

ORDINANCE NO. 1356

ORIGINAL

AN ORDINANCE OF REDMOND, WASHINGTON ESTABLISHING THE CONDITIONS, REQUIREMENTS, OBLIGATIONS, DUTIES OF CONSTRUCTION, MAINTENANCE AND OPERATION OF A NON-EXCLUSIVE CABLE COMMUNICATION AND DISTRIBUTION SYSTEM WITHIN THE CITY WITH RESPECT TO THE GRANTING OF THE RIGHT, PRIVILEGE, AND AUTHORITY TO FRANCHISEE'S TO CONTRUCT, OPERATE, MAINTAIN AND USE POLES, CONDUITS, CABLES, WIRES AND OTHER INCIDENTAL EQUIPMENT IN, UPON, UNDER, OVER, ALONG AND ACROSS STREETS, AVENUES, BOULEVARDS, ALLEYS AND OTHER PUBLIC PLACES OF THE CITY OF REDMOND, AND REPEALS ORDINANCE NO. 833 RELATING TO COMMUNITY ANTENNA SYSTEM FRANCHISES.

WHEREAS, the City Council has determined that the City's existing regulations governing cable television franchises, should be amended as set forth hereinafter, now, therefore,

THE CITY COUNCIL OF THE CITY OF REDMOND DO ORDAIN AS FOLLOWS:

Section 1. Definitions.

- (a) "Access channels" means free composite channels to be used for educational purposes and by government and other public agencies and/or their representatives (commonly referred to as "PEG" channels).
- (b) "Act" means the Cable Communications Policy Act of 1984 and any subsequent amendments.
- (c) "Addressability" means the ability of a system allowing the Franchisee to authorize by remote control customer terminals to receive, change or to cancel any or all specified programming.
- (d) "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with Franchisee.
- (e) "Applicant" means any person or entity that applies for a franchise.
- (f) "Bandwidth" means the measure of spectrum which transmits audio and visual information.
- (g) "Basic services" means those broadcast and nonbroadcast services provided by the cable Franchisee at the lowest monthly charge as defined by the Act or rules now or subsequently adopted by the FCC.
- (h) "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.
- (i) "CATV" means a community antenna television system as hereinafter

defined.

(j) "Channel" means a single path or section of the spectrum which carries a television signal.

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

(l) "City" means the City of Redmond, a municipal corporation of the State of Washington.

(m) "Combined disposable income" means the disposable income of the person claiming a rate discount, plus the disposable income of his or her spouse, and the disposable income of each co-tenant occupying the residence during the preceding calendar year, less amounts paid by the person claiming the rate *discount of his or her spouse during the previous year for the treatment or care of either person in a nursing home.*

(n) "Community Antenna Television System", "cable television system", or "system", means a system of antennas, cables, wires, lines, towers, transmission lines, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying, scrambling and distributing audio, video and other forms of electronic or electrical signals, located in whole or in part in the City.

(o) "Converter" means an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and with an appropriate channel selector which also permits a subscriber to view all signals delivered at designated converter dial locations.

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

(q) "Decoder" means electronic equipment which converts an electronically scrambled picture into a viewable signal.

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

(s) "Franchise" means the non-exclusive right or authority to construct, operate and maintain a cable television system by use of city owned rights-of-way, easements or other publicly owned properties.

(t) "Franchisee" means the person, firm or corporation to whom or which a franchise, as hereinabove 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.

(u) "Gross revenues" means any and all compensation, received from the provision of cable television service directly or indirectly by a Franchisee not including any taxes on services furnished by the Franchisee, imposed on any subscriber or used by any governmental unit, agency or instrumentality and collected by the Franchisee for such entity provided also that net uncollectible debts and refundable deposits are not considered as revenue in this definition.

- (v) "Headend" means the electronic equipment located at the start of a cable system, usually including antennas, preamplifiers, frequency converters, demodulators and related equipment.
- (w) "Hub" means a sub-headend fed by signals from a cable headend. Signals are distributed from the hub to subscribers by primary and feeder cables.
- (x) "Installation" means the connection of the system from feeder cable to subscribers' terminals.
- (y) "Institutional network" (I Network) or (closed "B" loop) means a cable communications network designed principally for the provision of non-entertainment interactive services to schools, public agencies or other non-profit agencies, separate and distinct from the subscriber network.
- (z) "*Interactive services*" means services provided to subscribers where the subscriber either (a) 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 (b) transmits signals to any other location for any purpose.
- (aa) "Interconnect" means a link by various technical means to other cable reception systems for purposes of program distribution.
- (bb) "Leased access channel" means any channel or portion of a channel available for programming for a fee or charge by persons or entities other than the Franchisee.
- (cc) "Office" means the person or entity designated by the City as being responsible for the administration of the franchise for the City.
- (dd) "Operator" means the person, firm or corporation to whom a franchise is granted pursuant to the provisions of this ordinance.
- (ee) "PEG Channels" - See (a) Access Channels.
- (ff) "Premium services" means programming over and above those provided by basic service for which there is additional charge.
- (gg) "Property of Franchisee" means all property owned, installed or used by a Franchisee in the conduct of a CATV business in the City under the authority of a franchise granted pursuant to this ordinance.
- (hh) "Public way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City in the service area which shall entitle the City and the Franchisee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. Public way shall also mean any easement now or hereafter held by the City within the service area for the purpose of public travel, or for utility or

public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the City and the Franchisee to the use thereof for the purpose of installing or transmitting franchisee's cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments and other property as may be ordinarily necessary and pertinent to the cable system.

