

ORDINANCE NO. 191

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON, GRANTING A NON-EXCLUSIVE CABLE TELEVISION FRANCHISE TO VISTA TELEVISION CABLE, INC. D/B/A TCI OF WASHINGTON PURSUANT TO CHAPTER 5.50 OF 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 Vista Television Cable, Inc. d/b/a TCI of Washington ("TCI"), and

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

WHEREAS, TCI has requested that the City grant it a new franchise for the provision of cable television service within the City, and

WHEREAS, the City adopted an ordinance, codified as Chapter 5.50 of the Woodinville Municipal Code, setting forth comprehensive requirements for the provision of cable television service within the City in Ordinance No. _____, and

WHEREAS, the City has analyzed and considered the technical ability, financial condition, legal qualification, and general character of TCI, warrants that all other conditions resulting from the grant of this Franchise have been considered by the City, and has determined that it is in the best interest of the City and its residents to grant a cable Franchise to TCI, and

WHEREAS, the City Council has determined that the proposed franchise complies with the terms, conditions, and criteria for approval set forth in Chapter 5.50 of the Woodinville Municipal Code, and

WHEREAS, TCI and the City have agreed to be bound by the conditions hereinafter set forth, NOW, THEREFORE,

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

Section 1. Authority Granted. The City hereby grants to the Franchisee, subject to the terms and conditions hereinafter set forth, the non-exclusive right, privilege, and authority to construct, operate, maintain, replace, and use all necessary equipment and facilities thereto for the Cable Television System described in the Franchisee's Proposal. The Franchisee is authorized to place its cable television facilities in, under, on, across, over, through, along, or below the public ways of the City which are designated in the Franchisee's Proposal or as subsequently approved by the City, and to offer and provide Cable Television Service to persons located within the City.

Section 2. Length of Franchise.

A. Original Term. This Franchise shall have a term of five (5) years commencing on the date of acceptance and terminating at midnight on the fifth anniversary thereafter. Provided, however, that if the Franchisee has increased the Cable Television System's channel capacity to a minimum of seventy-five (75) channels using fiber optic technology, the Franchise shall be extended for an additional five (5) year period subject to the conditions set forth in Subsection B.

If the Franchisee has not completed a fiber optic upgrade, but has increased channel capacity to the specified minimum by other means, the City may elect to extend this Franchise, without consideration of the conditions set forth in Subsection B, for an additional three (3) to five (5)

years, upon assurance from the Franchisee that the fiber optic upgrade will be completed within this period.

B. Conditions of Extension Beyond Original Term.

1. Review of whether the provisions for Public, Educational and Government (PEG) channels set forth in Section 22 adequately meets the current community cable related needs and interests. Subsequent negotiations may result in an increase, decrease, or relocation of the access channels then available.

2. Review of the condition and status of the cablecasting equipment provided pursuant to Section 23 to reflect the current state of the technology and to designate what obsolete and inoperable equipment should be replaced. The cost, if any, of new equipment and the source of funding for same shall be subject to negotiation.

3. Review of the then current status of federal or state regulation and its impact upon the Franchise to determine if appropriate changes should be made to reflect conditions not addressed under this Franchise.

C. Renewal. The term of this Franchise may be renewed for successive terms pursuant to WMC Section 5.50.050 and 47 USC Section 546.

Section 4. Franchise Area. The Franchise Area shall be the entire incorporated area of the City, in its present incorporated form or in any later reorganized, consolidated, enlarged, or re-incorporated form. In the event of any incorporation or annexation of any town or city which incorporates any portion of the Franchise Area, those portions shall automatically be removed from the description of the Franchise Area upon the effective date of such incorporation or annexation.

Section 5. Franchise Fee.

A. The Franchisee shall pay to the City a quarterly franchise fee, on or before the forty-fifth (45th) day after the end of each quarter (March, June, September, December), equal to five percent (5%) or maximum allowable of Gross Revenues, for the preceding three calendar months, as said term is defined in WMC Section 5.50.010. Revenues that are derived as a portion of a national or regional service shall be computed on a per Subscriber basis if such determination cannot be achieved by other means.

B. The City may modify the franchise fee if so permitted by federal and state law. Prior to implementation of any modification in franchise fees the Franchisee may request a public hearing before the City Council to discuss said modification. Following such hearing the City Council may require the implementation of such modification in accordance with the provisions of this Ordinance.

