



## **MEMORANDUM**

**To:** Dave Ramsay, City Manager

**From:** Janice Perry, MultiMedia Communications Manager  
Brenda Cooper, Chief Information Officer

**Date:** January 9, 2006

**Subject:** Title 26 Telecommunications Code Amendments

### RECOMMENDATION

The City Council adopts the attached ordinance amending Title 26 of the Kirkland Municipal Code.

### BACKGROUND DISCUSSION

Title 26 of the Kirkland Municipal Code establishes local policy, guidelines, standards and time frames concerning telecommunications and cable providers and services.

A brief summary of significant changes:

- Definitions for cable system, channel, franchise fee, gross revenues.
- Some definitions were moved from the cable section to the general definitions section of Title 26.
- Added a section on customer service.
- The title was significantly re-formatted to clarify what portions of the title apply to telecommunications, to cable, or to both.
- Changes have also been proposed that would eliminate conflict between our ordinance, federal legislations and rules under the Federal Communications Commission.

A copy of the proposed ordinance was sent to Comcast and Verizon for their review and comments. Staff met with each company, and made some changes based on each of their requests. Not all changes proposed by Comcast or Verizon were made. Staff worked with legal counsel and consultants to make sure the ordinance is in line with federal and state law, is equitable and fair for any telecommunications or cable business providing service to the Kirkland community and protects the City.

This ordinance amending Title 26 requires one reading.

Pc: Oskar Rey, Assistant City Attorney

ORDINANCE 4033

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO TELECOMMUNICATIONS AND CABLE SERVICES.

The City Council of the City of Kirkland do ordain as follows:

Section 1. Title 26 of the Kirkland Municipal Code is hereby amended to read as follows:

**Title 26**

**TELECOMMUNICATIONS**

**Chapters:**

- 26.04 Telecommunications**
- 26.08 Registration**
- 26.12 License**
- 26.16 Franchise**
- 26.20 Cable Franchise**
- 26.24 Conditions of Grant of License,  
Franchise or Cable Franchise**
- 26.28 Construction of Telecommunications  
Facilities**
- 26.32 Fees**
- 26.36 Miscellaneous**

**Chapter 26.04**

**TELECOMMUNICATIONS**

**Sections:**

- 26.04.010 Purpose.**
- 26.04.020 Definitions.**
- 26.04.025 Assertion of state-wide grant.**
- 26.04.030 Registration and fees.**
- 26.04.040 License and fees.**
- 26.04.050 Franchise and fees.**
- 26.04.060 Cable franchise and fees.**
- 26.04.070 Application to existing franchise ordinances and  
agreements.**
- 26.04.080 ~~Penalties~~ Fines.**
- 26.04.090 Other remedies.**
- 26.04.100 Further rules and regulations.**
- 26.04.110 Severability.**

**26.04.010 Purpose.**

The purpose of this title is to:

- (1) Establish a local policy concerning telecommunications providers and carriers and services;
- (2) Establish clear and nondiscriminatory local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications providers and carriers and services;
- (3) Promote competition in telecommunications;
- (4) Minimize unnecessary local regulation of telecommunications providers and carriers and services;
- (5) Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the city;
- (6) Permit and manage reasonable access to the public rights-of-way of the city for telecommunications purposes on a competitively neutral basis;
- (7) Conserve and manage the limited physical capacity of the public rights-of-way held in public trust by the city;
- (8) Assure that the city's current and ongoing costs of granting and regulating private access to and use of the public rights-of-way are fully paid by the persons seeking such access and causing such costs;
- (9) Secure fair and reasonable compensation to the city and the residents of the city, in a nondiscriminatory manner, to the extent permitted by law, for permitting private use of the rights-of-way;
- (10) Assure that all telecommunications carriers and providers providing facilities or services within the city comply with the applicable ordinances, rules and regulations of the city;
- (11) Assure that the city can continue to fairly and responsibly protect the public health, safety and welfare;
- (12) Enable the city to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

**26.04.020 Definitions.**

Terms used in this title shall have the following meanings:

- (1) "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.
- (2) "Cable Acts" means the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, as amended by portions of The Telecommunications Act of 1996, and as hereafter amended.
- (3) "Cable operator" means a ~~telecommunications carrier person~~ person providing or offering to provide "cable service" within the city as that term "cable operator" is defined in the Cable Acts.

(4) "Cable service" shall have the same meaning as defined in the Cable Acts.

(5) "City" means the city of Kirkland.

(6) "City property" means all real property now or hereafter owned by the city whether in fee ownership or other interest.

(7) "Excess capacity" means the volume or capacity in any existing or future duct, conduit, manhole, handhold or other utility facility within the right-of-way that is or will be available for use for additional telecommunications facilities.

(8) "FCC" or "Federal Communications Commission" means the federal administrative agency, or lawful successor, authorized to regulate and oversee cable operators, telecommunications carriers, services and providers on a national level.

(9) "Grantee" means ~~both~~ licensees and franchisees granted certain rights and obligations more fully described herein, as well as telecommunications carriers or providers asserting a state wide grant based on a predecessor telephone or telegraph company's existence at the time of the adoption of the Washington State Constitution.

(10) "Overhead facilities" means utility facilities and telecommunications facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

(11) "Person" means corporations, companies, associations, ~~joint stock companies~~, firms, partnerships, limited liability companies, government entities, other entities and individuals.

(12) "Public ways" includes the surface of and space above and below any real property in the city in which the city has a regulatory interest, or interest as a trustee for the public, as they now or hereafter exist, including, but not limited to, all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the city, and any unrestricted public or utility easements established, dedicated, platted, improved or devoted for public utility purposes; provided, however, this shall not include public parks for which a separate authorization and agreement to utilize any part of same shall be required from the city.

(13) "Rights-of-way" means all ~~city property and~~ applicable public ways, ~~collectively~~, within the city.

(14) "State" means the state of Washington.

(15) "Supporting structure" means the trench, pole, or conduit used to provide a path for placement of telecommunications facilities.

~~(16)~~ "Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Washington Utilities and Transportation Commission, to allow its use by a telecommunications carrier for a pole attachment.

~~(17)~~ "Telecommunications carrier" includes every person that directly or indirectly owns, controls, operates or manages plant, equipment or property

within the city, used or to be used for the purpose of offering telecommunications service.

~~(187) "Telecommunications facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices and apparatus used, operated, owned or controlled by a telecommunications company to facilitate the provision of telecommunications service the plant, equipment and property within the city used to transmit, receive, distribute, provide or offer telecommunications service.~~

~~(198) "Telecommunications provider" includes every person who provides telecommunications service over telecommunications facilities.~~

~~(2019) "Telecommunications service" means the providing or offering for rent, sale or lease, or in exchange for other value received, the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium except to the extent that the service provided or offered falls within the definition of "cable service" under this Section.~~

~~(20) "Underground facilities" means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for overhead facilities.~~

(21) "Usable space" means the total distance between the top of a utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance as specified in the orders and regulations of the Washington Utilities and Transportation Commission.

(22) "Utility facilities" means the plant, equipment and property including, but not limited to, the poles, pipes, mains, conduits, ducts, ~~cables,~~ wires, plant and equipment located under, on or above the surface of the ground within rights-of-way and used or to be used for the purpose of providing utility or telecommunications services.

(23) "Washington Utilities and Transportation Commission" or "WUTC" means the state administrative agency, or lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers in the state of Washington to the extent prescribed by law.

#### **26.04.025 Assertion of state-wide grant.**

The city may request, but not require, that a telecommunications carrier or provider with a state-wide grant to occupy right-of-way based on a predecessor telephone or telegraph company's existence at the time of the adoption of the Washington State Constitution obtain a license or franchise pursuant to Chapters 26.12 and 26.16 of this title. A telecommunications carrier or provider asserting such a state-wide grant shall register with the city pursuant to Chapter 26.08 of this title and, in so doing, provide the city with a statement detailing the basis for the assertion of a state-wide grant.

**26.04.030 Registration and fees.**

Except as otherwise provided herein, all telecommunications carriers or providers engaged in the business of transmitting, supplying or furnishing of telecommunications service originating, terminating or existing within the city shall register with the city pursuant to this title and pay all the fees as provided herein.

**26.04.040 License and fees.**

Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in rights-of-way for the purpose of providing telecommunications service to persons and areas outside the city shall first obtain a license granting the use of such rights-of-way from the city pursuant to this title and pay all the fees as provided herein.

**26.04.050 Franchise and fees.**

Except as otherwise provided herein, any telecommunications carrier who desires to construct, install, operate, maintain or otherwise locate telecommunications facilities in rights-of-way and to also provide telecommunications service to persons or areas in the city shall first obtain a franchise granting the use of such rights-of-way from the city pursuant to this title and pay all the fees as provided herein.

**26.04.060 Cable franchise and fees.**

~~Except as otherwise provided herein, a~~Any telecommunications carrier person who desires to construct, install, operate, maintain or locate telecommunications facilities in rights-of-way for the purpose of providing cable services shall first obtain a cable franchise from the city pursuant to this title and pay all the fees as provided herein and in the cable franchise.

**26.04.070 Application to existing franchise ordinances and agreements.**

Except as otherwise provided in this title, this title shall have no effect on any existing franchise agreement until:

- (1) The expiration of said franchise agreement; or
- (2) An amendment to an unexpired franchise agreement, unless both parties agree to defer full compliance to a specific date not later than the present expiration date.

**26.04.080 ~~Penalties~~ Fines.**

Any person found violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this title shall be guilty of a misdemeanor. Upon conviction any person violating any provision of this title shall be subject to a fine of up to one thousand dollars or by imprisonment for a period of up to ninety days, or both such fine and imprisonment. A separate and distinct

violation shall be deemed committed each day on which a violation occurs or continues.

**26.04.090 Other remedies.**

Nothing in this title shall be construed as limiting any other remedies that the city may have, at law or in equity, for enforcement of this title.

**26.04.100 Further rules and regulations.**

The city manager or designee is authorized to establish further rules, regulations and procedures with respect to the city's authority to manage, regulate and control public rights of way for the implementation of this title. Except in cases of emergency, the city shall attempt to notify and provide an opportunity for comment to persons who may be affected by rules, regulations and procedures adopted pursuant to this Section.

**26.04.110 Severability.**

If any section, subsection, sentence, clause, phrase, or other portion of this title, or its application to any person, is for any reason declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

**Chapter 26.08  
REGISTRATION**

**Sections:**

**26.08.010 Registration required.**

**26.08.020 Purpose of registration.**

**26.08.030 Exception to registration.**

**26.08.010 Registration required.**

All telecommunications carriers having telecommunications facilities within the corporate limits of the city, or all telecommunications carriers or providers that offer or provide telecommunications service within the city, in whole or in part, shall register with the city hereunder on forms provided by the city clerk which shall include the following:

- (1) The identity and legal status of the registrant, including any affiliates;
- (2) The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement;
- (3) A description of registrant's existing or proposed telecommunications facilities within the city;
- (4) Information sufficient for the city to determine whether the registrant is subject to public way licensing or franchising under this title;
- (5) Information sufficient for the city to determine whether the transmission, origination or receipt of the telecommunications services provided or to be

provided by the registrant constitutes an occupation or privilege subject to any municipal tax, permit, license or franchise fee;

(6) To the extent allowed by law, copies of the applicant's registration filed with the Washington Utilities and Transportation Commission pursuant to Chapter 480-121 WAC. Alternatively, applicant shall submit a statement detailing the basis (along with pertinent supporting materials) for its authorizations to provide telecommunications services or, in the further alternative, the reasons that registration with the WUTC is not required;

(7) To the extent allowed by law, information sufficient for the city to determine that the applicant has applied for and received any permit, operating license or other right or approvals required by the Federal Communications Commission to provide telecommunications services or facilities;

(8) Such other information as the city may reasonably require with respect to its authority to manage, regulate and control public rights of way.

#### **26.08.020 Purpose of registration.**

The purpose of registration is to:

- (1) Provide the city with accurate and current information necessary for the management and regulation of city right-of-way;
- (2) Assist the city in enforcement of this title;
- (3) Assist the city in the collection and enforcement of any municipal taxes, franchise fees, license fees or charges that may be due to the city; and
- (4) Assist the city in monitoring compliance with local, state and federal laws.

#### **26.08.030 Exception to registration.**

A person which provides telecommunications services solely to itself, its affiliates or members between points in the same building, or between closely located buildings under common ownership or control; provided, that such company or person does not use or occupy any rights-of-way of the city or other ways within the city, is excepted from the registration requirements pursuant to this title.