(ii) "Residential network" means a cable communications network designed principally for the delivery of entertainment, community access and/or interactive services to individual dwelling units.

(jj) "Scrambler" means a device used to electronically alter a signal so that it *can be viewed only on a TV receiver equipped with a special decoder.*

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

(ll) "Tier" means any group or groups of channels so designated and marketed by the Franchisee for a separate charge to a subscriber.

(mm) "Upstream" means transmission of a signal from the terminal to the system's headend.

Section 2. Terms of Franchise.

(a) **AUTHORITY TO GRANT FRANCHISES OR LICENSES FOR CABLE TELEVISION:** It shall be unlawful to engage in or commence construction, operation, or maintenance of a cable communications system without a franchise issued under this 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 affects its jurisdiction over them or any part of them, or limit the full power of the City to make all necessary changes, as the City in its sole discretion shall decide, including the dedication, establishment, maintenance and improvements of all new rights-of-way and thoroughfares and other public properties of any type. In the event the City grants another cable franchise, the new franchise shall be granted on the same terms as the existing franchise.

(b) **INCORPORATION BY REFERENCE:**

(1) The provisions of this Ordinance shall be incorporated by reference in any franchise ordinances or licenses approved hereunder.

(2) The provisions of any proposal submitted and accepted by the City shall be incorporated by reference in the applicable franchise or license. However in the event of any conflict between the proposal and this

ordinance, this ordinance having been reached by negotiation with the Franchisee, will be the prevailing document.

(c) **NATURE AND EXTENT OF THE GRANT:** Any franchise granted hereunder by the City shall authorize the Franchisee, subject to the provisions herein contained:

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

(2) To erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street, such amplifiers and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures, and other property as may be necessary and appurtenant; to the cable communications system; and, in addition, so to use, operate, and provide similar facilities, or properties rented or leased from others persons, firms or corporations, including but not limited to any public utility or other Franchisee franchised or permitted to do business in the City.

(3) No privilege or exemption shall be granted or conferred upon 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 FRANCHISE:** The franchise and rights and privileges granted shall remain in force and effect for a period of fifteen (15) years from the effective date of such franchise.

Section 3. Application.

An Applicant for a franchise to construct, operate, or maintain a cable communications system with the City shall file an application in a form satisfactory to the City, providing sufficient information as required by the City or its designee.

Section 4. Hearing.

After the application has been received, the City Council shall conduct a public hearing to determine the following:

(a) That the public will be benefited by the granting of a franchise to the Applicant.

(b) That the Applicant has requisite financial and technical resources and capabilities to build, operate and maintain a cable television system in the area.

(c) That the Applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the City.

(d) That the Applicant will comply with all terms and conditions placed upon the Franchisee by this Ordinance.

(e) 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.

Section 5. Acceptance.

(a) No franchise granted pursuant to the provisions of this Ordinance shall become effective unless and until the Ordinance granting same has become effective.

(b) Within thirty (30) days after the effective date of the ordinance awarding a franchise, or within such extended period of time as the Council in its discretion may authorize, the Franchisee shall file with the City Clerk its written acceptance, in form satisfactory to the City Attorney, of the franchise, together with the bond and insurance policies required by Sections 49 & 50 herein.

Section 6. Police Powers.

In accepting any franchise, the Franchisee acknowledges that its rights hereunder are subject to the police power of the City to adopt and enforce general ordinances necessary to 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.

Section 7. 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 powers provided they are consistent with the terms and conditions of this Ordinance and provided further they do not increase the material burdens nor diminish the rights of the Franchisee.

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

Section 8. Franchising Costs.

The Franchisee shall pay to the City, upon acceptance of any franchise granted hereunder, the City's out-of-pocket costs associated with the franchising process. Costs shall include such items as consulting fees, expenses, and the costs of publishing notices and ordinances, etc. Such payment is not deductible or considered in lieu of franchise fee payments. Payment is due within sixty (60) days of receipt of appropriate invoice from the City.

Section 9. Allocation of Shared Costs.

If more than one Franchisee is awarded a franchise, certain costs such as ongoing training expenses, equipping and providing manpower for access studio, other access and institutional network costs, bi-directional cable installed to municipal and educational buildings, emergency power and override, etc. will be shared proportionately to basic subscribers held by each Franchisee. The Franchisee with the greater number of basic subscribers will provide such facilities and manpower required. The Franchisee(s) with the lesser number of basic subscribers will reimburse the furnishing Franchisee, at direct cost, for all such services and equipment. Such

arrangements will be made directly between the Franchisees, but the City may be called upon to arbitrate any dispute in case of conflict between operators.

