

ORDINANCE 3437

AN ORDINANCE OF THE CITY OF KIRKLAND CREATING A NEW CHAPTER, KMC 7.61, ENTITLED CABLE TELEVISION--PROCEDURES AND TERMS FOR GRANT OF FRANCHISES.

BE IT ORDAINED by the City Council of the City of Kirkland as follows:

SECTION 1.

There is hereby created a new chapter of the Kirkland Municipal Code to be known as Chapter PROCEDURES AND TERMS FOR GRANT OF FRANCHISES, and to read as follows:

7.61.005 Purpose and Effect.

No cable communications company may utilize City right-of-way, streets, ways or facilities without first being granted a franchise pursuant to this chapter. This chapter sets forth the procedures and terms applicable to all franchises to be granted by the City for cable television. If any portion of KMC 7.61 should be inconsistent or conflict with a provision of KMC 7.60, then to the extent of the inconsistency or conflict, such portion of KMC 7.61 shall control.

7.61.010 Definitions.

In construing the provisions of this chapter, save when otherwise declared or clearly apparent from the context, the following definitions shall be applied:

(a) "Access channels" means any channel set aside for public use, educational use, or governmental use without a channel usage charge (commonly referred to as "PEG" channels).

(b) "*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.

(c) "Addressability" means the ability of a franchisee to electronically authorize customer terminals to receive, change or to cancel any or all specified programming.

(d) "Applicant" means any person or entity that applies for a franchise.

(e) "Basic cable" is the lowest level of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.

(f) "Cable Communications System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service and other communications services to subscribers.

(g) "Cable services" means (i) the one-way transmission to subscriber of video programming or other programming service, and (ii) subscriber interaction, if any, which is required for the selection by the subscriber of such video programming or other programming service.

(h) "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of carrying any type of transmission that a franchisee is authorized to provide to its subscribers.

(i) "Character generator" means a device used to generate alpha numerical programming to be cablecast on a cable channel.

(j) "City" means the City of Kirkland, a municipal corporation of the State of Washington.

(k) "Council" means the present governing body of the City or any future board constituting the legislative body of the City.

(l) "Data Transmission" means (1) the movement of encoded information by means of electrical or electronic transmission systems; (2) the transmission of data from one point to another over communications channels.

(m) "Dwelling units" means residential living facilities as distinguished from temporary lodging facilities such as hotel and motel rooms and dormitories, and includes single family residential units and individual apartments, condominium units, mobile homes within mobile home parks, and other multiple family residential units.

(n) "FCC" means the Federal Communications Commission, a regulatory agency of the United States government.

(o) "Franchise" shall mean 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 communications system for the purpose of offering cable service or other service to subscribers.

(p) "Franchise Area" means any, every and all of the roads, streets, avenues, alleys, highways and unrestricted utility easements of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys and highways that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended.

(q) "Franchisee" means the person, firm or corporation to whom or which a franchise, as herein above defined, is granted by the Council under this Ordinance and the lawful successor, transferee or assignee of said person, firm or corporation subject to such conditions as may be defined in City ordinance.

(r) "Gross revenues" means any and all receipts and revenues received directly or indirectly from all sources related to the operation of the cable communications system in the franchise area other than transactions related to real property receipts by a franchisee not including any taxes on services furnished by a franchisee, imposed on any subscriber or used by any

governmental unit, agency or instrumentality and collected by a franchisee for such entity provided also that net uncollectible debts are not considered as revenue in this definition. The franchise fee payable by the franchisee to the City on gross annual receipts derived from any new, non-cable television related programming product or other communications services such as interactive, data, telephone transmission or other communication products or services, shall be at the same rate (but no greater than the franchise fee authorized by Section 7.61.040: Franchise Fee) as the fee, tax, assessment or other revenue payable to the City by other providers of the same product or service within the franchisee's franchise service area. As used in this section, a non-programming product or service shall be considered new if franchisee was not already providing it as of the enactment of its Franchise.

(s) "High Definition Television (HDTV)" means a television system that will provide sharper picture definition than the current U.S. Standards, 525 lines per frame.