## **Chapter 26.12 LICENSE**

### **Sections:**

- 26.12.010 License.**
- 26.12.020 License application.**
- 26.12.030 Determination by the city.**
- 26.12.040 ~~Agreement~~ Acceptance.**
- 26.12.050 Nonexclusive grant.**
- 26.12.060 ~~Rights granted~~ License only.**
- 26.12.070 Term of grant.**

- 26.12.080 License route.**
- 26.12.090 Construction permits.**
- 26.12.100 Compensation to city.**
- 26.12.110 Service to city users.**
- 26.12.120 Amendment of grant.**
- 26.12.130 Renewal applications.**
- 26.12.140 Renewal determinations.**
- 26.12.150 Obligation to cure as a condition of renewal.**

**26.12.010 License.**

Except as otherwise provided in this title, a license shall be required of any telecommunications carrier who desires to occupy any rights-of-way with any telecommunications facilities for the purpose of providing telecommunications services to persons or areas outside the city.

**26.12.020 License application.**

Any person that desires a license hereunder shall file a written license application with the city ~~clerk~~. Within twenty-eight calendar days after the date of submittal of the application, the city ~~clerk~~ shall provide the applicant a written determination of whether the application is complete, and if the application is not complete, what must be submitted by the applicant in order for the application to be complete. The procedures for approval of a license and the requirements for a complete application shall be available in written form.

**26.12.030 Determination by the city.**

Within one hundred twenty days after receiving a complete application hereunder, the city shall make a determination granting or denying the application in whole or in part. The one-hundred-twenty-day period may be extended by a specific number of days or to a defined date by written agreement between the city and the applicant. If the application is denied, the determination shall include the reasons for denial. The reasons for denial of a license shall be supported by substantial evidence contained in a written record. The following standards shall apply when determining to grant or deny the application:

- (1) The capacity of the rights-of-way to accommodate the applicant's facilities;
- (2) The capacity of the rights-of-way to accommodate additional utility and telecommunications facilities if the application is granted;
- (3) The damage or disruption, if any, to public or private facilities, improvements, service, travel or landscaping if the application is granted, giving consideration to an applicant's willingness and ability to mitigate and/or repair same;
- (4) The public interest in minimizing the cost and disruption of construction within the rights-of-way;

(5) The availability of alternate routes or locations for the proposed facilities that are reasonable for placement of the proposed facilities;

(6) Such other factors as may relate to the city's authority to manage, regulate and control public rights-of-way.

**26.12.040 Agreement Acceptance.**

No license granted hereunder shall be effective until the license has been approved by the city council by ordinance and the applicant has accepted the license, in writing, in a form acceptable to the city. The license shall set forth the particular items and provisions under which the license to occupy and use rights-of-way will be granted. The city shall make reasonable efforts to treat all applicants in a competitively neutral and non-discriminatory manner. ~~All licenses granted pursuant to this title shall contain substantially similar terms which, taken as a whole and considering relevant characteristics of applicants, do not provide more or less favorable terms and conditions than those required of other licensees.~~

**26.12.050 Nonexclusive grant.**

No license granted hereunder shall confer any exclusive right, privilege or license to occupy or use the rights-of-way for delivery of telecommunications services or any other purposes.

**26.12.060 ~~Rights granted~~ License only.**

(a) No license granted hereunder shall convey any right, title or interest in rights-of-way but shall be deemed a license only to use and occupy the rights-of-way for the limited purposes and term stated in the grant.

(b) No license granted hereunder shall excuse a licensee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use rights-of-way.

(c) No license granted hereunder shall be construed as any warranty of title.

**26.12.070 Term of grant.**

Unless otherwise specified in a license agreement, a license granted hereunder shall be in effect for a term of not more than five years.

**26.12.080 License route.**

A license granted hereunder shall be limited to a grant of specific rights-of-way and defined portions thereof, as may be indicated in the license agreement.

**26.12.090 Construction permits.**

All licensees are required to obtain construction and right-of-way permits and pay all fees as required by the city; provided, however, that nothing in this title shall prohibit the city and a licensee from agreeing to alternative plan

review, permit and construction procedures in a license agreement; provided such alternative procedures provide substantially equivalent safeguards for reasonable construction practices. Except as provided in this section, the city shall grant, condition or deny construction for right-of-way permits in writing within thirty days of receiving a complete application unless a licensee has consented to a different time period or has not obtained a license from the city. The city shall notify the licensee in writing if more than thirty days are required to process the permit. The notice shall state the amount of additional time required, and the reasons for the additional time. Conditioned or denied permits may be appealed to the city hearing examiner within fourteen days of the date of the permit or permit denial.

**26.12.100 Compensation to city.**

To the extent permitted by law, each license granted hereunder is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for use of property pursuant to the license; provided nothing in this title shall prohibit the city and a licensee from agreeing upon the compensation to be paid.

**26.12.110 Service to city users.**

A licensee may be permitted to offer or provide telecommunications services to persons or areas within the city upon submitting an application for franchise approval pursuant to this title.

**26.12.120 Amendment of grant.**

(a) A new license application and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in rights-of-way which are not included in a license previously granted hereunder.

(b) If ordered by the city to locate or relocate its telecommunications facilities in rights-of-way not included in a previously granted license, the city shall grant a license amendment without further application.

(c) A new license application and grant shall be required of any telecommunications provider that desires to add to or modify the telecommunications services provided pursuant to a license previously granted, if the proposed telecommunications services will cause the provider to occupy more or different rights-of-way.

**26.12.130 Renewal applications.**

A licensee that desires to renew its license hereunder shall, not more than one hundred eighty days nor less than ninety days before expiration of the current license, file an application with the city for renewal of its license which shall include the following information:

(1) The applicable information required pursuant to the license application.

(2) Such other information as may relate to the city's authority to manage, regulate and control public rights of way ~~Any other information reasonably required by the city.~~

**26.12.140 Renewal determinations.**

Within ninety days after receiving a complete application hereunder, the city ~~clerk~~ manager shall make a determination on behalf of the city granting or denying the renewal application ~~in whole or in part~~. If the renewal application is denied, the determination shall include the reasons for nonrenewal. The standards enumerated in Section 26.12.030 of this chapter shall apply when determining to grant or deny the application, plus a determination of the applicant's compliance with the requirements of this title and the license agreement.

**26.12.150 Obligation to cure as a condition of renewal.**

No license shall be renewed until any ongoing violations or defaults in the licensee's performance of the license agreement, of the requirements of this title, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the licensee has been approved by the city ~~clerk~~ manager.

## Chapter 26.16 FRANCHISE

**Sections:**

**26.16.010 Franchise.**

**26.16.020 Franchise application.**

**26.16.030 Determination by the city.**

**26.16.040 ~~Agreement~~ Acceptance.**

**26.16.050 Nonexclusive grant.**

**26.16.060 ~~Rights granted~~ Franchise only.**

**26.16.070 Term of grant.**

**26.16.080 Franchise territory.**

**26.16.090 Construction permits.**

**26.16.100 Compensation to city.**

**26.16.110 *Repealed.***

**26.16.120 Service to the city.**

**26.16.130 Amendment of grant.**

**26.16.140 Renewal applications.**

**26.16.150 Renewal determinations.****26.16.160 Obligation to cure as a condition of renewal.****26.16.170 Personal wireless facilities in right-of-way.****26.16.010 Franchise.**

Except as otherwise provided in this title, a franchise shall be required of any telecommunications carrier who desires to occupy rights-of-way and to provide telecommunications services to any person or area in the city.

**26.16.020 Franchise application.**

Any person that desires a franchise hereunder shall file a written franchise application with the city clerk. Within twenty-eight calendar days after the date of the submittal of the application, the city clerk shall provide the applicant a written determination of whether the application is complete, and if the application is not complete, what must be submitted by the applicant in order for the application to be complete. The procedures for approval of a franchise and the requirements for a complete application shall be available in written form.

**26.16.030 Determination by the city.**

Within one hundred twenty days after receiving a complete application hereunder, the city shall make a determination granting or denying the application in whole or in part. The one-hundred-twenty-day period may be extended by a specific number of days or to a defined date by written agreement between the city and the applicant. If the application is denied, the determination shall include the reasons for denial. The reasons for denial of a franchise shall be supported by substantial evidence contained in a written record. The standards enumerated in Section 26.12.030 of this code shall apply when determining to grant or deny the application.

**26.16.040 Agreement Acceptance.**

No franchise shall be granted hereunder unless the franchise has been approved by the city council by ordinance and the applicant has accepted the franchise, in writing, in a form acceptable to the city. The franchise shall set forth the particular terms and provisions under which the franchise to occupy and use rights-of-way will be granted. The city shall make reasonable efforts to treat all applicants in a competitively neutral and non-discriminatory manner. ~~All franchises granted pursuant to this title shall contain substantially similar terms and conditions which, taken as a whole and considering relevant characteristics of the applicants, do not provide more or less favorable terms and conditions than those required of other franchisees.~~

**26.16.050 Nonexclusive grant.**

No franchise granted hereunder shall confer any exclusive right, privilege or franchise to occupy or use the rights-of-way for delivery of telecommunications services or any other purposes.

**26.16.060 ~~Rights granted~~ Franchise only.**

(a) No franchise granted hereunder shall convey any right, title or interest in the rights-of-way but shall be deemed a franchise only to use and occupy the rights-of-way for the limited purposes and term stated in the grant.

(b) No franchise granted hereunder shall excuse a franchisee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use rights-of-way.

(c) No franchise granted hereunder shall be construed as any warranty of title.

**26.16.070 Term of grant.**

Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be valid for a term of not more than ten years.

**26.16.080 Franchise territory.**

A telecommunications franchise granted hereunder shall be limited to the specific geographic area of the city to be served by the franchisee, and the specific rights-of-way and portions thereof, as may be identified in the franchise agreement.

**26.16.090 Construction permits.**

All franchisees are required to obtain construction and right-of-way permits and pay all fees for telecommunications facilities as required by the city; provided, however, that nothing in this title shall prohibit the city and a franchisee from agreeing to alternative plan review, permit and construction procedures in a franchise agreement; provided such alternative procedures provide substantially equivalent safeguards for responsible construction practices. Except as provided in this section, the city shall grant, condition or deny construction for right-of-way permits in writing within thirty days of receiving a complete application unless a franchisee has consented to a different time period or has not obtained a franchise from the city. The city shall notify the franchisee in writing if more than thirty days are required to process the permit, the amount of additional time required, and the reasons for the additional time. Conditioned or denied permits may be appealed to the city hearing examiner within fourteen days of the date of the permit or permit denial.

**26.16.100 Compensation to city.**

To the extent permitted by law, each franchise granted hereunder is subject to the city's right, which is expressly reserved, to annually fix a fair and reasonable compensation to be paid for use of property pursuant to a franchise; provided nothing in this title shall prohibit the city and a franchisee from agreeing upon the compensation to be paid.

**26.16.110 Nondiscrimination.**

*Repealed by Ord. 3796.*

**26.16.120 Service to the city.**

The city may, in accordance with ~~Washington Laws of 2000, Chapter 83, Section 7RCW 35.99.070, and as it may hereafter be amended,~~ require a franchisee that is constructing, relocating or placing ducts or conduits in public right-of-way to provide the city with additional duct, conduit or related structures.

**26.16.130 Amendment of grant.**

(a) A new franchise application and grant shall be required of any telecommunications carrier that desires to extend its franchise territory or to locate its telecommunications facilities in rights-of-way which are not included in a franchise previously granted hereunder.

(b) If ordered by the city to locate or relocate its telecommunications facilities in rights-of-way not included in a previously granted franchise, the city shall grant a franchise amendment without further application.

(c) A franchise application and grant shall be required of any telecommunications provider that desires to add to or modify the telecommunications services provided pursuant to a franchise previously granted, if the proposed telecommunications services will cause the provider to occupy more or different rights-of-way.

**26.16.140 Renewal applications.**

A franchisee that desires to renew its franchise hereunder shall, not more than one hundred eighty days (except as otherwise provided by federal law) nor less than one hundred twenty days before expiration of the current franchise, file an application with the city for renewal of its franchise which shall include the following information:

(1) The applicable information required pursuant to the franchise application.

(2) Such other information as may relate to the city's authority to manage, regulate and control public rights of way ~~Any other information reasonably required by the city.~~

**26.16.150 Renewal determinations.**

Within ~~one hundred twenty~~ ninety days after receiving a complete application hereunder from ~~cable franchisees, and within ninety days from other~~ telecommunications providers or carriers, the city ~~clerk~~ manager shall make a determination ~~on behalf of the city~~ granting or denying the renewal application ~~in whole or in part~~. If the renewal application is denied, the determination shall include the reasons for nonrenewal. The standards enumerated in Section 26.12.030 shall apply when determining to grant or deny ~~the~~ a renewal application, plus a determination of the applicant's compliance with the requirements of this title and the franchise ~~agreement~~.