Section 10. Technical Standards.

(a) Franchisee shall comply with FCC rules, Part 76, Subpart K, Section 76.601 through 76.610 and as amended, 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 Electrical Safety Code; ANSI C2;
- (4) Local Utility Code Requirements;
- (5) Local Rights-of-Way Procedures;
- (6) NCTA Manual 741 Signal Leakage and Interference Control.

(b) PREVENTATIVE MAINTENANCE: A comprehensive routine preventative maintenance program shall be developed, effected and maintained for each system by the respective Franchisee to ensure continued top quality cable communications operating standards in conformance with FCC Part 76.

Section 11. System Capability.

Franchisee shall provide at least a 300 mghz system capable of thirty-five (35) operational channels which will be activated with an initial minimum of twenty-eight (28) operational channels of service.

Furthermore, Franchisee shall upgrade to a 400 mghz or greater operation with a minimum of fifty-four (54) 6MHz video channels and a 20 MHz wide (88 to 108 MHz) FM broadcast band when directed by the City. Such direction may be made by the City at such time when fifty percent (50%) of the Franchisee's other systems of similar demographics as determined by trade reference books have installed such system. Demographic factors to be considered are size of the subscriber base and the number of dwelling units passed. Such system upgrade will be completed within twenty-four (24) months of such notice and such determination to Franchisee.

Section 12. System Services

1. Access (PEG) Channels.

The City requires, under Section 611 of the Act, the Franchisee to furnish access channels for public, educational and governmental use. Initially the City shall require two channels to be designated for this purpose. One channel shall be reserved for governmental purposes, and the other for educational and public uasge. The City shall prescribe rules and procedures under which the Franchisee is permitted to use such channel capacity for the provision of other services if such channel capacity is not being used for the purposes designated, and rules and procedures under which such permitted use shall cease. The Franchisee shall, upon notification by the City make additional channel(s) available at such time when more than sixty percent (60%) of the cablecast time on any access channels between 9 AM and 11 PM is used by any one of the three basic PEG categories for thirteen (13) consecutive weeks.

However, if such criterion will result in the necessity to change an existing

entertainment channel to an access channel, Franchisee may request Council resolution after a public hearing.

2. Institutional.

Separate from the PEG access channel(s), Franchisee shall make available a dedicated channel solely for the use of educational institutions, libraries, public safety facilities and municipal buildings within the City of Redmond. Such capacity will consist of either a "scrambled" signal which will not be able to be received by the residential subscriber network or a signal designed to be received by specially tuned converters. Such specially tuned converters will be provided without charge to designated facilities (see appendix "A"). These services shall be provided within twenty-four (24) months from the acceptance of the franchise. Both the installation and service of converters for the designated facilities will be made without charge. The City will be responsible for replacing loss or repairing damage to such equipment.

In addition, within twelve (12) months from acceptance of a franchise, the Franchisee shall provide to the City a character generator such as a Chyron V.P. 2 or one similar together with necessary ancillary equipment to allow the City to cablecast messages on either the residential network or the dedicated institutional network. Said character generator shall be provided and installed at a designated location in the City Hall of Redmond.

3. Facilities and Equipment.

The Franchisee's access facilities and equipment as specified in Appendix B shall be made available to the residents of the City of Redmond for the production of access programming to be cablecast on the Redmond access channel(s). The Franchisee shall be responsible for the maintenance of such equipment at no charge to the City.

4. Public Buildings.

In addition to the services provided for above, Franchisee shall provide without charge for installation, basic service, outlet and converter at such City of Redmond public buildings and Lake Washington School District educational facilities within the franchise area and as specified in Appendix A and that may be constructed during the period of the franchise provided that such installation will not require undergrounding cable through or under pavement or other physical obstructions other than open earth, extension of the trunk or distribution lines from the nearest point of connection to the existing cable system, or other modifications, additions or improvements to the existing cable television system which would cost Franchisee in excess of normal installation costs. Further, Franchisee agrees to provide installation, one outlet, and converter at a specified location in the new Public Safety Building to be built adjacent to City Hall provided that the City requires the contractor to provide trenches and/or conduit for the Franchisee's cables for this purpose.

However, in such cases, Franchisee and the City may share such additional costs involved in excess of normal installation costs on a mutually agreed upon case by case basis.

Section 13. Upgrade Construction Penalties.

A Franchisee may be assessed the sum of Five Hundred Dollars (\$500.00) per day as compensatory liquidated damages for each day the installation of original or upgraded service is not fully completed after the expiration of the twenty-four (24) month period following the awarding of the franchise, or, in the case of upgrading when directed by the City, except for delays due to acts of God. Franchisee may obtain extensions of upgrade deadlines due to delays caused by circumstances beyond Franchisee's control. The City shall have the right, solely and exclusively within its reasonable discretion, to grant such extensions and to waive such penalties. Any such extension or waiver, which must be in writing, shall not constitute waiver of future rights to enforce this penalty.

Section 14. Arbitration.

