

ORDINANCE NO. 2459

Repealed by 3502

AN ORDINANCE OF THE CITY OF KIRKLAND, WASHINGTON, REGULATING THE CONSTRUCTION, MAINTENANCE AND OPERATION OF CABLE COMMUNICATIONS SYSTEMS WITHIN THE CITY OF KIRKLAND, ESTABLISHING AND DEFINING TERMS, CONDITIONS, RATES AND CHARGES, REQUIREMENTS, OBLIGATIONS AND DUTIES, SETTING FORTH PENALTIES.

WHEREAS, the City Council of the City of Kirkland has found and determined that the public necessity and convenience of the City of Kirkland would be served by the construction, maintenance and operation of a cable communications system by franchise within the City of Kirkland, and

WHEREAS, the City Council had concluded full and open public hearings on the franchise for the operation of a cable communications system by franchise within the City of Kirkland, after public notice of such hearings was duly published in the official city newspaper, during which any and all applicants, interested parties and members of the public desiring to make applications and/or present statements concerning the grant of a cable communications franchise were afforded an opportunity to do so. The legal, character, financial, technical and other qualifications and adequacies and feasibility of the construction arrangements of all applicants were fully considered, NOW, THEREFORE,

Section 1. Title. This Ordinance hereinafter shall be referred to as the "CATV Communications Ordinance".

Section 2. Purpose. The purpose of this Ordinance is to set forth an integrated statement of the conditions, rates and charges, requirements, obligations and duties for the construction, maintenance and operation of a system of cable communications within the City of Kirkland. All cable communications companies are required by law to be regulated by the political subdivision within those boundaries they operate. The City of Kirkland desires to grant and regulate franchises for systems of cable communications within the City and all public rights-of-way within its boundaries.

Section 3. Application for Franchise and Renewal of Franchise. Each application for the granting or renewal of a franchise to construct, operate, or maintain any cable communications system upon a City right-of-way shall be filed with the City Clerk and in a form approved by the City Clerk.

At the time of the application, the following information shall be presented:

1. A detailed statement of the business organization of the applicant, including the following:
 - a. The names, residences and business addresses of all officers and directors of the applicants;
 - b. The names and addresses of all persons having control of, or being entitled to have or control, 5% or more of the ownership of the applicant, either directly or indirectly, and the respective ownership share of each person;
 - c. A detailed and complete financial statement of the applicant showing the resources required to construct and/or operate the proposed system and the ability of the applicant to accomplish same;
2. A detailed plan of the operation of the applicant, which shall include:
 - a. A description of the cable area proposed to be served and a proposed time schedule for installation in each neighborhood or portion of the area;
 - b. A statement of schedule setting forth all proposed classifications with rates and charges of any kind to be made against subscribers;
 - c. A description of the equipment to be utilized and operational standards to be met as proposed by the applicants;
 - d. A statement that the applicant is willing and able to comply with all relevant federal, state and local regulations regarding cable communications.

Section 4. Terms of the Franchise. Any franchise to be granted under the CATV Communications Ordinance shall not be deemed and held to be an exclusive franchise or permit and shall not in any manner prevent

the City of Kirkland from granting other or further franchises or permits in, along, over, through, under, below or across any of the public rights-of-way, streets, avenues, and other public land and properties of every type and description, and such franchise and permit shall in no way prevent or prohibit the City of Kirkland from using any of said roads, rights-of-way, streets or other public properties or affected jurisdiction over them or any part of them, with full power to make all necessary changes, relocations, repairs, maintenance and improvement of all rights-of-way and thoroughfares and other public properties of every type. The franchise Grantee must agree and covenant, at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any street or other public property any of its installation when so required by the City of Kirkland by reason of traffic condition, public safety, street vacation, dedications of new rights-of-way and the establishment of improvement or structure by any governmental agency acting in a governmental capacity, provided that the Grantee shall in all cases have the privilege to temporarily bypass, in the authorized portion of the same street or right-of-way upon approval by the City of Kirkland, any section of its cable or appurtenances to be so temporarily disconnected or removed.

