

TOWN OF WOODWAY

ORDINANCE 2020-617

AN ORDINANCE OF THE TOWN OF WOODWAY AMENDING WOODWAY MUNICIPAL CODE (“WMC”) CHAPTER 4.04 CONCERNING CABLE COMMUNICATIONS FRANCHISES AND RELATED MATTERS; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND AUTHORIZING SUMMARY PUBLICATION BY ORDINANCE TITLE ONLY.

WHEREAS, WMC Chapter 4.04 provides rules and regulations related to cable communications franchises; and

WHEREAS, many of the Federal and state rules and regulations regarding cable communications have been amended since WMC Chapter 4.04 was first enacted; and

WHEREAS, the Woodway Town Council desires to amend WMC Chapter 4.04 in order to update and revise certain provisions to ensure compliance with Federal and state regulations as well as industry practices; and

WHEREAS, the Woodway Town Council reasonably believes that adoption of this Ordinance is in the best interest of the health, safety, and welfare of the citizens of the Town, all as set forth in Exhibit A.

NOW, THEREFORE, the Town Council of the Town of Woodway does hereby ordain as follows:

Section 1. Findings. The Town Council adopts the forgoing recitals as findings in support of this Ordinance.

Section 2. Amendment. Chapter 4.04 of the Woodway Municipal Code is hereby amended as set forth this Ordinance and in Exhibit A, attached and incorporated herein.

Section 3. Corrections. The Town Clerk-Treasurer and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

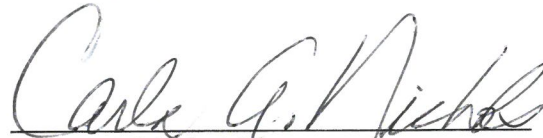
Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or the constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 5. Publication. The Town Clerk-Treasurer is hereby directed to publish the title of this Ordinance which is approved as a summary of the Ordinance.

Section 6. Effective Date. This ordinance shall be in full force and effect five days after its passage and publication as provided by law.


PASSED this 5th day of October 2020 by the Town Council of the Town of Woodway.

TOWN OF WOODWAY



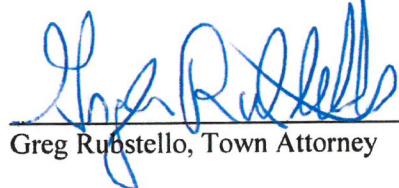
Carla A. Nichols, Mayor

ATTEST:



Heidi K. S. Napolitano, Clerk-Treasurer

APPROVED AS TO FORM:



Greg Rubstello, Town Attorney

Date Passed by the Town Council: *5 October 2020*

Date Published: *8 October 2020*

Effective Date: *13 October 2020*

TOWN OF WOODWAY

ORDINANCE 2020-617 | EXHIBIT A

AMENDED WOODWAY MUNICIPAL CODE CHAPTER CHAPTER 4.04: CABLE COMMUNICATIONS FRANCHISES

Sections:

- 4.04.010 Definitions.
- 4.04.020 Authority to grant franchises or licenses for cable television.
- 4.04.030 Incorporation by reference.
- 4.04.040 Nature and extent of the franchise.
- 4.04.050 Length of the franchise.
- 4.04.060 Application.
- 4.04.070 Franchise issuance.
- 4.04.080 Acceptance.
- 4.04.090 Police powers.
- 4.04.100 Rules and regulations by the ~~city~~Town.
- 4.04.110 Construction standards.
- 4.04.120 Notice of entry on private property.
- 4.04.130 Emergency repairs.
- 4.04.140 Restoration of property.
- 4.04.150 Location of cable facilities.
- 4.04.160 Undergrounding.
- 4.04.170 Construction in right-of-way.
- 4.04.180 Safety requirements.
- 4.04.190 Tree trimming.
- 4.04.200 Rates.
- 4.04.210 Cable availability.
- 4.04.220 Franchise fee.
- 4.04.230 Nondiscrimination.
- 4.04.240 ~~Continuity of service.~~Repealed.
- 4.04.250 Transfer of ownership.
- 4.04.260 ~~Removal and a~~Abandonment of property of franchisee.
- 4.04.270 Revocation for cause.
- 4.04.280 Effect of termination for noncompliance.
- 4.04.290 Indemnity and hold harmless.
- 4.04.300 Insurance.
- 4.04.310 ~~Equalization of civic contributions.~~Performance bonds/security fund.
- 4.04.320 Inconsistency.