In the event the City and Franchisee are unable to reach agreement as to whether the test of Sections 11, 16 and 45 are satisfied, the parties agree to resolve such question by arbitration. The City shall select an arbitrator who is knowledgeable in cable communications matters and Franchisee shall select a similarly qualified person. The two arbitrators selected by the parties shall select a third arbitrator. The decision of the majority of the arbitrators shall be binding and conclusive. The cost of such arbitration shall be shared equally by the City and the Franchisee.

Section 15. Parental Control Devices.

Franchisee will make available a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber. The fee for this device will be a one time charge equal to no more than Franchisee's actual cost for the device.

Section 16. Other Interactive Services.

The City may, at its discretion, require that the Franchisee provide such services as addressability, security, computer interaction, banking, shopping, etc. upon a "two-way" basis at such time as fifty percent (50%) of the Franchisee's other systems of similar demographics as determined by trade reference books have installed such system. Demographic factors to be considered are size of the subscriber base and the number of dwelling units passed. Such system upgrade will be completed within twenty-four (24) months of such final notice and determination to the Franchisee.

Section 17. Leased Access.

The Franchisee will comply with Section 612 of the Act to make available a cable channel for local commercial use as soon as the various criteria of that section are reached.

Section 18. Emergency Power.

Franchisee shall provide a standby power system to automatically activate equipment at the headends in the event of a primary electrical failure. Such system shall be operational within twelve (12) months from the effective date of the franchise.

Section 19. 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 and the use of adjoining property, and shall conform to the applicable section of the National Electrical Code, codes of State of Washington, and City regulations pertaining to such construction.

Section 20. Construction Notification.

The City may establish reasonable minimum requirements for advance notification to residents adjacent to proposed construction areas.

Section 21. Undergrounding.

In those areas and portions of the City where the transmission or distribution facilities of both the public utility providing telephone service and those of the utility providing electric service are underground or hereafter may be placed underground, *then the Franchisee shall likewise construct, operate and maintain all of its transmission and distribution facilities in the same area underground.* Amplifiers and associated equipment in Franchisee's transmission and distribution lines may be in appropriate housing upon the surface of the ground as approved by the City.

Section 22. Safety Requirements.

(a) The Franchisee shall, at all times, employ professional care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(b) All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the 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 the Franchisee is constructed and maintained in a safe condition. If an unsafe condition is found to exist by the City, it may order the Franchisee to make necessary repairs within thirty (30) days from the receipt of the City's notification thereof, the City may make the repairs itself or have them made, and collect all reasonable costs thereof from the Franchisee.

Section 23. Annexed and Newly Developed Areas.

All annexed and newly developed areas shall be provided cable service, if such areas are contiguous to the City limits, within six (6) months from the time of obtaining necessary permits. A list of such permits shall be provided to the City, upon request, by the Franchisee together with the dates for which application was made. Franchisee shall take immediate action to apply for such permits and licenses and will continue to pursue diligently the issuance of such required documents. It is understood that within these areas certain minimum density requirements; as outlined in Section 24 must be met.

In cases of new development (such as new subdivisions not yet meeting density requirements) and where utilities are to be placed underground, Franchisee shall install required equipment at its expense to provide future service. The developer shall be

required to give Franchisee reasonable notice of any construction or development, including a copy of any final plan, and of the particular date on which open trenching or other facilities shall be available for Franchisee's installation of conduit or cable. Franchisee may be charged no more for use of such trench than charged other users. The developer shall be responsible for the opening and closing of such trenches. Upon request Franchisee shall also provide specifications to the developer as needed for trenching or other technical data that may be required.

If technical equipment such as prewiring or distribution system is installed by the developer, it is the developer's responsibility to make certain that such equipment meets FCC standards.

Section 24. Line Extension.

Franchisee agrees to provide cable communications service to all areas within the City, subject to the condition that there are at least fifty (50) dwelling units per street mile or one such unit within one hundred fifty (150) feet of Franchisee's distribution system as measured from existing system or such ratio thereof.

In the event request is made for service by a resident living in an area not meeting such criteria, the Franchisee shall make such installation available to the requesting subscriber on a time and material cost basis.

Section 25. Completion Time.

In the event that the City of Redmond finds it is necessary to solicit proposals from, and grant the franchise to, another applicant other than the present franchise holder, the Franchisee so selected must agree to complete the new or rebuilt system so as to cause no interruption in service to existing subscribers. Therefore, such Franchisee shall complete the construction of described system including hook ups to all those so desiring in not less than twenty-four (24) months from the award of the franchise.

Section 26. Building Moving.

Whenever any person shall have obtained permission from the City to use any street for the purpose of moving any building, a Franchisee, upon seven (7) days written notice from the Director of Public Works, shall raise or remove, at the expense of that person desiring to move the building, any of its or their 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 the lines of Franchisee and other franchise holders. 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 the Franchisee.

Section 27. Tree Trimming.

With City approval, which shall not be unreasonably withheld the Franchisee shall have the authority to trim trees upon and overhanging streets and public ways and

places of the franchise area so as to prevent the branches of such trees from coming in contact with the wires and cables of the Franchisee and if necessary to clear the microwave path and shall be responsible for debris removal from such activities. At the option of the City, and with advance written notice to the Franchisee, such trimming may be done by it or under its supervision and direction, with reasonable costs to be borne by Franchisee.