**26.16.160 Obligation to cure as a condition of renewal.**

No franchise shall be renewed until any ongoing violations or defaults in the franchisee's obligations under the franchise ~~agreement~~, of the requirements of this title, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the franchisee has been approved by the city.

**26.16.170 Personal wireless service facilities in right-of-way.**

(a) The city may impose a site-specific charge pursuant to an agreement with a service provider of personal wireless services for:

(1) The placement of new structures in the right-of-way regardless of height, unless the new structure is the result of a city-mandated relocation, in which case the city will not charge the service provider if the previous location was not charged;

(2) The placement of replacement structures when the replacement is necessary for the installation or attachment of wireless facilities, and the overall height of the replacement structure and the wireless facility is more than sixty feet; or

(3) The placement of personal wireless service facilities on structures owned by the city located in the right-of-way; however, a site-specific charge shall not apply to the placement of personal wireless service facilities on existing structures unless the structure is owned by the city.

(b) The city is not required to approve a right-of-way use permit for the placement of a facility for personal wireless services that meets one of the criteria in this section absent such an agreement. If the parties are unable to agree on the amount of the charge, the service provider may submit the amount of the charge to binding arbitration by serving notice on the city. Within thirty days of receipt of the initial notice, each party shall furnish a list of acceptable arbitrators. The parties shall select an arbitrator; failing to agree on an arbitrator, each party shall select one arbitrator and the two arbitrators shall select a third arbitrator for an arbitration panel. The arbitrator or arbitrators shall determine the charge based on comparable siting agreements involving public land and rights-of-way. The arbitrator or arbitrators shall not decide any other disputed issues, including but not limited to size, location and zoning requirements. Costs of arbitration including compensation for the ~~arbitrator's~~ services of the arbitrator(s), must be borne equally by the parties participating

in the arbitration and each party shall bear its own costs and expenses, including legal fees and witness expenses in connection with the arbitration proceeding.

## **Chapter 26.20 CABLE FRANCHISE**

### **Sections:**

- 26.20.005 Purpose, ~~effect~~ and applicability.**
- 26.20.010 Definitions.**
- 26.20.020 Terms of franchise.**
- 26.20.030 Application.**
- 26.20.040 Franchise fee.**
- 26.20.050 Franchise issuance.**
- 26.20.060 Police power.**
- 26.20.070 ~~Rules and r~~ Regulations by the city.**
- 26.20.075 Interference.**
- 26.20.080 Technical standards.**
- 26.20.090 Parental control devices.**
- 26.20.100 ~~Conditions of grant of cable franchise and construction standards.~~ Coordination of construction activities.**
- 26.20.105 Damage to property.**
- 26.20.110 Undergrounding.**
- 26.20.120 Emergency override.**
- 26.20.130 Rates.**
- 26.20.140 Cable availability.**
- 26.20.150 Customer service.**
- 26.20.160 Emergency power**
- 26.20.170 System evaluation.**
- 26.20.180 Periodic meetings.**
- 26.20.190 Record inspection.**
- 26.20.200 Annual reports.**
- 26.20.205 Facilities maps**
- 26.20.210 Programming.**
- 26.20.220 Nondiscrimination.**
- 26.20.230 Continuity of service.**
- 26.20.235 Construction permits.**
- 26.20.240 ~~Transfer of ownership~~ Applications.**
- 26.20.245 Traffic control plan.**
- 26.20.250 ~~Violations, penalties and revocation~~ Emergency removal.**
- 26.20.255 Repair and emergency work**
- 26.20.260 ~~Effect of termination for noncompliance~~ Relocation of facilities.**

**26.20.265 Restoration of rights-of-way.****26.20.270 Equalization of civic contributions.****26.20.280 Security fund.****26.20.290 Inconsistency.****26.20.005 Purpose, ~~effect~~ and applicability.**

No ~~cable communications company operator~~ 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 cable franchises (including renewals of existing franchises) to be granted by the city for cable services.

**26.20.010 Definitions.**

In addition to the definitions contained in Section 26.04.020 of this code, in construing the provisions of this chapter and any franchise entered into pursuant to this chapter, the following definitions shall apply:

(a) "Access channel" means any channel or portion thereof designated for access purposes or otherwise made available to transmit access programming.

(b) "Applicant" means any ~~provider or any person, partnership, or company~~ who files an application for any permit necessary to install, maintain, or remove cable services or facilities.

(c) "Basic service" is the lowest service tier that includes the retransmission of local broadcast television signals.

(d) "Bi-directional" means that the cable system is capable of providing both upstream and downstream transmissions.

(e) "Broadcast signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a cable system by antenna, microwave, satellite dishes or any other means.

~~(f) "Cable Act" means Title VI of the Communications Act of 1934, as amended, 47 U.S.C. §§ 521 et. seq.~~

~~(g) "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, which includes video programming and~~ which is provided to multiple subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves subscribers without using any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (4) an open video system that complies with 47 U.S.C. 573 and federal regulations; or (5) any facilities of any electric utility used solely for operating its electric utility systems.~~

~~(h) "Cable internet service" means any service offered by a franchisee whereby persons receive access to the internet through the cable system.~~

(ig) "Cable services" means (1) the one-way transmission to subscribers of video programming or other programming service, and (2) subscriber interaction, if any, which is required for the selection or use ~~by the subscriber~~ of such video programming or other programming service, ~~or as defined in the Cable Act.~~

(jh) "Channel" means ~~a portion of the frequency band capable of carrying a video programming service or combination of video programming services whether by analog or digital signal.~~ a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by federal law or regulation).

(ki) "Downstream" means carrying a transmission from the head-end to remote points on the ~~cable communications~~ system or to interconnection points on the ~~cable communications~~ system.

(lj) "Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the city including, without limitation, damage to persons or property from natural consequences; ~~(such as storms, and earthquakes), riots or wars.~~

~~(mk)~~ "Expanded basic service" means the tier of optional video programming services, which is the level of cable service received by most subscribers above basic service, and does not include, for example, premium service.

(nl) "Facilities" means the component parts of the cable system, including but not limited to coaxial cable, fiber optic cable, amplifiers, taps, connectors, power supplies, electronics, towers, antennas, satellite dishes and optronics.

(om) "Fiber optic" means a transmission medium of optical fiber cable, along with all associated optronics and equipment, capable of carrying cable service by means of electric light-wave impulses.

~~(pn)~~ "Franchise" or "cable 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 a cable ~~communications~~ system for the purpose of offering cable service ~~or other service~~ to subscribers.

(qq) "Franchise area" means the area within the jurisdictional boundaries of the city, including any areas annexed or otherwise added to the city during the terms of a franchise.

~~(rp) "Franchise fee" means the fee or assessment imposed by the city on the franchisee or subscriber, or both, as provided in Section 622 of the Cable Act. Franchise fees shall not include any tax, fee or assessment of general applicability, capital costs required by a franchise to be incurred by the franchisee for public, educational or governmental access facilities and equipment, or requirements or charges incidental to the awarding or enforcing of the franchise including payments for bonds, insurance, indemnification, penalties or liquidated damages.~~ shall have the same meaning as set forth in the Cable Acts.

(sq) "Franchisee" means the person, ~~firm or corporation~~ to whom or which a franchise is granted by the council under this chapter and the lawful successor,

transferee or assignee of said person, ~~firm or corporation~~ subject to such conditions as may be defined by city ordinance.

~~(tr) "Gross revenues" means all revenues derived directly or indirectly by a franchisee or its affiliates from the operation of the cable system to provide cable services within the franchise area. Gross revenues shall not include (i) bad debt, provided, however, that all or part of any such bad debt that is written off but subsequently collected shall be included in gross revenues in the time period collected; or (ii) any taxes on services furnished by the franchisee which are imposed directly on any subscriber by the state, city or other governmental unit and which are collected by the franchisee on behalf of said governmental unit; or (iii) any public, educational or governmental ("PEG") access capital advances or contributions. Franchise fees are not a tax and are included in gross revenues. any and all receipts and revenues derived 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 and not including any taxes on services furnished by a franchisee, imposed on any subscriber or user by any governmental unit, agency or instrumentality and collected by a franchisee for such entity; provided also that net uncollectable debts are not considered as revenue in this definition.~~

~~(us) "Head-end" means a franchisee's primary facility for signal reception and dissemination on its cable system, including cables, antennas, wires, satellite dishes, monitors, lasers, switchers, modulators, processors for broadcast signals, and all other related equipment and facilities.~~

~~(v) "Institutional networks (I-nets)" means a private network designated principally for the provision of non-entertainment services to schools and public agencies separate and distinct from the cable communications system.~~

~~(w) "Node" means that portion of the cable system where fiber optic cables and coaxial cables meet. The node consists of an enclosure housing optronics and electronics that convert light into radio frequency ("RF") signals and RF signals into light necessary for the delivery of bi-directional cable services to subscribers over a hybrid fiber-coaxial cable ("HFC") cable system.~~

~~(xt) "Premium service" means programming choices (such as movie channels, and pay-per-view programs, or video on demand) offered to subscribers on a per-channel, per-program or per-event basis.~~

~~(y) "Public, education and government (PEG) access channels" means channel capacity designated for public, educational, government use.~~

~~(z) "Rights of way" includes the surface of and space above and below any real property in the city in which the city has a regulatory interest, or interest as a trustee for the public, as they now or hereafter exist, including, but not limited to, all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the city, and any unrestricted public or utility easements established, dedicated, platted, improved or devoted for public utility purposes; provided, however, this shall not include public parks for which a separate authorization and agreement to utilize any part of same shall be required from the city.~~

(~~aa~~) "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.

(~~bb~~) "Tier" means a group of channels for which a ~~single~~ periodic subscription fee is charged.

(~~cc~~) "Upstream" means carrying a transmission to the head-end from remote points on the cable system or from interconnection points on the cable system.

#### **26.20.020 Terms of franchise.**

(a) Authority to Grant Franchises for Cable ~~Communications~~ Systems. It is unlawful to engage in or commence construction, operation, or maintenance of a cable ~~communications~~ system without a franchise issued under this chapter. The city council may, by ordinance, award a nonexclusive franchise to construct, operate and maintain a cable ~~communications~~ system, which complies with the terms and conditions of this chapter.

Any franchise granted pursuant to this chapter shall be nonexclusive and shall not preclude the city from granting other or further franchises or permits or preclude the city from using any rights-of-way 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 chapter. All franchises granted subsequent to the effective date of the ordinance codified in this chapter shall be granted consistent with the terms and conditions of this chapter.

(b) Incorporation by Reference. The provisions of this chapter shall be incorporated by reference in any franchise ordinances approved hereunder. However, in the event of any conflict between this chapter 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; and

(2) To erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any right-of-way, 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. Unless otherwise specified in a cable franchise, a franchise shall be valid for a term of not more than ten years; provided, that the city may grant a cable franchise that contains a base term with performance standards, which, if met, would extend the term of the cable franchise for a defined period of time.

#### **26.20.030 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 nonrefundable filing fee in the amount determined by the city.

#### **26.20.040 Franchise fee.**

A franchisee shall pay to the city quarterly, a sum equal to five percent or greater of gross revenues, as defined in this chapter for the preceding three calendar months.

#### **26.20.050 Franchise issuance.**

Prior to the granting of an initial 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;

(2) That the applicant has the requisite financial and technical resources and capabilities to build, operate and maintain a cable-~~communications~~ system in the franchise 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 chapter;

(5) That the applicant is capable of complying with all relevant federal, state, and local regulations pertaining to the construction, operation and maintenance of the facilities and systems incorporated in its application for a franchise;

(6) That there is sufficient capacity in the public rights-of-way to accommodate the cable-~~communications~~ system;

(7) That the present and future use of the public rights-of-way will be compatible and consistent with the use by the cable-~~communications~~ system;

(8) The potential disruption to existing users of the public rights-of-way to be used by the cable-~~communications~~ system and the resultant inconvenience which may occur to the public; and

(9) Any other conditions that the city may deem appropriate.

(b) ~~Renewal Franchise-Federal Requirements.~~ Renewals of franchises shall be governed by the Cable Acts.

- ~~–(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.~~

#### **26.20.060 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.

#### **26.20.070 ~~Rules and r~~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 Cable Acts, 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.

#### **26.20.075 Interference.**

No cable operator may locate or maintain its cable facilities so as to unreasonably interfere with the use of the rights-of-way by the city, by the general public or other persons authorized to use or be present in or upon the rights-of-way. A franchisee shall have thirty days to perform any requested "make ready" work or alterations to their cable facilities upon request by persons authorized to use or be present in or upon the rights-of-way. If a franchisee fails to perform such work within thirty days, then the authorized persons may perform such "make ready" work or alterations at their own cost.