C. Any quarterly franchise fee not paid by the Franchisee within forty-five (45) of the end of a quarter shall bear interest at the rate of twelve percent (12%) or the maximum legal rate, whichever is greater, from the due date until paid.

D. Each franchise fee payment shall be accompanied by a financial report on a form provided by the City compatible to the Franchisee's computer system showing the basis for the Franchisee's computation, including, revenues received by the Franchisee within the City from such items as Basic Service, expanded Basic Service, pay TV service, other applicable sources of revenue, and such other information directly related to confirming the amount of the Franchisee's Gross Revenues as may be reasonably required by the City.

E. Acceptance of any franchise fee payment by the City shall not be construed as an agreement by the City that the franchise fee paid is in fact the correct amount, nor shall acceptance of payment by the City be construed as a release or waiver of any claim the City may have for further or additional sums payable under the provisions of this Franchise.

F. Nothing in this Section shall limit the Franchisee's obligation to pay applicable local, state, or federal taxes.

Section 6. Technical Standards and System Design.

A. The Franchisee shall comply with all FCC rules establishing technical standards and testing requirements for Cable Television Systems, including, but not limited to 47 CFR Sections 76.601 through 76.610 (as set forth in Appendix B herein), as said rules now exist or are hereafter amended. In addition, the Franchisee shall comply with the following:

1. Applicable local, state and federal statutes, ordinances, rules, and regulations;
2. Applicable Utility Joint Attachment Practices;
3. The National Electric Safety Code; ANSI C2;
4. City Utility Code Requirements;
5. City right-of-way procedures;

B. The Cable System shall be equipped with back-up power supplies capable of providing power to the System for two hours in the event of an electrical outage.

C. When a device that will unscramble authorized signals for the entire household without the need for additional converter equipment is commercially available, the Franchisee shall offer every Subscriber of premium tier services the opportunity to lease the device.

D. The Franchisee must, at the request of a Subscriber, be able to block out all premium, pay-per-view or public access channels (both audio and video), at no additional charge to the Subscriber. The Franchisee shall notify customers of the option to block out such channels in its Subscriber Handbook, its Annual Notice to Subscribers, and in a message at least 4 times annually with all Subscriber bills.

E. All closed caption programming retransmitted by the System shall include the closed caption signal. The Franchisee shall provide a remote control device to those Subscribers who are mobility limited, or where a member of the Subscriber's household is mobility limited. For hearing impaired customers, the Franchisee shall provide information concerning the cost and availability of equipment to facilitate the reception of Basic Services for the hearing impaired.

F. The Franchisee must have TDD/TTY (or equivalent) equipment at the company office, and a local or toll-free telephone number listed on Subscriber bills, in local telephone directories and with directory assistance for such equipment, that will allow hearing impaired customers to contact the company.

Section 7. Testing Requirements.

A. All tests of the Cable Television System shall be conducted in accordance with federal rules and in accordance with the most recent edition of NCTA "Recommended Practices for Measurements on Cable Television Systems," or if no recent edition exists, such other appropriate manual as the parties may designate.

B. The Franchisee shall notify the City at least one week in advance of any of the tests described above, except the City shall receive thirty (30) days advance notice of proof of performance tests. The City shall have the option of witnessing all tests of the System. Written test results should be submitted to the City upon request.

C. To the extent permitted by applicable law, the City shall have the right to conduct tests and to observe when Franchisee conducts tests of the Cable Television System. The Franchisee may observe the tests conducted by the City to assure the City's actions do not damage the System. Provided, however, the Franchisee may not in any way obstruct the performance of the tests by the City. Tests and inspections may include determining whether the System is being constructed in accordance with the System construction plan. Inspection does not relieve the Franchisee of its obligation to comply with all provisions of this Franchise and applicable law.

Section 8. Technical Evaluation.

A. If deemed necessary, the City shall have the right to review the Cable Television System's performance. During such evaluations, the Franchisee shall fully cooperate with the City and provide without cost such reasonable information and documents as the City may require to determine the Franchisee's compliance with this Franchise.

B. In the event that the System experiences recurring performance problems, the City may retain an independent consultant to conduct an analysis of the System and its performance and submit a report of such analysis to the City. The City or its consultant shall provide thirty (30) days prior notice to the Franchisee of any testing of the System, in accordance with federal law.