(t) "Insertion point(s)" means location(s) where institutional programming can be initiated for distribution throughout the secured portion of the subscriber network.

(u) "Installation" means the connection of the system from feeder cable to subscribers' terminals.

(v) "Institutional networks (I-Nets)" means a cable communications system designated principally for the provision of non-entertainment services to schools and public agencies separate and distinct from the subscriber network, or on secured channels of the subscriber network.

(w) "Interactive services" means services provided to subscribers where the subscriber either (i) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment

under his/her control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (ii) transmits signals to any other location for any purpose.

(x) "NCTA" means the National Cable Television Association.

(y) "Operator" means the person, firm or corporation to whom a franchise is granted pursuant to the provisions of this Ordinance.

(z) "Property of Franchisee" means all property owned, installed or used by a franchisee in the conduct of its business in the City under the authority of a franchise granted pursuant to this Ordinance.

(aa) "Proposal" means the response, by an individual or organization, to a request by the City regarding the provision of cable services; or an unsolicited plan submitted by an individual or organization seeking to provide cable services in the City.

(bb) "Subscriber" means a person or entity or user of the cable communications system who lawfully receives cable services or other service therefrom with franchisee's express permission.

7.61.020 Terms of Franchise.

(a) Authority To Grant Franchises Or Licenses For Cable Television: It is unlawful to engage in or commence construction, operation, or maintenance of a cable communications system without a franchise issued under this Ordinance. The Council may, by ordinance, award a non-exclusive franchise to construct, operate and maintain a cable communications system which complies with the terms and conditions of this Ordinance.

Any franchise granted pursuant to this Ordinance shall be non-exclusive and shall not preclude the City from granting other or further franchises or permits or preclude the City from using any roads, rights-of-

way, streets, or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the City to make such changes, as the City shall deem necessary, including the dedication, establishment, maintenance, and improvement of all new rights-of-way and thoroughfares and other public properties. However, any such changes shall not materially or substantially impair the rights granted a franchisee pursuant to this Ordinance. All franchises granted subsequent to the effective date of this Master Cable Ordinance shall be granted consistent with the terms and conditions of this Ordinance.

(b) Incorporation By Reference : The provisions of this Ordinance shall be incorporated by reference in any franchise ordinances or licenses approved hereunder. The provisions of any proposal submitted and accepted by the City may be incorporated by reference in the applicable franchise. However, in the event of any conflict between the proposal, this Ordinance and the franchise, the franchise shall be the prevailing document.

(c) Nature And Extent Of The Franchise: Any franchise granted hereunder by the City shall authorize a franchisee, subject to the provisions herein contained:

(1) To engage in the business of operating and providing cable service and other services and the distribution and sale of such service to subscribers within the City;

(2) To erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street, such amplifiers and appliances, lines, cables, fiber, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appurtenant to the cable communications system; and, in addition, so to use, operate and

provide similar facilities, or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other franchisee franchised or permitted to do business in the City. No privilege or exemption shall be granted or conferred upon a franchisee by any franchise except those specifically prescribed therein, and any use of any street shall be consistent with any prior lawful occupancy of the street or any subsequent improvement or installation therein.

(d) Term Of The Franchise: The City may grant a franchise for a period of time appropriate to the circumstances of the particular grant.

7.61.030 Application.

An applicant for a franchise to construct, operate, and maintain a cable communications system within the City shall file an application in a form prescribed by the City, accompanied by a non-refundable filing fee in the amount of five thousand dollars (\$5,000.00).

7.61.040 Franchise Fee.

A franchisee shall pay to the City quarterly, a sum equal to five percent (5%) of gross revenues, as defined in this Ordinance for the preceding three calendar months. Revenues that are derived as a portion of a national or regional service shall be computed on a per subscriber basis if such determination cannot be achieved by other means.