#### **26.20.080 Technical standards.**

(a) ~~Subject to federal, state and local law, a~~ franchisee shall comply with FCC technical standards, rules and regulations, Part 76, Subpart K, Section 76.601 through 76.610 as amended, hereafter, and, at the a minimum, also the following:

- (1) Applicable city, county, state and national/federal codes and ordinances;
- (2) Applicable utility joint attachment practices;
- (3) Safety codes, rules and regulations including tThe National Electric Safety Code and the National Electrical Code; and

- ~~(4) City public works policies and standards;~~
- ~~(5) Local rights-of-way procedures; and~~
- ~~(6) Bell System Code of Pole Line Construction.~~

(b) A comprehensive routine ~~preventive~~ preventative maintenance program shall be developed, effected, and sustained to ensure adequate operating standards in conformance with FCC ~~Regulations Part 76~~ or as may be amended.

(c) Subject to federal, state and local law, the city may impose more stringent technical standards on, a franchisee as deemed necessary by the city.

(d) Cable facilities shall comply with the most recent standards in the utility policy and other public works policies and standards and applicable city codes including, but not limited to, Title 19, Streets and Sidewalks, as it now exists or is hereafter amended.

#### **26.20.090 Parental control devices.**

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

#### **26.20.100 Conditions of grant of cable franchise and construction standards.**

~~All Franchisees shall comply with the provisions of Chapter 26.24 of this code entitled "Conditions of Grant of License, Franchise or Cable Franchise," and the provisions of Chapter 26.28 of this code entitled "Construction."~~

#### **26.20.100 Coordination of construction activities.**

All cable operators are required to cooperate with the city, with each other and other grantees as follows:

(1) Each cable operator shall meet with the city, other grantees and users of the rights-of-way annually or as determined by the city to schedule and coordinate construction.

(2) All construction locations, activities and schedules shall be coordinated, as ordered by the public works director, to minimize public inconvenience, disruption or damages.

#### **26.20.105 Damage to property.**

No cable operator or any person acting on a cable operator's behalf shall take any action or allow any action to be done which may impair or damage any rights-of-way, or other property located in, on or adjacent thereto and shall provide restoration in accordance with Section 26.20.265 of this chapter.

### **26.20.110 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.

### **26.20.120 Emergency override.**

At a minimum, a franchisee shall be in compliance with federal laws and FCC Regulations and rules requiring installation and maintenance of an Emergency Alert System (EAS) ~~and provide an audio interrupt on all channels and video message on at least one channel during an emergency. In addition, a franchisee shall provide text banner messages on the video portion of all of all television signals so that the city may provide emergency warning messages and emergency services public information to city residents.~~

### **26.20.130 Rates.**

~~Within thirty days after the grant of any franchise hereunder~~ Upon written request by the city, a franchisee shall ~~file with the city~~ submit 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 days and all subscribers a minimum of thirty days prior written notice of such change. Notwithstanding any provision to the contrary, a franchisee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or the city on the transaction between the cable operator and the customer.

Subject to the Cable Acts 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~~ allowed by federal law. The city will monitor ~~those other~~ rates within the benchmarks provided by the FCC.

### **26.20.140 Cable availability.**

Cable service shall not be denied to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides.

### **26.20.150 Customer service.**

~~A franchisee shall at all times be in compliance with FCC Customer Service Standards 76.309, Subpart II as may be amended, which standards are incorporated into this chapter by reference ("FCC Customer Service Standards"). In addition, a franchisee shall comply with the following standards:~~

~~(a) 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 service in its telephone answering functions, the franchisee shall, within thirty days of the end of each calendar month, provide a summary report of calls handled at their customer sales and service center facility taking calls from city customers. This report will provide the following:~~

- ~~(1) Percentage of calls answered within thirty seconds;~~
- ~~(2) Number of calls received;~~
- ~~(3) Average handle time;~~
- ~~(4) Number of calls abandoned by the caller;~~
- ~~(5) Average speed of answer; and~~
- ~~(6) Percentage of time all lines are busy.~~

~~This data will be compared to minimum customer service standards of the FCC or the city in effect at the time.~~

~~(b) Additional Regulations. The city reserves the right to enact and enforce any customer protection law or regulation containing more stringent standards, to the extent nonspecifically preempted by applicable law.~~

~~(c) Failure to Improve Customer Service. In the event the franchisee fails to meet the minimum customer service standards, the city or its designee may review telephone response and customer service information with the franchisee and discuss how to improve the franchisee's performance. It is assumed that improvements will be made by a franchisee in any areas of noncompliance from the last reporting period. Failure to do so may result in imposition of penalties in accordance with Section 26.20.250 of this chapter or further enforcement action. In addition, the city council may call a public hearing for the purpose of examining the reasons, if any, why the Franchisee has not complied with the minimum customer service standards. The city may make a transcript of any such hearings part of an exhibit under Section 626(c)(1)(A) and (B) of the Cable Act alleging that such practices have failed to conform to renewal requirements as stated therein.~~

~~(d) Refunds for Service Interruptions. Upon request by the subscriber, no charge for the period of an outage shall be made to any subscriber if the subscriber was without service for a period exceeding twelve hours.~~

~~(e) Service Logs. 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 hours' notice, may inspect such logs.~~

**26.20.150 Customer service.**

**(a) Policy.** The cable operator shall be permitted to resolve citizen complaints prior to action or involvement by the city. If a complaint is not resolved by the cable operator to the citizen's satisfaction, the city may intervene.

These standards are intended to be of general application; however, the cable operator shall be relieved of any obligations hereunder if it is unable to perform due to circumstances beyond its reasonable control, such as natural disasters. The cable operator may, and is encouraged, to exceed these standards for the benefit of its customers and such shall be considered performance for the purpose of these standards.

**(b) Definitions.** When used in this Section, the following words, phrases, and terms shall have the meanings given below.

(1) "Complaint" shall mean an initial or repeated customer expression of dissatisfaction, whether written or oral, or other matter that is referred beyond a customer service representative or to the city for resolution. This does not include routine inquiries and service requests.

(2) "Customer" shall mean any person who lawfully receives or will receive cable service from the cable operator.

(3) "Customer service representative" or "CSR" shall mean any person employed by the cable operator to assist, or provide service to customers, whether by answering telephone lines, answering customers' questions, or performing other customer service related tasks.

(4) "Normal business hours" shall mean those hours during which most similar businesses in the city 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.

(5) "Normal operating conditions" shall mean those service conditions that are within the control of the cable operator. Those conditions that 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 that 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.

(6) "Service interruption" shall mean the loss of picture or sound on one or more cable channels.

**(c) Accessibility.** The cable operator shall maintain at least one (1) customer service center or a bill payment location on the Eastside. Service shall be available at least nine (9) consecutive hours Monday through Friday, and at least four consecutive hours on Saturdays, ending no earlier than 1:00 p.m. The customer service center or bill payment location must be accessible to all persons, including the elderly and persons with disabilities. Parking must be provided in a

manner consistent with the Kirkland Municipal Code. The following services shall be available at the customer service center: the opportunity to pick up, exchange and return certain types of equipment, depending upon the size of the equipment; bill payment; and response to other customer inquiries and requests. Customers may pay cable bills at the bill payment location. The cable operator shall post a sign at the service center/bill payment location advising customers of its hours of operation.

The cable operator shall maintain a toll free telephone number that shall be available 24 hours a day, seven days a week for service/repair requests and billing inquiries. The cable operator shall have dispatchers and technicians on call 24 hours a day, 7 days a week, including legal holidays.

The cable operator shall maintain an internet web presence. Except for normal and regularly scheduled maintenance, the web site shall be available twenty-four hours and seven days a week under normal operating conditions. The following services shall be available on the website: the ability to sign up for and/or disconnect service; and receive responses to other customer inquiries and requests.

Qualified and trained customer service representatives will be available to respond to customer telephone and email inquiries during normal business hours.

**(d) Responsiveness.** The cable operator shall complete all standard residential installations requested by customers within seven (7) business days after the order is placed, under normal operating conditions ninety-five percent (95%) of the time measured on a quarterly basis, unless the customer requests a later date for installation. "Standard" residential installations are those located within one hundred twenty-five (125) feet from the existing distribution system. If a customer requests a nonstandard residential installation, or the cable operator determines that a nonstandard residential installation is required, the cable operator shall provide the customer in advance with a cost estimate and an estimated date of completion.

Absent unusual circumstances, all underground cable drops from the curb to the home shall be buried at a depth of no less than twelve inches (12"), and within a reasonable period of time from the initial installation, or at a time mutually agreed upon between the cable operator and the customer. In all instances, the cable operator must comply with the State's One Call requirements.

**(e) Service Appointments.** Customers requesting installation of cable service or service to an existing installation may choose an appointment window consisting of a four hour time block between 8:00 a.m. and 6:00 p.m. or another block of time mutually agreed upon by the customer and the cable operator. These options shall be clearly explained to the customer at the time of scheduling. The cable operator may not cancel an appointment with a customer after 5:00 p.m. on the day before the scheduled appointment, except for appointments scheduled within twelve (12) hours after the initial call.

If the cable operator's 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 that is convenient for the customer. If the customer is absent when the technician arrives, the technician shall leave written notification of timely arrival.

**(f) Outages and Service Interruptions.** In the event of a system outage (loss of reception on all channels) resulting from cable operator equipment failure affecting three (3) or more customers, the cable operator shall respond in accordance with its outage response procedures, and in no event more than two (2) hours after the third customer call is received and shall remedy the problem as quickly as possible.

Under normal operating conditions, the cable operator shall use its best efforts to correct service interruptions resulting from cable operator equipment failure by the end of the next day, but in no event longer than forty-eight (48) hours.

The cable operator shall notify the city if a planned service interruption is going to affect fifty (50) or more customers for a time period greater than two (2) hours. The cable operator shall keep an accurate and comprehensive file of any and all complaints regarding the cable system or its operation of the cable system, in a manner consistent with the privacy rights of customers, and the cable operator's actions in response to those complaints. The cable operator shall provide the city an executive summary upon request that shall include information concerning complaints

**(g) Signal Quality.** The cable service signal quality provided by the cable operator shall meet or exceed technical standards established by the FCC. The cable operator shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions shall be preceded by notice to the customers and shall occur during periods of minimum use of the cable system, preferably between midnight and 6:00 a.m.

If a customer experiences poor signal quality (whether it relates to a visual or audio problem) which is attributable to the cable operator's equipment, the cable operator shall respond and repair the problem no later than the day following the customer call; provided that the customer is available and the repair can be made within the allotted time. At the customer's request, the cable operator shall repair the problem at a later time that is convenient for the customer.

**(h) Problem Resolution.** A customer service representative shall have the authority to provide credits, waive fees, schedule service appointments and change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service representative shall be referred to the appropriate supervisor who shall contact the customer within twenty-four (24) hours and attempt to resolve the problem within forty-eight (48) hours or within such other timeframe as is acceptable to the customer and the cable operator.

**(i) Billing.** The first billing statement after a new installation or service change will be prorated as appropriate and will reflect any deposit. Bills must be clear, concise and understandable. Bills must be fully itemized, including, but not limited to, each category of service and equipment provided to the customer and must state clearly the charges therefor. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case

of a billing dispute, the cable operator must respond to a written inquiry from a customer within thirty (30) days.

A customer may terminate or downgrade service at any time. The cable operator will disconnect or downgrade any cable service for a customer who so requests within seven (7) business days. No period of notice before voluntary termination or downgrade of service may be required of customers by the cable operator, and the customer shall not be required to pay for the time which elapses from notification to actual disconnection. There will be no charge for disconnection, and any downgrade charges will conform to applicable law.

A cable operator may immediately disconnect a customer's service if:

(1) the customer is damaging, destroying, or unlawfully tampering with or has damaged or destroyed or unlawfully tampered with the cable operator's cable system or equipment;

(2) the customer is not authorized to receive a service and is receiving it and/or is facilitating, aiding or abetting the unauthorized receipt of service by others; or

(3) customer-installed or attached equipment is resulting in signal leakage that is in violation of FCC rules.

After disconnection, the cable operator will restore service after the customer provides adequate assurance that it has ceased the practices that led to disconnection, and paid all proper fees, expenses and charges owed the cable operator.

A late fee or administrative fee may not be imposed for payments earlier than thirty (30) days after the due date specified in the bill unless allowed by law. The cable operator must provide customers the ability to remit payment by mail or in person at the service center or bill payment location. Customers may not be charged a fee for any failure of the cable operator, including, for example, failure to timely or correctly bill the customer.

