

ORDINANCE NO. 190

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON, RELATING TO CABLE TELEVISION; ESTABLISHING REQUIREMENTS FOR CABLE TELEVISION PROVIDERS' USE OF THE PUBLIC RIGHTS-OF-WAY AND OTHER PROPERTY; DESCRIBING THE PROCEDURES FOR APPLICATION AND APPROVAL OF CABLE TELEVISION FRANCHISES; DESCRIBING VIOLATIONS AND ESTABLISHING PENALTIES; ADDING A NEW CHAPTER 5.50 TO THE WOODINVILLE MUNICIPAL CODE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, all codified in Title 47 of the United States Code, authorize local governments to grant franchises for the provision of cable television service within their corporate boundaries, and

WHEREAS, the King County granted a twenty-five (25) year franchise for the construction, maintenance, and operation of a cable television franchise on April 28, 1969, and

WHEREAS, the franchise granted on April 28, 1969, was subsequently assigned to TCI Communications, Inc. ("TCI"), and

WHEREAS, the term of the initial franchise was extended from time to time by the City, and

WHEREAS, the City has been diligently negotiating the terms and conditions under which a new franchise will be granted to TCI to continue operating the cable television system located within the City, and

WHEREAS, the Woodinville Municipal Code does not presently contain comprehensive regulations prescribing the terms and conditions under which cable television service may be offered in the City, and

WHEREAS, the City Council has determined that it is in the public interest to establish a comprehensive ordinance establishing the terms and conditions under which cable television service may be offered in the City, NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON DO
ORDAIN AS FOLLOWS:

Section 1. A new chapter 5.50 is hereby added to the Woodinville Municipal Code to read as follows:

**Chapter 5.50
CABLE TELEVISION**

Sections:	
5.50.010	Definitions.
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5.50.030	Application.
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- 5.50.230 Access and institutional network equipment.
- 5.50.240 Non-discrimination.
- 5.50.250 Continuity of service.
- 5.50.260 Transfer of ownership.
- 5.50.270 Removal and abandonment of property of franchisee.
- 5.50.280 Revocation for cause - Lesser sanctions.
- 5.50.290 Effect of termination for non-compliance.
- 5.50.300 Indemnity and hold harmless.
- 5.50.310 Insurance.
- 5.50.320 Performance bond.
- 5.50.330 Letter of credit.
- 5.50.340 Recourse against bonds and other security.
- 5.50.350 Franchising costs.
- 5.50.360 Equalization of civic contributions.
- 5.50.370 Inconsistency.
- 5.50.380 Independent contractors.
- 5.50.390 Ratification.

5.50.010 Definitions.

a. "Access Channels" (Public, Educational or Governmental access facilities) means: 1. Channel capacity designated for public, educational, government use; and 2. Facilities and equipment for the use of such channel capacity.

b. "The Act " means the *Cable Television Consumer Protection and Competition Act of 1992*, the *Telecommunications Reform Act of 1996*, and the *Cable Communications Policy Act of 1984*, as now existing or hereafter amended.

c. "Addressability" means the ability of a system allowing a Franchisee to authorize by remote control Subscriber terminals to receive, change or to cancel any or all specified programming.

d. "Applicant" means any person or entity that applies for a Franchise.

e. "Basic Cable Service" means all signals of local television broadcast stations provided 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 Television System), any public, educational, and governmental programming required by the Franchise to be carried on the basic tier, and any additional video programming signals and service added to the basic tier by a cable Franchisee.

f. "Cable Services" means (i) the one-way transmission to Subscribers of video programming or other programming service, and (ii) Subscriber interaction, if any, which is required for the selection or use by the Subscriber of such video programming.

g. "Cable Television System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service and other service to Subscribers, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;

2. A facility that serves Subscribers without using any Public Right-of-Way;

3. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facilities shall be considered a Cable Television System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

4. An open video system that complies with 47 U.S.C. § 573 as now existing or hereafter amended; or

5. Any facilities of any electric utility used solely for operating its electric utility system.

- h. "Channel" means a single path or section of the spectrum which carries a television signal.
- i. "Character generator" means a device used to generate alpha numerical programming to be cablecast on a cable channel.
- j. "City" means the City of Woodinville, a municipal corporation of the State of Washington.
- k. "Council" means the City of Woodinville Council acting in its official capacity.
- l. "Data Transmission" means (1) the movement of encoded information by means of electrical or electronic transmission systems; and (2) the transmission of data from one point to another over communications channels.
- m. "Dwelling units" means residential living facilities as distinguished from temporary lodging facilities such as hotel and motel rooms and dormitories, and includes single family residential units and individual apartments, condominium units, mobile homes within mobile home parks, and other multiple family residential units.
- n. "Emergency" means a condition of imminent danger to the health, safety and welfare of property or persons located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots or wars.
- o. "FCC" means the Federal Communications Commission, a regulatory agency of the United States government.
- p. "Fiber Optics" means the technology of guiding and projecting light for use as a communications medium.
- q. "Franchise" means the initial authorization, or renewal thereof, issued by the City which grants the non-exclusive right and authority for the construction and operation of a Cable Television System for the purpose of offering Cable Service or other service to Subscribers.
- r. "Franchisee" means the person, firm or corporation to whom or which a Franchise is granted by the Council under this Chapter and the lawful successor,

transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in City ordinance.

s. "Gross Revenues" means any and all receipts and revenues received directly or indirectly, from all sources, derived from the operation of the Cable Television System to provide Cable Services by a Franchisee, including franchise fees, and such revenues as obtained from local and national advertising, home shopping channels, and similar sources, but excluding bad debt, transactions related to real property receipts by a Franchisee and any taxes on services furnished by a Franchisee, imposed on any Subscriber or used by any governmental unit, agency or instrumentality and collected by a Franchisee for such entity.