4.04.010 DEFINITIONS.

- A. The "Act" means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 and any subsequent amendments.
- B. "Applicant" means any person or entity that applies for a franchise.

- C. "Basic cable service" is the lowest level of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.
- D. "Cable facilities" means equipment and wiring used to transmit audio and video signals to subscribers.
- E. "Cable services" means:
1. The one-way transmission to subscriber of video programming or other services; and
 2. Subscriber interaction, if any, which is required for the selection or use by the subscriber of such video programming or other services.
- F. "Cable 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, which includes video programming and which is provided to multiple subscribers within a community; but such term does not include:
1. A facility that serves only to retransmit the television signals of one or more television broadcast stations; or
 2. A facility that serves subscribers without using any Town right-of-way; or
 3. A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. Section 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; or
 4. An open video system that complies with 47 U.S.C. Section 573; or
 - 2.5. Any facilities of any electric utility used solely for operating its electric utility systems.
- ~~F.G. "Channel" means a portion a portion of the frequency band capable of carrying a Video Programming Service or combination of Video Programming Services, whether by analog or digital signal, on a twenty-four (24) hour per day basis or a portion thereof, of the electromagnetic frequency spectrum which is capable of delivering a television signal.~~
- ~~G.H. "CityTown" means the town of Woodway, a municipal corporation of the state of Washington.~~
- ~~H. "Cable communication system" means a system which may provide audio, video and data transmission to subscribers.~~
- I. "Council" means the cityTown of Woodway council acting in its official capacity.
- ~~J. "Dwelling units" means residential living facilities as distinguished from temporary lodging facilities such as hospitals, hotel and motel rooms and dormitories, and includes single family residential units and individual apartments, condominium units, mobile homes within mobile home parks, extended care facilities and other multiple family residential units.~~
- ~~K.J. "FCC" means the Federal Communications Commission, a regulatory agency of the United States government.~~
- ~~L.K. "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 communication system for the purpose of offering cable service or other service to subscribers.~~

~~M.L.~~ "Franchisee" or "operator" means the person, firm or corporation to whom or which a franchise is granted by the council under this chapter and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in cityTown ordinance.

~~M.~~ "Franchise area" means the geographical area of the Town that a cable operator is authorized to serve by the terms of its franchise or by operation of law.

~~N.~~ "Gross revenues" means any and all revenues (as that term is defined by generally accepted accounting principles) received directly or indirectly which arise out of or are derived from the operation of a franchisee's cable system in the cityTown as further described in the Franchise. ~~When the revenue of the franchisee includes gross revenue 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. "Gross revenues" shall not include the following:~~

- ~~1. 1. Fees and payments from subscribers who do not live in the city;~~
- ~~2. 2. Taxes on services furnished by a franchisee, which are imposed on any subscriber or used by any governmental unit, agency or instrumentality and which are collected by a franchisee for such entity;~~
- ~~3. 3. Bad debt write-offs;~~
- ~~4. 4. Revenue from the sale of equipment or other assets of the cable system to persons not purchasing services from the cable system;~~
- ~~5.1. 5. Revenue from transactions involving real property owned or leased by the franchisee;~~
- ~~6. 6. Amounts collected from subscribers as a franchise fee to be paid to city.~~

~~O.~~ "Headend" means the ~~electronic equipment located at the start of a cable system, usually including antennas, preamplifiers, frequency converters, demodulators and related equipment.~~

~~O.~~ ~~P~~"Installation" means the connection of the cable ~~communication~~ system from feeder cable to subscribers' terminals.

~~P.~~ ~~Q~~"Property of franchisee" means all property owned, installed or used by a franchisee in the conduct of its business in the cityTown.

