seattle banks, whichever is greater.

**6.17.290 - Transfer Of Ownership Or Control.**

A. (1) Any franchise awarded by the city shall not be assigned or transferred, either in whole or in part, or leased, sublet or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person without the prior written consent of the city council. Company may, however, transfer or assign the franchise to a wholly owned subsidiary of the company and such subsidiary may transfer or assign the franchise back to the company without such consent. The proposed assignee must show financial responsibility as determined by the city council and must agree to comply with all provisions of the franchise and this chapter. The granting of such prior consent in one instance shall not render unnecessary any subsequent prior consent in another instance. Any transfer of ownership other than as permitted herein shall make this franchise subject to revocation unless and until the City shall have given written prior consent thereto.

(2) In accordance with FCC rules and regulations, within 30 days of receiving a request to consent to transfer, the city shall notify the company in writing of information it requires to make its decision whether to consent. When the city has received such information, it shall have 120

days within which to act. If the city has not taken action on company's request for consent to transfer within this 120-day period, it shall be deemed to have consented.

(3) Nothing contained herein shall be deemed to prohibit the mortgage, pledge, or assignment of system tangible assets for the purpose of financing the acquisition of equipment for or the construction and operation of the system, without the city's consent, but any such mortgage, pledge, or assignment shall be subject to the rights of the city hereunder.

B. The company shall promptly notify the council of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the company. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of ten percent of the shares of or interest in the company. Every change, transfer or acquisition of control of the company shall make the franchise subject to cancellation unless and until the council shall have consented thereto. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the council may inquire into all qualifications of the prospective controlling party. Approval for transfer may also be withheld by the city if transfer would result in a rate increase attributable to the purchase price paid for the system. Transfer of control among or to subsidiaries or affiliates of the company shall not be subject to council consent, provided such subsidiary or affiliate agrees to be bound by all the terms and conditions of this chapter and of the franchise ordinance.

C. The consent or approval of the council to any transfer of the company shall not constitute a waiver or release of the rights of the city under the original franchise, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of the original franchise.

D. In the absence of extraordinary circumstances, the council will not approve any transfer or assignment of the franchise prior to substantial completion of construction of any proposed system.

E. In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to the franchise agreement.

**6.17.300 [Deleted]**

**6.17.310 - Copies Of Other Company Petitions And Applications.** Upon request copies of all

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facilities or through a cooperative arrangement acceptable to the city with one or more appropriate entities. In the event such arrangement is not approved, the company's obligation may in part be met by the purchase and maintenance of portable or mobile facilities and equipment pursuant to a plan acceptable to the city. Implementation of the delivery of such local origination programming through the utilization of the equipment and facilities described above, shall be provided as directed by the city, and shall be subject to the subsequent periodic review of the city. This provision shall not be construed to authorize the city to interfere with the company's First Amendment rights.

F. Upon request by any subscriber, the company shall make available a parental control or lockout device that will enable the subscriber to block all access to any and all channels without affecting those not blocked. The company shall inform subscribers of the availability of the lockout device at the time of original subscription and annually thereafter.

G. The company shall incorporate into its cable television system the capacity which will permit the city, in times of emergency, to override, by remote control, the audio portion of all channels simultaneously. The company shall designate a channel which will be used for emergency broadcasts of both audio and video. The company shall cooperate with the city in the use and operation of the emergency-alert override system.

**6.17.350 - Interconnection Of Facilities.**

A. The company may be required to interconnect its system with cable facilities of any commercial or public cable systems within the city and with all adjacent commercial systems in other jurisdictions, provided that such is technically and economically feasible. Upon finding of technical and economic feasibility, the company may be required to interconnect with one or more nonadjacent systems within a reasonable distance that may have programming desirable to Bellingham. Such interconnection shall be made within a reasonable time limit established by the city. The interconnection shall be accomplished according to the method and technical standards determined by the company and generally accepted in industry practices.