t. "Headend" means the electronic equipment located at the start of a Cable Television System, usually including antennas, preamplifiers, frequency converters, demodulators and related equipment.

u. "Installation" means the connection of the Cable Television System from feeder cable to Subscribers' terminals.

v. "Institutional networks (I-Nets)" means a Cable Television System designated principally for the provision of non-entertainment services to schools, public agencies or other non-profit agencies, separate and distinct from the Cable Television System, or on secured channels of the Cable Television System.

w. "Interactive services" means services provided to Subscribers where the Subscriber either (i) both receives information consisting of either television or other signals and transmits signals generated by the Subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the Subscriber or for any other purpose; or (ii) transmits signals to any other location for any purpose.

x. "Office" means the person or entity designated by the City as being responsible for the administration of a Franchise for the City.

y. "Property of Franchisee" means all property owned, installed or used by a Franchisee in the conduct of its business in the City under the authority of a Franchise granted pursuant to this Chapter.

z. "Proposal" means the response, by an individual or organization, to a request by the City regarding the provision of Cable Services; or an unsolicited

plan submitted by an individual or organization seeking to provide Cable Services in the City.

aa. "Public Right-of-Way" or "Street" means the land owned, dedicated or conveyed to the City or a unit of government, including, but not limited to any public alley, boulevard, lane, way, place, drive, easement, right-of-way or sidewalk, or any portion thereof, under the jurisdiction of the City.

bb. "Subscriber" means a person or entity or user of the Cable Television System who lawfully receives Cable Services or other service therefrom with Franchisee's express permission.

5.50.020 Terms of franchise.

A. It shall be unlawful to engage in or commence construction, operation, or maintenance of a Cable Television System without a Franchise issued under this Chapter. The Council may, by ordinance, award non-exclusive Franchises to construct, operate and maintain Cable Television Systems which comply with the terms and conditions of this Chapter.

B. Any Franchise granted pursuant to this Chapter shall be non-exclusive and shall not preclude the City from granting other or further Franchises or permits or preclude the City from using any Public Rights-of-Way, Streets, or other public properties for any lawful purpose or affect its jurisdiction over them or any part of them, or limit the full power of the City to make such changes, as the City shall deem necessary, including the dedication, establishment, maintenance, and improvement of all new Public Rights-of-Way and other public properties.

C. The provisions of this Chapter shall be incorporated by reference in any Franchise approved hereunder. The provisions of any Proposal submitted and accepted by the City shall be incorporated by reference in the applicable Franchise. In the event of any conflict between the Proposal, this Chapter and the Franchise, the Franchise shall be the prevailing document.

D. Any Franchise granted hereunder by the City shall authorize a Franchisee, subject to the provisions herein contained:

1. To engage in the business of operating and providing Cable Service and the distribution and sale of such service to Subscribers within the City;

2. To erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any Street, such amplifiers and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be reasonably necessary and appurtenant to the Cable Television System; and provide similar Cable Facilities, or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other Franchisee Franchised or permitted to do business in the City. No privilege or exemption shall be granted or conferred upon a Franchisee by any Franchise except those specifically prescribed therein, and any use of any Street shall be consistent with any prior lawful occupancy of the Street or any subsequent improvement or installation therein.

E. The duration of a Franchise granted pursuant to this Chapter shall be for a period of time appropriate to the circumstances of the particular grant.

5.50.030 Application.

An Applicant for an initial Franchise to construct, operate, and maintain a Cable Television System within the City shall file an application in a form prescribed by the City, accompanied by a non-refundable filing fee as deemed appropriate by the City.

5.50.040 Franchise issuance.

Prior to the granting of a Franchise, the City Council shall conduct a public hearing to determine the following:

a. That the public will be benefited by the granting of a Franchise to the Applicant;

b. That the Applicant has the requisite financial and technical resources and capabilities to build, operate and maintain a Cable Television System in the area;

c. That the Applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the City;

d. That the Applicant will comply with all terms and conditions placed upon a Franchisee by this Chapter;

e. That the Applicant is capable of complying with all relevant federal, state, and local regulations, codes and standards pertaining to the construction, operation and maintenance of the Cable Facilities and systems incorporated in its application for a Franchise;

f. That the Public Rights-of-Way have the capacity to accommodate the Cable Television System;

g. That the proposed Franchise is consistent with the City's present and future use of the Public Rights-of-Way to be used by the Cable Television System;

h. That the benefit to the public from the Cable Television System outweighs the potential disruption to existing users of the Public Rights-of-Way to be used by the Cable Television System, and the resultant inconvenience which may occur to the public; and

i. That all other conditions resulting from the grant of the Franchise have been considered by the City and that the City determines that the grant is still in the public's best interest.

5.50.050 Franchise renewal.

A. The City may, on its own initiative, during the six month period which begins with the thirty-sixth month before the Franchise expiration, commence a proceeding which affords the public in the Franchise Area appropriate notice and participation for the purpose of identifying the future cable-related community needs and interests and reviewing the performance of the Franchisee under the Franchise during the current Franchise term. If the Franchisee submits, during said six month period, a written renewal notice requesting the commencement of such a proceeding, the City shall commence such a proceeding not later than six months after the date such notice is submitted.

B. Upon completion of a proceeding under Subsection A, a Franchisee seeking renewal may, on its own initiative, or at the request of the City, submit a Proposal for renewal.