~~Q.~~ ~~R~~"Proposal" means the response, by an individual or organization, to a request by the cityTown regarding the provision of cable services; or an unsolicited plan submitted by an individual or organization seeking to provide cable services in the cityTown.

~~R.~~ ~~S~~"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.~~ land acquired or dedicated for public roads and streets, but does not include:

1. State highways;
2. Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public, unless specifically used as a utility corridor;
3. Structures, including poles and conduits, located within the right-of-way;
4. Federally granted trust lands or forest board trust lands;
5. Lands owned or managed by the state parks and recreation commission; or

6. Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use.

S. "Right-of-Way" also includes easements dedicated for compatible use and consistent with Section 621 of the Cable Act.

R.T. "Subscriber" means a person or entity or user of the cable system who lawfully receives cable services or ~~other service therefrom~~ with franchisee's express permission.

4.04.020 AUTHORITY TO GRANT FRANCHISES OR LICENSES FOR CABLE TELEVISION.

It shall be unlawful to engage in or commence construction, operation, or maintenance of a cable communications system without a franchise issued under this chapter. The council may, by ordinance, award a nonexclusive franchise to construct, operate and maintain a cable communications system which complies with the terms and conditions of this chapter.

Any franchise granted pursuant to this chapter shall be nonexclusive and shall not preclude the cityTown from granting other or further franchises or permits or preclude the cityTown 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 cityTown to make such changes, as the cityTown 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 chapter. All franchises granted subsequent to the effective date of the master cable ordinance codified in this chapter shall be granted with consistent material terms and conditions of this chapter and existing franchises.

4.04.030 INCORPORATION BY REFERENCE.

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

4.04.040 NATURE AND EXTENT OF THE FRANCHISE.

Any franchise granted hereunder by the cityTown shall authorize a franchisee, subject to the provisions herein contained:

- A. To engage in the business of operating and providing cable service ~~and other services~~ and the distribution and sale of such services to subscribers within the cityTown;
- B. 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 appropriate to the cable system. 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.

4.04.050 LENGTH OF THE FRANCHISE.

The cityTown shall have the right to grant a franchise for a period of time appropriate to the circumstances of the particular grant. (~~Ord. 315 § M2(D), 1996~~)

4.04.060 APPLICATION.

An applicant for a franchise to construct, operate, and maintain a cable communications system within the eityTown shall file an application in a form prescribed by the eityTown, accompanied by a nonrefundable filing fee in an amount determined by the eityTown.

4.04.070 FRANCHISE ISSUANCE.

Prior to the granting of a franchise, the eityTown 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 eityTown;
4. That the applicant will comply with all terms and conditions placed upon a franchisee by this chapter;
5. That the applicant is capable of complying with all relevant federal, state, and local regulations 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 communications system;
7. That the proposed franchise is consistent with the eityTown's present and future use of the public rights-of-way to be used by the cable communications system;
8. That the benefit to the public from the cable communications system outweighs the potential disruption to existing users of the public rights-of-way to be used by the cable communications 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 eityTown and that the eityTown determines that the grant is still in the public's best interest.

B. Renewal Franchise.

1. That the applicant has complied with the material terms and conditions of the existing franchise, and with applicable law;
2. That the quality of the applicant's previous service, including signal quality, response to customer 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 the applicant has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the applicant's proposal;
4. That the applicant's proposal is reasonable to meet the future cable-related community needs and interests taking into account the cost of meeting such needs and interests;
5. The capacity of public rights-of-way to accommodate the cable system;
6. The present and future use of the public rights-of-way to be used by the cable system;
7. The potential disruption to existing users of the public rights-of-way to be used by the cable system and the resultant inconvenience which may occur to the public; and

8. Any other condition that is in the public's best interest.

4.04.080 ACCEPTANCE.

No franchise granted pursuant to the provisions of this chapter 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 cityTown clerk its written acceptance of the franchise and all of its terms and conditions, in a form satisfactory to the cityTown attorney, together with the insurance policy required by Section 4.04.300, Insurance, as well as the bond policy required by ~~Section F18, Performance Bonds, in the franchise. Acceptance of this chapter is a condition precedent to its taking effect, and unless such acceptance is filed within the time period specified, this chapter shall be null and void. (Ord. 315 § M5, 1996)~~

4.04.090 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 cityTown 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 cityTown pursuant to such power. The cityTown 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 cityTown 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 cityTown services and other public street improvement projects.

