

ORDINANCE NO. 1068

AN ORDINANCE granting to TELECABLE, INC., its successors and assigns, a franchise to construct, operate and maintain in certain streets of The City of Kirkland a community antenna television system for television signal distribution.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKLAND AS FOLLOWS:

Section 1. The City of Kirkland, hereinafter referred to as the "City", hereby grants to Telecable, Inc., a corporation organized under the laws of the State of Washington, and doing business in Kirkland, King County, Washington, hereinafter called the "Grantee", and to its successors and assigns which shall hereinafter be included in the word "Grantee" under the conditions and limitations herein prescribed the right, privilege and authority and franchise to install, lay down, maintain and operate underground pipes and conduit with the necessary manholes and other appliances therefore, and to erect standard utility poles with or without crossarms, stretch wires and cables and antennas or other appurtenances thereof, in, over, upon, and under the streets, alleys and public highways of The City of Kirkland, hereinafter referred to as "streets", and to maintain and use the same for the purpose of operating a coaxial cable subscription system for television, radio and other audio visual electrical signal distribution to subscriber's homes and to such businesses and public establishments, apartments, hotels and other premises as may also desire such service, hereinafter called "CATV:", and for no other uses or purposes whatsoever.

Section 2. The construction of new facilities or the extension of existing facilities within Grantee's service area shall be done only in accordance with a plan or design first submitted to and approved by the City of Kirkland, and pursuant to a permit issued the City authorizing such construction of new facilities or extension of existing facilities within all or a portion of such service area. All poles, cables, wires, antenna or conduits or appurtenances shall be constructed and erected in a neat, workmanlike manner and conform to the national electrical safety code, State of Washington, and the City of Kirkland regulations governing overhead and underground construction and maintenance of wires and cables carrying low-voltage electricity. Whenever it is practicable to make use of poles already in said streets, Grantee shall make use of such poles; Provided, that in any area in the City which has telephone, or electric power wires and cables laid underground, Grantee shall not be permitted to erect poles and run or suspend wires, cable, or other conductors thereon, but shall lay such wires, cables or conductors in underground pipes or conduits; and if prior to the laying of such telephone or electrical wires or cables underground, Grantee shall have erected poles in such area and suspended wires, cables, and other conductors thereon, Grantee shall contemporaneously with the laying of such wire and cables underground at its own cost and expense, remove poles, cables and wires owned by grantee from the surface of the streets within such area, and shall place the same in under-

ground pipes or conduits in conformity with the requirements of the City and shall not thereafter erect or maintain any poles whatever therein.

Section 3. Nothing in this Ordinance shall be construed to prevent the City from sewerage, paving, grading, altering, or otherwise improving or reimproving any of the streets of the City, including the installation of city-owned utilities; and the City shall not be liable for any damage resulting to the Grantee by reason of the performance of such work or by exercise of such rights of the City. This Ordinance shall not be so construed as to deprive the City of any rights or privileges which it now has or which may hereafter be conferred upon it, to regulate and control the use of streets. Whenever and to whatever extent any street shall be improved or the grade thereof changed, modified, raised or lowered, or the size, position or location of any City-owned public utilities changed, modified, or altered, any of the installations belonging to the Grantee which may be affected by, or shall conflict with any such changes, alterations, or modifications shall be promptly adjusted, removed, altered, raised, lowered, or otherwise modified to conform to the improvements or changes made, by and at the cost and expense of Grantee, and in conformity with the requirements of the City. The City shall at all times have the right to make free use of any or all of the poles of said Grantee for wires, cables and conductors to carry any City-owned systems or facilities requiring such use.

Section 4. Whenever it shall be necessary in the erection of poles or in the construction of underground pipes or conduits, to take or excavate in any portion of any street, the Grantee shall file with the City a petition therefor, together with plans, designs and drawings on a reasonable scale, setting forth the streets to be disturbed and obtain a permit from, and approval of, the City for so doing before beginning such work. After any poles are erected, or such pipes or conduits constructed, Grantee shall promptly replace any portion of the street disturbed by such work, in a neat and workmanlike manner to its original condition and as required and approved by the City.

At all times during the period of this grant, the Grantee shall keep on deposit with the City, the sum of Five Hundred Dollars (500.00) in cash to be used by the City as necessary for the purpose of restoring streets in the manner prescribed by the City, to pay the reasonable cost of any city inspection necessitated by Grantee's actions pursuant to this franchise and to pay the cost of raising or removing of any wires, cables or conductors as provided in Section 9 hereof.