C. Any report prepared by the consultant pursuant to this Section shall include:

1. A description of the technical problem in System performance which precipitated the special tests;
2. What System components were tested;
3. The equipment used and procedures employed in testing;
4. A detailed description of any technical deficiencies identified in the System;
5. A detailed description of the steps necessary to correct specific technical deficiencies identified in the special testing;
6. Any other information pertinent to said tests and analyses which may be required by the City.

D. If the tests indicate that the System is not in compliance with FCC standards or the requirements of this Franchise, WMC Chapter 5.50, or other applicable law, the Franchisee shall reimburse the City for any costs incurred in conducting such tests, including consultant fees and other expenses.

Section 9. System Upgrade. Within thirty (30) months of acceptance of this Franchise, and in accordance with Section 10, the Franchisee shall physically rebuild, upgrade or otherwise modify its Cable System to be capable of transmitting at least seventy-five (75) video programming choices to Subscribers plus an architecture which can support in excess of twenty (20) additional programming options. A rebuild, upgrade or modification of the Cable System shall be one means of satisfying this requirement. The Franchisee may utilize alternative technologies (including compression or servers) to deliver such programming choices and options. Provided, however, that the requirements of this Section shall not apply if the Franchise Area is subject to effective competition as defined by applicable federal law.

Section 10. Construction Information and Schedule. Construction information and a construction schedule shall be submitted to the City in accordance with the City's permitting process. The Franchisee shall commence construction of the first segment of the System within six (6) months of acceptance of this Franchise. Following construction and activation, and throughout the term of the Franchise, the System shall be able to deliver at least seventy-five (75) programming service choices without additional construction activity or the addition of any further electronic equipment.

Section 11. Books and Records. The Franchisee agrees that the City may, upon reasonable notice, review such of its books and records at the Franchisee's King County business office, during normal business hours and in a nondisruptive basis, as is reasonably necessary to verify compliance with the terms of this Franchise. Such records shall include, but shall not be limited to, any public records required to be kept by the Franchisee pursuant to FCC regulations. Notwithstanding anything to the contrary set forth herein, the Franchisee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. To the extent permitted by RCW Chapter 42.17, the City agrees to treat any information disclosed by the Franchisee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions of this Franchise. The Franchisee shall not be required to provide Subscriber information in violation of 47 USC Section 551.

Section 12. Reports. The Franchisee shall furnish, upon request, a report of its activities pursuant to this Franchise as deemed appropriate by the City. Such report shall include:

1. Most recent annual report.
2. A copy of the 10-K Report.
3. The number of homes for which cable is available.
4. The number of Subscribers with Basic Service.
5. The number of Subscribers with expanded Basic Service.
6. The number of Subscribers with premium services.
7. The number of Pay-per-View purchases.
8. The number of installations in the period.
9. The number of disconnects in the period.

10. Total number of miles of cable in the City.

11. A summary of all complaints received by category, length of time taken to resolve and action taken to provide resolution.

12. Copies of all FCC complaint logs.

13. A statement of its current billing practices, and a sample copy of the bill format.

14. A current copy of its Subscriber service contract.

15. A current copy of its cable rate card delivered to Subscribers.

16. Report on operations - Such other reports with respect to its local operation, affairs, transactions or property that may be appropriate and are permitted by law.

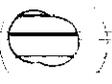
Section 13. Periodic Meetings. Upon request, but not more frequently than annually unless mutually agreed upon by the Franchisee and the City, the Franchisee shall meet with designated City officials and/or designated representatives to review its performance under this Franchise for the preceding period. The subjects may include, but are not limited to, those items covered in the periodic reports and performance tests.

Section 14. Customer Service. The Franchisee shall at all times be in compliance with applicable FCC Customer Service obligations, including 47 CFR Section 76.309 (Appendix C), as now existing or hereafter amended, which standards are incorporated into this Franchise by reference. The City reserves the right to enact or enforce any customer protection law containing more stringent standards, to the extent not specifically preempted by federal statutes or regulations.

Section 15. Telephone Response.