7.61.050 Franchise Issuance.

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

A. Initial Franchise.

1. That the public will be benefited by the granting of a franchise to the Applicant;

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2. That the Applicant has requisite financial and technical resources and capabilities to build, operate and maintain a cable television system in the area;
 3. That the Applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the City;
 4. That the Applicant will comply with all terms and conditions placed upon a franchisee by this Ordinance;
 5. That the Applicant is capable of complying with all relevant Federal, State, and local regulations pertaining to the construction, operation and maintenance of the facilities and systems incorporated in its application for a franchise;
 6. The capacity of public rights-of-way to accommodate the cable system;
 7. The present and future use of the public rights-of-way to be used by the cable system; and
 8. 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.
 9. Any other condition that the City may deem appropriate.

B. Renewal Franchise.

Federal Requirements:

1. A franchisee has substantially complied with the material terms of the existing franchise and with applicable law;
2. The quality of a franchisee's service has been reasonable in light of community needs;
3. A franchisee has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in a franchisee's proposal;

4. A franchisee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

C. Other Requirements:

In addition the City, at its option, may review the following criteria as a part of the public hearing:

1. The capacity of public rights-of-way to accommodate the cable system;
2. The present and future use of the public rights-of-way to be used by the cable system;
3. 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;
4. Any other condition that the City may deem appropriate.

7.61.060 Police Power.

In accepting any franchise, a franchisee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the City pursuant to such power.

Violations specifically designated in this Ordinance or the Franchise Ordinance as civil violations will subject a franchisee to a monetary penalty. If the City determines that such a violation exists, the franchisee will be notified of the violation and be provided a reasonable period of time to cure such violation. If the Operator fails to correct the violation within the allotted period of time, the franchisee will be sent a Notice of Civil Violation and monetary penalties will begin to be assessed upon the franchisee.

Within ten (10) days after the date of the Notice of Civil Violation, the franchisee may request a hearing before the City Council to appeal the determination of violation. If the Council upholds the determination, the total amount of monetary penalties assessed from the date of the Notice of Civil Violation will be immediately due. Payment of a monetary penalty does not relieve a franchisee of the duty to correct the violation. This civil violation provision does not limit the right of the City to pursue other remedies, such as revocation, for violations by a franchisee.

7.61.070 Rules and Regulations by the City.

(a) In addition to the inherent powers of the City to regulate and control any franchise it issues, the authority granted to it by the *Act*, and those powers expressly reserved by the City, or agreed to and provided for in a franchise, the right and power is hereby reserved by the City to promulgate such additional regulations as it may find necessary in the exercise of its lawful police powers.

(b) The City Council reserves the right to delegate its authority for franchise administration to a designated agent.

7.61.080 Technical Standards.

(a) Subject to Federal, State and local law, a franchisee shall comply with FCC rules, Part 76, Subpart K, Section 76.601 through 76.610 as amended, hereafter, and, at the minimum, the following:

- (1) Applicable City, County, State and National/Federal Codes and Ordinances;
- (2) Applicable Utility Joint Attachment Practices;
- (3) The National Electric Safety Code; ANSI C2;
- (4) City Public Works Policies and Standards
- (5) Local Rights-of-Way Procedures;

(6) Bell System Code of Pole Line Construction

(b) Preventive Maintenance: A comprehensive routine preventive maintenance program shall be developed, effected, and sustained to ensure continued top quality cable communications operating standards in conformance with FCC Regulations Part 76 or as may be amended.

7.61.090 Parental Control Devices.

In accordance with the *Act* a franchisee will make available at the cost specified by the FCC a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

7.61.100 Construction Standards.

All facilities constructed under this Ordinance shall be placed and maintained at such places and positions in or upon such streets, avenues, alleys and public places as shall not interfere with the passage of traffic or pedestrians and the use of adjoining property, and shall conform to the applicable section of the National Electrical Code, codes of the State of Washington, City regulations, and the City Public Works Policies and Standards.

7.61.110 Construction Notification.

Upon application for a construction permit , if determined necessary by the public works director, a franchisee will submit to the City its plan for advance notification for the proposed construction project. In the event that an emergency situation arises which precludes such advance notification, a franchisee shall subsequently inform the City of the nature of the extraordinary event and the action taken.

7.61.120 Undergrounding

In those areas and portions of the City where the transmission or distribution facilities of the public utility providing telephone service and those of

the facility providing electric service are underground or hereafter may be placed underground, then a franchisee shall likewise construct, operate and maintain all of its transmission and distribution facilities in the same area underground upon City 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.