Section 5. Rates and Charges. The Grantee shall charge no more for basic services in the City of Kirkland than is charged by the cable industry in surrounding areas unless Grantee can show cause why such rates should be higher.

The Grantee shall keep on file with the City of Kirkland a copy of the current rates and charges for all services offered.

The Grantee shall give subscribers and the City of Kirkland sixty (60) days written notice of any changes in subscriber rates and charges.

Section 6. Franchise Fee. The Grantee shall pay unto the City of Kirkland quarterly, on or before the 10th day of each April, July, October and January, a sum equal to three percent (3%) of the gross revenue received by the Grantee within the corporate limits of the City of Kirkland as now or hereafter fixed. The City of Kirkland or his authorized agents shall have the right, at all reasonable times, to inspect the books and records of the Grantee for the purpose of ascertaining accurately the actual basic subscriber receipts of Grantee and Grantee shall furnish promptly unto the City of Kirkland, with each payment, a statement outlining the basic subscriber receipts upon which payment is based.

The City of Kirkland shall have the right to renegotiate the franchise fee if at any time the Federal Communications Commission amends or changes its rules. The franchise fee collected by the City of Kirkland shall be used for the regulation and administration of cable communications.

Section 7. Length of Franchise. Each franchise granted hereafter by the City of Kirkland under this Ordinance shall be for a term of fifteen (15) years. Grantee shall have first option to renew said franchise for additional fifteen (15) years provided Grantee continues satisfactory performance of its obligations under this Ordinance.

The City of Kirkland may terminate the franchise by ordinance enacted for such purpose pursuant to the provisions of this Ordinance, in the event of the wilfull failure, refusal or neglect by the Grantee to do or comply with any material and substantial requirements contained in this Ordinance, or rules and regulations of the Federal Communications Commission. Prior to any such action, the Grantee shall be notified in writing of such alleged failure of refusal to comply, pursuant to Section 8 of this Ordinance, and shall have a period of at least ninety (90) days to remedy such noncompliance.

Section 8. Procedures for Termination.

1. Any inquiry, investigation, or other proceeding to be taken or proposed to be taken by the City in regard to the operation of the Grantee's cable communications system shall be taken only after:
 - a. Reasonable public notice of such action or proposed action is published in a local daily or weekly newspaper having general circulation in the City. Such notice shall be published at least thirty (30) days prior to the date of the proposed action; and
 - b. A copy of such action or proposed action is served directly on the Grantee at least thirty (30) days prior to the proposed action; and
 - c. The Grantee has been given an opportunity to respond in writing and/or at hearings as may be specified by the City.
2. The public notice required by this Section shall state clearly the action or proposed action to be taken, the time provided for any response, the person or persons in authority to whom such response be addressed, and such other procedures as may be specified by the City. If a hearing is to be held, the public notice shall give the date, time and place of such hearing, whether public participation will be allowed, and the procedures governing such public participation. The Grantee shall be an indispensable party to any hearing conducted in regard to its operations.

Section 9. Modification. If any portion of this Ordinance should be inconsistent with any rule or regulation now or hereafter adopted by

the Federal Communications Commission, then to the extent of the inconsistency, the rule or regulation of the Federal Communications Commission shall control for so long, but only for so long, as such rule or regulation shall remain in effect, but the remaining portions of this Ordinance shall not hereby be affected.

This Ordinance should be amended whenever possible, to conform with the rules and regulations of the Federal Communications Commission as they are amended. Such ordinance amendments should be made within one (1) year after the passage of such rules and regulations.

Section 10. Equal Employment Opportunity and Affirmative Action Plan. Grantee shall comply with the City of Kirkland's affirmative action policies and procedures.

Grantee shall file with the City of Kirkland a current copy of its affirmative action plan.

Section 11. Deleted.

Section 12. Prohibited Program Content. No Grantee may exercise control over program content on an access channel, except to the extent necessary to prevent the presentation of program material prohibited by the rules and regulations of the Federal Communications Commission.