4.04.100 RULES AND REGULATIONS BY THE CITYTOWN.

In addition to the inherent powers of the cityTown to regulate and control any franchise it issues, the authority granted to it by the Act, and those powers expressly reserved by the cityTown, or agreed to and provided for in a franchise, the right and power is hereby reserved by the cityTown to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers giving due regard to the rights of the franchisee. Except as noted above, the foregoing does not allow for amendment by the cityTown of material terms of any franchise it issues without the consent of a franchisee.

The cityTown council reserves the right to delegate its authority for franchise administration to a designated agent.

4.04.110 CONSTRUCTION STANDARDS.

All cable facilities constructed under this chapter shall be placed and maintained at such places and positions in or upon such public rights-of-way and public places so it 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 cityTown rules, regulations, ordinances, codes, standards and policies pertaining to such construction.

At least ten (10) days prior to the intended construction of cable facilities, ~~1~~ 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 preprinted door hanger may be used for this purpose.

The cityTown reserves the right, as the interest of the public may require, to requestrequire the installation or construction of new cable facilities proposed by 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 cityTown 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.

4.04.120 NOTICE OF ENTRY ON PRIVATE PROPERTY.

At least twenty-four (24) hours prior to entering private property or streets or other public property or easements adjacent to or on such private property to perform new plant facility construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted upon the affected property. A franchisee shall make a good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices.

4.04.130 EMERGENCY REPAIRS.

Notice requirements of Section 4.04.120 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, provided that franchisee obtains permission from subscriber to enter the private property.

4.04.140 RESTORATION OF PROPERTY.

After performance of work, franchisee shall restore private property as nearly as practicable 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.

4.04.150 LOCATION OF CABLE FACILITIES.

Whenever, in the sole opinion of the cityTown, any of a franchisee's facilities or equipment need to be relocated or altered due to a construction or repair project by the cityTown in a public way, a franchisee shall move or relocate said facilities or equipment within thirty (30) days of receiving written notice from as required by the cityTown. ~~However, in the event such relocation is required due to emergency repairs deemed necessary by the city, such relocation or moving shall be accomplished within twenty four (24) hours.~~ Any relocation or alteration of a franchisee's facilities or equipment required under this section shall be at the sole expense of a franchisee, except as otherwise provided in RCW 35.99.060.

4.04.160 UNDERGROUNDING.

In those areas and portions of the cityTown where the transmission or distribution facilities of the public utility providing telephone service and those of the facility providing electric service are underground or where underground placement is required for new or existing telephone and

electrical service, then a franchisee shall likewise construct, operate and maintain all of its transmission and distribution facilities in the same area underground upon cityTown approval. Such activities shall be made in concurrence and cooperation with the other affected utilities. Amplifiers and associated equipment in a franchisee's transmission and distribution lines may be in appropriate housing upon the surface of the ground.