7.61.130 Relocation.

Whenever, any of a franchisee's facilities or equipment need to be relocated or altered due to a construction or repair project by the City in a public right-of-way, a franchisee shall move or relocate said facilities or equipment within thirty (30) days from receiving written notice from the City. 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.

If a franchisee fails to do so within the thirty (30) days written notice, the City may have the facility moved and charge the costs and expenses of such to the franchisee. Such thirty (30) day notice shall be waived if an emergency shall arise. For purposes of this section, an emergency is defined as a sudden unforeseen event potentially causing significant damage, destruction, or loss of life.

7.61.140 Safety Requirements.

(a) 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.

(b) All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public right-of-ways 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.

(c) The City reserves the general right to see that the system of a franchisee is constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the City, the City will, notify the franchisee in writing, and after discussions with a franchisee, establish a reasonable time for a franchisee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from a franchisee.

7.61.150 Building Moving.

Whenever any person shall have obtained permission from the City to use any street for the purpose of moving any building, a franchisee, upon fourteen (14) days written notice from the City, shall raise or remove, at the expense of the permittee desiring to move the building, any of a franchisee's wires which may obstruct the removal of such building; provided, that the moving of such building shall be done in accordance with regulations and general ordinances of the City. Where more than one street is available for the moving of such building, the building shall be moved on such street as shall cause the least interference with overall transportation and utility needs as determined by the City. It is further provided that the person or persons moving such building shall indemnify and save harmless said franchisee of and from any and all damages

or claims of whatsoever kind or nature caused directly or indirectly for such temporary arrangement of the lines and poles of a franchisee.

7.61.160 Tree Trimming.

A franchisee has the authority for maintenance and trimming of all trees and vegetation within the Franchise Area to prevent such trees and vegetation from becoming a hindrance or coming into contact with a franchisee's lines or other facilities. A franchisee is responsible for removing debris and for any damage caused.

A franchisee shall make its best effort to notify all property owners directly adjacent to any scheduled trimming. Removal of any tree within the Franchise Area, City owned land (including parks), Natural Growth Protection easements, sensitive areas (as defined by the City Planning Department's sensitive area map), or private property shall only occur after written permission is granted by the respective City Department or private property owner; a copy of any written permission given by a private property owner must be provided to the City Planning Department at least two (2) weeks prior to the removal of the tree.

The City reserves the right to deny removal of any tree within any of the above described areas. If after seven (7) days advance written notice to a franchisee, the franchisee does not trim said trees the work may be done by the City or under its supervision and direction, with reasonable costs to be borne by a franchisee.

7.61.170 Emergency Override

No later than twelve (12) months from the effective date of a franchise, a franchisee shall make provisions for an emergency alert system to override the audio portions of all television signals distributed by a franchisee and to replace them with emergency warning audio messages. Such system will fully conform with FCC standards mandated by the Act.

A franchisee shall provide for interconnection with regional systems if technically feasible with compatible equipment as may be in the future required. Control of these emergency override facilities shall be the responsibility of the City and shall be used only in the event of a sudden, unforeseen event potentially causing significant damage, destruction, or loss of life. The City shall hold a franchisee, its agents, employees, officers, and assigns harmless from any claims arising out of the emergency use of its transmitting facilities by the City. The City, at its option may elect to share this service with adjoining communities. The cost incurred in this section shall be considered external costs for the purposes of rate regulation.

7.61.180 Rates.

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

Prior to implementation of any change in rates or charges for any service or equipment provided by a franchisee, a franchisee shall provide the City a minimum of thirty (30) days 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 will establish rate regulation review procedures as delegated by Federal law. The City will monitor those other rates within the benchmarks provided by the FCC.

7.61.190 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.

7.61.200 Customer Service.

A franchisee shall render repair service to restore the quality of the signal at approximately the same standards existing prior to the failure or damage of the component causing the failure and make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the system.

Upon notification by the subscriber, no charge for the period of an outage shall be made to the subscriber if the subscriber was without service for a period exceeding twenty-four (24) hours.