Section 28. Rates.

Within sixty (60) days after the grant of any franchise hereunder, Franchisee will file with the City a complete schedule of all rates to be charged to subscribers, including but not limited to:

- (a) Installation of Basic Service.
- (b) Charges for Basic Service.
- (c) Installation of Premium Service.
- (d) Charges for Premium Service.
- (e) Installation of FM service.
- (f) Charges for FM service (including rates for FM service as a primary service).
- (g) Charges for relocation and reconnection.
- (h) Converter charges.
- (i) Charges for parental control keys.
- (j) Installation charges for additional outlet service.
- (k) Charges for additional outlet service.
- (l) Discounts for multiple premium services, etc.
- (m) Extended drop installation charges.
- (n) All other charges proposed.

Notice of Rate Change. Prior to implementation of any change in rates or charges for any service or equipment provided by Franchisee, Franchisee shall be required to provide City and all subscribers a minimum of thirty (30) days prior written notice of such change. Franchisee shall work with the City to cablecast notice of such change at least hourly on the community access channel for a least thirty (30) days prior to the implementation of any rate change.

Section 29. Discounts.

Franchisee shall offer a discount to those individuals permanently disabled or sixty-two (62) years or older who are the legal owner or lessee/tenant of their residence provided that their combined disposable income from all sources does not exceed the Federal poverty level for the current and preceding calendar year. Such discounts will consist eight and one half percent (8.5%) with a minimum deduction of two dollars (\$2.00) from the normal charge for basic residential services as well as a fifty percent (50%) reduction in normal residential installation charges.

The City of Redmond or its designee shall be responsible for certifying to the Franchisee that such applicants conform to the specified criteria.

Section 30. Franchise Fee.

Franchisee shall pay to the City a sum equal to five percent (5%) of gross

revenues as defined herein. Such payments will be made on a quarterly basis.

Section 31. Record Inspection.

Subject to statutory and constitutional limits and reasonable advance notice, the City reserves the right to inspect the records of the Franchisee at any time during normal business hours provided the City shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the Franchisee. Such documents shall include such information as financial records, subscriber records within the context of Section 631 of the Act, tax returns and plans. Such data, however, is understood to be limited to such information that pertains solely to the operation and maintenance of the cable television system within the City of Redmond.

Section 32. Periodic Reports.

The Franchisee shall furnish to the City within sixty (60) days of the conclusion of its fiscal year, a report of its activities, including, but not limited to the following:

- A. Annual report.
- B. A copy of the 10-K Report, if required by the Security 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 subscribers using two-way services.
- G. The number of hook-ups in period.
- H. The number of disconnects in period.
- I. The number of miles of cable laid in period.
- J. Total number of miles of cable in City.
- K. Summary of complaints received by category, length of time taken to resolve and action taken to provide resolution.
- L. Plans for future programming and/or changes as decided upon by Franchisee which affect services within the franchise area.
- M. Maps indicating existing location of headend equipment, trunk and distribution lines and projected routes with construction completion estimate by month or quarter in the event of a rebuild of the existing system.
- N. A statement of its current billing practices.
- O. A current copy of its access rules.
- P. A current copy of its subscriber service contract.
- Q. A statement listing all production equipment provided for access programming.
- R. Report on Operations - Such other reports with respect to its operation, affairs, transactions or property that may be appropriate.

However, it is recognized that certain of these reports, such as the corporate annual report and the 10-K may be delayed beyond this sixty (60) day period, but shall be submitted by the Franchisee as soon as practicable thereafter.

Section 33. Annual Meeting.

On a yearly basis, upon thirty (30) days' written notice from the City, the

Franchisee shall meet with designated City officials and/or designated representative(s) to review the performance of the Franchisee over the preceding twelve (12) months. The subjects shall include, but not be limited to those items covered in the periodic reports and performance tests listed above, as well as possible items for discussion such as:

1. Computer uses;
2. Service rate structures;
3. Interconnection;
4. Franchise fees;
5. Penalties;
6. Free or discounted services;
7. Application of new technologies;
8. Technical standards;
9. System performance;
10. Services provided;
11. Programming offered;
12. Access channels, facilities and support;
13. Municipal uses of cable;
14. Use and promotion of institutional network;
15. Local origination;
16. Consumer protection;
17. Privacy;
18. Amendments to this franchise;
19. Judicial rulings;
20. Congressional actions;
21. FCC rulings;
22. Line extension policies;
23. Insurance;
24. Franchisee rules;
25. City rules;

Section 34. Performance Tests.

If the City determines that reasonable evidence exists of inadequate CATV system performance pursuant to Section 10, it may require Franchisee to perform tests and analyses directed toward such suspected inadequacies at the franchisee's own expense. Franchisee shall fully cooperate with City in performing such testing and shall prepare results and the report prepared by Franchisee shall include at least:

1. A description of the problem in CATV system performance which precipitated the special tests.
2. What CATV system component was tested.
3. The equipment used and procedures employed in testing.
4. The method, if any, by which such CATV system performance problem was resolved.