4.04.170 CONSTRUCTION IN RIGHT-OF-WAY.

- A. Right-of-Way Permit. 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 in accordance with WMC 12.04.020. Permits to perform work in public rights-of-way shall be available to all similarly situated applicants on the same terms and conditions. No work, other than emergency repairs, shall commence without such a permit. Emergency repairs may be made immediately with notification given to the cityTown no later than the next business day.
- B. 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 reasonably required for the safety of the public. Franchisee must obtain written permission from the Town to install ~~a~~Any poles or other fixtures ~~placed~~ in any ~~street~~Right-of-Way. ~~by a franchisee~~Such poles and/or fixtures shall be placed in such manner as not to interfere with the usual travel on such ~~public way~~Right-of-Way.
- C. 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, or as otherwise specified in the permit. Any facility, apparatus, or improvement under this chapter shall be laid, installed, located, or maintained in conformance with instructions given by, and to the reasonable satisfaction of, the cityTown. In any event, a franchisee shall, at its own expense, and to the reasonable satisfaction of the cityTown in accordance with the terms of the right-of-way permit, restore to cityTown standards and specifications any damage or disturbance caused to streets as a result of franchisee's construction or operations.
- D. Relocation/Removal. Upon receipt of ~~ninety (90) days'~~ prior written notice consistent with the requirements of RCW 35.99.060, a franchisee, at its own expense, and within the time period prescribed by the cityTown, shall protect, support, temporarily disconnect, relocate, or remove any of its cable facilities or property when, in the judgment of the cityTown, the same is required by reason of traffic conditions, public safety, and/or improvements by governmental agencies. Nothing herein shall be deemed a taking of the property of a franchisee, and franchisee shall be entitled to no surcharge by reason of this section.
- E. CityTown'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 chapter or failure to comply with any applicable federal, state or cityTown laws, ordinances, rules, regulations or standards to be performed on any street, within the reasonable time prescribed and to the reasonable satisfaction of the cityTown,

the cityTown may, at its option, cause such work to be done, and a franchisee shall pay to the cityTown the reasonable cost thereof, within thirty (30) days after receipt of demand.

4.04.180 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, over, under, and upon the 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.

The cityTown reserves the general right to see that the cable facilities of a franchisee are constructed and maintained in a safe condition.

4.04.190 TREE TRIMMING.

~~Except for emergency conditions which may preclude prior approval, for locations in the rights-of-way or Town property, Grantee shall obtain written approval or permit from the Town prior to commencing any tree trimming. In all other cases, Grantee shall abide by all Town rules, regulations, ordinances, policies and standards, including the Town's vegetation plan and WMC Chapter 16.12 pertaining to tree preservation. Except for emergency conditions which may preclude prior approval, a franchisee shall abide by all city rules, regulations, ordinances, policies and standards, including the city's vegetation plan. A 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 clear a microwave path. A franchisee shall be responsible for debris removal from such activities. (Ord. 315 § M12, 1996)~~

4.04.200 RATES.

A. Within thirty (30) days after the grant of any franchise hereunder, a franchisee shall file with the cityTown a complete schedule of all present rates charged to all subscribers.

~~B. B.~~ Prior to implementation of any change in rates or charges for any service or equipment provided by a franchisee, a franchisee shall provide the cityTown and all subscribers a minimum of thirty (30) days' prior written notice of such change.

~~Subject to the Act and resultant FCC regulations, the city may regulate the rates or charges for providing cable service and other equipment and may establish rate regulation review procedures as delegated by federal law.~~

- ~~1. B. The city will follow the FCC rate regulations in its regulation of the basic service rates and charges of the company and any other cable television system operating in the town, notwithstanding any different or inconsistent provisions in the franchise; and~~
- ~~2. In connection with such regulation, the town will ensure a reasonable opportunity for consideration of the views of interested parties; and~~
- ~~3. The mayor, or his or her designee, is authorized to execute on behalf of the town and file with the FCC such certification forms or other instruments as are now or may hereafter be required by the FCC rate regulations in order to enable the town to regulate basic service rates and charges. (Ord. 315 § M13, 1996; Ord. 290 §§ 1-3, 1993)~~

4.04.210 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 subject to density and coverage limitations.

4.04.220 FRANCHISE FEE.

A franchisee shall pay to the cityTown a quarterly franchise fee no later than forty-five (45) days following the end of such quarter, equal to a percentage of gross revenues for the preceding three months. Interest shall accrue if not paid by, forty-five (45) days from the end of the quarter. Such remittances shall be accompanied by forms ~~furnished by the city~~ to report reasonable detailed information as to the sources of such income.