Section 13. Discrete Areas. The City of Kirkland shall be considered part of east King County as to recognition of discrete communities for purposes of cable communications and the importation of distant signals.

Section 14A. Access Channel. The Grantee shall at all times adhere to the Federal Communications rules relating to local access channels.

Section 14B. The Kirkland City Council in exercise of its constitutional local police power authority, does hereby adopt by reference as a part of this ordinance, and as though fully set forth herein, the Federal Communications Commission Rules in force on January 2, 1979, relating to the provision for local access channels and the Grantee shall comply therewith in the event the FCC's authority to make and administer such rules is either terminated or declared invalid.

Section 15. Unlawful to Steal Service. Every person who knowingly and wilfully makes unauthorized connection whether physically, electrically, inductively, or attaches any unauthorized device or devices to any cable wire, or other components of a franchised cable communications system or to a television set, for the purpose of intercepting any program carried by franchised cable communications service system which

such person is not authorized to receive, shall upon conviction thereof be guilty of a misdemeanor, and may be punished by a fine not exceeding two hundred and fifty (\$250) dollars.

Section 16. Upon recommendation, a review of this Ordinance may periodically be made by the Kirkland City Council. The City Council under its police powers reserves the right to amend any section of this Ordinance at any time, with due regard to the rights of any franchisee hereunder and the interests of the public. In any proceeding to amend this Ordinance, the franchisee and the general public shall be given prior notice and an opportunity to be heard.

Section 17. Any franchise shall be a privilege to be held in personal trust by the original Grantee. The franchise cannot be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, merger, consolidation or otherwise without prior written approval of the City of Kirkland. Said approval shall be granted by the Kirkland City Council only after a public hearing and under the same terms and conditions as an original application. Said application shall not be refused unless the Council finds that the public interest will not be served by the proposed transfer.

In the event the Grantee is a corporation an assignment of the franchise shall be deemed to occur if there is an actual change in control or where ownership of more than fifty percent (50%) or more of the voting stock of the Grantee is acquired by a person or a group of persons acting in concert, none of whom already own fifty percent (50%) or more of the voting stock singularly or collectively. Any such transfer or assignment shall be made only by an instrument of writing, such as a bill of sale or similar document, a duly executed copy of which shall be filed with the City of Kirkland within thirty (30) days after such transfer or assignment.

Section 18. Hearing. The Kirkland City Council shall conduct a public hearing to determine the following:

1. That the public will be benefited by the granting of the requested franchise;
2. That the applicant has the necessary resources to build, operate and maintain a cable communications system in the franchises area;
3. That the applicant will comply with all terms and conditions placed upon the franchisee by the City Council; and
4. That the applicant is willing and able to comply with all relevant federal, state and local regulations.

Section 19. Consumer Protection. Subscribers and users in the City of Kirkland shall have the protection described in this Section in

addition to all other rights conferred in this Ordinance.

1. Upon request, each Grantee shall furnish to the City of Kirkland and the City of Kirkland shall compile and maintain for public inspection during regular business hours, copies of:
 - a. All applications and other communications submitted by the franchise applicants or Grantees to the City of Kirkland, the Federal Communications Commission or any federal, state or local regulatory body having jurisdiction with respect to cable communications within the City of Kirkland.
 - b. Current information on ownership and management of the Grantee.
 - c. Current information on forms of subscriber agreements used by the Grantee, complaint procedures followed by the Grantee and nonbasic services provided by the Grantee and the rates and charges thereof.
 - d. Records of all written requests for use of public access channels and leased channel time and the disposition of such requests, and records of all signals and programs carried (other than radio and television broadcast signals).
2. The City of Kirkland shall also compile and maintain for public inspection during regular business hours, copies of:
 - a. All federal, state and local laws and regulations applicable to cable communications within the City of Kirkland.
 - b. Records of all written complaints filed with the City of Kirkland and the disposition thereof.
 - c. Policy statements and administrative staff operating procedures of the City of Kirkland.
3. No Grantee shall cause or permit the viewing habits of any subscriber to be monitored without the subscriber's expressed consent.
4. Whenever a Grantee shall offer a new service or facility, or changes in channel allocation or assignment, the Grantee shall give notice thereof to the subscribers and the Kirkland City Council.