**(j) Notice/Work.** Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, the cable operator shall give reasonable notice to property owners or legal tenants prior to entering upon private premises, and the notice shall specify the work to be performed. In the case of an emergency, however, the cable operator shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Nothing herein shall be construed as authorizing access or entry to private property. Any work on private property shall be conducted in accordance with an agreement between the cable operator and the property owner. If damage is caused by any cable operator activity, the cable operator shall reimburse the property owner one hundred percent (100%) of the cost of the damage or replace or repair the damaged property to as good a condition as before the cable operator's activity commenced. Affected property owners shall be notified in advance of major construction or installation projects in adjacent rights-of-way.

**(k) Services for Customers with Disabilities.** For any customer with a disability, the cable operator shall at no charge deliver and pick up converters and other cable operator equipment at the customer's home. In the case of a malfunctioning converter or such other equipment, the technician shall provide

another converter or such other equipment, hook it up and ensure that it is working properly, and shall return the defective converter or such other equipment to the cable operator.

The cable operator shall provide TDD/TTY service with trained operators, who can provide every type of assistance rendered by the customer service representatives, for any hearing-impaired customer at no charge.

The cable operator shall provide free use of a remote control unit to mobility-impaired customers. Any customer with such a disability may request the remote control unit by providing the cable operator with a letter from the customer's physician stating the need, or by making the request to the cable operator's installer or service technician, where the need for the special service can be visually confirmed.

**(I) Customer Information.** The cable operator shall provide its customers with a written service agreement and a customer installation packet for use in establishing cable service. The cable operator shall provide the following information at the time of installation and make it continuously available via its internet presence or send it annually via paper mail to each customer.

(1) Products and services offered by the cable operator, including channel positions of programming carried on the system;

(2) The prices for those services (including discounts offered) and conditions of subscription to programming and other services;

(3) Installation and service maintenance policies;

(4) Instruction on the use of cable service;

(5) The cable operator's billing, collection, disconnection and reconnection procedures and late charge procedures;

(6) Customer privacy requirements;

(7) All applicable complaint procedures, the cable operator's website address, and the telephone number and mailing address of the cable operator; and the contact information for the city (which contact information for the city shall be distinctly identified and clearly distinguished from the information regarding the cable operator);

(8) Use and availability of parental control/lock out devices and the cost, if any, for the use of such devices;

(9) Special services or equipment available for customers with disabilities and explanations for how to obtain and use them; and

(10) Days, times of operation, and location of the customer service location and bill payment center.

Customers will be notified of any changes in rates, programming services or channel positions thirty (30) days in advance of such change(s) if the change is within the control of the cable operator.

In addition to the requirements regarding advance notification to customers of any changes in rates, programming services or channel positions, the cable operator shall give thirty (30) days written notice to the city before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the

addition or deletion of channels, each channel added or deleted must be separately identified. The cable operator shall provide written notice to a customer of any increase in the price to be charged for equipment associated with the basic service tier at least thirty (30) days before any proposed increase is effective. The notice shall include the address of the city. To the extent the cable operator is required to provide notice of service and rate changes to customers, the cable operator may provide such notice using any reasonable written means at its sole discretion.

All officers, agents, and employees of the cable operator or its contractors or subcontractors who are in personal contact with customers shall wear on their outer clothing identification cards bearing their name and photograph. The cable operator shall account for all identification cards at all times. Every vehicle of the cable operator shall be visually identified to the public as working for the cable operator. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor or subcontractor, and shall be further identified as contracting or subcontracting for the cable operator. There must be a listed telephone number for the names displayed. The telephone number listed and posted must be a local or toll free number. The phone number must connect to persons trained to receive and respond to calls regarding employees, construction and related problems (including repair problems). All CSRs shall identify themselves to callers immediately following the greeting during each telephone contact with the public.

Each CSR, technician or employee of the cable operator in each contact with a customer shall state the estimated cost of the service, repair, or installation prior to delivery of the service or before any work is performed, and shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work is to be performed.

The cable operator must take appropriate steps to ensure that all written cable operator promotional materials, announcements and advertising of cable service to customers and the general public, where price information is listed in any manner, clearly and accurately discloses price terms. In the case of telephone orders, the cable operator will take appropriate steps to ensure that prices and terms are clearly and accurately disclosed to potential customers in advance of taking the order.

The cable operator will maintain a file in its regional office that is available for public inspection during normal business hours containing all information required under FCC regulations.

**(m) Customer Privacy.** The cable operator shall not monitor cable television signals to determine the individual viewing patterns or practices of any customer without prior written consent from that customer, except as needed to maintain system integrity or for other lawful purposes.

The cable operator shall not sell or otherwise make available customer lists or other personally identifiable information without prior written customer consent except as otherwise permitted by law. The cable operator is permitted to disclose such information if such disclosure is necessary to render or conduct a legitimate

business activity related to a cable service provided by the cable operator to its customers.

A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.

**(n) Safety.** The cable operator shall install and locate its facilities, cable system, and equipment in compliance with all federal, state and local laws and regulations, and company safety standards, and in such manner as shall not unduly interfere with or endanger persons or property. Whenever the cable operator receives notice that an unsafe condition exists with respect to its equipment, the cable operator shall investigate such condition immediately, and shall take such measures as are necessary to remove or eliminate any unsafe condition.

**(o) Complaints to the Cable Operator.** The cable operator shall establish written procedures for receiving, acting upon, and resolving complaints without intervention by the city (except where necessary) and shall publicize such procedures clearly on its internet web page. Said written procedures shall describe a simple process by which any customer may submit a complaint by telephone, via the internet, or in writing to the cable operator regarding a disputed matter, or an alleged violation of: (i) any provision of these standards; (ii) any terms or conditions of the customer's contract with the cable operator; or (iii) reasonable business practices.

Within fifteen (15) days after receiving a complaint, the cable operator shall notify the customer of the results of its investigation and its proposed action or credit. The cable operator shall also notify the customer of the customer's right to file a complaint with the city in the event the customer is dissatisfied with the cable operator's decision, and shall explain the necessary procedures for filing such complaint with the city. The cable operator's complaint procedures shall be filed with the city.

**(p) Verification of Compliance.** The cable operator shall document its compliance with these standards as requested by the city.

**(g) Noncompliance with Standards.** The cable operator's noncompliance with any provision of these standards may be deemed by the city as a franchise violation.

**(r) Procedure for Remedying Violations.** If the city has reason to believe that the cable operator has failed to comply with any of these standards, or has failed to perform in a timely manner, or if similar complaints repetitively arise, the city may require in writing that the cable operator remedy the alleged noncompliance. If the alleged noncompliance is denied or not remedied to the satisfaction of the city, the city may opt to follow the liquidated damages procedures, revocation procedures or seek other remedies set forth in the franchise, or pursue any other remedies at law or in equity.

**(s) Customer Contract.** The cable operator shall not enter into a contract with any customer that is in any way inconsistent with the terms of these customer service standards or the cable operator's franchise with the city.

#### **26.20.160 Emergency power**

In the event of a power failure, a franchisee shall provide standby power generating capacity at the head-end and its hubs, capable of providing at least four hours of emergency operation. The franchisee shall also maintain standby power supply systems, rated for at least two hours' duration, throughout all of the trunk and distribution networks.

#### **26.20.170 System evaluation.**

In addition to periodic meetings, the city may require reasonable routine system evaluation sessions at any time during the term of a franchise, but not to exceed one evaluation per year. The city shall provide franchisee thirty (30) days prior written notice of a system evaluation. ~~However, Notwithstanding the foregoing,~~ in the case of ~~reoccurring~~ recurring 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 problems in ~~cable-communications~~ system performance which precipitated the special tests;
- (b) A description of what ~~cable-communications~~ system components were tested;
- (c) A description of the equipment used and the 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 tests are performed.

If the tests indicate that the ~~cable-communications~~ 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, as well as associated consultant fees and other expenses. Such fees or

expenses shall not exceed ~~\$2,500~~15,000 for each evaluation. A franchisee shall have an opportunity to refute any findings which illustrate noncompliance, and if franchisee is found to be in compliance, then the city shall pay for the evaluation.

**26.20.180 Periodic meetings.**

Upon request, a franchisee shall meet with designated city officials and/or designated representative(s) to review the performance of a franchisee. The franchisee shall designate an officer or employee who is knowledgeable about the ~~cable communications~~ system and has decision-making authority with regard to the areas of concern identified by the city. The subjects may include, but are not limited to, customer service, technical issues or problems, franchise compliance and other areas of concern to the city regarding those items covered in the periodic reports and performance tests.

**26.20.190 Record inspection.**

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~~ may include, but ~~is~~ are not limited to, such information as financial records, subscriber records, and appropriate information and plans pertaining to a franchisee's operation in the city ~~to the extent allowed by law~~.

**26.20.200 Annual reports.**

A franchisee shall furnish an annual report of its activities as appropriate within ~~one hundred twenty~~ ninety days of the end of its ~~fiscal~~ calendar year. Such report shall include:

- (a) ~~The m~~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 service;
- (e) The number of subscribers with expanded basic service;
- ~~(e)~~ The number of subscribers with premium services;
- ~~(f)~~ The number of ~~hook-ups~~ installations in the period;
- ~~(g)~~ The number of disconnects in the period;
- ~~(h)~~ Total number of miles of cable in the city;
- ~~(i)~~ A sSummary of escalated or repeated 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; and
- ~~(l)~~ Such other reports as the city deems necessary.

**26.20.205 Facilities maps.**

Each cable operator shall provide the city with an accurate route map or maps certifying the location of all cable facilities within the rights-of-way. Each cable operator shall provide updated route maps upon written request.

#### **26.20.210 Programming.**

Upon request, 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 such as, sports, weather, news, educational, music, comedy, family or others that may be found to be of interest to the citizens of the city of Kirkland as determined from time to time in residential questionnaire polls. The results of any surveys will be appended to the respective franchise ordinances if appropriate.

#### **26.20.220 Nondiscrimination.**

In connection with rates, charges, facilities, rules, regulations and in all of franchisee's services, programs or activities, and all of franchisee's hiring and employment made possible by or resulting from this franchise, there shall be no discrimination by the franchisee or by franchisee's employees, agents, contractors, subcontractors or representatives against any person because of sex, age (except minimum age and retirement provisions), race, creed, national origin, sexual orientation, marital status or the presence of any disability, including sensory, mental or physical handicaps, (unless based upon a bona fide occupational qualification) ~~in relationship to hiring and employment.~~ This requirement shall include, but not be limited to the following practices: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The franchisee shall not violate any applicable federal, state or local law or regulation regarding nondiscrimination.

Any material violation of this provision ~~shall~~ may be grounds for termination of a franchise by the city and, in the case of the franchisee's breach, may result in ineligibility for further city agreements; provided, that nothing in this chapter shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any subscriber 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. ~~The franchisee will not deny access to cable service to any group of potential residential subscribers because of the income of the residents of the local area in which the group resides.~~

#### **26.20.230 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 cable ~~communication~~ system for seventy-two 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 cable communication 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 the city's option, operate the cable communication system or designate someone to operate the cable communication 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.

### **26.20.235 Construction permits.**

No person shall construct or install any cable facilities within the city without first obtaining a construction permit therefore, provided, however:

(1) No permit shall be issued for the construction or installation of cable facilities in the rights-of-way unless the cable operator has applied for and received a franchise pursuant to this title.

(2) No permit shall be issued for the construction or installation of cable facilities without payment of all fees pursuant to this title.

(3) No permit shall be issued to cut any public way, the surface of which is less than five years old, unless the cable operator overlays the surface of any public way which is cut by the cable operator.

### **26.20.240 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. The city shall not unreasonably withhold its approval. The city shall provide written notice of its approval or disapproval of assignment within sixty days of receiving written notice of the franchisee's intent to assign the franchise.~~

~~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 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 the franchisee. Further the city will monitor the limitations or ownership, control, utilization and restrictions on sale of systems in accordance with the Cable Act.~~

#### **26.20.240 Permit Applications.**

Applications for permits to construct cable facilities shall be submitted upon forms provided by the city. The applicant shall pay all associated fees and shall include any additional information as requested by the public works director. The application shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(1) That the facilities will be constructed in accordance with all applicable codes, rules and regulations.

(2) The location and route of all facilities to be installed on existing utility poles.

(3) The location and route of all facilities to be located under the surface of the ground, including line and grade proposed for the burial at all points along the route which are within the rights-of-way.

(4) To the extent such information is made accessible to the cable operator, the location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the rights-of-way along the route proposed by the cable operator.

(5) The location of all other facilities to be constructed within the city on city property, but not within the rights-of-way.

(6) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the rights-of-way.

(7) Any landscape plan that may be required by city code for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

#### **26.20.245 Traffic control plan.**

All permit applications that involve work on, in, under, across or along any rights-of-way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed.