Section 5. Construction, maintenance and operation of Grantee's CATV system, including house connections, shall be in accordance with the provisions of this franchise and in accordance with the provisions of all applicable codes and ordinances, the State of Washington Electrical Code as the same may hereafter be amended, and Grantee shall comply with all applicable state and federal laws and rules and regulations of the Federal Communications Commission relating to CATV systems.

Section 6. Neither Grantee nor any of its officers, agents or employees shall engage in the business locally of selling, servicing, or repairing television sets or other receivers of parts therefor which make use of standard broadcast entertainment signals transmitted by its system; provided, however, that nothing herein shall prevent Grantee from making necessary modifications and adjustments to subscribers' television receivers to insure proper operation under conditions of cable

connection at the time of installation or in response to subscriber's complaints, or from selling, servicing or repairing receivers and other equipment used by other CATV system operators in the conduct of their business.

Section 7. The Grantee agrees that it will diligently pursue the construction of its facilities to the end that all persons residing within an area for which Grantee has been granted a permit for the construction of new facilities or the extension of existing facilities will be offered such service within 180 days after the issuance of said permit by the City in accordance with Section 2 hereof. Grantee further agrees to commence actual construction of the necessary facilities in any such area within ninety (90) days after issuance of such permit. Unless the City has upon cause shown extended the time within which to substantially complete construction of CATV facilities in an area for which a permit has been granted, service shall be commenced within the time specified herein or the applicable permit may be cancelled and revoked, in which latter case any facilities installed shall be removed by Grantee and at Grantee's cost and expense.

Section 8. Whenever permission is obtained from the City for use of any streets of the City for the purpose of moving any building or structure, Grantee, upon forty-eight (48) hours notice from the City Engineer and at the expense of the party moving the building or structure, shall raise or remove any wires, cables, or conductors which may obstruct the removal of such building or structure; and in case of Grantee's refusal or failure to comply with such notice, the City may raise or remove such wires, cables, or conductors at the expense of Grantee for the purpose aforesaid.

Section 9. That the rights and privileges herein granted shall not be deemed exclusive, and the right is hereby reserved to the City to grant to any other person, company, corporation, or association, or by itself to exercise the rights and privileges herein granted; and the franchise, rights and privileges granted by this Ordinance shall be subject to the right of the City Council, at any time subsequent hereto, to repeal, amend, or modify this Ordinance and grant, with due regard for the rights of the Grantee and the interest of the public; and to cancel, forfeit, and abrogate the rights and privileges granted by this Ordinance if the same are not exercised in full accordance with the provisions hereof, or at all; and at any time during the life of such grant to acquire, by purchase or condemnation, for the use of the City itself, and all property of the Grantee within the limits of the public streets, at a fair and just value, which shall not include any valuation for the franchise itself, or of any of the rights and privileges hereby granted, and the grant shall thereupon terminate.

Section 10. The rights, privileges and franchise herein granted shall cease and terminate January 1, 1987, and within ninety (90) days thereafter the Grantee, if required by the City, shall at its own cost and expense remove all of its CATV facilities and installations from the City streets and shall place all portions of said streets that may have been disturbed in as good condition for public use as the abutting portions thereof.

The CATV system of the Grantee installed hereunder shall not be abandoned, either in whole or in part, without the consent of the City.

Section 11. The Grantee shall pay to the City of Kirkland on the 10th day of February, the 10th day of May, the 10th day of August, and the 10th day of November, each year, an amount equal to five (5%) per cent of the gross income received for such services rendered in the City of Kirkland for which any part of the rights exercised under this franchise are used. Such quarterly payments shall be based on the gross income from such business for the three-month period preceding these dates and ending respectively on December 31, March 31, June 30, and September 30, of each year. Said quarterly payments shall become delinquent if not paid on or before thirty (30) days after the date due, and shall thereafter bear interest at the rate of ten per cent (10%) per annum of the amount due until paid. The provisions of Sections 12, 13 and 14, inclusive of Ordinance No. 716 of the City of Kirkland, shall apply as to the keeping of records by the Grantee and the right to inspect and audit same by the City of Kirkland.