C. Upon submittal by a Franchisee of a Proposal for the renewal of a Franchise, the City shall provide prompt public notice of such Proposal comprised of the publication of a notice of application in the official newspaper of the City for two consecutive weeks and by posting a notice of application at City Hall. Within four months of the date of the submission of an Application found to be

acceptable for filing, the City shall renew the Franchise or issue a preliminary assessment that the Franchise should not be renewed.

D. Notwithstanding Subsections A through C, a Franchisee may submit an Application for renewal of a Franchise at any time, and the formal procedures set forth in Subsections A through C shall not apply to the review of said Application.

E. In the course of considering an Application for a renewed Franchise, the City Council shall hold a public hearing in which the public and the Franchisee seeking renewal shall be offered an opportunity to speak, offer evidence and question witnesses as limited by such reasonable rules of procedure as may be adopted by the City. A transcript or recording shall be made of such hearing. Based on the record of such hearing and the Application (including any negotiations relative thereto), the City Council shall determine whether to grant a renewed Franchise and shall issue a written opinion stating the reasons for its decision applying the following standards:

1. Whether the Franchisee has substantially complied with the material terms of the existing Franchise and with applicable law;

2. Whether the quality of the Franchisee's service, including signal quality, response to consumer complaints, and billing practices (but without regard to the mix, quality, or level of Cable Services or other services provided over the Cable Television System) has been reasonable in light of community needs;

3. Whether the Franchisee has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the Franchisee's Proposal; and

4. Whether the operator's Proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

5.50.060 Acceptance.

A. No Franchise granted pursuant to the provisions of this Chapter shall become effective unless and until it has been accepted by the Franchisee.

B. In its acceptance, the Franchisee shall declare that it has carefully read the terms and conditions of this Chapter and the Franchise and

unconditionally accepts all of the terms and conditions of this Chapter and the Franchise and agrees to abide by same. In accepting a Franchise, a Franchisee shall indicate that it has relied upon its own investigation of all relevant facts, that it was not induced to accept the Franchise, and that it accepts all reasonable risks related to the interpretation of the Franchise.

C. Within sixty days after the effective date of the Ordinance granting a Franchise, or within such extended period of time as the Council in its discretion may authorize, a Franchisee shall file with the City Clerk its written acceptance of the Franchise and all of its terms and conditions, in a form satisfactory to the City Attorney, together with any bond required by WMC Section 5.50.320, evidence of insurance required by WMC Section 5.50.310, and any other security required by this Chapter of a Franchise. If a Franchisee fails to file a timely acceptance, the Franchise shall be null and void.

5.50.070 Police powers.

By accepting a Franchise, a Franchisee acknowledges that its rights thereunder are subject to the legitimate exercise of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the City pursuant to such power. The City Council expressly reserves unto itself all its police powers to adopt ordinances necessary to protect the health, safety and welfare of the general public in relation to the rights granted under this Franchise.

The City reserves the right to use, occupy and enjoy any Public Rights-of-Way or other public places for any lawful purpose, including without limitation, the construction of any water, sewer or storm drainage system, installation of traffic signals, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, pedestrian amenities, City services, and other public street improvement projects.

5.50.080 Rules and regulations by the city.

In addition to the inherent powers of the City to regulate and control any Franchise it issues, the authority granted to it by the Act, and those powers expressly reserved by the City, or agreed to and provided for in a Franchise, the right and power is hereby reserved by the City to promulgate such additional regulations of general applicability as it may find necessary in the exercise of its lawful police powers. The City Council reserves the right to delegate its authority for Franchise administration to a designated agent.

5.50.090 Construction standards.

A. All Cable Facilities constructed under this Chapter shall be placed and maintained at such places and positions in or upon such Public Rights-of-Way and public places as shall not interfere with the passage of traffic and the use of adjoining property, and shall conform to the applicable section of the National Electrical Code, codes of the State of Washington, and City rules, regulations, ordinances, codes, standards and policies pertaining to such construction.

B. At least seven days prior to any intended construction, a Franchisee shall inform all residents in the affected area that a construction project will commence, the dates and nature of the project, and provide a toll-free telephone number which the Subscriber may call for further information. A pre-printed door hanger may be used for this purpose.

C. The City reserves the right, as the interest of the public may require, to ensure that (1) the Public Rights-of-Way have the capacity to accommodate the Cable Television System, (2) the proposed construction is consistent with the City's present and future use of the Public Rights-of-Way, (3) the benefit to the public from the construction of the Cable Television System outweighs the potential disruption to existing users of the Public Rights of Way and the resultant inconvenience which may occur to the public, and may require the installation or construction of new Cable Facilities proposed by the Franchisee to be constructed in arterial thoroughfares or to be installed in alternate Public Rights-of-Way which are substantially comparable in terms of the expense to Franchisee for installation or construction, and which provide distribution to all affected parcels of property that is equal or better to the requested installation route. The City shall give particular preference to the alternate installation location in cases in which the existing improvements to the Public Right-of-Way would be affected by the proposed installation, or where the structural integrity of the surface of the Right-of-Way, or inconvenience to the public caused by the proposed installation cannot be mitigated through alternative means.

D. At least twenty-four hours prior to entering private property or easements adjacent to or on such private property to perform new plant construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted upon the affected property. A Franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices.

E. The notice requirements of Subsection A shall not apply for purposes of entry upon private property to perform repairs at the Subscriber's request or in the event of system outage repairs or other emergencies in which insufficient time is available to provide notice to Subscribers.

F. After performance of work, a Franchisee shall restore private property as nearly as possible to its condition prior to construction. Any disturbance of landscaping, fencing, or other improvements on private property shall, at the sole expense of a Franchisee, be promptly repaired and restored (including replacement of such items as shrubbery and fencing) to the reasonable satisfaction of the property owner.

