

ORDINANCE NO. 156

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON
ESTABLISHING DEFINITIONS AND TERMS APPLICABLE TO ALL
FRANCHISES RELATED TO THE PROVISION OF CABLE
TELEVISION SERVICES WITHIN THE CITY OF SHORELINE**

WHEREAS, pursuant to RCW 35A.11.030, the City of Shoreline has the power, among other things, to grant franchises; and

WHEREAS, the Shoreline City Council finds that the development of cable television and communication systems has the potential of greatly benefiting and impacting the residents of the City: and

WHEREAS, the Council further finds that because of the complex and rapidly changing technology associated with cable systems, the public’s convenience, safety and general welfare can best be served by establishing powers which should be vested in the City as provided in federal and state law; and

WHEREAS, it is the intent of this ordinance to specify and provide the means to attain the public interest and purpose in these matters, and to establish standards, procedures and requirements that are to apply to all cable system Franchisees operating in the City of Shoreline;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
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Section M1. Definitions

- (a) **“Access Channels”** (Public, Educational or Governmental access facilities) means channel capacity designated for public, educational, government use.
- (b) **“The Act”** means the *Cable Television Consumer Protection and Competition Act of 1992*, and the *Telecommunications Reform Act of 1996* as now existing or hereafter adopted or amended, and the *Cable Communications Policy Act of 1984* , as now existing or hereafter adopted or amended.
- (c) **“Addressability”** means the ability of a system allowing a Franchisee to authorize by remote control specific equipment 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.

(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 Shoreline, a municipal corporation of the State of Washington.

(k) **“Council”** means the City of Shoreline Council acting in its official capacity.

(l) **“Data Transmission”** means (1) the movement of encoded information by means of electrical or electronic transmission systems; (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 franchising authority, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and operation of the 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, as herein above defined, is granted by the Council under this Ordinance 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 all revenues derived directly or indirectly from the operation or use of all or part of the System Facilities owned by the Franchisee, its affiliates, subsidiaries, parents, and any person in which the Franchisee has a financial interest, and including, but not

limited to, revenue from regular subscriber service fees, premium programming fees, installation and reconnection fees, subscriber revenues from security monitoring services, leased channel fees, converter rentals, studio rental, production equipment and personnel fees, workshop fees, and advertising revenues. Gross revenues do not include refunds to subscribers, bad debt, transactions related to real property receipts, or any taxes on services furnished by the Franchisee imposed directly on any subscriber or user by the State or Federal governmental unit and collected by the Franchisee on behalf of the governmental unit. An affiliate or subsidiary does not include entities which are suppliers of services to all cable operators and which are not controlled by the Franchisee. When the revenue of the Franchisee includes gross revenues from sources outside of the City, a Franchisee shall prorate the gross revenues among its sources by multiplying such gross revenues by a fraction the numerator of which is the number of Franchisee's subscribers in the City and the denominator of which is the total number of all a Franchisee's subscribers.

(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) **“Internet”** means an International telecommunications network providing point to point communication through modem accessibility.

(y) **“Office”** means the person or entity designated by the City as being responsible for the administration of a Franchise for the City.

(z) **“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 Ordinance.

(aa) **“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.

(bb) **“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.

(cc) “**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.

(dd) “**System Facilities**” means the cable communications system constructed for the exclusive use within the City of Shoreline of, without limitation, the headend, antenna, cables, wires, lines, towers, amplifiers, converters, health and property security systems, equipment or facilities located within the corporate limits of the City designed, constructed or wired for producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave or other means, audio and visual radio, television and electronic signals to and from Subscribers, in the City of Shoreline and any other equipment or facilities located within the corporate limits of the City intended for the exclusive use of the System. System facility excludes buildings, contracts, facilities, and equipment where primary use is for providing service to other system facilities located outside the City limits.