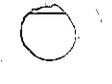
A. In order that the City may be informed of the Franchisee's success in achieving satisfactory customer relations in its telephone answering functions, the Franchisee shall, upon request by the City, and no less than quarterly, provide the City with a summary that provides, at a minimum, the following:

1. Number of calls received per day;
2. Time taken to answer;
3. Average talk time;
4. Number of calls abandoned by the caller;

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5. Average hold time;
 6. Percentage of time all lines busy;
 7. An explanation of any abnormalities, including the exclusion of calls due to emergencies.
 8. A comparison of the above-referenced data with the applicable FCC Customer Service Standards.

B. Calls for service generated during a period of Cable System outages due to an emergency affecting more than twenty-five (25) customers may be excluded from the service response calculations. The City shall retain the right to require additional information, beyond that provided in the Franchisee's quarterly report, on calls excluded from the service level calculations.

Section 16. Failure to Improve Customer Service.



A. The City or its designee shall review telephone response and customer service information with the Franchisee and identify any deficiencies disclosed in the reports provided by the Franchisee. All deficiencies identified in the quarterly reports shall be corrected by the Franchisee within ninety days of receipt of notice from the City. Failure to do so may result in enforcement action pursuant to WMC Section 5.50.280.

B. An unsatisfactory customer service record may also result in non-renewal of this Franchise pursuant to 47 USC Section 546(c)(1)(A) and (B).

Section 17. Refunds for Outages. After notification from a Subscriber of a service outage, Franchisee shall credit the Subscriber's account, on a *pro rata* basis, if the Subscriber was confirmed without service for a period exceeding twenty-four (24) hours. Provided, however, that Subscriber's must notify Franchisee of such outages within thirty (30) days. The Franchisee shall provide written notice to all Subscribers of the availability of refunds for service outages and the time limits for filing such claims.

Section 18. Termination of Subscriber Service. Upon termination of any Subscriber's Cable Service, the Franchisee shall promptly remove all of its facilities and equipment, except drop cable and internal wiring, from the premises of such Subscriber upon Subscriber's request. If the Subscriber is unable to return leased equipment to the Franchisee's facility, the Franchisee shall make arrangements to pick up such property at the Subscriber's residence. All Subscriber charges shall be canceled as of the date of notification to the Franchisee. Programming charges shall be charged on a *pro rata* basis upon termination unless otherwise provided in a Subscriber's service contract.

Section 19. Use Notification. If the Franchisee decides to use its Cable System, or lease capacity on its Cable System for telecommunications services requiring regulation by the Washington Utilities and Transportation Commission ("WUTC"), it shall provide the City with a copy of the application for state certification simultaneously with its filing at the WUTC.

Section 20. Future Provisions.

A. Because of the rapid pace of electronic communication development it is essential that the City be provided with such new features when they become technologically and economically feasible. While such potential services are too numerous to enumerate, they could include, but are not limited to, computer interaction, interactive video on demand, interactive shopping, Video Dial Tone service and similar services. Recognizing that these types of services are not generally available at the present time and that the expiration of the current Franchise term may not coincide with the advent of such services, the City may require that these features be made available to Subscribers within the City within twenty-four (24) months of one or more of the following:

1. Forty percent (40%) of other franchising authorities in King and Snohomish Counties have been furnished such services by the Franchisee.

2. Any adjacent community has had these features made available to its Subscribers by the Franchisee, unless such services are provided on a "test" basis for a period not greater than two (2) years.

B. Prior to the implementation of these additional services, the Franchisee may request a public hearing to review the costs and benefits of such options to Subscribers within the City. The City Council may, at its discretion, require the activation of such features, extend the time requirement, or postpone the event until further hearing.

Section 21. Emergency Override. The Franchisee shall be in compliance with FCC Regulations requiring installation of an Emergency Alert System (EAS) and provide an audio interrupt on all channels and video message on at least one channel during an emergency.

Section 22. Access Channels. Within sixty (60) days of the completion of the System upgrade required by Section 9, unless such time is extended by the City, the Franchisee shall make the following Public, Educational and Government (PEG) access channels available to the City and/or its residents:

A. Public Access. One (1) channel. The City may, at least initially, elect to share the channel with other neighboring communities.

B. Educational Access. One (1) channel shall be provided upon a showing to the City Council by appropriate members of the educational community of the need for such channel and the availability of appropriate programming, for the purpose of cablecasting educational programs from the local school system, community colleges or the University of Washington.

C. Local Government Access. One (1) channel. The City may, at least initially, elect to share a channel with other neighboring communities for the purpose of cablecasting City Council hearings, committee and commission meetings and public meetings, as well as community bulletin board announcements from City Hall.