B. Company shall use all reasonable diligence in negotiating with operators of other broadband systems and governmental authorities in arranging for such interconnection. Company may be excused from any requirements under this section upon a showing, satisfactory to the city, that the operator of the facility to be interconnected or the franchising authorities in such other jurisdictions refuse to reach a reasonable agreement regarding such interconnection.

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petitions, applications, communications and reports submitted by the company to the Federal Communications Commission, Securities and Exchange Commission (specifically 10K and 8K), or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to the franchise, shall be provided simultaneously to the city attorney.

**6.17.320 - Fiscal Reports. [Deleted]**

**6.17.330 - Removal Of Cable System.** At the expiration of the term of the franchise herein, company shall forthwith, upon notice by the city council, remove at its own expense all designated portions of the system from all streets and public property within the city. If company fails to do so, the city may perform the work at company's expense.

**6.17.340 - System -- Required Services And Facilities.** The city may require, as a condition of grant of franchise (and to the extent not clearly prohibited by applicable State or Federal law) any or all of the following:

- A. Minimum channel capacity of thirty-five channels.
- B. A plant having the technical capacity for non-voice return, or "two-way" communications. Two-way capability shall be activated from identified user locations upon reasonable notice by the city to the company provided that such operations shall be economically feasible.
- C. Programming and subscriber service which takes into account (1) requirements and limitations imposed by the FCC and other governmental entities with authority, (2) developments and innovations in telecommunications technology, (3) the desires of the community expressed through the city council, city administration, and any advisory board created for this purpose, (4) the need to ensure healthy competition between providers of programming and services, and (5) any other matters deemed to be in the best interest of the city.
- D. One free drop for basic subscriber service at each public facility or private educational facility as designated by the city.
- E. The capability to provide a full production studio or equipment and facilities capable of color broadcasting within the city and other related TV production equipment and facilities for local production and presentation of cablecast programs other than automated services and shall facilitate its use for the production and presentation of public, educational and governmental access programs. Such obligation may be accomplished by the company's building and maintaining such

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**6.17.360 - Rules And Regulations.**

A. In addition to the inherent powers of the city to regulate and control any franchise it issues, and those powers expressly reserved by the city, or agreed to and provided for herein, the right and power is hereby reserved by the city to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of the franchise agreement and this chapter.

B. The city council reserves the right to delegate its authority for regulation and for franchise administration and enforcement to the council finance committee, the city attorney, or a cable advisory committee established for such purpose.

C. Council reserves the right to approve all guidelines for the administration of community access channels, and to delegate this authority at its discretion to the council finance committee, the city attorney, or a cable advisory committee established for such purpose.

**6.17.370 - Performance Evaluation Sessions.**

A. The city and the company shall hold scheduled performance evaluation sessions within thirty days of the third, sixth and ninth anniversary dates of the company's award of the franchise, or as may be required by federal and state law. All such evaluation sessions shall be open to the public.

B. Special evaluation sessions may be held at any time during the term of the franchise at the request of the city or the company.

C. All evaluation sessions shall be announced in a newspaper of general circulation, in accordance with this chapter. Company shall notify its subscribers of all evaluation sessions by announcement on at least one local origination channel of its system between the hours of seven p.m. and nine p.m. for two consecutive days preceding each session.

D. Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures, franchise fee, penalties, free or discounted services, application of new technologies, system performance, services provided, programming offered, customer complaints, privacy, amendments to this chapter, judicial and FCC rulings, line-extension policies, and company or city rules.

**6.17.380 - Rate Regulation -- Full Regulatory Power Reserved.** To the extent permitted by applicable law, the city reserves the right to regulate all rates and charges in a manner to be determined from time to time by the city council by ordinance. The council may establish whatever

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rate regulation method it deems reasonable, including without limitation a utility approach that allows a stated return on investment, a modified utility approach that allows automatic increases within a predefined range, an approach that regulates service quality but not rates, or any combination thereof. The rate regulation method may include without limitation rules governing allocation of depreciation; calculation, crediting and treatment of tax benefits; and, allowing and disallowing consideration of any interest expense. In addition to the power to regulate rates and charges, the city reserves the right to adopt other regulations including but not limited to regulations governing the company's collection of advance charges and deposits installation and reconnection charges, disconnection charges, all policies and procedures having a substantial effect on the company's relationship with its subscribers or the city, and the availability of refunds.