5. With respect to basic services, the Grantee shall provide if technically practicable, all basic subscriber services and a tie-in connection without cost (except for actual cost of installation) to one outlet (one television connection) to each state accredited public or private educational institution and each building designated by the City Clerk, which is owned and controlled by the City of Kirkland and used for public purposes and not for residential use, when such recommended building is within 300 feet of the distribution cable.

Section 20. Construction Variances. The Grantee is required in all cases to request and apply for all construction variances for system extension, subscriber installations, or any other variances that may be required by the City of Kirkland.

Section 21. Rights Reserved to the City. A Grantee shall upon request of the City of Kirkland or the City Council make his/her facilities immediately available to the City for emergency use during the period of any emergency or disaster declared by the Mayor or the City Council.

Section 22. Limitations and Conditions.

1. A Grantee's facilities shall be so located or relocated and so erected so as to interfere as little as possible with traffic or with such streets, avenues, highways, bridges and other public places and egress, ingress to abutting property, provided, however, the Grantee shall not break up, block or disturb any streets or other public thoroughfare without prior written permission from the City. All such construction and installation work, whenever same crosses any of the public properties shall be done under the supervision of and upon the inspection of the City and the Grantee shall timely submit to the City, prior to any such work, detailed plans and specifications of any such proposed work. The location of any franchise property in a street or other public area shall be subject to the approval of the City and such approval shall be given in writing and Grantee shall be subject to all applicable ordinances, regulations, permits or licenses as provided by the ordinances of the City of Kirkland as they now exist or as they are amended.
2. During any period of construction, all surface structures, if any, shall be erected and used in such places and positions within said public rights-of-way and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property, and grantee shall at all times

Post and maintain proper barricades during any such period of construction as is required by the laws and statutes of the State of Washington. Any portion of the streets so excavated shall within a reasonable time as quickly as possible after said excavation be restored and replaced by the Grantee at its sole cost and expense in at least as good condition as it was immediately prior to the time of such excavation, and all to be performed in accordance with the applicable rules and regulations of the City of Kirkland.

3. Grantee, its successors and assigns shall commence construction under any franchise within one (1) year from after the date of granting thereof, and all such work shall be done and completed with the greatest amount of dispatch so as to reduce any interference with the vehicular and pedestrian traffic and the public safety to a minimum. If Grantee has failed or neglected to commence such construction within said period of one (1) year, then all rights, privileges and authorities herein granted shall cease and terminate and the franchise shall be of no further force and effect.
4. Grantee, its successors and assigns shall properly repair any damage to City property of every type and nature and all other improvements caused by the failure or workmanship of Grantee's work during the life of any franchise. Grantee shall comply with all ordinances and regulations of the City of Kirkland regarding such excavation and whenever deemed necessary by the City, shall be required to post a performance bond in favor of the City, warranting, among other things, that such restoration work will be done promptly and in the proper, workmanlike manner.

Section 23. Indemnity and Hold Harmless Waiver of Damages.

1. Grantee, its successors and assigns shall indemnify and hold harmless the City of Kirkland from any and all liabilities, fees, cost and damages, whether to person or property, or expense of any type or nature which may accrue to the City by reason of the construction, operation, maintenance, repair and alteration of Grantee facilities; provided, however, that in case of any suit or action is instituted against the City by reason of any such damage or injury, the City shall cause written notice thereof to be given to Grantee and Grantee thereupon shall have the duty to defend any suit or action without cost or expense to the City.