Section M2. Terms of Franchise

A. Authority to Grant Franchises or Licenses for Cable Television Systems.

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

Any Franchise granted pursuant to this Ordinance 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 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. However, any such changes shall not materially or substantially impair the rights granted a Franchisee pursuant to this Ordinance or any Franchise. All Franchises granted subsequent to the effective date of this Master Cable Ordinance shall be granted consistent with the terms and conditions of this Ordinance. Inasmuch as Ordinance 83, Establishing Minimum Requirement Procedures and Application Information for Franchise and Right-of-Way Use Agreements Within Shoreline, is the paramount pertinent local regulatory ordinance, in the event of any conflict between this Ordinance and Ordinance 83, the latter shall be the prevailing document.

B. Incorporation By Reference.

The provisions of this Ordinance shall be incorporated by reference in any Cable Franchise ordinances or licenses approved hereunder. The provisions of any proposal submitted and accepted by the City shall be incorporated by reference in the applicable Franchise. However, in the event of any conflict between the proposal, this Ordinance and the Franchise, the Franchise shall be the prevailing document.

C. Nature And Extent Of The Franchise.

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 necessary and appurtenant to the Cable Television System; and provide similar Cable Services utilizing 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.
3. The Franchise granted hereunder does not include authorization for providing services as a Telephone Business as defined by RCW 82.04.065.

Section M3. Franchise Issuance

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

A. Initial Franchise.

1. That the public will be benefited by the granting of a Franchise to the Applicant;
2. That the Applicant has the requisite financial and technical resources and capabilities to build, operate and maintain a Cable Television System in the area;
3. That the Applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the City;
4. That the Applicant will comply with all terms and conditions placed upon a Franchisee by this Ordinance;
5. 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;
6. That the Public Rights-of-Way have the capacity to accommodate the Cable Television System;
7. 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;

8. 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
9. 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.

B. Renewal Franchise.

1. That the Franchisee has substantially complied with the material terms of the existing Franchise.
2. That the quality of the Franchisee's previous service including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs.
3. That a Franchisee'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.
4. That a Franchisee has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in a Franchisee's proposal.
5. That such renewal is consistent with Section 626 of the Federal Cable Act, 47, USC 5 as amended.

Section M4. Acceptance

No Franchise granted pursuant to the provisions of this Ordinance shall become effective unless and until the ordinance granting the same has become effective.

Within sixty (60) days after the effective date of the Ordinance awarding 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 the bond and evidence of insurance as required by Section M32: Insurance and Section M33: Performance Bond herein. Acceptance of this Franchise is a condition precedent to its taking effect, and unless such acceptance is filed within the time period specified, this Franchise is null and void.

Section M5. Police Powers

In accepting any Franchise, a Franchisee acknowledges that its rights hereunder are subject to the legitimate rights 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 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, other pedestrian amenities, other City services, or uses not limited to the enumerated items as listed herein, and other public street improvement projects.

Section M6. 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 giving due regard to the right of the Franchisee. The City Council reserves the right to delegate its authority for Franchise administration to a designated agent. Except as noted above, the foregoing does not allow for amendment by the City of material terms of any Franchise it issues without the consent of a Franchisee.

Section M7. Construction Standards

All Cable Facilities constructed under this Ordinance 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.

At least seven (7) days prior to the 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 a toll-free telephone number which the Subscriber may call for further information. A pre-printed door hanger may be used for this purpose.

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.

A. Notice of Entry on Private Property.

At least forty-eight (48) hours prior to entering private property or easements adjacent to or on such private property to perform new plant construction or reconstruction, a written 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, consistent with sound engineering practices.

B. Emergency Repairs.

Notice requirements of subsection A above, are suspended 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.

C. Restoration of Property.

After performance of work, 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.

Section M8. Undergrounding

In accepting a Franchise granted under this ordinance, a Franchisee agrees that its activities within the City shall comply with Shoreline City Ordinance No. 82, Establishing Minimum Requirements and Procedures For The Underground Installation Of Electric and Communication Facilities Within Shoreline, provided that a Franchisee shall be exempt from the requirements of Section 6(b) of that ordinance. In accordance with Section 6(b)(1) thereof:

A. Information.

A Franchisee shall provide to the City of Shoreline, or any entity that has noticed the Franchisee of a joint trenching project under Section 12 of Shoreline City Ordinance No. 82, all reasonably requested information regarding the nature and location of facilities installed, owned, operated, or maintained by the Franchisee within a proposed undergrounding area. Said information will be provided within a reasonable period of time, not to exceed thirty (30) days following the request.