G. In connection with the original installations of Cable Facilities, the Franchisee shall locate the Cable Facilities in a manner which is compatible with the existing location of other utilities and within the Right-of-Way and in compliance with all applicable federal, state, and local laws. In all cases where practicable, the Cable Facilities shall be laid in those sections of the streets so as not to unnecessarily or unreasonably tear up the streets except where necessary and required to cross streets as determined by the Franchisee and approved by the City, and shall be laid as to make cable available to all of the City customers along the affected street.

H. The Franchisee shall at all times keep full and complete plans, plat or plats, specifications, profiles and records showing the location, and size of all the Cable Facilities constructed in the City. These records shall be subject to inspection at all reasonable times by the proper officials and agents of the City, and a copy of these plans, plat or plats, specifications, profiles, and records shall be furnished to the City within ten days of request.

I. The Franchisee will locate underground Cable Facilities within forty-eight hours upon request by the City by marking the location on the ground. The location of the underground Cable Facilities shall be identified by using orange spray paint. The marked location shall be within two feet of the actual location.

5.50.100 Undergrounding and landscaping.

In those areas and portions of the City where the transmission or distribution facilities of the public utility providing telephone or electric service are underground or hereafter may be placed underground, then a Franchisee shall likewise construct, operate and maintain all of its transmission and distribution Cable Facilities in the same area underground upon City approval. Such

undergrounding activities shall be made concurrently and in cooperation with the other affected utilities. Amplifiers and associated equipment in a Franchisee's transmission and distribution lines may be in appropriate housing upon the surface of the ground, accompanied by landscaping and screening approved by the City. Provided, however, that City approval of landscaping and screening shall not be unreasonably delayed, withheld or denied.

5.50.110 Construction in right-of-way.

A. A Franchisee shall submit an application for, pay the permit fee, and obtain a permit to perform work in any Public Rights-of-Way pursuant to WMC Chapter 15.42 as now existing or hereafter amended. No work, other than emergency repairs or standard installations, shall commence without such a permit. Emergency repairs may be made immediately with notification given to the City no later than the next business day.

B. In accordance with the permit issued, all transmission lines, equipment, and structures shall be located and installed so as to cause minimum interference with the rights and reasonable convenience of property owners, and at all times shall be maintained in a safe condition, and in good order and repair. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of the public. Any poles or other fixtures placed in any Street by a Franchisee shall be placed in such manner as not to interfere with the usual travel on such public way.

C. When installing, locating, laying, or maintaining Cable Facilities, apparatus, or improvements, a Franchisee shall not interfere with the use of any Street to any greater extent than is necessary, and shall leave the surface of any such Street in as good condition as it was prior to performance by Franchisee of such work. Any facility, apparatus, or improvement under this Chapter shall be laid, installed, located, or maintained in conformance with City rules, regulations, ordinances, standards and policies. In any event, a Franchisee shall, at its own expense, and to the satisfaction of the City in accordance with the terms of the Right-of-Way permit, restore to City standards and specifications any damage or disturbance caused to Streets as a result of Franchisee's construction or operations.

D. Upon receipt of sixty days prior written notice, a Franchisee, at its own expense, and within the time period prescribed by the City, shall protect, support, temporarily disconnect, relocate, or remove any of its Cable Facilities or property within the Public Rights-of-Way when, in the judgment of the City, the same is required by reason of traffic conditions, public safety, improvements by

governmental agencies, and/or any other City use of the Franchise Area. Nothing herein shall be deemed a taking of the property of a Franchisee, and Franchisee shall be entitled to no surcharge by reason of this Section.

E. After receipt of thirty days prior written notice, and upon the failure of a Franchisee to commence, pursue, or complete any work required by the provisions of this Chapter or failure to comply with any applicable federal, state or City laws, ordinances, rules, regulations or standards to be performed on any Street, within the reasonable time prescribed and to the satisfaction of the City, the City may, at its option, cause such work to be done, and a Franchisee shall pay to the City the reasonable cost thereof, which costs may include the City's reasonable overhead and administrative expense, within thirty days after receipt of demand.

5.50.120 Safety requirements.

A. A Franchisee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ reasonable care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public. All structures and all lines, equipment and connections in, on, over, under, across and upon Public Rights-of-Way or places of a Franchise Area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

B. The City reserves the right to see that the Cable Television System of a Franchisee is constructed and maintained in a safe condition.

5.50.130 Building moving.

Whenever any person shall have obtained permission from the City to use any Street for the purpose of moving any building, a Franchisee, upon seven days written notice from the City, shall raise or remove, at the expense of the permittee desiring to move the building, any of a Franchisee's wires which may obstruct the removal of such building; provided that the moving of such building shall be done in accordance with all City codes, regulations and general ordinances of the City. A Franchisee shall be indemnified and held harmless by the permittee from any and all damages or claims whatsoever kind or nature, caused directly or indirectly from this action, except to the extent such damages or claims are the result of Franchisee's negligent action. A Franchisee may also require payment in advance from the permittee.

5.50.140 Tree trimming.

Upon approval of the City, and in accordance with all City ordinances, policies and standards, a Franchisee may, at its sole expense, trim trees upon and overhanging Streets and Public Rights-of-Way within the Franchise Area so as to prevent the branches of such trees from coming in contact with the wires and cables of a Franchisee. A Franchisee shall be responsible for debris removal from such activities. Unless otherwise provided in the City's approval, all tree trimming shall be under the direction of an arborist certified by the International Society of Arboriculture. Provided, however, that the requirements of this Section shall not apply to the removal or trimming of specific trees during a bona fide emergency when said trees threaten to damage, or have damaged, a Franchisee's System.