5. Radiation limits tests, such as those heretofore for required by the FCC.

6. Any other information pertinent to said tests and analyses which may be required by City, or determined when the test is performed.

If the results of testing shall indicate that the Franchisee was operating within the established parameters as described in Section 10; then the City shall be responsible for the costs of such tests. If the technical analysis shows that the Franchisee is in violation of such parameters, the Franchisee shall reimburse the City for such actual costs of testing. If such violation is shown, Franchisee shall correct all violations within sixty (60) days after written notice from the City.

Section 35. Customer Service.

A. Franchisee shall maintain a local office which shall be open during normal business hours, shall have a publicly listed telephone which is toll free to subscribers to the Redmond cable system, and shall be operated to receive customer inquiries on a 24-hour-a-day, 7 day-a-week basis. A record of all complaints requiring service calls shall be maintained for a two-year period. Franchisee's local office shall be staffed a minimum of regular business office hours from Monday through Friday, except holidays, for a prompt response to any complaint concerning billing, employee courtesy, programming, safety, or company policy.

B. Franchisee shall render repair service to restore the quality of the signal at no less than 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. A written or computerized log shall be maintained for a period of one year for all service interruptions which can be inspected upon notice.

C. An employee of Franchisee shall answer and respond to all individual complaints received prior to 5:00 pm weekdays. Franchisee may use an answering service to receive complaints after 5:00 pm weekdays and on weekends and holidays. A standby technician shall check with the answering service until 9:00 pm on weekdays and until 5:00 pm on weekends and holidays and will respond to any system outage affecting more than one customer.

D. Franchisee shall instruct its answering service to immediately notify a standby technician during the weekend or on a holiday if it receives calls indicating an outage affecting more than one customer.

E. Franchisee will maintain a sufficient repair force to respond to individual customer complaints or requests for repair service within twenty-four (24) hours, after receipt of the complaint or request except Saturday, Sunday and legal holidays. All complaints shall be resolved within seven (7) days, to the extent reasonable. Upon a request by customer, no charge for the period of the outage shall be made to the customer if the customer was without service for a period

exceeding twenty-four (24) hours, unless the outage was due to Acts of God or events beyond the reasonable control of Franchisee.

F. A standby technician shall be on call seven (7) days a week. Franchisee shall respond immediately to service complaints involving a system outage affecting more than one customer. For purposes of this section, a system outage shall mean a customer is without all services.

G. Franchisee shall supply at the time of a new connection, and periodically at least once a year, the title, address, and telephone number of the Redmond City official or his/her designee, to whom system subscribers may direct their concerns.

H. All customers, access programmers and members of the general public may *direct comments regarding the company's service or performance to the City or its designee*. The City will provide a method whereby all customers, access programmers and members of the general public have recourse to a review by the City or its designee regarding any complaints.

Section 36. Subscribers' Right of Privacy.

The Franchisee shall comply with all of the provisions of Section 631 of the Act.

Section 37. Programming.

For informational purposes only, the Franchisee shall file, upon granting of the franchise a complete listing of its cablecast programs including a breakdown of its basic and tier schedule. Such listing shall become the initial programming and cost schedule to be considered as the basis from which any changes may be contemplated in the future. This information, however, does not accord the City any greater rights of regulation than those granted in the Act.

Section 38. Modification.

In the event the Franchisee shall seek to have the existing franchise modified, Section 625 of the Act shall govern the procedure for the modification request unless City and Franchisee shall otherwise agree.

Section 39. Non-Discrimination.

The 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 Franchisee.

Installation and housedrop hardware shall be uniform throughout the City, except that the Franchisee shall be free to change its hardware and installation procedure as state of the art progresses.

The Franchisee will not deny access to cable communications service to any group of potential residential subscribers because of the income of the residents of the local area in which the group resides.

Section 40. Equal Employment Opportunity.

The Franchisee shall comply with all provisions of Section 634 of the Act.

Section 41. Continuity of Service.

It shall be the right of all subscribers to continue receiving service so long as *their financial and other obligations to the company are fulfilled.*

(a) In this regard the Franchisee shall act so far as it is within the control of the Franchisee so as to ensure that all subscribers receive continuous uninterrupted service during the term of this franchise.

(b) In the event the 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 Franchisee's control, the City may, after notice and an opportunity for Franchisee to commence operations at its option, operate the system or designate someone to operate the system until such time as the Franchisee restores service to conditions acceptable to the City Council or a permanent Franchisee is selected. If the City is required to fulfill this obligation for the Franchisee, the 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 the Franchisee's failure to perform.

Section 42. Franchise Renewal.

The provision of Section 626 of the Act will govern the actions of the City and the Franchisee in proceedings relating to franchise renewal. The City expressly reserves the right to establish guidelines and monitoring systems in accordance with the provisions of the Act to measure the effectiveness of the Franchisee's performance during the term of such franchise.