B. Notice.

A Franchisee shall respond to any notification pursuant to Section 12 of Shoreline City Ordinance No. 82, within forty-five (45) days following such notification with written commitment either to participate in the proposed project or to remove its facilities.

C. Cost.

A Franchisee shall bear its proportionate share of all costs common to participants in any joint trenching project and to bear the entire cost of all materials and labor particularly necessary for the undergrounding installation of its facilities and, upon the completion of that installation, the removal of the overhead facilities replaced thereby.

Section M9. Landscaping

A Franchisee shall comply with all generally applicable landscaping regulations as now exist or may later be enacted by the City.

Section M10. Construction in Right-of-Way

A. Right-of-Way Permit.

In accordance with City ordinances, a Franchisee shall submit an application for, pay the permit fee, and obtain a Right-of-Way permit to perform work in any Public Rights-of-Way. Emergency repairs may be made immediately with notification and permit application provided to the City no later than the next business day.

B. Blanket Permit.

The terms "Minor Activities" and "Blanket Activities" shall be defined in a specifically negotiated Blanket Permit Definitions, a copy of which will be filed with the City Clerk in conjunction with the Operator's Franchise and identified within that Franchise by a Clerk's Receiving Number. A Franchisee shall be authorized to perform Minor Activities without a City permit of any kind and Blanket Activities under the terms and conditions of this section. All other activities will require a separate permit in accord with City ordinances.

1. The Franchisee shall pay the City a permit inspection/processing fee in the amount set out in Blanket Permit Definitions identified by Clerk's Receiving Number in the Franchise agreement between the Franchisee and the City.
2. The Franchisee shall provide a monthly list of permit construction activity by the 10th of the following month listing the previous month's activity authorized under this section.
3. The Franchisee shall provide payment of inspection fees for the monthly activity within thirty (30) days of the previous month's activity. No bill will be provided by the City.
4. For each separate use of the right-of-way under this section, and prior to commencing any work on the right-of-way under this section, the Franchisee shall:
 - (a) Fax or otherwise deliver to the City, at least 24 hours in advance of entering the right-of-way, a City Inspection Request Form, which shall include the following information: identification no. assigned by the City, street address nearest to the proposed work site; parcel no. and description of work to be performed.
 - (b) Fax or deliver, to the City, notice of completion within 24 hours after completing work.
5. The Franchisee shall hold the City and its officers, agents and employees harmless from all costs, claims or liabilities of any nature including attorney's fees, costs and expenses for or on account of injuries or damages sustained by any persons or

property resulting from the negligent activities or omissions of the Franchisee, its agents or employees pursuant to this section, or on account of any unpaid wages or other remuneration for services; and if a suit as described above be filed, the Franchisee shall appear and defend the same at its own cost and expense, and if judgment be rendered or settlement made requiring payment by the City, the Franchisee shall pay the same.

6. The Franchisee shall immediately, upon completion of the permitted activity, restore and repair to the City's standards all improvements or landscaping in the right-of-way which is in any way damaged or disturbed by the Franchisee. The Franchisee shall comply with all applicable laws and regulations when performing any work pursuant to this section.
7. In the event the Franchisee fails to comply with any of the conditions set forth in this Section, the City is authorized to immediately terminate the Franchisee's authority to operate under this section by providing Franchisee written notice of such termination at Franchisee's address set forth in their Franchise with the City.
8. The City reserves the right to alter the terms and conditions of this Section and of Attachment A by providing thirty (30) days written notice to the Franchisee at the Franchisee's address set forth in their Franchise with the City. Any change made pursuant to this paragraph, including any change in the inspection fee stated in Attachment A, shall thereafter apply to all subsequent inspections made pursuant to this section. Further, the City may terminate the Franchisee's authority to work in the City's right-of-way under the terms of this section at any time without cause by providing thirty (30) days written notice to the Franchisee at the Franchisee's address set forth in their Franchise with the City. Notwithstanding any termination, the Franchisee will not be relieved of any liability to the City.