A log of all service interruptions shall be maintained and kept on file by a franchisee. The City, during normal business hours and after forty-eight (48) hours' notice, may inspect such logs. The foregoing will comply with Section 631 of the Act.

A franchisee shall at all times be in compliance with FCC Customer Service obligations 76.309, Subpart II, or as may be amended. The City, however, reserves the right to impose more stringent requirements if it so deems necessary. Violation of this section constitutes a civil violation by a franchisee as provided in Section 7.61.060: Police Power.

7.61.210 Telephone Response.

A franchisee shall maintain an adequate force of customer service representatives as well as incoming trunk lines so that telephone inquiries are met promptly and responsively. A franchisee shall have in place procedures for utilization of other manpower and/or recording devices for handling the flow of telephone calls at peak periods of large outages or other major causes of subscriber concern. A copy of such procedures and/or policies shall be made available to the City.

In order that the City may be informed of a franchisee's success in achieving satisfactory customer relations in its telephone answering functions, a franchisee shall, upon request by the City, provide the City with a summary for the previous quarter that will provide, at a minimum, the following:

- (a) Number of calls received per day;
- (b) Time taken to answer;
- (c) Average talk time;
- (d) Number of calls abandoned by the caller;
- (e) Average hold time;
- (f) Percentage of time all lines busy;
- (g) An explanation of any abnormalities.

This data will be compared to minimum standards of the NCTA being incorporated herein by reference or any amendment thereto increasing such standards, and shall be monitored by the City.

Calls for service generated during period of system outages due to emergency or exceptional circumstances surrounding the operation of the system may be excluded from the service response calculations. The City shall have the final determination as to what constitutes a system failure due to emergency and which calls shall be excluded from the service level calculations. Violation of this section constitutes a civil violation by a franchisee as provided in Section 7.61.060: Police Power.

7.61.220 Failure to Improve Customer Service.

The City or its designee shall review telephone response and customer service information with a franchisee. In cases where applicable standards have not been met it will be a franchisee's responsibility to pursue favorable improvements in a reasonable manner in the appropriate categories from the last reporting period. Failure to do so may result in the calling of a public

hearing by the City Council for the purpose of examining the reasons, if any, why such improvements were not achieved by a franchisee.

Violation of specifically designated customer service requirements is a civil violation, subjecting a franchisee to monetary penalties.

7.61.230 Emergency Power

A franchisee shall provide a standby power system to automatically activate equipment at the headend and hubs, if applicable, in event of a primary electrical failure.

7.61.240 Cable Communications System Evaluation.

In addition to periodic meetings, the City may require reasonable routine evaluation sessions at any time during the term of a franchise, but not to exceed one (1) evaluation per year. However in the case of reoccurring problems the City may conduct as many evaluations as are necessary.

To assist in the preliminary evaluation, the City may enlist an independent consultant to conduct an analysis of the cable communications system and its performance and to submit a report of such analysis to the City. It is intended that such evaluations cover areas such as customer service, response to the community's cable-related needs, and a franchisee's performance under and compliance with the terms of a franchise.

During an evaluation session, a franchisee shall fully cooperate with the City and shall provide within a reasonable time without cost such reasonable information and documents as the City may request to perform evaluations.

If, as a result of the evaluation session, or at any other time, the City determines that reasonable evidence exists of inadequate cable communications system performance, it may require a more detailed technical evaluation and analyses directed toward such suspected inadequacies. The report prepared by the consultant shall include at least:

- (a) A description of the technical problem in cable communications system performance which precipitated the special tests;
- (b) What cable communications system components were tested;
- (c) The equipment used and procedures employed in testing;
- (d) The method, if any, by which such cable communications system performance problem was resolved;
- (e) Any other information pertinent to said tests and analyses which may be required by the City, or determined when the test is performed.

If the tests indicate that the system is not in compliance with FCC standards or the requirements of the Franchise, a franchisee shall reimburse the City for any costs involved in conducting such tests, such as consultant fees or other expenses. Such fees or expenses shall not exceed \$2,500 for each evaluation. A franchisee will have an opportunity to refute findings and if franchisee is found to be in compliance, the City pays for the evaluation.