D. Additional Channels. One additional channel each for Public, Education and Government shall be made available when the existing channel is used for access purposes with programming (excluding character generated and filler programming, e.g. NASA, AM/FM radio programming) during fifty percent (50%) of the hours between 10:00 am and 10:00 PM, during any consecutive ten (10) week period. Except for character generated announcement, the programming of additional channels required shall be distinct and non-repetitive of the existing channel. Character generated announcements, however, which may be cablecast on additional channels which are duplicative of those on another channel shall not be counted towards the total channel usage. Based upon this criterion the Franchisee shall, within six (6) months following a written request by the City, provide another designated access channel for this purpose. If an activated channel fails to meet the continuing criteria of programmed usage, for one hundred and eighty (180) continuous days of operation, such channel shall revert to the Franchisee for whatever use it deems appropriate.

Section 23. Access Cablecasting Equipment.

A. Public Access. If requested by the City, the Franchisee shall provide a completely furnished cablecasting studio to the City's residents in an area generally known as the north area of Lake Washington for the purpose of public access. Should this option be selected, arrangements for capital equipment, operation and maintenance shall be the subject of a separate agreement.

B. Educational Access. The facility cablecasting educational programs will be responsible for providing the necessary transmitting equipment.

C. Government Access. For the purpose of achieving the objectives set forth in Section 22(C) certain cablecasting equipment shall be furnished and maintained by the Franchisee. A recommended list of such equipment is listed in Appendix A. The Franchisee shall purchase this equipment, or its equivalent, or make funds available for this purpose, within sixty (60) days after written request by the City. Such expenditures may be considered as an external cost pass through in the context of applicable federal regulations.

Section 24. Public Buildings. The Franchisee shall provide Basic Service without charge for installation or monthly rate to such public buildings and schools as specified in Appendix B as well as other such public buildings that may be constructed, acquired or leased during the period of the Franchise that are passed by cable and within 150 feet of the trunk or distribution System.

Section 25. Institutional Networks (I-Nets).

A. Construction. Upon request, the Franchisee shall, in accordance with specific agreements and plans to be developed by the City and the Franchisee, construct an Institutional Network (I-Net) to link public facilities designated by the City with bi-directional video, data and audio signals. The I-Net shall be primarily for the purpose of non-commercial, governmental closed-circuit use, for institutional communications not normally transmitted via the subscriber network system.

B. Parameters. The I-Net shall be constructed in accordance with agreements and plans developed by the City and the Franchisee. The following parameters shall apply to such agreements, unless otherwise agreed by the parties:

1. Any charges by the Franchisee to the City for construction of the I-Net or I-Net interconnections shall not exceed the incremental cost to the Franchisee, i.e., the actual cost of constructing the I-Net over and above the cost of constructing the Franchisee's Cable System for its own use.

2. There shall be no charge by the Franchisee to the City or to other public users for the use of the I-Net.

3. The Franchisee shall cooperate with the City to ensure the most cost-effective construction of the I-Net.

4. The Franchisee shall, at the request of the City, interconnect the I-Net to its Cable System for the purpose of receiving PEG Access programming.

5. Management and control of I-Net transmissions shall be the responsibility of the City or its designee up to a point of demarcation to be jointly determined by the City and the Franchisee at a later date. The Franchisee shall make technical assistance available, on a time and materials cost to the City, beyond the point of demarcation, to ensure the effective and reliable operation of the I-Net.

C. Internet Alternative. In lieu of providing the closed interconnection specified above, the Franchisee and City may mutually elect to provide access to the Internet to accomplish these objectives. In this case the Franchisee shall provide, without charge, a cable modem, or until such time as such equipment is available, telephone equipment and lines for this purpose. There shall be

no charge for unrestricted usage during business hours. The using facility shall be responsible for the provision of computers and related equipment as well as the cost of additional outlets if so requested.

Section 26. Coverage. Subject to the density considerations in Section 27, Cable Service shall be provided in the entire Franchise Area. If such coverage does not now exist, the Franchisee shall complete such wiring and offer Cable Service to all residents within six (6) months of acceptance of this Franchise. Areas subsequently annexed to the City shall be provided with Cable Service within twelve (12) months of the effective date of the annexation.

Section 27. Cable Availability. Cable Service shall be available to all residents within the City provided there are at least thirty-two (32) dwelling units per street mile.