C. Installation.

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 required by the Manual of Uniform Traffic Devices (MUTCD), 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.

D. Interference With Use of Streets.

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 Ordinance 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 reasonable

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.

E. Relocation/Removal.

Upon receipt of sixty (60) 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.

F. City's Performance of Work.

After receipt of thirty (30) days prior written notice, and upon the failure of a Franchisee to commence, pursue, or complete any work required by the provisions of this Ordinance or failure to comply with any applicable federal, state or City laws, ordinances, rules, regulations, permit conditions, 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 (30) days after receipt of demand.

Section M11. Safety Requirements

A Franchisee, in accordance with applicable national, state, and local safety requirements shall, at all times, employ ordinary 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.

Section M12. 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 (7) 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 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 mover permittee.

Section M13. **Tree Trimming**

In accordance with all City rules, regulations, codes, ordinances, policies and standards, the Franchisee shall have the authority, at its expense, to trim trees upon and overhanging Streets, Public Rights-of-Way and places in the Franchise Area so as to prevent the branches of such trees from coming in contact with the wires and cables of a Franchisee, and if necessary, to remove obstructions from between the transmission and receive points of microwave facilities. A Franchisee shall use standard arboricultural methods and shall be responsible for debris removal from such activities.

Except in emergencies, the Franchisee shall provide at least seven (7) days written notice to the owner of the property on which any tree or plant life the Franchisee desires to trim is located. Said notice may be in the form of a doorknob hanger and shall contain a contact name, address, and telephone number where the property owner can obtain information from the Franchisee regarding its tree trimming plans and express concerns regarding the trimming of the trees or plant life on their property.

Section M14. **Rates**

Within thirty (30) 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.

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 (30) days prior written notice of such change. If such change is included with the Subscriber's billing statement, it shall be clearly titled on separate sheet apart from the statement. The notice shall identify each category of rate increase together with the former rate, the new rate and the amount of such increase. Prior to the initial use of this notice a format of the proposed form shall be submitted to the City for its approval which shall not unreasonably be withheld.

Subject to the Act and resultant FCC regulations, the City may regulate the rates or charges for providing Basic Cable Service and equipment and may establish rate regulation review procedures as delegated by Federal law.

Section M15. **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.

Section M16. **Franchise Fee**

A Franchisee shall pay to the City quarterly, on or before the forty-fifth (45th) day after the end of each calendar quarter a percentage of gross revenues as defined herein for the preceding calendar quarter. Such remittances shall be accompanied by forms furnished by the City to report reasonably detailed information as to the sources of such revenues.

Section M17. External Franchising Costs

A Franchisee shall have the authority to pass through such external costs as allowed under applicable federal regulations. However, the City reserves the right to review and approve certain specific features and/or services delineated in a Franchise agreement prior to the implementation of such items and the pass through of any associated costs pertaining thereto.

Section M18. 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.

It is intended that such evaluations cover areas such as customer service and a Franchisee's performance under and compliance with the terms of a Franchise.

Section M19. Audit by City

Subject to statutory and constitutional limits and upon not less than ten (10) business days' advance written notice, the City reserves the right to inspect the records of a Franchisee, which are not a part of its public files but which are necessary for the enforcement of a Franchise, during normal business hours provided that the City shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of a Franchisee. Such documents shall include such information as financial records, subscriber records and plans pertaining to a Franchisee's operation in the City. Provided, nothing in this Ordinance shall be read to require a Franchisee to violate state or federal law respecting Subscriber privacy, nor shall this Ordinance be read to require a Franchisee to disclose confidential or proprietary information without adequate safeguards to protect its confidential or proprietary nature.