7.61.250 Periodic Meetings.

Upon request, a franchisee shall meet with designated City officials and/or designated representative(s) to review the performance of a franchisee for the preceding period. The subjects may include, but are not limited to, those items covered in the periodic reports and performance tests.

7.61.260 Record Inspection.

Subject to statutory and constitutional limits and 48 hours advance notice, the City may inspect the records of a franchisee relating to the operation of the cable communications system in the franchise area during normal business hours. The City shall maintain the confidentiality of any trade secrets or other proprietary or confidential information in the possession of a franchisee. Such documents shall include such information as financial records, subscriber records, appropriate information and plans pertaining to a franchisee's

operation in the City subject to Section 631 of the Act.

7.61.270 Reports.

A franchisee shall furnish, upon request, a report of its activities as appropriate. Such report shall include:

- A. Most recent annual report.
- B. A copy of the 10-K Report, if required by the Securities and Exchange Commission.
- C. The number of homes passed.
- D. The number of subscribers with basic services.
- E. The number of subscribers with premium services.
- F. The number of hook-ups in period.
- G. The number of disconnects in period.
- H. Total number of miles of cable in City.
- I. Summary of complaints received by category, length of time taken to resolve and action taken to provide resolution.
- J. A statement of its current billing practices, and a sample copy of the bill format.
- K. A current copy of its subscriber service contract.
- L. Report on Operations - Such other reports with respect to its local operation, affairs, transactions or property that may be appropriate.
- M. Telephone response logs.

7.61.280 Programming.

A franchisee shall file with the City a listing of its programming and the tiers in which they are placed. Subject to Federal law a franchisee shall be responsive to the City's suggestions of general program categories as determined from time to time in residential questionnaire polls. The results of initial such surveys will be appended to the respective franchise ordinances if appropriate.

7.61.290 Non-Discrimination.

A franchisee shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any preferences or advantage to any person nor subject any person to any prejudice or disadvantage; provided, that nothing in this Ordinance shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled, and provided further that connection and/or service charges may be waived or modified during promotional campaigns of a franchisee.

A franchisee may from time to time, for research purposes, provide unique experimental program packaging or interactive services to customers served by specific system nodes. The nodes will be selected on a non-discriminatory basis representing broad community demographics.

7.61.300 Continuity of Service.

A franchisee shall continue to provide service to all 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 within its control to ensure that all subscribers receive continuous uninterrupted service during the term of the franchise.

(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 an impossibility to operate the system because of 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 system or designate someone to operate the system until such time as a franchisee restores service to conditions acceptable to the City Council or a

replacement franchisee is selected. If the City is required to fulfill this obligation for a franchisee, a franchisee shall reimburse the City for all reasonable costs or damages in excess of revenues from the system received by the City that are the result of a franchisee's failure to perform.

7.61.310 Transfer of Ownership.

Any franchise awarded by the City shall be based upon an evaluation by the City of each application, the qualifications, and other criteria as such pertain to each particular applicant. 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 approval is granted by the City Council to ensure a review of unforeseen circumstances not present at the time of the original franchise. The City may not unreasonably withhold its approval.

A transfer of control 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, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

A franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of 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 City adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the City may cancel the franchise. Approval shall not be required for mortgaging purposes or if said transfer is from a franchisee to another person or entity controlling, controlled by, or under common control with a franchisee. Further the City will monitor the limitations or

ownership, control, utilization and restrictions on sale of systems in accordance with the Act.

Except as specifically addressed in a franchise agreement, unless the City reasonably determines the proposed transfer increases the risk of nonperformance or partial performance of any franchise obligation, the City agrees that it will not seek modifications to the terms of the Franchise Agreement as a condition of approval of a transfer which occurs within two (2) years of the effective date of this Ordinance.