2. Grantee shall have no recourse whatever against the City of Kirkland for any loss, expense or damage arising out of any provision or requirement of any franchise with the enforcement thereof. No privilege or exemption will be granted or conferred unto Grantee by a franchise except those specifically prescribed herein, and any such privilege claimed under this franchise by the Grantee in any street shall be subordinate to any prior lawful occupancy of the street or any subsequent improvement or installation therein.

Section 24. Bond and Insurance. Grantee shall forfeit all rights and privileges conferred by any ordinance and the franchise shall be null and void and of no force and effect whatsoever unless Grantee shall within ninety (90) days of the approval by the City of Kirkland of its franchise and prior to the commencement of construction of any part of its cable communication system, file a good and sufficient bond or other surety, as determined by the City of Kirkland executed by a surety company authorized and qualified to do business in the State of Washington, conditioned upon the faithful performance of all duties and obligations to be performed by the Grantee under the terms of this Ordinance, including the payment of all gross revenue payments imposed by the terms of this Ordinance, and the removal of said system, and including repair and restoration of streets, and all public utilities of every type and nature incident to all work done by the Grantee pursuant to the terms of any franchise, and such bond or other surety to be renewed by the Grantee annually and kept in full force and effect at all times and during the life of any franchise.

Grantee shall forfeit all rights and privileges conferred by any ordinance, and the franchise shall be null and void and of no force and effect whatever unless Grantee shall, before commencing construction of any part of said cable communications system, file with the City Clerk proper evidence that it has in full force and effect and shall keep in full force and effect covering all operations during the life of the franchise, public liability insurance, naming the City of Seattle and the City of Kirkland as additional insureds with coverage of not less than \$500,000 property damage liability per occurrence and \$500,000 bodily injury liability per person per occurrence.

Section 25. Codes. All work done by the Grantee pursuant to any franchise shall be in full compliance with the Uniform Building Code and all applicable laws of the State of Washington and ordinances of the City of Kirkland then in effect. In the event the Grantee fails at any time to furnish any required safeguards, signs, signals, and/or lights to promptly repair any damage to City utilities or promptly backfill excavations as required by law, ordinance or regulation then the City reserves the right to proceed as may be required to so comply, and in such event the Grantee agrees and covenants to promptly reimburse the City for all expenses of such work.

Section 26. Raising and Moving of Wires. If the raising and moving of cable wires is required by any party at any time to enable use of the streets, or other public rights-of-way or properties, such party shall make written application at least five (5) days in advance of such required use, and Grantee shall raise and move said cable, wires and/or other equipment at the expense of the applicant and payment shall be made in advance.

Section 27. Street Use Permit. Whenever it shall be necessary to the erection of poles or in the construction of underground pipes or conduits, to excavate in any portion of any street, the Grantee shall file with the Director of Public Service a petition therefor together with plans, designs and drawings or a reasonable scale, setting forth the streets to be disturbed and obtain a permit from and approval of the Director of Public Service 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 Director of Public Service.

At all times during the period of this grant, the Grantee shall keep on deposit in the City Treasury to the credit of the Department of Public Service the sum of Five Hundred (\$500) Dollars in cash to be used by said Department of Public Service for the purpose of restoring streets in the manner prescribed by said Director of Public Service, 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 26 hereof.

Section 28. CATV Construction. 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 underground pipes or conduits in conformity with the requirements of the City and shall not thereafter erect or maintain any poles whatever therein.

Section 29. Severability Clause. If any part of this Ordinance is found to be unconstitutional or void, such finding shall not affect the remaining sections which shall remain in full force and effect.

Section 30. This Ordinance shall be in force and take effect five (5) days from and after its passage, approval and publication as provided by law.

ADOPTED BY MAJORITY VOTE of the Kirkland City Council in regular meeting on the 7th day of May, 1979.

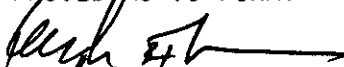
SIGNED IN AUTHENTICATION thereof on the 7th day of May, 1979.


MAYOR

ATTEST:


Director of Administration & Finance
(ex officio City Clerk)

APPROVED AS TO FORM:


City Attorney