Section 43. 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. No franchise can 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 under the same terms, and conditions as the original Franchise or as it may be subsequently amended by mutual agreement to insure a review of unforeseen circumstances not present at the time of the original franchise. City's approval shall not be unreasonably withheld. Such costs associated with this process shall be reimbursed to the City by the new prospective Franchisee.

An assignment of a franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, 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.

The Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of the Franchisee's company. Every change, transfer or acquisition of control of the Franchisee's company shall make the franchise subject to cancellation unless and until the City shall have consented thereto. 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 unless control by the Franchisee is restored to a status acceptable to the City Council.

Such approval of transfer, subject to conditions enumerated above, shall not be unreasonably withheld. Approval of the City shall not be required if said transfer is from Franchisee to another person or entity, controlling, controlled by or under common control with the Franchisee. Approval shall not be required for mortgaging purposes provided that less than fifty percent (50%) of the beneficial interests, as described above are affected by such mortgage.

Upon the commencement of a foreclosure action or other actions which could possibly result in a judicial sale of all or a substantial part of the cable system, the Franchisee shall notify the City Council of such fact, and such notification shall be treated as a notification that a change in control of the company has taken place, and the provisions of this ordinance governing the consent of the City Council to such change in control of the Franchisee shall apply.

Any transfer or assignment approved by the City shall be evidenced by a written instrument, a duly executed copy of which shall be filed in the Office within sixty (60) days after the approval of the transfer or assignment by the City. By said instrument, the assignee shall agree to comply with all terms of this ordinance, the franchise ordinance, and the assignor's application. The City shall have the right, at its sole discretion, to require that any conditions in the original franchise be fulfilled prior to such transfer. Furthermore, the City may ask that a review be made of the terms of a new franchise to determine whether unforeseen circumstances, not present at the time of the original franchise are now pertinent to the City, and that such conditions, if any, be incorporated in a new franchise agreement acceptable to the City. Such costs associated with this process shall be reimbursed to the City by the new prospective Franchisee.

Section 44. Right of City to Purchase.

The City reserves the right to purchase the existing system pursuant to Section 627 of the Act.

Section 45. Removal & Abandonment of Property of Franchisee.

The City may direct the Franchisee to temporarily disconnect or bypass any equipment of the 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 the Franchisee.

In the event that the use of any part of the CATV 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 this Ordinance or other City ordinances or this Ordinance has been terminated, cancelled or has expired, the Franchisee shall promptly, upon being given ten (10) days' notice, remove within ninety (90) 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, the Franchisee shall promptly restore the street or other areas from which such property has been removed to a condition similar to that condition existing before such removal.

Any property of the Franchisee remaining in place ninety (90) days after the termination or expiration of the franchise shall be considered permanently abandoned. The City may extend such time not to exceed an additional ninety (90) days.

Any property of the Franchisee to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon permanent abandonment of the property of the Franchisee in place, the property shall become that of the City, and the 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, federal law or the Constitution. In the event the City and the 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.

Section 46. Revocation for Cause.

Any franchise granted by the City may be terminated during the period of such franchise for the following reasons:

- (a) Failure by the Franchisee to comply with material provisions of this Ordinance.
- (b) Failure of the Franchisee to comply with FCC regulations, or other provisions of the Act.

The procedure to be followed resulting in termination for any of the above reasons, save Franchisee's request will be:

- (a) City Council will direct in writing Franchisee to correct such deficiencies or comply with such regulations within thirty (30) days or a reasonable period of time.
- (b) Failure to do so will cause the matter of termination to be brought before the City Council.
- (c) At such hearing the Franchisee and other interested parties may offer evidence explaining or mitigating such non-compliance. The City Council in its sole discretion, will make the determination as to whether such non-compliance was without just cause. In the event the City Council finds that such non-compliance was without just cause, the City Council may at its sole discretion fix an additional time period to cure such deficiency(ies). If the deficiency has not been cured at the expiration of any additional time period or if

the Council does not grant any additional period, the City Council may by ordinance declare the franchise to be terminated and forfeited.

(d) If the Franchisee appeals the revocation and termination of the franchise through legal remedies, the revocation of such franchise shall be held in abeyance pending such de novo judicial review by a court of competent jurisdiction.

(e) Provided, nothing contained in the above subsections of this section shall prevent the issuance of a new franchise containing terms similar to or identical to a franchise which previously was revoked, on satisfactory assurances made to the City Council that the terms and conditions of this Ordinance can be met by the Franchisee.

Section 47. Effect of Termination for Non-Compliance.

Subject to state and federal law, if any franchise is terminated by the City by reason of the 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 Section 627 (b) (1) of the Act. If the City, or a third party, does not purchase the system, the Franchisee shall, upon Order of the City Council, remove the system as required under Section 45.

Section 48. Indemnify & Hold Harmless.

The Franchisee will indemnify and hold harmless the City from any and all liabilities, fees, costs and damages except in the case of negligence or willful misconduct on the part of the City, whether to person or property, or expense of any type or nature which may occur to the City by reason of the construction, operation, maintenance, repair and alterations of Franchisee's facilities or any other actions of Franchisee in the City of Redmond. In any case in which suit or action is instituted against the City by reason or damages or injury caused by Franchisee, the City shall cause written notice thereof to be given to the Franchisee and Franchisee thereupon shall have the duty to appear and defend in any such suit or action, without cost or expense to the City.