7.61.320 Removal & 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 other reasons of public safety and efficient operation of the City. 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 communications system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system or property has been installed in any street or public place without complying with the requirements of the Franchise or other City ordinances or the Franchise has been terminated, cancelled or has expired, a franchisee shall promptly, upon being given ten (10) days' notice, remove within one hundred eighty (180) days from the streets or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. 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 consistent with the Public Works Policies and Standards. Any property of a franchisee remaining in place one hundred eighty (180) days after the termination or expiration of the franchise shall be

considered permanently abandoned. The City may extend such time not to exceed an additional one hundred eighty (180) days.

Any property of a franchisee to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon permanent abandonment of the property of a franchisee in place, the property shall become that of the City, and a franchisee shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property. None of the foregoing affects or limits franchisee's rights to compensation for an involuntary abandonment of its property under State, or Federal law. In the event the City and a franchisee are unable to agree as to whether an abandonment is voluntary for the purposes of this Section either party may invoke arbitration to resolve such question.

7.61.330 Revocation

Any franchise granted by the City may be terminated during the period of such franchise for failure by a franchisee to comply with the material provisions of this Ordinance and/or the Franchise.

The procedure to be followed resulting in termination unless by franchisee's request, shall be:

(a) The City shall provide franchisee with a detailed written notice of such violation. Within thirty (30) days thereafter, franchisee shall respond demonstrating that no violation occurred, that any problem has been corrected, or with a proposal to correct the problem within a specified period of time.

(b) If said response is not satisfactory to City, City may declare a franchisee in default, with written notice to franchisee. Within ten (10) business days after notice to franchisee, franchisee may deliver to City a request for a hearing before the City Council. If no such request is received, City may declare the franchise terminated for cause.

(c) If franchisee timely requests a hearing, such hearing shall be held within thirty (30) days after City's receipt of the request therefor. Such hearing shall be open to the public and franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged non-compliance. Within ten (10) days after the hearing, the City Council, on the basis of the entire record, will make the determination as to whether there is cause for termination and whether the franchise will be terminated. The City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Council does not grant any additional period, the City Council may by ordinance declare the franchise to be terminated and forfeited.

(d) If a franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided a franchisee is otherwise in compliance with the Franchise.

(e) Nothing contained in the above subsections of this Section shall prevent the issuance of a new franchise containing terms substantially the same or identical to a franchise which previously was revoked, upon satisfactory assurances made to the City Council that the terms and conditions of this Ordinance can be met by the new franchisee.

7.61.340 Effect of Termination for Non-Compliance.

Subject to State and Federal law, if any franchise is terminated by the City by reason of a franchisee's non-compliance, that part of the system under such franchise located in the streets and public property, shall, at the election of the City, become the property of the City at a cost consistent with the provisions of *the Act*. If the City, or a third party, does not purchase the system within twelve (12) months a franchisee shall, upon order of the City Council, remove the system as required under Section 7.61.320 Removal & Abandonment of

Property of Franchisee of this Ordinance. The City may at its discretion extend the period of time for the system to be purchased beyond the initial twelve (12) month period.

7.61.350 Insurance.

A franchisee shall, concurrently with the filing of an acceptance of award of any franchise granted hereunder, furnish to the City and file with the City Clerk and at all times during the existence of any franchise granted hereunder, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy, for the purpose of protecting the City and all persons against liability for loss or damage, for personal injury, death and property damage, and errors or omissions, occasioned by the operations of a franchisee under such franchise, such policy to provide minimum limits of one million dollars (\$1,000,000.00) for both personal injury and/or property damage.

The policies mentioned in the foregoing paragraph shall name the City as additional insured and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the City thirty (30) days in advance of the effective date thereof. If such insurance is provided by a policy which also covers a franchisee or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement.

7.61.360 Performance Bond.

A franchisee shall comply with all present and future ordinances and regulations of the City regarding excavation or construction and shall be required, upon acceptance of the franchise to post a performance bond in an amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00) in favor of the City warranting, among other things, that all restoration will be done promptly and in a workmanlike manner. Such bond shall remain in force for the

duration of the franchise and shall be in lieu of individual construction project bonds heretofore required.

7.61.370 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, in a form satisfactory to the City Attorney, its agreement to be bound to comply with all terms and conditions applicable to the overlapping franchise.

