

**ORDINANCE NO. 2012-05-030**

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

**WHEREAS**, the City of Bellingham and Comcast of Washington IV, Inc. entered into a Cable Television Franchise agreement, with an effective date of November 8, 2011, and

**WHEREAS**, by the terms of this Franchise, the prior Franchise granted under Ordinance No, 10709 was replaced; and

**WHEREAS**, some of the terms and conditions of the Franchise Ordinance No. 2011-10-059 are inconsistent with several provisions of Bellingham Municipal Code Chapter 6.17 related to Cable Television; and

**WHEREAS**, the Franchise Agreement provides that in the event of a conflict between the provisions of the City Code and the Franchise, the express provisions of the Franchise will govern, except in the exercise of the City's police power; and

**WHEREAS**, it is necessary to amend Bellingham Municipal Code Chapter 6.17 to ensure consistency between the Bellingham Municipal Code and the Comcast Franchise Agreement;

**NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN as follows:**

**Bellingham Municipal Code 6.17 is hereby amended as follows:**

**6.17.010 - Purpose Of Provisions**

[Unchanged]

**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, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Where a word is not defined and there is a definition for the term in the Cable Act, then the Cable Act definition shall apply. Other words not defined shall be given their common and ordinary meaning.

**"Access" "PEG Access", or "PEG Use"** refers to the availability, for non-commercial purposes, of a channel, or channels, on the Cable System for Public, Education, or

Government programming by various agencies, institutions, organizations, groups, and individuals, including the City.

(1) **“Public Access” or “Public Use”** means access where organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their programming;

(2) **“Education Access” or “Education Use”** means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their programming; and

(3) **“Government Access” or “Government Use”** means access where government institutions or their designees are the primary or designated programmers or users having editorial control over their programming.

**“Access Channel”** means any channel or portion of a PEG channel utilized for Video Services, whether by Grantee or in cooperation with, by or through the City, where any resident of the City or non-commercial organization whose members reside in the City may be a programmer, either without charge or in a non-profit manner, on a nondiscriminatory basis.

**“Access Facilities”** means facilities designated for PEG Use, and equipment, including, but not limited to, modulators, demodulators, and transmitters, as well as production facilities and equipment for PEG Use of PEG channels,

**“Access Provider”** means an entity designated by the City to provide PEG programming and the provision of any facilities, equipment, or other services, for the purpose of facilitating such programming.

**“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.

**“Basic” or “Basic service”** means a service tier that includes, at a minimum, all signals of domestic television broadcast stations provide to any Subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the Cable system), any public, educational, and governmental programming required by a franchise to be carried on a Basic tier, and any additional video programming signals or service added to the basic tier by a franchise grantee.

**“BTV10”** means the City’s PEG channel in existence on January 1, 2012, and identified as a government and education access channel.

**"Cable Act"** means the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as further amended from time to time.

**"Cable Service"** means (1) the one-way transmission to Subscribers of (a) video programming or (b) other programming services; and (2) Subscriber interaction, if any, that is required for the selection or use of such video programming or other programming services.

**"Cable System"** means a facility, consisting of closed transmission paths and associated signal generation, reception, and control equipment that is designated to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City, but such term does not include (1) a facility that serves only to retransmit the television signals of 1 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 subchapter II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of section 541(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 service; (4) an open video system that complies with Section 573 of the Cable Act; or (5) any facilities of an electric utility used solely for operating its electric system. For the purposes of this Franchise, Cable System means Grantee's system serving the City.

**"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 the Commission by regulation).

**"City"** means the City of Bellingham, of the State of Washington and all the territory within its present and future boundaries.

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

**"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.

**"Council"** means the Bellingham City Council.

**"Council Committee"** means the Finance Committee of the City Council.

**"County"** means the County of Whatcom, Washington.

**"Day"**, unless otherwise specified shall mean a calendar day.

**"Digital Services"** means services offered over the Cable system including the transmission of audio and video by discrete (digital) signals including standard definition and high definition signals consistent with the standards developed by the Advanced Television Systems Committee for digital television transmission over terrestrial, cable, and satellite networks.

**"Expanded Basic Service"** means the next tier of service above the Basic Service tier excluding premium or pay-per-view services.

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

**"Gross Revenues"** means all revenue derived by company, or any affiliate of company or any other person who would constitute a cable operator of the Cable System under the Cable Act, from the operation of the Cable System to provide Cable Service in the City. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for any tier of Cable Services including Basic Service, optional Premium Service or Digital Services; pay-per-view services; installation, disconnection, reconnection and change-in-service fees, Leased Access channel fees, all Cable Service lease payments from the Cable System to provide Cable Services in the City, late fees and administrative fees, payments or other consideration received by company from programmers for carriage of programming on the Cable System and accounted for as revenue under GAAP; revenues from rentals or sales of converters or other Cable System equipment; advertising sales revenues booked in accordance with Applicable Law and GAAP; revenues from program guides and electronic guides, additional outlet fees, Franchise Fees required by this Franchise, revenues from home shopping and other revenue-sharing arrangements.