4.04.230 NONDISCRIMINATION.

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, against any person in accordance with the requirements of state or federal law. ~~because of sex, age (except minimum age and retirement provisions), race, color, 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 is not intended to expand or conflict with other state or federal law regulating the same matters.~~

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 of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding nondiscrimination. ~~material and repeated violations of this provision shall be grounds for termination of this franchise by the cityTown and, in the case of the franchisee's breach, may result in ineligibility for further cityTown agreements; provided, that nothing in this chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled; and provided further, that connection I and/or service charges may be waived or modified during promotional campaigns of a franchisee.~~

~~**4.04.240 CONTINUITY OF SERVICE.**~~

~~A franchisee shall continue to provide service to subscribers so long as their financial and other obligations to a franchisee are fulfilled.~~

~~A. In this regard a franchisee shall act so far as it is reasonable within its control to provide all subscribers with continuous uninterrupted service during the term of the franchise subject to applicable law.~~

~~B. In the event a franchisee fails to operate a 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 the occurrence of an act of God 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 emergency alert system or designate someone to operate the emergency alert system until such time as a franchisee restores~~

~~service 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 that are the result of a franchisee's failure to perform. (Ord. 315 § M17, 1996)~~

4.04.250 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 cityTown council within one hundred twenty ~~ninety (90)~~ 120 days after transfer application has been submitted. The cityTown council's approval shall not be unreasonably withheld. Such costs associated with this review process shall be reimbursed to the cityTown by a new prospective franchisee.

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 beneficial interests, singularly 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 cityTown prior to any proposed change in, or transfer of, or acquisition by any other party of control of a franchisee's company. Every change, transfer, or acquisition of control of a franchisee's company shall cause a review of the proposed transfer. In the event that the cityTown adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the cityTown 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.

The cityTown will exercise such regulatory control as it has under the Act to monitor ownership, control, utilization and transfer of a franchise.

4.04.260 ~~REMOVAL AND ABANDONMENT~~ OF PROPERTY OF FRANCHISEE.

~~The city may direct a franchisee to temporarily disconnect or bypass any equipment of a franchisee in order to complete street construction or modification, install and remove underground utilities, or for any other reasons of public health and safety and reasonable right-of-way management. Such removal, relocation or other requirement shall be at the sole expense of a franchisee.~~

~~In the event that the use of any part of the cable system is discontinued for any reason for a continuous period of twelve (12) months or more, or in the event such system or property has been installed in any public right-of-way or other public place without complying with the requirements of the franchise or other city ordinances or the franchise has been terminated, canceled or has expired, a franchisee shall promptly, upon being given ten (10) days' notice, remove at its expense within ninety (90) days from the public right-of-way or other public place all such property and poles of such system other than any which the city may permit to be abandoned in place which permission shall not be unreasonably withheld. 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 reasonably satisfactory to the city.~~

Any property of a franchisee remaining in place ninety (90) days after the termination or expiration of the franchise shall be considered permanently abandoned unless the franchisee

has commenced removal within a reasonable amount of time. Any property of a franchisee which the franchisee intends to be abandoned in place shall be abandoned in such manner as the cityTown shall prescribe. Upon permanent intentional abandonment of the property of a franchisee in place, the property shall become that of the cityTown, and a franchisee shall submit to the cityTown clerk-treasurer an instrument in writing, to be approved by the cityTown attorney, transferring to the cityTown the ownership of such property. If franchisee abandons property without removing the property or obtaining approval for a permanent abandonment in place, the CityTown is authorized to remove the property at franchisee's sole expense. None of the foregoing affects or limits franchisee's rights to compensation for an involuntary abandonment of its property under state or federal law.

4.04.270 REVOCATION FOR CAUSE.

~~A. Any franchise granted by the cityTown may be terminated during the period of such franchise for repeated failure by a franchisee to comply with material provisions of this chapter, the franchise, FCC regulations or other applicable law.~~

~~B. The procedure to be followed resulting in termination for any of the above reasons, except franchisee's request, shall be:~~