Section 28. Extraordinary Installation Charges.

A. All residents requesting Cable Service and living within one hundred twenty-five (125) feet of existing cable distribution or trunk lines shall have Cable Service installed at the prevailing published installation rate.

B. In the event a request is made for service and the residence is more than one hundred twenty-five (125) feet from an existing cable distribution or trunk line, such installation shall be completed on a time and material cost basis for that portion of the service line extending beyond one hundred twenty-five (125) feet.

C. In the event a request is made for service by a resident living in an area not meeting the density criteria established in Section 27, the Franchisee shall make its best efforts to notify the City for its assistance in identifying other interested residents in the area, and shall enter into a contractual agreement with the residents requesting service wherein the Franchisee shall be reimbursed for its actual construction costs. In such instance, upon request, but for no more than a three (3) year period, the Franchisee shall make a *pro rata* refund, if and when additional dwellings are serviced by the same distribution line.

Section 29. Penalties. In the event that the City perceives a deficiency in the operation of the Cable System or the Franchisee fails to comply with any material condition of this Franchise or WMC Chapter 5.50, the City may commence an enforcement proceeding pursuant to WMC Section 5.50.280.

Section 30. Insurance.

A. The Franchisee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the

Franchisee, its agents, representatives or employees. The Franchisee shall provide an insurance certificate naming the City, its officers, elected officials, employees and volunteers as additional insureds, to the City for its inspection upon acceptance of this Franchise, and such insurance certificate shall evidence:

1. Commercial general liability insurance, written on an occurrence basis, with limits not less than:
 - a. \$1,000,000.00 for bodily injury or death to each person;
 - b. \$1,000,000.00 for property damage resulting from any one accident;
and
2. Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000.00 for each person and \$1,000,000.00 for each accident.
3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00.
4. Commercial form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$1,000,000.00.

B. The liability insurance policies required by this Section shall be maintained by the Franchisee throughout the term of this Franchise, and such other period of time during which the Franchisee is operating without a Franchise hereunder, or is engaged in the removal of its Cable Television System. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Franchisee. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Franchisee's insurance shall be primary insurance with respect to the City, its officers, officials, employees and volunteers. Any insurance maintained by the City, its officers, officials, employees and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with it.

C. In addition to the coverage requirements set forth in this Section, each such insurance certificate shall contain the following statement:

It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 30 days after receipt by the City, by registered mail, of a written notice addressed to the City Manager of such intent to cancel or not to renew.

Within 15 days after receipt by the City of said notice and prior to said cancellation, the Franchisee shall obtain and furnish to the City evidence of replacement insurance meeting the requirements of this Section.

Section 31. Indemnification. The Franchisee shall indemnify and hold harmless the City from any and all liabilities, fees, costs and damages, except in the case of judicially determined gross negligence and/or willful misconduct of the City, whether to person or property, or expense of any type or nature which may occur to the City by reason of the construction, operation, maintenance, repair and alteration of the Franchisee's facilities or any other actions of the Franchisee in the City. In any case in which suit or action is instituted against the City by reason of damage or injury caused by the Franchisee, the City shall cause written notice thereof to be given to the Franchisee and the Franchisee thereupon shall have the duty to appear and defend any such suit or action, without cost or expense to the City.

Section 32. Performance Bonds and Other Surety. Except as expressly provided herein, the Franchisee shall not be required to obtain or maintain a performance bond or other surety as a condition of being awarded this Franchise or continuing its existence within the City. The City acknowledges that the legal, financial, and technical qualifications of the Franchisee are sufficient to assure compliance with the terms, conditions, and covenants of this Franchise. The Franchisee and the City recognize that the costs associated with performance bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for services. In order to minimize such costs, the City agrees to require performance bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefor. The City agrees that in no event, however, shall it require a performance bond or other related surety in an aggregate amount greater than \$250,000.00, conditioned upon the substantial performance of the material terms, conditions, and covenants of this Franchise. Initially, no performance bond or other surety shall be required. In the event that a performance bond or other surety is required in the future, the City shall give the Franchisee at least 60 days prior written notice thereof stating the reasons for the requirement, consistent with WMC Section 5.50.320(A).

Section 33. Independent Contractors. This Franchise shall not be construed to provide that the Franchisee is the agent or legal representative of the City for any purpose whatsoever. The Franchisee is not 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 whatsoever.