Section 12. The Grantee shall forfeit and shall be deemed to have forfeited and abandoned all rights and privileges conferred by this Ordinance, and this Ordinance shall be null and void and of no force or effect unless Grantee shall within thirty (30) days after the effective date of this Ordinance file with the City its written acceptance of the rights and privileges hereby conferred and the terms, conditions and restrictions hereby imposed; and shall at the same time file with the City a good and sufficient bond in the penal sum of Five Thousand (\$5,000.00) Dollars executed by a surety company authorized and qualified to do business in the State of Washington as a surety, conditioned that Grantee shall strictly comply with each and every condition and covenant of this Ordinance; Provided, whenever in the judgment of the City, any bond or bonds filed by Grantee pursuant to the provisions hereof shall be deemed insufficient to satisfy the conditions of the bond, the Grantee shall upon demand furnish a new or additional bond in such amount as may be specified by the City.

Section 13. That the Grantee by its acceptance of this Ordinance and the rights, privileges and franchise hereby granted, does covenant and agree for itself, its successors and assigns, with the City of Kirkland to at all times protect and save harmless the said City from all claims, actions, suits, liability, loss, costs, expenses or damages of every kind or description which may accrue to, or be suffered by, any person or persons or property, and to appear and to defend at its own cost and expense any action or suit instituted or begun against the City for damages, by reason of the construction, reconstruction, readjustment, repair, maintenance, operation, or use of said streets or anything that has been done or may at any time be done by said Grantee, its successors or assigns, by virtue of this Ordinance, and in case judgment shall be rendered against said City in any such suit or action, said Grantee shall fully satisfy such judgment within ninety (90) days after such action or suit shall have been finally determined, if determined adversely to the City.

Section 14. So long as the Grantee shall exercise any right or privilege granted by this Ordinance, it shall provide and maintain in full force and effect public liability insur-

ance, with the City as an additional insured, providing for a limit of not less than Two Hundred Fifty Thousand (\$250,000.00) Dollars for all damages arising out of bodily injuries to, or death of one person, and subject to that limit for each person, a total limit of not less than Five Hundred Thousand Dollars (\$500,000.00) for all damages arising out of bodily injuries to, or death of two or more persons in any one occurrence; and property damage liability insurance providing for a limit of not less than Fifty Thousand Dollars (\$50,000.00) for all damage arising out of injury to, or destruction of property in any one occurrence. A copy of such policy or certificate evidencing the same shall be filed with the City prior to issuance of any permit for construction and shall provide for ten (10) day's notice to the City of any change, cancellation or lapse thereof.

Section 15. Grantee shall have the right to charge and collect reasonable compensation from anyone to whom it shall furnish CATV service except as otherwise provided in this Ordinance; Provided, the rates charged must be uniform for the same class of customers or service. No extra or special charge may be imposed or collected for programs or presentations not available generally to all television receivers within the City of Kirkland, whether or not such receivers are connected to the cable system herein franchised. Except as may now be or hereafter otherwise provided by law, the legislative authority of the City shall have supervisory jurisdiction and control over the services authorized by this franchise and all rates and charges therefor, to the same extent as the Utilities and Transportation Commission of the State of Washington now has over the rates, charges and service of utilities which are subject to the jurisdiction of such Commission; Provided, that the legislative authority of the City shall never prescribe rates other than such as shall be just, reasonable, adequate and sufficient, and that its jurisdiction and control shall at all times be subject to review by the courts.

Section 16. The rights and privileges hereby granted shall not be assignable or transferable by operation of law, nor shall said Grantee assign, transfer, mortgage or encumber the same without the consent of the City Council of the City given by resolution.

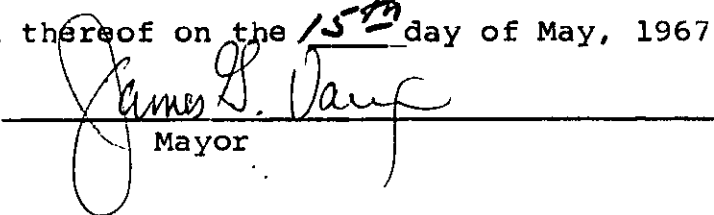
Section 17. This Ordinance shall be in force and take effect five (5) days from and after its passage by the Council and publication as required by law.

PASSED by the City Council at regular meeting on the 15th day of May, 1967.


SIGNED in authentication thereof on the 15th day of May, 1967.

Attest.


Director of Administration and Finance
(ex officio City Clerk)


Mayor

Approved as to form:


City Attorney