**6.17.390 - Initial Rates. [Deleted]**

**6.17.400 - Rate Change Procedure. [Deleted]**

**6.17.410 - Violation Of Certain Chapter Provisions -- Penalties.** Without limiting any other rights the city may have under this chapter or other applicable law, and unless specifically provided for to the contrary in any negotiated franchise agreement, for the violation of any of the following provisions of this franchise, penalties shall be chargeable to the letter of credit as follows:

A. For failure to complete system construction and provide service in accordance with Section 6.17.210 unless the city council specifically approves the delay by motion or resolution, due to the occurrence of conditions beyond company's control; otherwise, the company shall pay five hundred dollars per week for each week or part thereof the deficiency continues;

B. For failure to provide data, documents, reports, or information as required in this chapter, company shall pay fifty dollars for each day such violation occurs or continues;

C. For failure to test, analyze and report on the performance of the system following a request pursuant to section 6.17.260(D), company shall pay fifty dollars per day for each day or part thereof that such noncompliance occurs or continues;

D. For failure to comply with the operational standards contained in this chapter or in the grant of franchise for thirty days following city notice directing the company to make improvements pursuant to section 6.17.240, company shall forfeit two hundred dollars per day or part thereof that the violation occurs or continues.

**6.17.430 - Forfeiture And Termination.**

A. In addition to all other rights and powers retained by the city under a franchise

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agreement or this chapter, the city reserves the right to forfeit and terminate any franchise and all rights and privileges of the company hereunder in the event of a substantial breach of the terms and conditions of any franchise agreement or of this chapter. A substantial breach by company shall include, but shall not be limited to, the following:

- (1) Violation of any material provision of the franchise or this chapter, or any material rule, order, regulation or determination of the city made pursuant to the franchise or this chapter;
- (2) Attempt to evade any material provision of the franchise or this chapter or to practice any fraud or deceit upon the city or its subscribers or customers;
- (3) Failure to begin or complete system construction or system extension as provided in section 6.17.210;
- (4) Failure to provide the services promised in company's application as incorporated herein by section 6.17.040;
- (5) Failure to restore service after forty-eight consecutive hours of interrupted service except when approval of such interruption is obtained from the city; or
- (6) Material misrepresentation of fact in the application for or negotiation of the franchise.

B. The foregoing shall not constitute a substantial breach if the violation occurs without fault of the company or occurs as a result of circumstances beyond its control. Company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

C. The city may make a written demand that the company comply with any such provision, rule, order or determination under this chapter, or pursuant to the franchise. If the violation by the company continues for a period of thirty days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the city may place the issue of termination of the franchise before the city council. The city shall cause to be served upon company, at least twenty days prior to the date the council considers the issue of termination, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which council is to consider.

D. The city council shall hear and consider the issue and shall hear any person interested therein, and shall determine in its discretion whether or not any violation by the company has occurred.

E. If the city council shall determine the violation by the company was the fault of company and within its control, the council may, by resolution, declare that the franchise of the company shall be forfeited and terminated unless there is compliance within such period as the council may fix, such period not to be less than ninety days. provided no opportunity for compliance need be granted for fraud or misrepresentation.

F. The issue of forfeiture and termination shall automatically be placed upon the council agenda at the expiration of the time set by it for compliance. The council may then terminate the franchise forthwith upon finding that company has failed to achieve compliance, or may further extend the period, in its discretion.

**6.17.440 - Foreclosure Of Cable System.** Upon foreclosure or other judicial sale of all or a substantial part of the cable system, or upon the termination of any lease covering all or a substantial part of the system, the company shall notify the council of such fact, and such notification shall be treated as a notification that a change in control of the company has taken place, and the provisions of this franchise governing the consent of the city council to such change in control of the company shall apply.