5.50.150 Rates.

A. Within thirty days after the grant of an initial Franchise hereunder, a Franchisee shall file with the City a complete schedule of all present rates charged to all Subscribers.

B. Prior to implementation of any change in rates or charges for any service or equipment provided by a Franchisee, a Franchisee shall provide the City and all Subscribers a minimum of thirty days prior written notice of such change.

C. The City reserves the right to regulate the rates or charges for providing Basic Cable Service and equipment and may establish rate regulation review procedures pursuant to the Act and FCC regulations promulgated thereunder.

5.50.160 Cable availability.

Cable Service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the local area in which such group resides.

5.50.170 Franchise fee.

A Franchisee shall pay to the City quarterly, on or before the forty-fifth day after the end of each quarter (March, June, September, December), a percentage of Gross Revenues as defined herein for the preceding three months. Such remittances shall be accompanied by forms approved by City, which identify specific information as to the sources of various applicable income streams.

5.50.180 External franchising costs.

The Franchisee may pass through to its subscribers such external costs as are allowed under the Act and regulations promulgated thereunder. However, the Franchisee shall not proceed with any Franchise-required activity where the cost of such may be passed through to Subscribers externally unless it has first provided written notice to the City. Such notice shall include an analysis (description of service and calculation methodology per subscriber) of the financial impact of the activity to Subscribers. The City, upon receiving such notice, shall consider waiving the Franchise requirement, and, if so waived, the Franchise shall be deemed amended. If the City has not waived the requirement, or otherwise responded to the notice within sixty days, the Franchisee shall

proceed with the required activity and shall pass through the external costs in accordance with federal law.

5.50.190 Cable television system evaluation.

In addition to periodic meetings, the City may require reasonable evaluation sessions on an annual basis during the term of a Franchise. However, additional evaluations may be held if the City and the Franchisee agree that such evaluations are warranted. Such evaluations shall cover areas such as customer service, a Franchisee's performance under, and compliance with the terms of a Franchise, and such other matters as may be reasonably designated by the City.

5.50.200 Audit by city.

The City may, upon seven days advance notice, inspect the books and records of the Franchisee during normal business hours, for the purpose of ascertaining the actual Gross Revenues collected by a Franchisee for the previous year. In the event that such audit discloses a discrepancy of more than ten percent between the financial report submitted by the Franchisee with a quarterly payment and the actual quarterly Gross Revenues collected by the Franchisee, the Franchisee agrees to pay to the City the costs of such audit. In the event that such audit results in a determination that additional franchise fees are due the City, interest shall be charged at the maximum legal rate or twelve percent, whichever is greater, from the date on which such additional franchise fees were due and payable. The City agrees to close the audit within six months.

5.50.210 Public, educational and government access.

A. The City may require the provision of Public, Educational and Government ("PEG") Access as a condition of a Franchise granted pursuant to this Chapter. In the event that the City requires the provision of Public Access as a condition of a Franchise, the Franchisee shall notify all Subscribers, on an on-going basis, of the option to have the Public Access channel removed from their channel line-up upon request. The City Manager's office shall review and approve the content of all such notices.

B. In the event that additional Franchises are granted by the City, subsequent Franchisees shall provide all PEG access channels currently available to the Subscribers of existing Franchisees. In order to provide these Access Channels, subsequent Franchisees shall interconnect, at their cost, with existing Franchisees, subject to any reasonable terms and conditions that the existing

Franchisee providing the interconnection may require. These interconnection agreements shall be made directly between the Franchisees.

C. In the event of a dispute between two or more Franchisees regarding the interconnection of PEG channels, the City Council may be called upon to arbitrate regarding these arrangements. To the extent permitted by applicable law, the decision of the City Council in such cases shall be final and binding upon all parties.

5.50.215 Channel blockage - Availability - Notice to subscribers. In addition to the notice Subscriber notification requirements set forth in WMC Section 5.50.210(A), each Franchisee shall notify all Subscribers, on an on-going basis, of the option to have any channel removed from their channel line-up upon request. The City Manager's office shall review and approve the content of all such notices. In the event that a Franchisee receives a request to remove a channel from a Subscriber's channel line-up, the Franchisee shall block the channel from the Subscriber's channel line-up within a reasonable period of time, not to exceed thirty (30) days.

5.50.220 Institutional networks (I-Nets).

A. If required in its Franchise, a Franchisee's Cable Television System shall have the capability of serving designated educational and public buildings with uni- or bi-directional video/audio signals (the "I-Net"). The I-Net system shall be for the purpose of private communications and the signals so provided shall not be transmitted via the Subscriber network system. The linkage may be by cable, microwave or other means deemed appropriate by a Franchisee; provided that the communication system, if connected by microwave, shall be furnished suitable encoding and decoding devices.

B. An entity desiring the activation of such a system shall make application thereof to the City. At a public hearing to evaluate such a request both the requester and the Franchisee shall be provided the opportunity to present the public benefits as well as the costs of such implementation. Upon a finding by the City Council that these features are reasonably required to meet community needs, taking into account the cost of meeting such needs, the City Council may require the implementation of such services in a reasonable time.

C. As an alternative, in order to enable designated public buildings and schools the opportunity to communicate with each other as well as outside of the community, if required in its Franchise, a Franchisee shall furnish access to the Internet via appropriate wired connection and modems. One such outlet will

be provided without charge for installation nor equipment and unlimited hours to each facility designated by the City. Additional outlets shall be made available on a time and material basis.

5.50.230 Access and institutional network equipment.

A Franchisee may be required to contribute either goods and services and/or monies for the purpose of providing facilities and equipment in order to broadcast PEG access programming as well as provide communications via the Institutional Networks.