Gross revenues shall not include any taxes on services furnished by company, which taxes are imposed directly on a Subscriber or user by a city, county, State or other governmental unit, and collected by company for such entity. The Franchise fee is not such a tax. Gross revenues shall not include amounts which cannot be collected by company and are identified as bad debt; provided that if amounts previously representing bad debt are collected, then those amounts shall be included in gross revenues for the period in which they are collected. Gross revenues shall not include payments received by the company from the City in payment for construction of fiber for City PEG use.

Gross Revenues shall include revenue received by any entity other than company where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees, however, amounts included in gross revenues shall not be counted more than once; therefore, amounts included once in company's gross revenues shall not be added to gross revenues again if they are received by an affiliate of company in payment for programming or other goods or services supplied to company.

**"Headend"** means the control center of the Cable System where incoming signals are amplified, converted, processed, and combined for transmission to the Subscriber.

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

**"PEG"** means public, educational, and governmental.

**"PEG Fees"** means a per subscriber fee collected by the company during the term of the franchise for, or in support of the use of, public, educational, or government access facilities. The PEG fee shall be collected by the company and paid to the City for purposes consistent with 47 U.S.C. §542.

**"Premium Service"** means a Cable Service (such as movie channels or pay-per-view programs) offered to Subscribers on a per-channel, per-program, or per-event basis

**"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.

**"Subscriber"** means any person who legally receives Cable Services over the Cable System.

**"Video Services"** means programming provided by, or generally considered comparable to programming provided by a cable operator as the term "cable operator" is defined in the Cable Act.

**6.17.030 - Application For Franchise**

[Unchanged]

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

[Unchanged]

**6.17.050 - Franchise**

[Unchanged]

**6.17.060 - Duration And Acceptance Of Franchise**

Any franchise granted by the City shall continue in force and effect for a term of specified in the grant of franchise subject to the terms of this chapter, provided that within 60 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. A Franchise shall be voidable at the City's discretion if the company fails to accept within 60 days.

#### **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 Cable Act if so specified in this franchise ordinance.

1. At least 13 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 City 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 4 successive weeks in the city official newspaper before being considered for first reading by the Council.

**6.17.080 - Police Powers**

[Unchanged]

**6.17.090 - Operation Without Franchise Prohibited**

[Unchanged]

**6.17.100 - Use Of Company Facilities**

[Unchanged]

**6.17.110 - Costs To Be Borne By Company**

[Unchanged]

**6.17.120 - Notices And Maintenance Of Local Office**

A. All notices from company to the city pursuant to a franchise shall be to the Finance Director with a courtesy copy to the Information Technology Director 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 maintain a convenient local customer service and bill payment location within the City for matters such as receiving Subscriber payments, handling billing questions, equipment replacement and customer service information

B. Normal business office hours means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

**6.17.130 - Franchise Grant - Letter Of Credit Requirements**

A. Unless otherwise provided in the Franchise agreement, within 10 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 the amount specified in the franchise ordinance. The form and content of such letter of credit shall be approved by the City Attorney. The letter of credit 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 to the City any delinquent fees, taxes or other amounts due and unpaid according to the terms of this grant of franchise; or, fails to repay 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 canceled by the surety nor the intention not to renew be stated by the surety until 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 30 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 \$250,000 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.

**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 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 for any and all violations outlined 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 canceled by the surety nor the intention not to renew be stated by the surety until 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. \$2,000,000 for personal injury or death to any person and \$5,000,000 aggregate for personal injury or death per single accident or occurrence;

b. \$2,000,000 for property damage to any one person and \$5,000,000 aggregate for property damage per single accident or occurrence;

c. \$2,000,000 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 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 canceled by the surety nor the intention not to renew be stated by the surety until 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**

[Unchanged]

**6.17.170 - Service - Rights Of Individuals**

[Unchanged]

**6.17.180 - Meetings - Public Notice Requirements**

[Unchanged]

**6.17.190 - Severability Of Chapter Provisions**

[Unchanged]

**6.17.200 - Service Availability - Record Of Requests For Service**

[Unchanged]

### **6.17.205 –Update of Subscriber Information Following Annexation**

In the event the City annexes any area which is being provided cable service by a company, the company shall provide written notice to the City , within one hundred –twenty days (120) days following an annexation, indicating that subscriber addresses within the annexation area have been updated to reflect the City as the franchising authority . The company shall provide revenue for new subscribers effective from the date of the annexation.