**6.17.450 - Receivership.** The council shall have the right to cancel the franchise one hundred and twenty days after the appointment of a receiver or trustee to take over and conduct the business of the company, 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 and twenty days, or unless:

A. Within one hundred and twenty days after the election or appointment, such receiver or trustee shall have fully complied with all the provisions of this chapter and the franchise agreement and remedied all defaults thereunder; and

B. Such receiver or trustee, within said one hundred and twenty days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and the franchise granted to the company.

**6.17.460 - Purchase Of Cable System By City.**

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A. Right to Purchase. Pursuant to Section 11.04 of the Bellingham Charter, the company shall grant the city the right to purchase at a fair and just value the property of the company within the limits of the public streets, said price not including any valuation of the franchise itself; provided, however, the city may only exercise this right after submission of the proposition to the city electorate as an advisory ballot proposition and a majority of the voters favor such purchase .

B. Date of Valuation. The date of valuation for the purposes of subsection A of this section shall be no earlier than the day following the date of expiration or termination and no later than the date upon which the city makes a fair and reasonable offer for the system or the date of transfer of ownership, whichever occurs first.

C. Transfer to City. Upon exercise of this option and the payment of the above sum by the city and its service of official notice of exercise of such right upon company, the company shall immediately transfer to the city possession and title to all facilities and property, real and personal, of the cable system, free from any and all liens and encumbrances not agreed to be assumed by the city in lieu of some portion of the purchase price set forth above; and the company shall execute such warranty deeds or other instruments of conveyance to city as the city shall find necessary for this purpose.

D. Arbitration of Value and Costs.

(1) In the event city and company cannot agree upon the value of the system, either may give notice of a demand to the other for arbitration.

(2) Arbitration shall commence and proceed as follows:

(a) The parties shall, within fifteen days, appoint one arbitrator each who is experienced and knowledgeable in the purchase, sale and valuation of systems. Arbitrators shall each agree upon the selection of a third arbitrator, similarly qualified. within fifteen days.

(b) Within thirty days after appointment of all arbitrators and upon ten days' written notice to parties, the board of arbitrators shall commence a hearing on the issue of valuation.

(c) The hearing shall be recorded and may be transcribed at the request and expense of either party. All hearing proceedings, debate and deliberations shall be open to the public and at such times and places as contained in the notice or as thereafter clearly stated in the order to adjourn, except as otherwise authorized by the city attorney.

(d) At the close of the hearings and within thirty days, the board of arbitrators shall

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prepare findings and decision agreed upon by a majority of the board which shall be filed with the city and served by mail upon the company. If the arbitrators fail to render a decision within the allotted thirty days and both parties fail to mutually extend the decision deadline, the proceedings shall become null and void and shall be started anew.

- (e) The decision of the board shall be final and binding upon the parties.
- (f) Either party may seek judicial relief in the following circumstances:
  - i. A party fails to select an arbitrator;
  - ii. The arbitrators fail to select a third arbitrator;
  - iii. One or more arbitrators is unqualified;
  - iv. Designated time limits have been exceeded;
  - v. The board has not proceeded expeditiously; and
  - vi. Based upon the record the board abused arbitrarily its discretion.

(g) In the event a court of competent jurisdiction determines the board of arbitrators has arbitrarily abused its discretion, it may order the arbitration procedure repeated.

(h) Cost of arbitration shall be borne equally unless the board of arbitrators finds the offer of the city or the demand of company was unreasonable. in which case, cost may be apportioned so that less or none of the costs may be borne by one party.

**6.17.480 - Compliance With State And Federal Laws.** If a material provision of this chapter or any franchise is affected by any subsequent action of the state or federal government, the parties shall negotiate any affected provisions herein to such reasonable extent as may be necessary to carry out the intent and purpose of this chapter and the franchise.