All financial records of the Company with respect to subscribers, subscriber's revenues, and plant and equipment costs associated with Property of Franchisee shall be maintained and held, or made available to the City within the notice period provided above, in the business office of the Franchisee nearest to the City which shall not be greater than fifty (50) miles from the City.

Section M20. Public, Educational and Government Access

The City may require, as a condition of a Franchise granted pursuant to this Ordinance, provisions for Public, Educational and Government ("PEG") Access.

Section M21. City-wide Public, Educational and Government Access Interconnection

The City may request a Franchisee to begin negotiations to interconnect PEG access channels of a cable television system with other cable system(s) within the City. Interconnection of system may be accomplished by direct cable connection, microwave link, or other technically feasible method.

Upon receiving request of the City to interconnect, if a Franchise has not already done so, a Franchisee shall initiate negotiations with other affected system(s), and shall report to the City the results of such negotiations no later than sixty (60) days after such initiation.

If no agreement is reached within one hundred twenty (120) days from the date of the City's request, the parties shall within one hundred fifty (150) days of the request, enter into an alternate dispute resolution process of their choice and shall notify the City regarding the dispute resolution process. Failure of the parties to reach agreement within one hundred eighty (180) days from the date of the City's request, or to participate in good faith in a dispute resolution procedure as required herein, shall subject a Franchisee to appropriate penalties in accordance with provisions of the Franchise ordinance.

Section M22. Institutional Networks (I-Nets)

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 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 to assure transmission security.

Section M23. City-wide Institutional Networks Interconnection

A Franchise Agreement may require a Franchisee to make such interconnections as necessary to connect certain designated institutions on a City-wide basis. The same conditions as enumerated in Section M21: City-wide Public, Educational, and Government Access Interconnection shall prevail.

Section M24. 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.

Section M25. Non-Discrimination

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.

Any material violation of this provision may be grounds for termination of a Franchise by the City and, in the case of the Franchisee's breach, may result in ineligibility for further City agreements; provided, that nothing in this Ordinance 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.

Section M26. Continuity of Service

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 within its control to ensure that all Subscribers receive continuous uninterrupted service during the term of the Franchise, subject to applicable law.

In the event a Franchisee fails to operate a Cable Television System for seventy-two (72) 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 someone 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 is required to fulfill this obligation for a Franchisee, 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.

Section M27. Transfer of Ownership

A Franchise shall not be sold, transferred, leased, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, unless written approval is granted by the City Council to ensure a review of unforeseen circumstances not present at the time of the original Franchise. The City's approval shall not be unreasonably withheld. Such costs associated with this review process shall be reimbursed to the City by a new prospective Franchisee. This proceeding shall be in conformance with the Federal Communications Commission (FCC) Regulation 394 Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise, which will govern the rights of the parties and establish time limitations for responses.

An assignment of a Franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

A Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of, the control of the Franchisee. Every change, transfer, or acquisition of control of a Franchisee shall cause a review of the proposed transfer. In the event that the City adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the City may cancel the Franchise. Approval shall not be required for mortgaging purposes or if said transfer is from a Franchisee to another person or entity controlling, controlled by, or under common control with a Franchisee.

If, in accordance with FCC 394 guidelines, the City adopts a resolution denying its consent, such changes, transfers or acquisition of control shall be deemed not to have been consummated. A Franchisee may take such legally allowable actions following such refusal to accept such transfer.

The City shall be reimbursed for its reasonable out-of-pocket costs associated with its review of a Franchisee's request. Such costs will not exceed in constant dollars those incurred during the original franchising or refranchising process.

Section M28. Removal & Abandonment of Property of Franchisee

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 (12) 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, upon receiving ten (10) business day's prior written demand from the City, a Franchisee shall promptly remove, at its expense, all such property and poles of such system, other than any which the City may permit to be abandoned in place, from the Streets or public places. Said removal shall be completed within one hundred eighty (180) days from receipt of the City's written demand. In the event of 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.

Any property of a Franchisee remaining in place one hundred and eighty (180) 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 (90) days.