#### **26.20.250 Violations, penalties and revocation.**

~~Any franchise granted by the city may be terminated for failure by a franchisee to comply with the material provisions of this chapter and/or the franchise. In addition to termination, the city may impose lesser sanctions, including but not limited to monetary penalties for violation of this chapter and/or the franchise.~~

~~(a) Procedures. Unless a franchisee requests termination of its franchise, the following procedures shall be followed by the city and the franchisee with respect to violations, penalties and franchise termination:~~

~~(1) The city shall provide the franchisee with a written violation notice, by certified mail, detailing the violation and the time period within which the violation must be cured (referred to in this section as the "violation notice"). Within thirty days thereafter, the franchisee shall respond in writing, by certified mail, demonstrating that no violation occurred or that the violation has been corrected.~~

~~(2) The franchisee may, in writing, by certified mail, request an extension of time to cure an alleged violation with an explanation of why the franchisee believes an extension is necessary. The amount of additional time, if any, shall be determined by the city.~~

~~(3) If the franchisee's response to the violation notice is not satisfactory to the city, the city may declare the franchisee to be in default, with written notice, by certified mail, to the franchisee (referred to in this section as the "default notice"). Within ten business days thereafter, the franchisee may deliver to the city, in writing, by certified mail, a request for a hearing before the city council. If no such request is received, the city may declare the franchise terminated for cause or impose lesser sanctions.~~

~~(4) If the franchisee files a timely written request for a hearing, such hearing shall be held within forty-five days after the city's receipt of the hearing request. The hearing shall be open to the public and the franchisee, the city and other interested parties may offer written or oral evidence relevant to the alleged violation and suitable penalties for alleged violations. In addition, the franchisee may offer evidence explaining or mitigating the alleged violation. Within thirty days after the hearing, the city council, on the basis of the record, shall make the determination as to whether there is a violation, whether there is cause for termination, whether the franchise will be terminated or whether lesser sanctions shall be imposed. The city council may, in its discretion, fix an additional time period for the franchisee to cure violations. If the violation has not been cured at the expiration of any additional time period or if the city council does not grant any additional time period, the city council, may, by ordinance, declare the franchise to be terminated and forfeited. In the alternative, the city council may impose lesser sanctions.~~

~~(b) In the event that the city determines that there is a violation and imposes monetary penalties on a franchisee, the penalty shall be two hundred dollars per day, per violation, the first time there are violations found pursuant to this section; five hundred dollars per day, per violation, the second time there are violations found pursuant to this section; and one thousand dollars per day, per violation, the third time (or more) there are violations found pursuant to this section. It shall be the responsibility of the franchisee to contact the city for the purpose of demonstrating that a violation has been cured.~~

~~(c) Unless the city council finds that the franchisee has been nonresponsive in correcting a violation or that a violation is flagrant, penalties shall be assessed for each day beyond fifteen days from the violation notice until the violations have been cured. If the franchisee has been nonresponsive or the violation is flagrant, then penalties may be assessed from the violation notice date.~~

~~(d) If payment of any penalty is delinquent by three months or more, the city may: (1) require partial or total forfeiture of the performance bond or other surety posted by the franchisee; (2) terminate the franchise; or (3) commence a civil action in a court of competent jurisdiction to collect the penalty.~~

**26.20.250 Emergency removal.**

The city retains the right to cut or move any cable facilities located within the rights-of-way as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

**26.20.255 Repair and emergency work.**

In the event of an unexpected repair or emergency, a cable operator may commence such repair and emergency response work as required under the circumstances; provided the cable operator shall notify the public works director as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

**~~26.20.260 Effect of termination for noncompliance.~~**

~~Subject to state and federal law, if any franchise is terminated by the city by reason of a franchisee's noncompliance, that part of the cable communications 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 Cable Act if it is not acquired by or transferred to a third party in accordance with Section 26.20.240 of this chapter. If the city, or a third party, does not purchase the system within twelve months a franchisee shall, upon order of the city council, remove the system as provided under Section 26.24.080 of this title. The city may at its discretion extend the period of time for the cable communications system to be purchased beyond the initial twelve-month period.~~

**26.20.260 Relocation of facilities.**

(a) The city may require a cable operator to relocate authorized facilities within the rights-of-way when reasonably necessary for construction, alteration, repair or improvement of the right-of-way for the purpose of public health, welfare and safety.

(b) The city shall notify cable operators as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. In calculating the date by which relocation must be completed, the city shall consult with the affected cable operators and consider the extent of the facilities to be relocated, the cable operators' service requirements, and the construction sequence for the relocation, within the city's overall project construction sequence and constraints, in order to safely complete the relocation. Cable operators shall complete the relocation by the date specified unless the city or a reviewing court establishes a later date for completion, after a showing by a cable operator that

the relocation cannot be completed by the date specified, using its best efforts and meeting safety and service requirements.

(c) The city may require relocation of facilities at the cable operator's expense in the event of an unforeseen emergency that creates an immediate threat to public health, welfare or safety.

#### **26.20.265 Restoration of rights-of-way.**

Restoration shall comply with the following:

(1) When a cable operator, or any person acting on its behalf, does any work in or affecting any rights-of-way, it shall, at its own expense, promptly remove any obstructions therefrom and restore such rights-of-way or property to the same condition which existed before the work was undertaken. As used in this section, "promptly" shall mean as required by the city's public works director in the reasonable exercise of the director's discretion.

(2) If weather or other conditions do not allow for the complete restoration required hereunder, the cable operator shall temporarily restore the affected rights-of-way or property. Such temporary restoration shall be at the cable operator's sole expense, and the cable operator shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(3) A cable operator or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights-of-way.

#### **26.20.270 Equalization of civic contributions.**

In the event the city grants multiple franchises, the city shall require that subsequent franchisees make an equitable contribution to the city comparable to those costs contributed by the original franchisee. These costs may include but are not limited to such features as PEG access and institutional network costs, services to municipal buildings and any other costs that may have been incurred as a result of ~~the~~ an earlier franchise.

#### **26.20.280 Security fund.**

Upon request by the City, ~~E~~each franchisee shall establish a permanent security fund with the city by depositing the amount of up to two hundred fifty thousand dollars with the city in cash, ~~an unconditional letter of credit a bond~~ or other instrument acceptable to the city, which fund shall be maintained at the sole expense of franchisee so long as any of franchisee's facilities are located within the rights-of-way. This security fund shall be separate and distinct from any other bond, ~~letter of credit, security~~ or deposit required.

This security fund may be utilized by the city for the following purposes: (1) reimbursement ~~of to~~ the city by reason of a franchisee's failure to pay the city any sums due under the terms of this chapter or a franchise; (2) reimbursement ~~of to~~ the city for reasonable costs and damages borne by the

city to correct franchise violations not corrected by a franchisee after due notice; (3) monetary remedies or damages assessed against a franchisee due to default or violations of a franchise or this chapter; and (4) any other lawful purpose. If a franchisee ~~has been declared to be~~ is in default by the city under ~~Section 26.20.250 of this chapter or a franchise,~~ or if a franchisee fails to pay the city any franchise fees, ~~penalties~~ damages, or monetary sanctions, or if a franchisee fails to perform any of the conditions lawfully imposed by the city, the city may withdraw from the security fund an amount sufficient to compensate the city's costs and damages, with interest at the maximum legal rate under state law, or twelve percent, whichever is greater. Upon such withdrawal, the city shall notify the franchisee in writing, by certified mail of the amount and date thereof. Within thirty days of mailing notice to a franchisee that the city has withdrawn funds from the security fund, a franchisee shall deposit such further bond or sum of money, or other security, as deemed sufficient to meet the requirements of this chapter.

**26.20.290 Inconsistency.**

If any portion of this chapter 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 chapter shall not be affected thereby.

**Chapter 26.24**  
**CONDITIONS OF GRANT OF LICENSE, ~~FRANCHISE OR CABLE~~**  
**FRANCHISE**

**Sections:**

- 26.24.010 General ~~duties~~ requirements.**
- 26.24.020 Interference ~~with the rights-of-way.~~**
- 26.24.030 Damage to property.**
- 26.24.040 Notice of work.**
- 26.24.050 Repair and emergency work.**
- 26.24.060 Maintenance of facilities.**
- 26.24.070 Relocation ~~or removal~~ of facilities.**
- 26.24.080 Removal of unauthorized facilities.**
- 26.24.090 Failure to relocate.**
- 26.24.100 Emergency removal or relocation of facilities.**
- 26.24.110 Damage to grantee's facilities.**
- 26.24.120 Restoration of rights-of-way.**
- 26.24.130 Facilities maps.**
- 26.24.140 Duty to provide information.**
- ~~26.24.150 Leased capacity.~~**
- 26.24.160 Grantee insurance.**

**26.24.170 General indemnification.****26.24.180 ~~Performance and financial guarantees~~ Forms of security.****26.24.190 Security fund.****26.24.200 Construction and completion bond.****26.24.210 Acts at grantee's expense.****26.24.220 Coordination of construction activities.****26.24.230** *Repealed.***26.24.240** *Repealed.***26.24.250 Revocation or termination of grant.****26.24.260 Notice and ~~duty~~ to cure.****26.24.270 Hearing.****26.24.280 Standards for revocation or lesser sanctions.****26.24.290 Non-telecommunications services.****26.24.010 ~~General duties~~ requirements.**

(a) All grantees, before commencing any construction in the rights-of-way, shall comply with all requirements of the Kirkland Municipal Code ~~or other ordinances and regulations~~ of the city as they relate to the city's authority to manage, regulate and control public rights of way.

(b) All grantees shall have no ownership rights in rights-of-way, even though they may be granted a license or franchise to construct or operate their facilities.

(c) Notwithstanding anything in Title 26 to the contrary, any reference in this Chapter 26.24 to a grantee, franchise or permit shall apply only to telecommunications providers or carriers and not to cable operators.

**26.24.020 ~~Interference with the rights-of-way.~~**

No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the rights-of-way by the city, by the general public or other persons authorized to use or be present in or upon the rights-of-way.

**26.24.030 ~~Damage to property.~~**

No grantee or any person acting on a grantee's behalf shall take any action or ~~permit~~ allow any action to be done which may impair or damage any rights-of-way, or other property located in, on or adjacent thereto ~~except~~ and shall provide restoration in accordance with Section 26.24.120 of this chapter.

**26.24.040 ~~Notice of work.~~**

Unless otherwise provided in a license or franchise agreement, or as agreed by the holder of a state wide grant and the city, no grantee, or any person acting on the grantee's behalf, shall commence any nonemergency work involving undergrounding, or excavation ~~or obstructing~~ in or about the rights-of-way, without five working days' advance written notice to the city. ~~Any private property owner whose property will be affected by a grantee's work shall be afforded the same notice.~~

#### **26.24.050 Repair and emergency work.**

In the event of an unexpected repair or emergency, a grantee may commence such repair and emergency response work as required under the circumstances; provided the grantee shall notify the public works director as promptly as possible, before such repair or emergency work or as soon thereafter as possible if advance notice is not practicable.

#### **26.24.060 Maintenance of facilities.**

Each grantee shall maintain its facilities in good and safe condition and in a manner that complies with all applicable federal, state and local requirements.

#### **26.24.070 Relocation or removal of facilities.**

(a) The city may require a grantee to relocate authorized facilities within the right-of-way when reasonably necessary for construction, alteration, repair or improvement of the right-of-way for the purpose of public health, welfare and safety.

(b) The city shall notify grantees as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. In calculating the date by which relocation must be completed, the city shall consult with the affected grantees and consider the extent of the facilities to be relocated, the grantees' services requirements, and the construction sequence for the relocation, within the city's overall project construction sequence and constraints, to safely complete the relocation. Grantees shall complete the relocation by the date specified unless the city or a reviewing court establishes a later date for completion, after showing by a grantee that the relocation cannot be completed by the date specified, using best efforts and meeting safety and service requirements.

(c) Grantees may not seek reimbursement for their relocation expenses from the city except:

(1) Where the grantee has paid for the relocation cost of the same facilities at the request of the city within the past five years, the grantee's share of the cost of relocation will be paid by the city;

(2) Where aerial to underground relocation of authorized facilities is required by the city under subsection (a) of this section for grantees with an ownership share of the aerial supporting structures, the additional incremental cost of underground compared to aerial relocation, or as provided for in the approved tariff if less, will be paid by the city; and

(3) Where the city requests relocation under subsection (a) of this section solely for aesthetic purposes.

(d) Where a project in subsection (a) of this section is primarily for private benefit, the private party or parties shall reimburse the cost of relocation in the same proportion to their contribution to the costs of the project. Grantees will not be precluded from recovering their costs associated with relocation required under subsection (a) of this section, provided that the recovery is consistent with subsection (c) of this section and other applicable laws.