Section 34. Acceptance. The Franchisee shall not exercise any of the rights or privileges granted pursuant to this Franchise until its terms and conditions shall be accepted by the Franchisee. Acceptance shall be accomplished by the submission of a written instrument, executed and sworn to by a corporate officer of the Franchisee before a Notary Public, and filed with the City within sixty (60) days after the effective date of this Franchise. Such instrument shall evidence the

unconditional acceptance of this Franchise and the promise to comply with and abide by all its provisions, terms and conditions.

Section 35. General Provisions.

A. Entire Agreement. This Franchise contains all of the agreements of the parties with respect to any matter covered or mentioned in this Franchise and no prior or contemporaneous agreements or understandings pertaining to any such matters shall be effective for any purpose.

B. Modification. No provision of this Franchise may be amended or added to except by agreement in writing signed by both of the parties.

C. Full Force and Effect. Any provision of this Franchise which is declared invalid, void or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.

D. Assignment. The Franchisee shall not have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder, except as provided in WMC Section 5.50.260.

E. Attorney Fees. If any suit or other action is instituted in connection with any controversy arising under this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses including such sum as the court may judge reasonable for attorneys fees, including fees upon appeal of any judgment or ruling.

F. Non-Waiver. Failure of the City to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

G. Governing Law/Venue. This Franchise shall be governed by and construed in accordance with the laws of the State of Washington. The venue and jurisdiction over any dispute related to this Franchise shall be with the United States District Court for the Western District of Washington or the King County Superior Court, Seattle, Washington.

H. Authority. Each individual executing this Franchise on behalf of the City and Franchisee represents and warrants that such individuals are duly authorized to execute and deliver this Franchise on behalf of the Franchisee or the City.

I. Notices. Any notices required to be given shall be delivered to the parties at the following addresses:

Franchisee:
TCI of Washington
14870 NE 95th Street
Redmond, WA 98052
Attn: General Manager

City:
City Manager
City of Woodinville
13203 N.E. 175th Street
Woodinville, WA 98072

with a copy to:

TCI of Washington
PO Box 91220
Bellevue, WA 98009-9220
Attn: Legal Dept.

Notices may be delivered personally to the addressee or deposited in the United States mail, postage prepaid, to the address set forth herein, unless otherwise provided herein. Notice deposited in the United States mail shall be deemed received three (3) days after the date of mailing or upon actual receipt, whichever occurs earlier.

J. Captions. The respective captions of the Sections of this Franchise are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect in any respect any of the provisions of this Franchise.

K. Time of Essence. Time is of the essence of this Franchise and each and all of its provisions in which performance is a factor.

L. Remedies Cumulative. Any remedies provided for under the terms of this Franchise are not intended to be exclusive but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

M. Incorporation by Reference. The terms, conditions, and requirements set forth in WMC Chapter 5.50 and the provisions of the Proposal submitted by the Franchisee are hereby incorporated by reference as if set forth fully herein.

N. Superseding Effect. This Franchise shall, as of its effective date, supersede and replace all existing Franchises previously granted by the City to the Franchisee or any of its predecessors, subsidiaries or affiliated companies.

Section 36. Severability. If any section, sentence, clause or phrase of this Franchise 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 Franchise.

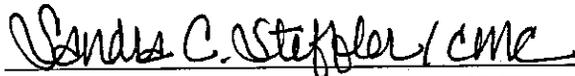
Section 37. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum. This ordinance shall take effect five days after passage and publication of an approved summary thereof consisting of the title.

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

APPROVED:


MAYOR, ROBERT R. MILLER

ATTEST/AUTHENTICATED:


SANDRA C. STEFFLER, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 
for WAYNE D. TANAKA

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

SUMMARY OF ORDINANCE NO. 191

of the City of Woodinville, Washington

On the day of Nov. 10, 1997, the City Council of the City of Woodinville, passed Ordinance No. 191. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON, GRANTING A NON-EXCLUSIVE CABLE TELEVISION FRANCHISE TO VISTA TELEVISION CABLE, INC. D/B/A TCI OF WASHINGTON PURSUANT TO CHAPTER 5.50 OF THE WOODINVILLE MUNICIPAL CODE, AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this Ordinance will be mailed upon request.

DATED this _____ day of _____, 1997.

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