Any property of a Franchisee to be abandoned in place one hundred and eighty (180) days shall be abandoned in such manner as the City shall prescribe. 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. None of the foregoing affects or limits Franchisee's rights to compensation for an involuntary abandonment of its property under state, or federal law.

Section M29. Revocation for Cause

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 Ordinance and/or the Franchise subject to the provisions of this ordinance, the Franchise and other applicable law.

The following procedures shall be followed in determining whether to terminate a Franchise under this Section:

- (a) The City Council shall provide Franchisee with a detailed written notice, by certified mail, stating the nature of any alleged non-compliance. Within thirty (30) days thereafter, 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.
- (b) If said response is not satisfactory to the City or if the Franchisee timely requests a hearing on the matter of the alleged non-compliance, the City shall cause the matter of non-compliance to be brought before the City Council for a hearing within sixty (60) days after City's receipt of the Franchisee's response or request therefore.
- (c) At such a hearing a Franchisee and other interested parties shall be given fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, and to question witnesses. The City Council, or its designee, acting as hearings officer, will make the determination as to whether any non-compliance or deficiency was without just cause. In the event the City Council finds that such non-compliance or deficiency was without just cause, 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 Council does not grant any additional period, the City Council may by ordinance declare the Franchise to be terminated and forfeited. Within twenty (20) 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 and whether the Franchise will be terminated.
- (d) 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.
- (e) Nothing contained in the above subsections of 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 Ordinance can be met by the new Franchisee.

Section M30. 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 Section M28: Removal & Abandonment of Property of Franchisee of this Ordinance.

Section M31. Indemnity & Hold Harmless

A Franchisee will indemnify and hold harmless the City, its officers, employees, contractors, and duly authorized agents or any person under its direction or control, from any and all liabilities, fees, costs and damages, except in the case of judicially determined 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 a Franchisee's facilities or any other actions of a Franchisee in the City of Shoreline. In any case in which suit or action is instituted against the City by reason of damage or injury caused by a Franchisee, the City shall cause written notice thereof to be given to a Franchisee and a Franchisee thereupon shall have the duty to appear and defend any such suit or action, without cost or expense to the City.

Notwithstanding the above, the City agrees to defend, indemnify, save and hold harmless the Franchisee, its directors, officers, shareholders, and employees against any and all claims, costs and liability for damages, injury or death arising from or connected with the City's use of the Franchisee's Cable Television System due to or claimed to be due to or alleged to be due to negligent or wrongful acts, errors or omissions of the City, its officers, employees, contractors, duly authorized agents or any person under its direction or control, save and except claims or litigations arising through the Franchisee's negligence or willful misconduct, and will defend any such suits at the cost and expense of the City, and failing to do so will make good to and reimburse the Franchisee for any expenditures, including reasonable attorney's fees, the Franchisee may make by reason of such matters. As used in this section, the term "use" shall refer only to physical use of the Franchisee's Cable Television System, such as cablecasting of PEG programming, the use of Franchisee poles and aerial and underground structures and the activation of the emergency alert override.

Section M32. Insurance

A Franchisee agrees to maintain and 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. Such insurance must be in place no later than the date of acceptance of a Franchise by a Franchisee. This insurance shall be maintained in full force at the Franchisee's expense throughout the period of the Franchise. The City may delineate more specific details concerning such insurance prior to the award of a given Franchise.

Section M33. Performance Bond

A Franchisee shall promptly repair or cause to be repaired any damage to City property caused by a Franchisee or any agent of a Franchisee. A Franchisee shall comply with all present and future ordinances and regulations regarding excavation or construction and, if deemed necessary by the City, shall be required to post a performance bond or other surety acceptable to the City in an amount specified by the City in favor of the City warranting that all restoration work will be done promptly and in a workmanlike manner and that penalties, if any, after final adjudication are paid to the City within ninety (90) days of such finding are payable to the City.

Section M34. **Recourse Against Bonds and Other Security**

Bonds and other security may be utilized by the City for the following purposes, including, but not limited to, reimbursement of the City by reason of a Franchisee's failure to pay the City any sums due under the terms of this Ordinance or the Franchise, reimbursement of the City for reasonable costs borne by the City to correct Franchise violations not corrected by a Franchisee after due notice; and monetary remedies or damages assessed against a Franchisee due to default or violations of the Franchise requirements or this Ordinance.