(de) A city may require relocation of facilities at grantee's expense in the event of an unforeseen emergency that creates an immediate threat to public health, welfare and safety.

**26.24.080 Removal of unauthorized facilities.**

Within thirty days following written notice from the city, any grantee, ~~telecommunications carrier or other person~~ that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the rights-of-way shall, at its own expense, remove such facilities or appurtenances from the rights-of-way. If such grantee fails to remove such facilities or appurtenances, the city may cause the removal and charge the grantee for the costs incurred. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

- (1) Upon expiration or termination of the grantee's license or franchise.
- (2) Upon abandonment of a facility within the rights-of-way.
- (3) If the system or facility was constructed or installed without the prior grant of a license or franchise.
- (4) If the system or facility was constructed or installed without the prior issuance of a required construction permit.
- (5) If the system or facility was constructed or installed at a location not permitted by the grantee's license or franchise.
- (6) Any such other reasonable circumstances affecting public health, safety and welfare deemed necessary by the public works director.

**26.24.090 Failure to relocate.**

If a grantee is required to relocate, change or alter the telecommunications facilities hereunder and fails to do so, the city may cause such to occur and charge the grantee for the costs incurred.

**26.24.100 Emergency removal or relocation of facilities.**

The city retains the right and privilege to cut or move any telecommunications facilities located within the rights-of-way as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency.

**26.24.110 Damage to grantee's facilities.**

To the extent permitted by Washington law, the city shall not be liable for any damage to or loss of any telecommunications facility within the rights-of-way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the rights-of-way by or on behalf of the city.

**26.24.120 Restoration of rights-of-way.**

Restoration shall comply with the following:

(1) When a grantee, or any person acting on its behalf, does any work in or affecting any rights-of-way, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to the same condition which existed before the work was undertaken. As used in this section, "promptly" shall mean as required by the city's public works director in the reasonable exercise of the director's discretion.

(2) If weather or other conditions do not ~~permit~~ allow for the complete restoration required hereunder, the grantee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the grantee's sole expense, and the grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(3) A grantee or other person acting on its behalf shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights-of-way.

#### **26.24.130 Facilities maps.**

Each grantee shall provide the city with an accurate as-built map or maps certifying the location of all telecommunications facilities within the rights-of-way. Each Grantee shall provide updated as-built maps annually.

#### **26.24.140 Duty to provide information.**

Within ten days of receipt of a written request from the city-~~clerk~~ manager, each grantee shall furnish the city-~~clerk~~ manager with information sufficient to demonstrate:

(1) That grantee has complied with all requirements of this title.

(2) That all ~~taxes and~~ fees due the city in connection with the telecommunications services and facilities provided by the grantee have been properly collected and paid by the grantee.

(3) That grantee has furnished the city with all necessary information with respect to grantee's facilities in city rights-of-way.

#### **~~26.24.150 Leased capacity.~~**

~~A grantee shall have the right to offer or provide capacity or bandwidth to another telecommunications provider; provided, that the proposed lessee or person shall comply with all of the requirements of this title.~~

#### **26.24.160 Grantee insurance.**

Unless otherwise provided by a franchise or license, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies (which may be evidenced by an acceptable certificate of insurance) insuring both the grantee and the city, and its elected and appointed officers, officials, agents, representatives and employees as additional insureds:

- (1) Comprehensive general liability insurance with limits not less than:
  - (a) Five million dollars for bodily injury or death to each person;
  - (b) Five million dollars for property damage resulting from any one accident; and
  - (c) Five million dollars for all other types of liability.
- (2) Automobile liability for owned, non-owned and hired vehicles with a limit of three million dollars for each person and three million dollars for each accident.
- (3) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars.
- (4) Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars.
- (5) The ~~liability~~ insurance policies required by this section shall be maintained at all times by the grantee. Each such insurance policy or certificate of insurance shall contain the following endorsement:
 

It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until thirty days after receipt by the city, by registered mail, of a written notice addressed to the city manager of such intent to cancel or not to renew.
- (6) Within ten days after receipt by the city of said notice, and in no event later than twenty days prior to said cancellation, the grantee shall obtain and furnish to the city replacement insurance policies or a certificate of insurance meeting the requirements of this title.

**26.24.170 General indemnification.**

In addition to and distinct from the insurance requirements of this title, each grantee hereby agrees to defend, indemnify and hold the city and its officers, officials, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorneys' fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the acts, omissions, failure to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this title or by an agreement made or entered into pursuant to this title, provided that a grantee shall not be required to indemnify the city to the extent the damages, loss and expenses are the result of negligence by the city, its employees, agents or contractors.

**~~26.24.180 Performance and financial guarantees~~ Forms of security.**

Before a license or franchise granted pursuant to this title is effective, and as necessary thereafter, the grantee shall provide and deposit such moneys, bonds, letters of credit or other instruments in form and substance acceptable to the city as may be required by this title, or by an applicable license or

franchise agreement or other applicable code, ordinance, rules or regulations of the city.

**26.24.190 Security fund.**

Each grantee shall establish a permanent security fund with the city by depositing the amount of up to fifty thousand dollars with the city in cash, an unconditional letter of credit, or other instrument acceptable to the city, which fund shall be maintained at the sole expense of grantee so long as any of grantee's telecommunications facilities are located within the rights-of-way. This security fund shall be separate and distinct from any other bond or deposit required.

(1) The fund shall serve as security for the full and complete performance of grantee's obligations under this title, including any costs, expenses, damages or loss the city pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the city.

(2) Before any sums are withdrawn from the security fund the city manager or designee shall give written notice to the grantee:

(a) Describing the act, default or failure to be remedied, or the damages, cost or expenses which the city has incurred by reason of the grantee's act or default;

(b) Providing a reasonable opportunity for the grantee to first remedy the existing or ongoing default or failure, if applicable;

(c) Providing a reasonable opportunity for the grantee to pay any moneys due the city before the city withdraws the amount thereof from the security fund, if applicable; and

(d) That the grantee will be given an opportunity to review the act, default or failure described in the notice with the city manager or designee.

(3) Grantee shall replenish the security fund within fourteen days after written notice from the city clerk that there is a deficiency in the amount of the fund.

### **26.24.200 Construction and completion bond.**

Unless otherwise provided in a license or franchise agreement, a bond written by a surety acceptable to the city equal to at least one hundred percent of the estimated cost of constructing the grantee's telecommunications facilities within the rights-of-way shall be deposited before a construction permit is issued.

(1) The construction bond shall remain in force until ninety days after substantial completion of the work, as determined by the public works director, including restoration of rights-of-way and other property affected by the construction. However, in addition to the foregoing, the city reserves the right to require a maintenance bond as per Chapter 175 of the city zoning code.

(2) The construction bond shall guarantee, to the satisfaction of the city:

- (a) Timely completion of construction;
- (b) Construction in compliance with applicable plans, permits, technical codes and standards;
- (c) Proper location of the facilities as specified by the city;
- (d) Restoration of the rights-of-way and other property affected by the construction;
- (e) The submission of "as-built" maps after completion of the work as required by this title;
- (f) Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

### **26.24.210 Acts at grantee's expense.**

Any act that a grantee is or may be required to perform under this title, a license, franchise, ~~or cable franchise~~ or applicable law shall be performed at the grantee's expense.

### **26.24.220 Coordination of construction activities.**

All grantees are required to cooperate with the city and with each other as follows:

(1) By February 1st of each year, each grantee shall provide the public works director with a schedule of its proposed construction activities which may affect the rights-of-way for that year. Failure to provide such schedule on a timely basis may impact upon the ability of a grantee to obtain permits for its construction activities during the course of that year.

(2) Each grantee shall meet with the city, other grantees and users of the rights-of-way annually or as determined by the city to schedule and coordinate construction.

(3) All construction locations, activities and schedules shall be coordinated, as ordered by the public works director, to minimize public inconvenience, disruption or damages.

### **26.24.230 Assignments or transfers of grant.**

*Repealed by Ord. 3796.*

**26.24.240 Transactions affecting control of grant.**

*Repealed by Ord. 3796.*

**26.24.250 Revocation or termination of grant.**

A license or franchise for telecommunications granted by the city to use or occupy rights-of-way may be revoked for any one or more of the following reasons:

- (1) Construction or operation at an unauthorized location;
- (2) Material misrepresentation ~~or lack of candor~~ by or on behalf of a grantee in any application to the city;
- (3) Abandonment of telecommunications facilities in the rights-of-way without the express written permission of the City;
- (4) Failure to relocate or remove telecommunications facilities as required in this title;
- (5) Failure to pay ~~taxes, compensation,~~ fees or costs when and as due the city;
- (6) Violation of a material provision of this title;
- (7) Violation of a material term of a license or franchise.

**26.24.260 Notice and ~~duty to cure.~~**

In the event that the city ~~clerk~~ manager believes that grounds exist for revocation of a license or franchise, the grantee shall be given written notice of the apparent violation or noncompliance, be provided a short and concise statement of the nature and general facts of the violation or noncompliance, and be given a reasonable period of time not exceeding thirty days from receipt of written notice to furnish evidence:

- (1) That corrective action has been, or is being, actively and expeditiously pursued to remedy the violation or noncompliance.
- (2) That rebuts the alleged violation or noncompliance.
- (3) That it would be in the public interest to impose ~~some monetary damages, penalty~~ civil penalties or sanctions less than revocation.

**26.24.270 Hearing.**

In the event that a grantee fails to provide evidence reasonably satisfactory to the city ~~clerk~~ manager as provided hereunder, the city ~~clerk~~ manager shall make a preliminary determination as to whether an event of default by grantee has occurred and initially prescribe remedies in accordance with Section 26.24.280. In the event that a grantee wants to appeal such determination, it shall do so to the hearing examiner. In the event a further appeal is sought by the grantee, it shall make such appeal to the city council. With respect to apparent violations or noncompliance, appeals provided for herein shall be made within 14 days of a determination adverse to grantee. In any event, the city shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

**26.24.280 Standards for revocation or lesser sanctions.**

If persuaded that the grantee has violated or failed to comply with a material provision of this title or of a franchise or license or applicable codes, ordinances, statutes, ~~or rules and~~ or regulations, the ~~city clerk~~ manager shall make a preliminary determination whether to revoke the license or franchise, and issue a written decision relating thereto, or to establish some monetary damages, ~~penalty,~~ lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- (1) Whether the misconduct was egregious.
- (2) Whether substantial harm resulted.
- (3) Whether the violation was intentional.
- (4) Whether there is a history of prior violations of the same or other requirements.
- (5) Whether there is a history of overall compliance.
- (6) Whether the violation was voluntarily disclosed, admitted or cured.

#### **26.24.290 Non-telecommunications services.**

If a telecommunications provider intends to provide services that do not fall within the scope of "telecommunications services," as defined in this code or ~~the Federal Telecommunications Act of 1996~~ federal law (as it now exists or is hereafter amended) or "information services" as defined by the FCC, then the provider shall be required to obtain a separate franchise or other authorization from the city for those services. The separate franchise or authorization process for non-telecommunications services shall not be governed by this title (except for cable services).

### **Chapter 26.28**

## **CONSTRUCTION OF TELECOMMUNICATIONS FACILITIES**

#### **Sections:**

- 26.28.010 Construction standards.**
- 26.28.020 Construction codes.**
- 26.28.030 Construction permits.**
- 26.28.040 Applications.**
- 26.28.050 Engineer's certification.**
- 26.28.060 Traffic control plan.**
- 26.28.070 Issuance of permit.**
- 26.28.080 Construction schedule.**
- 26.28.090 Compliance with permit.**
- 26.28.100 Display of permit.**
- 26.28.110 Surveyor of underground facilities.**
- 26.28.120 Noncomplying work.**
- 26.28.130 Completion of construction.**
- 26.28.140 As-built drawings.**
- 26.28.150 Restoration of improvements.**
- 26.28.160 Landscape restoration.**

**26.28.170 Location of facilities.****26.28.180** *Repealed.***26.28.190** *Repealed.***26.28.200 Construction surety.****26.28.210 Applicability of Chapter 26.28 to telecommunications providers or carriers****26.28.010 Construction standards.**

No person shall commence or continue with the construction, installation or operation of telecommunications facilities within the city except as provided in this title; provided, however, this chapter shall be in addition to the requirements of the city standard plans contained in the most recent utility policy, ~~policy section dated May 5, 1993 as such was enacted or has or in the future is amended from time to time ("utility policy")~~, and in the event of a conflict between the aforesaid utility policy and this chapter, the standards of the utility policy shall control.