5.50.240 Non-discrimination.

A. In connection with rates, charges, Cable Facilities, rules, regulations and in all Franchisee's services, programs or activities, and all Franchisee's hiring and employment made possible by or resulting from this Franchise, there shall be no discrimination by Franchisee or by Franchisee's employees, agents, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, creed, national origin, marital status or the presence of any disability, including sensory, mental or physical handicaps, unless based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Franchisee shall not violate any applicable federal, state or local law or regulation regarding non-discrimination.

B. Any material violation of this Section shall be grounds for termination of any Franchise granted pursuant to this Chapter and may result in the Franchisee becoming ineligible for entering into further Franchises, agreements, and/or contracts with the City. Provided, however, that nothing in this Chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any Subscriber coming within such classification would be entitled, and provided further that connection and/or service charges may be waived or modified during promotional campaigns of a Franchisee.

5.50.250 Continuity of service.

A. It shall be the right of all Subscribers to continue receiving Cable Service so long as their financial and other obligations to a Franchisee are fulfilled. In this regard, a Franchisee shall act so far as it is reasonably within its

control to ensure that all Subscribers receive continuous uninterrupted service during the term of the Franchise.

B. In the event a Franchisee fails to operate a Cable Television System for seventy-two continuous and consecutive hours without prior notification to and approval of the City Council or without just cause such as an impossibility to operate the Cable Television System because of the occurrence of an Emergency or other circumstances reasonably beyond a Franchisee's control, the City may, after notice and an opportunity for a Franchisee to commence operations at its option, operate the Cable Television System or designate a third party to operate the Cable Television System until such time as a Franchisee restores Cable Service to conditions acceptable to the City or a replacement Franchisee is selected. If the City elects to operate the Cable Television System or designate a third party to do so, a Franchisee shall reimburse the City for all reasonable costs or damages in excess of revenues from the Cable Television System received by the City that are the result of a Franchisee's failure to perform.

5.50.260 Transfer of ownership.

A. A Franchise issued pursuant to this Chapter shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, or otherwise hypothecated in any manner, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any person or entity, or the controlling interest in any corporation holding a Franchise hereunder be changed, without the prior consent of the City Council, and then only under such conditions as may be required by the City Council. Such a transfer of control is not limited to major interest holders but includes actual working or de facto control by minor interest holders in whatever manner exercised. Every change, transfer or acquisition of control of the Franchisee shall make the Franchise subject to cancellation unless and until the City shall have consented. Such consent shall not be unreasonably withheld.

B. The Franchisee shall promptly notify the City of any proposed change in control of the Franchisee. A formal application for approval of a proposed transfer of control shall be filed within thirty days of such notification and the City Council shall render its formal decision within one hundred and twenty days of receipt of said application by the City, unless the Franchisee and the applicant shall agree in writing to an extension of said period. The application shall include, among other things, a copy of any and all documents relating to the sale or transfer and any filings by any party to the transaction at any state or federal agency including, but not limited to, the FCC, the Department of Justice,

the Federal Trade Commission, and the Securities and Exchange Commission. An original and three copies of the text of the application shall be filed and additional copies as the City may request.

C. The proposed purchaser, transferee, or assignee must show financial responsibility as determined by the City and must agree to comply with all provisions of the Franchise and this Chapter, including any provisions which the City may amend or add prior to approval of the transfer.

D. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City may inquire into all qualifications of the prospective controlling party, and the Franchisee shall assist the City in any such inquiry. The City may require any reasonable conditions which it deems necessary at the time of review to ensure that the Cable Television System will satisfy the public interest of the City and its citizens for the balance of the term of the Franchise.

E. WMC Section 5.50.040 shall apply to any transfer as if the transferee were an Applicant for a new Franchise.

F. Subsection A notwithstanding, this Section shall not be deemed to require City approval of:

1. Transfers from a Franchisee to another person or entity controlling, controlled by, or under common control with a Franchisee; or
2. Transfers required for mortgaging or similar financing purposes associated with the construction or operation of a Cable Television System which involve pledging the System as collateral.

5.50.270 Removal and abandonment of property of franchisee.

A. The City may direct a Franchisee to temporarily disconnect or bypass any equipment of a Franchisee in order to complete Street construction or modification or install and remove underground utilities. Such removal, relocation or other requirement shall be at the sole expense of a Franchisee.

B. In the event that the use of any part of the Cable Television System is discontinued for any reason for a continuous period of twelve months, or in the event such system or property has been installed in any Street or public place without complying with the requirements of the Franchise or other City ordinances or the Franchise has been terminated, canceled or has expired, a



Franchisee shall promptly, upon being given ten days written notice, remove, at its expense, within one hundred and eighty days from the Streets or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. Following such removal, a Franchisee shall promptly restore the Street or other areas from which such property has been removed to a condition satisfactory to the City.

C. Any property of a Franchisee remaining in place one hundred and eighty days after the termination or expiration of the Franchise shall be considered permanently abandoned. The City may extend such time not to exceed an additional ninety days; provided, however, that a Franchisee may not abandon any of its property within Public Rights-of-Way, Streets, or other places without the prior written consent of the City.

D. Upon permanent abandonment of the property of a Franchisee in place, the property shall become that of the City, and a Franchisee shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property.

5.50.280 Revocation for cause - Lesser sanctions.



A. Any Franchise granted by the City may be terminated during the period of such Franchise for failure by a Franchisee to comply with material provisions of this Chapter and/or the Franchise. In addition to termination, the City may impose lesser sanctions, including, but not limited to, monetary penalties, for violation of this Chapter and/or a Franchise.