Section 49. Insurance.

The 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, in protection of the City, its officers, boards, commissions, agents and employees, 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 Franchisee under such franchise, with minimum limits of One Million Dollars (\$1,000,000) for both personal injury and/or property damage.

The policies mentioned in the foregoing paragraph shall name the City, its officers, boards, commissions, agents and employees, 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 Franchisee or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement.

Section 50. Performance Bond.

Franchisee shall promptly repair or cause to be repaired any damage to City property caused by Franchisee or any agent of Franchisee. Franchisee shall comply with all present and future ordinances and regulations regarding excavation or construction and if deemed necessary by the City shall be required to post a performance bond in an amount not to exceed Fifteen Thousand Dollars (\$15,000), in favor of the City warranting that all restoration work will be done promptly and in a workmanlike manner.

Section 51. Inconsistency.

If any portion of this Ordinance should be inconsistent with any rule or regulation now or hereinafter adopted by the FCC or other federal legislation, then to the extent of the inconsistency, the rule or regulation of the FCC or other federal legislation shall control for so long, but only for so long, as such rule or regulation shall remain in effect, but the remaining provisions of this Ordinance shall not hereby be effected.

Section 52. Severability.

Each section, subsection or other portion of this ordinance shall be severable and the invalidity of any section, subsection, or other portion shall not invalidate the remainder.

Section 53. Force Majeure.

In the event that the Franchisee's performance of any of the terms, conditions, obligations or requirements of this ordinance is prevented or impaired due to any cause(s) beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof.

Section 54. Repeal of Prior Ordinance and Codification.

Redmond Ordinance #833 is hereby repealed and Chapter 5.60 of the Redmond Municipal Code is hereby amended to read as set forth above with appropriate municipal codes section numbers substituted for the section numbers above.

Section 55. This ordinance or summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force thirty (30) days after the date of publication.

APPROVED:


MAYOR, DOREEN MARCHOINE

ATTEST/AUTHENTICATED:

Doris A. Schiabile
CITY CLERK, DORIS A. SCHIABLE

APPROVED AS TO FORM:

By *Jay C. Martin*
CITY ATTORNEY

FILED WITH THE CITY CLERK:	January 13, 1987
PASSED BY THE CITY COUNCIL:	January 20, 1987
PUBLISHED:	January 25, 1987
EFFECTIVE DATE:	February 24, 1987

APPENDIX "A"

City owned and maintained buildings include the following:

CITY HALL
15670 N.E. 85th St., Redmond

REDMOND PUBLIC LIBRARY
15810 N.E. 85th St., Redmond

MAINTENANCE OPERATIONS
CENTER PARKS AND
PUBLIC WORKS
18080 N.E. 76th St., Redmond

REDMOND FIRE DEPARTMENT
Main Headquarters - Station 11
8450 161st Ave. N.E., Redmond

FIRE STATION #12
4211 148th Ave. N.E., Redmond

LWSD Public Schools located in City of Redmond:

AUDUBON ELEMENTARY
3045 180th N.E., Redmond

HORACE MANN ELEMENTARY
17001 N.E. 104th, Redmond

REDMOND ELEMENTARY
16600 N.E. 80th St., Redmond

NORMAN ROCKWELL ELEMENTARY
11125 162nd Ave. N.E., Redmond

BENJAMIN RUSH ELEMENTARY
6101 152nd Ave. N.E., Redmond

REDMOND JUNIOR HIGH
10055 166th Ave. N.E., Redmond

REDMOND SENIOR HIGH
17272 N.E. 104th St., Redmond

ROSE HILL JUNIOR HIGH
13505 N.E. 75th, Redmond

APPENDIX B

ACCESS EQUIPMENT

- 3 **Portable Units each with the following:**
 - 1 GSX-700 700S Video Camera Panasonic One tube with camera batteries and camera case
 - 1 BR-6200 Video Tape Recorder, Panasonic with VTR batteries and AC power adaptor
 - 1 Electrovoice 635 A microphone and cables
 - 1 Radio Shack Headphones
 Various Adaptors and cables

- 2 Editing Suites with 1/2" to 1/2", 1/2" to 3/4", and 3/4" to 3/4" editing capability

- 2 1/2" Panasonic NV 8500 Editing decks

- 2 1/2" Panasonic AG 6300 Source decks

- 1 3/4" Panasonic NV 8600 Editing deck

- 1 3/4" Panasonic NV 9240 Source deck

- 2 A-500 Panasonic Edit Controllers

- 2 MM-7 Universal Mixers (audio)

- 2 Panasonic CT-1010 monitors

- 2 Panasonic CT-110 monitors

- 1 Panasonic BT-S1300 cross-pulse monitor

- 1 Fortel CCDYC time base corrector

- 1 Sony U-Matic V0 2860

- 1 Hitachi video deck for playback

- 1 Sony Trinitron color television