- ~~1. The city council shall identify the deficiencies or noncompliance and shall direct a franchisee, in writing, to correct such deficiencies or comply with such regulations within thirty (30) days or a reasonable period of time.~~
- ~~2. Failure to comply with subsection (B)(1) of this section within such thirty (30) days or other prescribed period will cause the matter of noncompliance to be brought before the city council for hearing.~~
- ~~3. At such hearing a franchisee and other interested parties shall be given a fair opportunity for full participation, including the right to introduce evidence to require the production of evidence and to question witnesses. The city council will make the determination as to whether any noncompliance was without just cause. In the event the city council finds that such noncompliance was without just cause, the city council may in its sole discretion fix an additional time period to cure such deficiency(ies). 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.~~
- ~~4. If a franchisee appeals the city council 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.~~
- ~~5. 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 council that the terms and conditions of this chapter can be met by the new franchisee. (Ord. 315 § M20, 1996)~~

4.04.280 Effect of termination for noncompliance.

If any franchise is terminated by the cityTown by reason of a franchisee's noncompliance, that part of the system under such franchise located in the streets and public property shall, at the election of the cityTown, become the property of the cityTown in accordance with the cityTown's as well as a franchisee's rights and remedies under state and federal law. If the cityTown, or a third party, does not purchase the system, a franchisee shall, upon order of the

cityTown council, remove the system as required under Section 4.04.260, Removal and abandonment of property of franchisee.

4.04.290 INDEMNITY AND HOLD HARMLESS.

As a condition to the issuance of any franchise under this chapter, the franchisee shall be required to agree to an indemnification provision as provided for in the franchise.

~~Franchisee agrees to indemnify and hold the city, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and reasonable attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this franchise to the extent caused by the negligent acts, errors or omissions of the franchisee, its partners, shareholders, agents, employees, or by the franchisee's breach of this franchise.~~

~~In the event it is determined that RCW 4.24.115 applies to this franchise, franchisee agrees to defend, hold harmless and indemnify the city to the maximum extent permitted thereunder, to the full extent of franchisee's negligence. Franchisee understands that these indemnity provisions shall apply to claims from which the franchisee would otherwise be able to claim immunity under RCW Title 51 and that this understanding has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this franchise with respect to any event occurring prior to such expiration or termination. 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.~~

~~The city shall at its sole expense, fully indemnify and hold harmless a franchisee, its officers, agents and employees from any and all claims, suits, actions, liability and judgment for damage resulting from the city's sole negligent action which results in liability to a franchisee in connection with the city's use of the emergency alert override, I-nets or public, educational, and government access. (Ord. 315 § M22, 1996)~~

4.04.300 INSURANCE.

A franchisee agrees to maintain sufficient insurance to operate in the right of way and shall furnish the cityTown with a certified copy or original of such insurance policies ~~a commercial-general liability insurance policy~~ naming the cityTown as an additional insured. The amount of such insurance policies ~~policy~~ shall be established in the franchise agreement. 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.

4.04.310 PERFORMANCE BONDS/SECURITY FUND.

A franchisee shall comply with any franchise regarding the agreed-upon performance bond or security fund.

A. The security fund shall serve as security for the payment of any penalties, fees, charges, or credits as provided for herein or under the franchise and for the performance by a cable operator of all its obligations.

C.B. The rights reserved to the Town with respect to the security fund are in addition to all other rights of the Town, whether reserved by any applicable franchise agreement or authorized by law, and no action, proceeding, or exercise of a right with respect to same shall in any way affect, or diminish, any other right the Town may otherwise have.

4.04.310 — ~~EQUALIZATION OF CIVIC CONTRIBUTIONS.~~

~~In the event the city grants an overlapping franchise under terms and conditions materially different from those in the existing franchise, then the franchisee may, within six (6) months of the grant of such overlapping franchise, elect to come under the same terms and conditions as the overlapping franchise. Said election shall apply to the franchisee's entire franchise area and shall become effective upon the franchisee's filing with the clerk of the city its written acceptance, and its agreement to be legally bound to comply with all terms and conditions applicable to the overlapping franchise. (Ord. 315 § M24, 1996)~~

4.04.320 INCONSISTENCY.

If any portion of this chapter should be inconsistent or conflict with any rule or regulation now or hereafter adopted then to the extent of the inconsistency or conflict the rule or regulation of the applicable federal or state agency shall control for so long, but only for so long, as such rule, regulation, or law shall remain in effect. The remaining provisions of this chapter shall not be affected thereby.