B. Unless a Franchisee requests termination of its Franchise, the following procedures shall be followed by the City:

1. The City shall provide Franchisee with a detailed written notice, by certified mail, detailing the violation, the steps necessary to cure such violation, and time period within which the violation must be cured. Within thirty days thereafter, the Franchisee shall respond demonstrating that no violation occurred, that any problem has been corrected, or with a proposal to correct the problem within a specified period of time.

2. The Franchisee may request an extension of time to cure an alleged violation if construction is suspended or delayed by the City, or where unusual weather, natural consequences (e.g. earthquakes, floods, etc.), extraordinary acts of third parties, or other circumstances which are reasonably beyond the control of the Franchisee delay progress, provided that the Franchisee



has not, through its own actions or inactions, contributed to the delay. The amount of additional time allowed will be determined by the City. The extension of time in any case shall not be greater than the extent of the actual non-contributory delay experienced by the Franchisee.

3. If said response is not satisfactory to City, the City may declare a Franchisee to be in default, with written notice, by certified mail, to the Franchisee. Within ten business days after notice to the Franchisee, the Franchisee may deliver to the City a request for a hearing before the City Council. If no such request is received, the City may declare the Franchise terminated for cause or impose lesser sanctions.



4. If the Franchisee files a timely written request for a hearing, such hearing shall be held within thirty days after the City's receipt of the request therefor. Such hearing shall be open to the public and the Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged non-compliance. Within ten days after the hearing, the City Council, on the basis of the record, will make the determination as to whether there is cause for termination, whether the Franchise will be terminated, or whether lesser sanctions should be imposed. The City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the City Council does not grant any additional period, the City Council may by resolution declare the Franchise to be terminated and forfeited or impose lesser sanctions.

5. If a Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided a Franchisee is otherwise in compliance with the Franchise.

6. Nothing contained in this Section shall prevent the issuance of a new Franchise containing terms substantially the same or identical to a Franchise which previously was revoked, upon satisfactory assurances made to the City that the terms and conditions of this Chapter can be met by the new Franchisee.

C. In the event that the City elects to impose monetary penalties upon a Franchisee for failure to comply with the material provisions of this Chapter and/or a Franchise, said penalties shall be assessed at five hundred (\$500.00) per day, per violation, for each day beyond thirty (30) days that the Franchisee has been in violation.

D. Monetary penalties may be assessed retroactive to the date that notification was provided to the Franchisee in such cases where the Franchisee has been non-responsive in correcting the violation or in the case of flagrant violations. If payment of any penalty is delinquent by three (3) months or more, the City may: (1) require partial or total forfeiture of the performance bond or other surety posted by the Franchisee; (2) terminate the Franchise; and/or (3) commence a civil action in a court of competent jurisdiction to collect said penalty.

5.50.290 Effect of termination for non-compliance.

Subject to state and federal law, if any Franchise is terminated by the City by reason of a Franchisee's non-compliance, that part of the Cable Television System under such Franchise located in the Streets and Public Rights-of-Way, shall, at the election of the City, become the property of the City at a cost consistent with the provisions of the Act. If the City, or a third party, does not purchase the system, a Franchisee shall, upon order of the City Council, remove the Cable Television System as required under WMC Section 5.50.270.

5.50.300 Indemnity and hold harmless.

No Franchise shall be granted pursuant to this Chapter unless it contains language requiring the Franchisee to indemnify, defend, and hold harmless the City from any and all liabilities, fees, costs and damages, except gross negligence and/or willful misconduct of the City, caused by reason of the construction, operation, maintenance, repair and alteration of a Franchisee's facilities or any other actions of a Franchisee in the City of Woodinville. The indemnification language required by this Section shall specifically provide that a Franchisee will indemnify, defend, and hold harmless the City from claims against the City: (1) by the Franchisee's employees; (2) based upon the City's ownership or control of the public rights-of-way; and, (3) based upon the City's inspection or lack of inspection of the Franchisee's facilities. In addition, each Franchise granted pursuant to this Chapter shall contain language requiring the Franchisee to assume the risk of damage to its facilities by City activities, except in the case of gross negligence or willful or malicious action on the part of the City.

5.50.310 Insurance.

Upon acceptance of a Franchise granted pursuant to this Chapter, and prior to commencement of any work, construction, maintenance, or operations within the City, a Franchisee shall furnish the City with a certified copy or original of a comprehensive liability insurance policy naming the City as an additional insured.

The amount of such policy shall be as deemed appropriate by the City. This insurance shall be maintained in full force at the Franchisee's expense throughout the entire period of the Franchise. The City may delineate more specific details concerning such insurance prior to the award of any given Franchise.

5.50.320 Performance bond.

A. Prior to exercising any of the rights granted under a Franchise or undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by a Franchise, the Franchisee shall furnish a performance bond reasonably acceptable to the City in an aggregate amount sufficient to assure the Franchisee's performance of all covenants, terms, conditions and obligations under the Franchise. The performance bond shall be issued by a corporate surety authorized to do surety business in the State of Washington. The performance bond shall be maintained during the term of the Franchise (including any extension thereof) and for a one-year period thereafter. The amount of the performance bond shall be established based upon the legal, financial, and technical qualifications of the Franchisee; provided, however, that the City may from time to time review the amount of surety and determine an appropriate level based upon the Franchisee's performance of the covenants, terms, conditions and obligations under the Franchise. In the event that the City elects to raise the amount of surety required, written notice shall be provided to the Franchisee setting forth the reasons for doing so.

B. The performance 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 60 days after receipt by the City, by registered mail, of a written notice of such intent to cancel or not to renew."