On the anniversary of the grant of each later awarded franchise, such franchisees shall pay to the City an amount proportional to the amount contributed by the original franchisee, based upon the amount of subscribers held by such franchisees.

Overlapping franchisee's shall be required to provide all PEG access facilities, equipment and channel(s) that are required of and available to customers by the existing franchisee. In order to provide the access channels, additional franchisees shall interconnect, at their cost, with the existing franchisee. In addition, the overlapping franchisee shall reimburse on a proportional basis, the franchisee for the capital expenditure required to provide PEG facilities and equipment.

7.61.380 Inconsistency.

If any portion of this Ordinance should be inconsistent or conflict with any rule or regulation now or hereafter adopted by Federal or State laws, then to the extent of the inconsistency or conflict, the rule or regulation of the Federal or

State law 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 Ordinance shall not be affected thereby.

7.61.390 Severability.

If any section, subsection sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 2.

This Ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code, in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

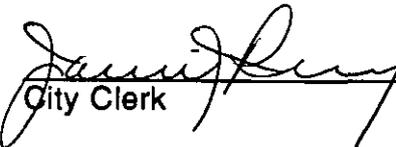
Passed by majority vote of the Kirkland City Council in regular, open meeting this 15th day of November, 1994.

Signed in authentication thereof this 15th day of November, 1994.



MAYOR

Attest:



City Clerk

Approved as to Form:



City Attorney

Customer Service

0-3437

Title 47 CFR, Part 76 (Cable Television Service), Subpart H (General Operating Requirements) is amended as follows:

1. The authority citation for Part 76 is revised to read as follows:

AUTHORITY: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1061, 1087, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309; Secs. 612, 614-615, 623, 632 as amended, 106 Stat. 1460; 47 U.S.C. Secs. 532, 533, 535, 543, 552.

2. Section 76.309 will be added to the Commission's Rules and will read as follows:

Section 76.309 Customer Service Obligations

(a) A cable franchise authority may enforce the customer service standards set forth in section (c) of this rule against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

- (1) a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in section (c) of this rule;
- (2) a franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in section (c) of this rule and are contained in current franchise agreements;
- (3) any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or
- (4) the establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in section (c) of this rule.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

- (1) **Cable system office hours and telephone availability-**
 - (A) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.
 - (B) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.
 - (C) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.
 - (D) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.
 - (E) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
 - (F) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.
 - (G) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.
 - (H) Installations, outages and service calls- Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:
 - (A) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.
 - (B) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin attempts to correct other service problems the next business day after notification of the service problem.

(C) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(D) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(E) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) **Communications between cable operators and cable subscribers-**

(A) **Notifications to subscribers-**

- (i) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:
 - (i) products and services offered;
 - (ii) prices and options for programming services and conditions of subscription to programming and other services;
 - (iii) installation and service maintenance policies;
 - (iv) instructions on how to use the cable service;
 - (v) channel positions of programming carried on the system; and,
 - (vi) billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(2) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

(B) **Billing-**

- (i) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
- (ii) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.
- (C) **Refunds-** Refund checks will be issued promptly, but no later than either-
 - (i) the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
 - (ii) the return of the equipment supplied by the cable operator if service is terminated.
- (D) **Credits-** Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) **Definitions-**

(A) **Normal Business Hours-** The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(B) **Normal Operating Conditions-** The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(C) **Service Interruption-** The term "service interruption" means the loss of picture or sound on one or more cable channels.

PUBLICATION SUMMARY OF ORDINANCE NO. 3437

AN ORDINANCE OF THE CITY OF KIRKLAND CREATING A NEW CHAPTER, KMC 7.61, ENTITLED CABLE TELEVISION--PROCEDURES AND TERMS FOR GRANT OF FRANCHISES.

SECTION 1. Creates a new KMC Chapter 7.61 to set forth the procedures and terms applicable to all franchises to be granted by the City for cable television, including technical standards, required reporting of activities and procedure for termination.

SECTION 2. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its regular meeting on the 15th day of November, 1994.

I certify that the foregoing is a summary of Ordinance 3437 approved by the Kirkland City Council for summary publication.



City Clerk
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