### **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.

**B. Line Extensions.** Subsequent to initial construction, the company shall be required to extend its system and make service available at standard installation and service rates, for every potential subscriber pursuant to the following requirements:

1. In newly developing underground service areas, where a shared trench is provided, the company shall extend and make cable service available to every dwelling unit in areas having at least thirty-two (32) dwelling units per trench mile, or any proportionate subset thereof, as measured from the existing system and shall extend its system simultaneously with the installation of utility lines when this density requirement is met.
2. In any area served by overhead facilities, the company shall extend and make cable television service available to every dwelling unit in areas having at least thirty-two (32) dwelling units per strand mile, or any proportionate subset thereof, as measured from the existing system, and shall extend its system simultaneously with the installation of utility lines when this density requirement is met.
3. In any area served by underground facilities that has existing homes that are not served by the company, the company shall extend and make cable television service available to every dwelling unit in areas having at least one hundred-twenty (120) dwelling units per trench mile, or any proportionate subset thereof, as measured from the existing system.
4. Company must extend and make cable television service available to any resident requesting connection at the standard connection charge if the connection to the resident would require no more than a standard 125' aerial drop line.
5. With respect to requests for connection requiring an aerial drop line in excess of 125' , 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 125'.

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**

[Unchanged]

**6.17.230 - Use Of Streets**

[Unchanged]

**6.17.240 - Operational Standards**

[Unchanged]

**6.17.250 - Continuity Of Service Mandatory**

[Unchanged]

**6.17.260 - Complaint Procedure**

[Unchanged]

**6.17.270 - Company Rules And Regulations**

[Unchanged]

**6.17.280 - Franchise Fees**

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 equal to 5% of company's (gross annual revenue from all sources attributable to the operations of the company within the confines of the city). This payment shall be in addition to any other tax or payment owed to the city, county or other taxing jurisdiction of the company.

In the event company bundles or combines Cable Services (which are subject to the franchise fee) with non-Cable Services (which are not subject to the franchise fee) so that Subscribers

pay a single fee for more than one class of service resulting in a discount on Cable Services, company agrees that for the purpose of calculation of the franchise fee, it shall allocate Cable Service revenue no less than a pro rata share of the revenue received for the bundled or combined services. The pro rata share shall be computed on the basis of the published charge for each service in the bundled or combined classes of services when purchased separately.

**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. The City shall dedicate 1.25% of the total franchise fee to support the operation of BTV10.

**C.** If the city increases the local taxing rate or unilaterally imposes any tax, fee 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.** Franchise fees shall be paid monthly not later than 45 days following the end of a given month. Neither current nor previously paid franchise fees shall be subtracted from the Gross Revenue amount upon which franchise fees are calculated and due for any period, unless otherwise required by applicable law. Nor shall copyright fees or other license fees paid by company be subtracted from Gross Revenues for purposes of calculating franchise fees.

**E.** 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 of 12% per annum or 2% above prime lending rate as quoted by major Seattle banks, whichever is greater.

#### **6.17.285 Reporting Requirements**

**A. Monthly Revenue Report.** Company shall submit to the City along with its franchise fee payment a report showing the basis for computation of such fees showing the basis for the computation of the franchise fees and PEG fees paid during that period in a form and substance acceptable to the City. This report shall separately indicate revenues received by the Company within the City including, but not limited to, such items as listed in the definition of Gross revenues.

**B. Quarterly Reports.**

**1.** 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.

2. 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:

- a. 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;
- b. An identification and explanation of any adjustment in the amount of gross revenues made in determining the franchise fee calculation base; and
- c. A calculation establishing the franchise fee due and owing.

**C. Annual Report.** On an annual basis, no later than 5 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 5 year period.

**D. Auditing and Financial Records**

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 the 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 representatives 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 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 36 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 30 days following written notice to the company by the city, which notice shall include a copy of the audit report.

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

A. Neither the Grantee nor any other Person may Transfer the Cable System or the Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. If Grantee submits an application for approval of any Transfer in accordance with federal regulations (47 C.F.R. Section 76.502) the City shall process said application in accordance with those regulations. Applications for approval of any Transfer shall also be filed, and the City shall process such applications, in accordance with procedures set out in the City Code so long as they are not in conflict with Applicable Law. A Transfer without the prior written approval of the City is a

material violation of this Franchise and shall make the Franchise subject to termination by the City.