C. The performance bond required by this Section shall be in addition to any other bonds which may be required by specific provisions of the Woodinville Municipal Code, including, but not limited to construction bonds for work or construction activities within Public Rights-of-Way. Provided, however, that a Franchisee shall not be required to obtain said additional bonds if the performance bond required by this Section is sufficient in its scope and amount to satisfy the requirements of the specific provision of the Woodinville Municipal Code requiring said additional bond.

5.50.330 Letter of credit.

A. The City may at its discretion require in a Franchise that a Franchisee obtain a standby letter of credit. When and if the City should so require, the Franchisee shall deposit with the City a letter of credit from a financial institution chosen by the Franchisee and approved by the City in the amount set by the City, but not to exceed \$50,000. The letter of credit may not be revoked or terminated during the term of the Franchise plus an additional sixty days except with written approval of the City. 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 Franchisee of all provisions of the Franchise and this Chapter, compliance with all orders, permits, and directions of any agency, commission, board, department, division, or office of the City having jurisdiction over its acts or defaults under the Franchise, and the payment by the Franchisee of any costs, claims, liens, liquidated damages, and taxes due the City which arise by reason of the construction, operation, or maintenance of the system, or breach or termination of the Franchise.

B. The letter of credit shall be maintained by the Franchisee at \$50,000 or such lesser amount as the City shall determine during the entire term of the Franchise, as the City may require, even if funds are drawn against it pursuant to this Chapter.

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

"It is hereby understood and agreed that this letter of credit may not be canceled by the surety nor the intention not to renew be stated by the surety until 30 days after receipt by the City Clerk, by certified mail, of a written notice of such intention to cancel or not to renew."

D. At the City's option, it may draw against the letter of credit for any unpaid liquidated damages, Franchise fees or other amounts owing to it under the Franchise which are thirty days or more past due.

E. The rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether reserved by this Chapter or related documents or authorized by law, and no action, proceeding or exercise of a right with respect to such letter of credit shall affect any other right the City may have.

5.50.340 Recourse against bonds and other security.

A. The bonds and other security required by this Chapter may be utilized by the City for the following purposes: (1) reimbursement of the City by reason of a Franchisee's failure to pay the City any sums due under the terms of this Chapter or a Franchise; (2) reimbursement of the City for reasonable costs borne by the City to correct Franchise violations not corrected by a Franchisee after due notice; (3) monetary remedies or damages assessed against a Franchisee due to default or violations of a Franchise or this Chapter; and, (4) any other lawful purpose.

B. In the event a Franchisee has been declared to be in default by the City under WMC Section 5.50.280 and fails to pay the City any Franchise fee, penalties, or monetary sanctions, or fails to perform any of the conditions lawfully imposed by the City, the City may thereafter foreclose against the performance bond and/or withdraw from any other security an amount sufficient to compensate the City's damages, with interest at the maximum legal rate or twelve percent, whichever is greater. Upon such foreclosure or withdrawal, the City shall notify a Franchisee in writing, by certified mail, postage prepaid, of the amount and date thereof.

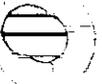
C. Within thirty days after mailing notice to a Franchisee that the City has foreclosed Franchisee's performance bond or that any amount has been withdrawn by the City from the other security pursuant to Subsection A, a Franchisee shall deposit such further bond or sum of money, or other security, as the City may require, sufficient to meet the requirements of this Chapter.

D. The rights reserved to the City with respect to any bond or security are in addition to all other rights of the City whether reserved by this Chapter or authorized by law, and no action, proceeding, or exercise of a right with respect to any bond or other security shall constitute an election or waiver of any rights or other remedies the City may have.

5.50.350 Franchising costs.

Upon acceptance of any initial Franchise or renewal granted hereunder, the Franchisee shall pay to the City the City's out-of-pocket costs associated with the franchising process. Costs shall include such items as the costs of publishing notices and ordinances, etc. Such payment is not to be considered in lieu of Franchise fee payments. Payment is due within thirty days of receipt of appropriate invoice from the City.

5.50.360 Equalization of civic contributions.



A. In the event of one or more Franchises being granted, the City may require that subsequent Franchisees pay to the City an amount proportionally equal to costs contributed by the original Franchisee. These costs may include but are not limited to such features as access and institutional network costs, bi-directional or equivalent cable installed to municipal buildings and similar expenses.

B. On the anniversary of the grant of each later awarded Franchise, such subsequent Franchisees shall pay to the City an amount proportional to the amount contributed by the original Franchisee, based upon the number of Subscribers held by such subsequent Franchisees. Such payments will be based upon incremental increases in Subscribers, if any.

5.50.370 Inconsistency.

If any portion of this Chapter should be inconsistent or conflict with any federal or state statute or regulation now or hereafter adopted, then to the extent of the inconsistency or conflict, the statute or regulation shall control for so long as such statute or regulation shall remain in effect; provided the remaining provisions of this Chapter shall not be effected thereby.

5.50.380 Independent contractors.

No Franchise granted pursuant to this Chapter shall be construed to create a relationship whereby the Franchisee is an agent or legal representative of the City for any purpose whatsoever. No Franchisee shall be granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever.

5.50.390 Ratification.

Any act consistent with this Chapter and prior to the effective date hereof is hereby ratified and affirmed.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum. This ordinance shall take effect five days after passage and publication of an approved summary thereof consisting of the title.

APPROVED BY THE CITY COUNCIL AT ITS REGULAR MEETING ON
Nov. 10, 1997.

APPROVED:

Robert R. Miller
MAYOR, ROBERT R. MILLER

ATTEST/AUTHENTICATED:

Sandra C. Steffler, CMC
SANDRA C. STEFFLER, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY: Wayne D. Tanaka
WAYNE D. TANAKA

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO. _____