A. Recourse.

In the event Franchisee has been declared to be in default by the City under Section M29: Revocation For Cause, and if a Franchisee fails, within thirty (30) days of mailing of the City's finding, to pay the City any Franchise fee, penalties, or monetary sanctions, or fails to perform any of the conditions of the Franchise, 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 legal rate. Upon such foreclosure or withdrawal, the City shall notify a Franchisee in writing, by certified mail, postage prepaid, of the amount and date thereof.

B. Restoration.

Within thirty (30) 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" above, 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 Ordinance.

C. Rights of the City.

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 Ordinance 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.

Section M35. **Equalization of Civic Contributions**

In the event of one or more Franchises being granted, the City may require that such 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.

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.

Additional Franchisees shall provide all PEG access channel(s) currently available to the subscribers of existing Franchisees. In order to provide these Access Channels, additional 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. The City Council, in such cases of dispute of award, may be called upon to arbitrate regarding these arrangements.

Section M36. Inconsistency

If any portion of this Ordinance should be inconsistent or conflict with any rule or regulation now or hereafter adopted by the FCC or other federal or state law, then to the extent of the inconsistency or conflict, the rule or regulation of the FCC or other Federal law shall control for so long, but only for so long, as such rule, regulation, or law shall remain in effect; provided the remaining provisions of this Ordinance shall not be effected thereby.

Section M37. Severability

If any section, subsection, 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 M38. Effect of Change in Law

In the event that state or federal laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time required by law. In the event such state or federal law, rule or regulation is subsequently repealed, rescinded, amended, voided or otherwise changed, so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of either party.

Section M39. Independent Contractors

This Ordinance shall not be construed to provide that a Franchisee is the agent or legal representative or 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 or thing whatsoever.

Section M40. Entire Ordinance

This ordinance, including the Franchise Cable Ordinance, Ordinance No. 83 and exhibits that are attached hereto and incorporated herein by reference represents all of the covenants, promises, agreements, and conditions, both oral and written, between the parties. However, the City reserves the right to waive any of these sections without affecting the applicability of other sections not so specifically waived. Waiver of any Franchise requirement or Ordinance Sections by the City shall be in writing in order to be effective.

Section M41. Successors or Assigns

This Ordinance and the subsequent Franchise Agreement including all addenda, shall be binding to the Franchisee, its heirs, successors and assigns.

Section M42. Force Majeure

Prevention or delay of any performance by a Franchisee under this Ordinance or a Franchise due to circumstances beyond a Franchisee's control or acts of God shall not be deemed noncompliance or a violation of this Ordinance of a Franchise.

Section M43. Publication Costs

In accord with state law, this ordinance shall be published in full. The cost of said publication shall be borne by all cable service providers operating within the City as of the effective date, hereof, in proportion to the subscriber base within the City of each cable of each as of that date. Upon acceptance of any initial Franchise or renewal Franchise granted hereunder, the Franchisee shall reimburse the City within a reasonable time for all costs of publishing said Franchise in full.

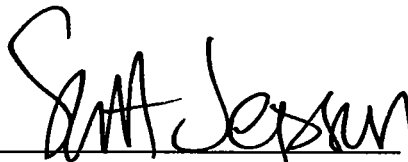
Section M44. Ratification

Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section M45. Effective Date

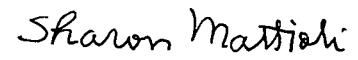
This Ordinance shall take effect and be in full force thirty (30) days after its passage, according to law.

PASSED BY THE CITY COUNCIL ON MAY 26, 1998.



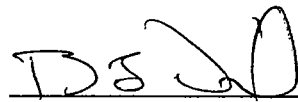
Mayor Scott Jepsen

ATTEST:



Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:



Bruce L. Disend
City Attorney

Date of Publication: June 4, 1998
Effective Date: June 26, 1998