**B.** For the purposes of determining whether it shall consent to a Transfer, the City, or its agents, may inquire into all qualifications of the prospective Transferee and such other matters subject to applicable law. The Grantee and any prospective transferees shall assist the City in any such inquiry, and if they fail to do so, the request for Transfer may be denied.

**C.** In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise, the City shall consider the legal, financial, and technical qualifications of the transferee to operate the Cable System; any potential impact of the Transfer on Subscriber services; whether the Grantee is in compliance with its Franchise and, if not, the proposed transferee's commitment to cure such noncompliance; and whether operation by the transferee or approval of the Transfer would adversely affect Subscribers, the public, or the City's interest under this Franchise, or other Applicable Law.

**D.** No application for a Transfer of a Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all lawful terms of this Franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the Grantee under this Franchise for all purposes, including renewal, unless the City, in its sole discretion, expressly waives this requirement in whole or in part.

**E.** Approval by the City of a Transfer of a Franchise does not constitute a waiver or release of any of the rights of the City under this Franchise, whether arising before or after the date of the Transfer.

#### **6.17.310 - Copies Of Other Company Petitions And Applications**

[Unchanged]

#### **6.17.330 - Removal Of Cable System**

[Unchanged]

#### **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 85 channels of video programming to its customers in the franchise area, including basic cable.

**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 cable case 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 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 annual 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.

#### **6.17.360 - 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, the Information Technology Director 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, City Attorney, Information Technology Director , or a cable advisory committee established for such purpose.

#### **6.17.370 - Performance Evaluation Sessions**

**A.** The City may, at approximately three-year intervals during the term of the franchise, and at such other times as the City deems appropriate, conduct a public review of the franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment, that the Franchise continues to effectively serve the public in the light of new developments in cable law and regulation, cable technology, cable company performance, local regulatory environment, community needs and interests, and other such factors. Both the City and company agree to make a full and good faith effort to participate in the review in a manner that accomplishes this end. It is not intended that the Franchise be modified as a result of such review, except as a last resort for achieving the purpose of the review. The City shall establish a procedure for ensuring orderly review, full discussion of any proposed policy changes between the City and Grantee, and full public hearing regarding all matters discussed during the review.

**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.** Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, company's overall compliance with the franchise, 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**

[Unchanged]

#### **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, company shall pay \$500 per week for each week, or part thereof, the deficiency continues;
- B.** For failure to provide data, documents, reports and information as required by this Franchise or to cooperate with the City during a system review, One Hundred Fifty and No/100 Dollars (\$150) per day, or part thereof, per each separate violation;
- C.** For failure to test, analyze and report on the performance of the system following a request pursuant Section 6.17.260D, company shall pay \$250 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 30 days following City notice directing the company to make improvements pursuant to Section 6.17.240, company shall forfeit \$200 per day or part thereof that the violation occurs or continues.
- E.** For failure to comply with any of the material provisions of the franchise, for which a penalty is not otherwise specified, the penalty shall be Two Hundred and No/100 (\$200) per day for each day, or part thereof, such failure occurs or continues.

#### **6.17.430 - Forfeiture And Termination**

[Unchanged]

#### **6.17.440 - Foreclosure Of Cable System**

[Unchanged]

#### **6.17.450 - Receivership**

[Unchanged]

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

[Unchanged]

**6.17.480 - Compliance With State And Federal Laws**

[Unchanged]

**6.17.490 - Landlord/Tenant Relations**

[Unchanged]

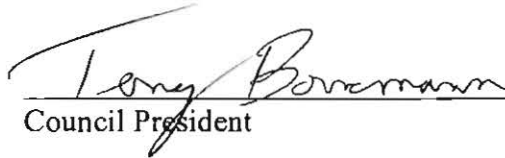
**6.17.500 - Theft Of Services And Tampering Prohibited**

[Unchanged]

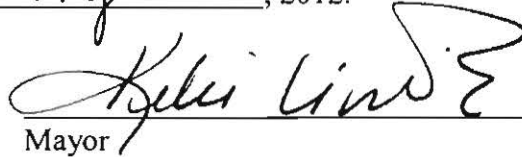
**6.17.520 - Selling Or Servicing Television Sets By Franchisee Prohibited**

[Unchanged]

**PASSED** by the Council this 14th day of May, 2012.

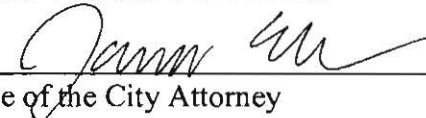
  
\_\_\_\_\_  
Council President

**APPROVED** by me this 15<sup>th</sup> day of May, 2012.

  
\_\_\_\_\_  
Mayor

**ATTEST:**   
\_\_\_\_\_  
Finance Director

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Office of the City Attorney

Published:

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