**26.28.020 Construction codes.**

Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local construction codes, safety codes, and rules and regulations including, but not limited to, the National Electrical Safety Code. Telecommunications facilities shall comply with the most recent standards in the utility policy and other public works policies and standards and applicable city codes including, but not limited to, Title 19, Streets and Sidewalks, as it now exists or is hereafter amended. ~~In the event of a conflict between the standards in the utility policy, public works standards and other local standards and titles, those titles, public works standards and other local standards shall apply.~~

**26.28.030 Construction permits.**

No person shall construct or install any telecommunications facilities within the city without first obtaining a construction permit therefore, provided, however:

(1) No permit shall be issued for the construction or installation of telecommunications facilities within the city unless the telecommunications carrier has filed a registration statement with the city pursuant to this title.

(2) Except as otherwise provided in this title, no permit shall be issued for the construction or installation of telecommunications facilities in the rights-of-way unless the telecommunications carrier has applied for and received a franchise or license pursuant to this title.

(3) Unless otherwise provided by law, a franchise or license, no permit shall be issued for the construction or installation of telecommunications facilities without payment of all fees pursuant to this title.

(4) No telecommunications permit shall be issued to cut any public way, the surface of which is less than five years old, unless the grantee overlays the surface of any public way which is cut by the grantee.

### **26.28.040 Applications.**

Applications for permits to construct telecommunications facilities shall be submitted upon forms provided by the city. The applicant shall pay all associated fees and shall include any additional information as requested by the public works director. The application shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

(1) That the facilities will be constructed in accordance with all applicable codes, rules and regulations.

(2) The location and route of all facilities to be installed on existing utility poles.

(3) The location and route of all facilities to be located under the surface of the ground, including line and grade proposed for the burial at all points along the route which are within the rights-of-way.

(4) To the extent such information is made accessible to grantee, the location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the rights-of-way along the route proposed by the applicant.

(5) The location of all other facilities to be constructed within the city, but not within the rights-of-way, in accordance with applicable city building and land use regulations.

(6) The construction methods to be employed for protection of existing structures, fixtures and facilities within or adjacent to the rights-of-way.

(7) The location, dimension and types of all trees that will be impacted during construction within or adjacent to the rights-of-way along the route proposed by the applicant, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

### **~~26.28.050 Engineer's certification.~~**

~~Unless otherwise provided in a license or franchise, all permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations. The engineer shall also provide a certificate of the construction cost estimate.~~

### **26.28.060 Traffic control plan.**

All permittees shall comply with the Manual on Uniform Traffic Control Devices with respect to traffic control. The City may require a traffic control plan ~~All permit applications which involve work on, in, under, across or along any rights-of-way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed.~~

### **26.28.070 Issuance of permit.**

Within thirty days after submission of all plans and documents required of the applicant and payment of necessary permit fees, the public works director, if satisfied that the application, plans and documents comply with all requirements of this title, shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as the public works director may deem necessary or appropriate.

**26.28.080 Construction schedule.**

The ~~City may require a permittee shall to~~ submit a written construction schedule to the public works director ~~ten working days~~ before commencing any work in or about the rights-of-way. ~~The permittee shall further provide written notification to the public works director not less than five working days in advance of any excavation or work in the rights-of-way.~~

**26.28.090 Compliance with permit.**

All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The public works director and his or her representative shall be provided access to the work and such further information as he or she may require to ensure compliance with such requirements.

**26.28.100 Display of permit.**

The permittee shall maintain a copy of the construction permit and approved plans at the construction site, which shall be displayed and made available for inspection by the public works director at all times when construction work is occurring.

**26.28.110 Surveyor of underground facilities.**

If the construction permit specifies the location of facilities by depth, line, grade, proximity to other facilities or other standards, the permittee shall cause the location of its facilities to be verified by a registered Washington land surveyor. The permittee, at its expense, shall relocate any facilities which are not located in compliance with permit requirements.

**26.28.120 Noncomplying work.**

Upon order of the public works director, all work which does not comply with the permit, the approved plans or specifications for the work or the requirements of this title shall be removed.

**26.28.130 Completion of construction.**

The permittee shall promptly complete all construction activities so as to minimize disruption of the rights-of-way and other public and private property. All construction work authorized by a permit within rights-of-way, including

restoration, must be completed within ninety days of the date of issuance or at such other interval as the city may specify in writing upon issuance of the permit.

**26.28.140 As-built drawings.**

~~Within thirty days after completion of construction~~ Upon request, the permittee shall furnish the public works director with ~~two a complete~~ sets of ~~plans~~ locational drawings, drawn to scale and certified to the city as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit. In the event the permittee installs facilities for the city, the permittee shall provide the city with as-built drawings of the city facilities, drawn to scale.

**26.28.150 Restoration of improvements.**

Upon completion of any construction work, the permittee shall promptly repair, but in no event longer than such time as may be established by the city during permit review, any and all public and private property, improvements, fixtures, structures and facilities which are damaged during the course of construction, restoring the same to their condition before construction commenced.

**26.28.160 Landscape restoration.**

(a) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair or replacement of telecommunications facilities, which is done pursuant to a franchise, license or permit, shall be replaced or restored to the condition existing prior to performance of the work. Significant trees removed shall be replaced. Significant trees are defined as an existing healthy tree which, when measured four feet above grade, has a minimum diameter of:

- (1) Six inches for evergreens, except as provided under subsections (a)(2) or (4) of this section; or
- (2) Eight inches for Douglas fir and hemlock trees; or
- (3) Twelve inches for deciduous trees; or
- (4) A tree that, because of its unique species, environment or location, is determined by the public works director to be a significant tree.

(b) All restoration work within the rights-of-way shall be done in accordance with landscape plans approved by the public works director.

**26.28.170 Location of facilities.**

Unless otherwise required in current or future city ordinances regarding underground construction requirements, all facilities shall be constructed, installed and located in accordance with the following terms and conditions:

~~(1) Telecommunications facilities shall be installed within an existing underground duct or conduit whenever excess capacity exists within such utility facility.~~

~~(2)~~ A franchisee with written authorization to install overhead facilities shall install its telecommunications facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

~~(3)~~ Whenever ~~all~~ existing telephone, electric utilities, ~~cable facilities~~ or telecommunications facilities are located or relocated underground within rights-of-way, a franchisee with written authorization to occupy the same rights-of-way must also locate or relocate its telecommunications facilities underground.

~~(4)~~ Whenever ~~all~~ new ~~or existing~~ telephone, electric utilities, ~~cable facilities~~ or telecommunications facilities are located ~~or relocated~~ underground within rights-of-way, a franchisee that currently occupies or will occupy the same rights-of-way shall concurrently ~~relocate~~ place its telecommunications facilities underground at its expense.

**26.28.180 Conduit occupancy.**

*Repealed by Ord. 3796.*

**26.28.190 Occupancy of city owned conduit.**

*Repealed by Ord. 3796.*

**26.28.200 Construction surety.**

Prior to issuance of a construction permit, the permittee shall provide a construction bond, as provided in this title.

**26.28.210 Applicability of Chapter 26.28 to telecommunications providers or carriers**

Notwithstanding anything in Title 26 to the contrary, any reference in this Chapter 26.28 to a grantee, franchisee, franchise, permittee or permit shall apply only to telecommunications providers or carriers and not to cable operators.

## Chapter 26.32 FEES

**Sections:**

**26.32.010 Registration fee.**

**26.32.020 Pre-application conference and application fee.**

**26.32.030 Refund.**

**26.32.040 Other city costs.****26.32.050 Reserved compensation for use of rights-of-way.****26.32.060 Compensation for use of city property.****26.32.070 Construction permit fee.****26.32.080 Annual fees.****26.32.090 Regulatory fees and compensation not a tax.****26.32.100 Fee review process, city ~~clerk~~ and hearing examiner.****26.32.110 Applicability of Chapter 26.32 to telecommunications providers or carriers****26.32.010 Registration fee.**

Each application for registration as a telecommunications carrier or provider shall be accompanied by a fee in such amount as the city ~~clerk~~ determines is required to cover all direct and indirect costs associated with the registration process.

**26.32.020 Pre-application conference and application fee.**

Prior to the acceptance of an application by the city from a telecommunications carrier or provider, the applicants shall participate in a pre-application conference with the city for the purpose of establishing the application fee. The purpose of establishing the application fee is to ensure the recovery of the city's direct and indirect costs and expenses associated with the review of the application including, but not limited to, actual costs of city staff time and resources as well as any outside consultation expenses which the city reasonably determines are necessary to adequately review and analyze the application. The application fee shall be established by the city ~~clerk~~ and shall be a minimum of up to two thousand five hundred dollars and with the maximum fee established depending upon estimated reasonable city costs and expenditures in review of the application. All disputes in the amount required shall be resolved by an appeal to a hearing examiner. All franchisee and licensee applicants shall deposit the application fee with the city. This application fee shall be applied towards actual expenses and costs of the city. Any unencumbered application fees shall be refunded to the applicant upon written request of the applicant, but in no event earlier than sixty days after granting or denial of the permit. In the event the city's actual costs associated with application review exceed the application fee, the applicant shall reimburse the city within thirty days of receiving written notice from the city requesting reimbursement. The city's notice shall contain the reimbursement amount and a description of the costs incurred by the city in connection with review of the application.

**26.32.030 Refund.**

An applicant whose license or franchise application has been withdrawn, abandoned or denied shall, within sixty days of its application and review fee payment, be refunded the balance of its deposit under this section, less:

- (1) The registration fee; and

(2) All ascertainable costs and expenses incurred by the city in connection with the application.

**26.32.040 Other city costs.**

To the extent allowed by law, all grantees shall, within thirty days after written demand therefor, reimburse the city for all direct and indirect costs and expenses incurred by the city in connection with any modification, amendment, renewal or transfer of a license or franchise.

**26.32.050 Reserved compensation for use of rights-of-way.**

To the extent permitted by law, the city reserves its right to fix a fair and reasonable compensation to be paid for the authorization granted to a grantee. Nothing in this title shall prohibit the city and a grantee from agreeing upon the compensation.

**26.32.060 Compensation for use of city property.**

If the right is granted, by lease, license, franchise or other manner, to use and occupy city property for the installation or use of telecommunications facilities, the compensation to be paid shall be fixed by the city (to the extent permitted by law) or as otherwise agreed between the city and grantee.

**26.32.070 Construction permit fee.**

Prior to issuance of a construction permit, the permittee shall pay a permit fee to be calculated in accordance with Section 5.74.040 of this code. The purpose of the construction permit fee shall be to recover the city's actual attributable direct and indirect construction plan review costs and expenses, as well as damage or rights-of-way value diminution as a result of permittee's occupancy of the right-of-way.

**26.32.080 Annual fees.**

Each grantee shall pay an annual fee (if any) to the city equal to the city's direct and indirect costs in connection with reviewing, inspecting and supervising the use and occupancy of the rights-of-way.

**26.32.090 Regulatory fees and compensation not a tax.**

The regulatory fees and costs provided for in this title, and any compensation charged and paid for the rights-of-way provided for herein, are separate from, and additional to, any and all federal, state, local and city taxes as may be levied, imposed or due from a telecommunications carrier or provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services.

**26.32.100 Fee review process, city clerk and hearing examiner.**

Any applicant or permittee may initiate a review of the fees established in Sections 26.32.020 through 26.32.080 of this chapter. Within ten days of notice of the fee ~~determined by~~ from the city clerk, the applicant or permittee may appeal to the hearing examiner. Pursuant to the provisions of Chapter 3.34 of this code, the hearing examiner is authorized to review and make determinations as provided herein.

**26.32.110 Applicability of Chapter 26.32 to telecommunications providers or carriers**

Notwithstanding anything in Title 26 to the contrary, any reference in this Chapter 26.32 to an applicant, grantee, franchisee, franchise, permittee or permit shall apply only to telecommunications providers or carriers and not to cable operators.

**Chapter 26.36  
MISCELLANEOUS**

**Sections:**

**26.36.010 Context.**

**26.36.010 Context.**

When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

Section 2. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 3. 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 1.08.107, 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 open meeting this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Signed in authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
MAYOR

Attest:

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City Clerk

Approved as to Form:

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City Attorney

H:\CAO\ORD\Telecomm Title 26 Revisions 2006 Final.doc

PUBLICATION SUMMARY  
OF ORDINANCE NO. 4033

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO  
TELECOMMUNICATIONS AND CABLE SERVICES.

SECTION 1. Amends portions of Title 26 of the Kirkland Municipal Code relating to telecommunications and cable services.

SECTION 2. Provides a severability clause for the ordinance.

SECTION 3. 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 meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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

\_\_\_\_\_  
City Clerk