**6.17.490 - Landlord/Tenant Relations.**

A. Interference with Cable Service Prohibited. Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable television service, cable installation or maintenance from a cable television company regulated by and lawfully operated under a valid and existing cable television franchise issued by the city; provided, however, the city may establish necessary rules and standards it deems appropriate to protect the property rights of landlords and tenants.

B. Gratuities and Payments to Permit Service Prohibited. Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall ask, demand or receive any

**City of Bellingham**  
CITY ATTORNEY  
210 Lottie Street  
Bellingham, Washington 98225  
Telephone (360) 676-6903

payment, service or gratuity in any form as a condition for permitting or cooperating with the installation of a cable communication service to the dwelling unit occupied by a tenant or resident requesting service.

C. Penalties and Charges to Tenants for Service Prohibited. Neither the owner of any multiple-unit residential dwelling nor his agent or representative shall knowingly penalize, charge or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communication service from a company operating under a valid and existing cable communication franchise issued by the city. Any person convicted of violating any provision of this section is subject to a fine of not less than fifty dollars nor more than five hundred dollars for each offense.

D. Reselling Service Prohibited. No person shall resell, without the expressed, written consent of both the company and the city, any cable service, program or signal transmitted by a cable television company operating under a franchise issued by the city.

E. Protection of Property Permitted. Nothing in this section shall prohibit a person from requiring that cable television system facilities conform to laws and regulations and reasonable conditions necessary to protect safety, functioning, appearance and value of premises or the convenience and safety of persons or property.

F. Risks Assumed by Company. Nothing in this section shall prohibit a person from requiring a cable television company to agree to indemnify the owner, or his agents or representatives for damages or from liability for damages caused by the installation, operation, maintenance or removal of cable television facilities.

**6.17.500 - Theft Of Services And Tampering Prohibited.**

A. No person, whether or not a subscriber to the cable system, shall knowingly damage or cause to be damaged any wire, cable, conduit, equipment or apparatus of company, or commit any act with intent to cause such damage, or to tap, tamper with or otherwise connect any wire or device to a wire, cable, conduit, equipment and apparatus or appurtenances of company with the intent to obtain a signal or impulse from the cable system without authorization from or compensation to the company, or to obtain cable television or other communications service with intent to cheat or defraud company of any lawful charge to which it is entitled.

B. Any person convicted of violating any provision of this section is subject to a fine of not less than fifty dollars nor more than five hundred dollars and/or a jail sentence not to exceed



ninety days. Each violation of this section shall be considered a separate offense.

**6.17.520 - Selling Or Servicing Television Sets By Franchisee Prohibited.** No franchisee or any major stockholder of a franchisee shall directly or indirectly engage within the city in the business of selling, leasing, renting, servicing, or repairing radio or television sets or other receivers or parts thereof which make use of standard broadcast entertainment signals, provided that nothing herein shall prevent a franchisee from making modifications to the tuner input circuit of the subscribers' television receivers and the fine tuning of the subscribers' operating controls only, to insure proper operation under conditions of cable connection at the time of installation or in response to subscriber complaints, or from the selling, servicing, or repairing of receivers and other equipment belonging to other cable system operators for use in the conduct of their business.

**6.17.530 - Chapter Applicability To Current Franchisee. [Deleted]** .

PASSED by the Council this 28 day of September, 1998.

Bob Ryan  
Council President

APPROVED by me this 29<sup>th</sup> day of September, 1998.

Mark Asmundson  
Mayor

ATTEST: Jean Carpenter  
Finance Director

APPROVED AS TO FORM:

[Signature]  
Office of the City Attorney

Published: 10-04-98

**CITY OF BELLINGHAM WASHINGTON**

ORDINANCE NUMBER: 1998.09.075  
COUNCIL BILL NUMBER: 12422  
AGENDA BILL NUMBER: 13691  
1ST/2ND READING/INTRODUCTION: 9.8.98  
3RD/FINAL READING: 9.14.98  
PUBLISHED: 10-4-98

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CC: LEGISLATIVE COORDINATOR  
LEGAL SECRETARY  
ITSD (TO SCAN)  
OTHER: Linda Stork-JSS