

**SULTAN CITY COUNCIL  
AGENDA ITEM COVER SHEET**

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ITEM NO: A-5  
DATE: July 10, 2008  
SUBJECT: Ordinance No. 987-08 Repealing SMC 5.28 (CATV Systems) and Adopting Cable System Regulations

CONTACT PERSON: Deborah Knight, City Administrator



**ISSUE:**

The issue before the City Council is to have First Reading of Ordinance No. 987-08 (Attachment A) to enact cable system regulations that govern granting cable system franchises and the construction, operation, and maintenance of cable systems and repealing Chapter 5.28 (Attachment B) of the Sultan Municipal Code (SMC).

**STAFF RECOMMENDATION:**

Have First Reading of Ordinance No. 987-08 an ordinance of the City of Sultan, Washington, enacting cable system regulations that govern the granting of cable system franchises and the construction, operation, and maintenance of cable systems and repealing chapter 5.28 of the sultan municipal code.

**SUMMARY:**

This proposed action is a result of reviewing and renegotiating the City's franchise agreement with Comcast.

SMC Chapter 5.28 includes regulations specific to the City's initial franchise agreement with Broadview Television Co. (d/b/a Viacom Cablevision now Comcast) and general regulations applicable to any cable system operator.

The proposal is to separate the specific negotiated terms with Comcast from the general regulations applicable to any cable system operator now contained in Ordinance No. 987-08.

Action Item A-4 is a separate ordinance approving a five year non-exclusive franchise agreement with Comcast.

The proposed change will keep the general policies for managing cable systems (i.e. regulations) in the Sultan Municipal Code and move specific issues negotiated between the City and Comcast, such as competitive equity, into the Franchise Agreement.

**BACKGROUND:**

The original cable television franchise agreement with Comcast (Ordinance No. 502) expired on August 8, 2004. The Cable TV ordinance is codified in Section 5.28 of Sultan Municipal Code.

As required by federal law, the City of Sultan and its East County Cable Consortium partners (Snohomish, Monroe, and Lake Stevens) formally began the cable franchise renewal process in April 2004. On June 11, 2004, Comcast Cable Communication responded with a proposal.

Based on information gathered by a 2004 regional needs survey, the Consortium issued a request for proposals for a consultant to negotiate with Comcast on behalf of the Consortium.

Since then, the Consortium hired three firms to provide professional services to renew the franchise agreement and ordinance. The owner of the first firm hired by the Consortium passed away and the services of the second firm were not acceptable to the Consortium.

River Oak Communications was retained by the Consortium in February 2006. The proposed cable system regulations were developed during negotiations with Comcast.

**DISCUSSION:**

The following table describes the significant changes to the CATV Systems regulations in SMC 5.28 and the proposed Cable System Regulations in Ordinance No. 987-08

	<b>SMC 5.28 CATV Systems</b>	<b>Ordinance No. 987-08</b>
<b>Definitions</b>		
Cable System	Very limited definition	Expanded definition based on federal code
Basic Services, Combined Disposable Income, Gross Revenues, Headend	Included	N/A. Moved to franchise agreement
<b>Franchise Grant</b>		
Term	Included	General information. Specifics provided in the franchise agreement
Hearing	Required	Required

<b>Application</b>	<b>SMC 5.28 CATV Systems</b>	<b>Ordinance No. 987-08</b>
	Not Required	Required. Establishes an application fee of \$20,000
<b>Franchise Fees and Financial Controls</b>		
<ul style="list-style-type: none"> <li>• Franchise Fees</li> <li>• Payments</li> <li>• Maximum Franchise Fee</li> <li>• Fee Reports</li> <li>• Audits</li> <li>• Unlawful to Evade Franchise fees</li> </ul>	Included	N/A. Specific requirements moved to franchise. New sections include Maximum Franchise Fee and Unlawful to Evade
<b>Administration and Regulation</b>		
	Included	N/A. Specific requirements moved to franchise
<b>Financial and Insurance Requirements</b>		
Indemnification	Included	N/A. Moved to franchise
Insurance	Included - \$1,000,000	N/A. Moved to franchise expanded to include \$2M general liability and \$5M excess liability
<b>Customer Service Standards</b>		
	Included	Expanded to include: Customer Service; Responsiveness; Repairs and outages; Bills, Credits, Refunds and Deposits; Treatment of Property; Services for Customers with Disabilities; Customer Information; Safety; Complaints to the City; Remedy and Violations.
<b>Reports and Records</b>		
	Included	N/A. Moved to franchise agreement. Expanded to include map of facility locations
<b>Programming</b>		
	Included	N/A. Moved to franchise. Requires broad programming categories.

<b>Access</b>	<b>SMC 5.28 CATV Systems</b>	<b>Ordinance No. 987-08</b>
	Included as PEG (public education and govt.) \$15,000 contribution	N/A. Moved to franchise. \$2,994 contribution.
<b>General ROW Use and Construction</b>		
	Included with specific requirements	Included with very limited requirements. Specific requirements included in franchise agreement.
<b>Technical Standards</b>		
	Included	Included with very limited requirements. Specific requirements included in franchise agreement
<b>Service Extensions and Complimentary Service</b>		
	Included	N/A. Moved to franchise agreement.
<b>Franchise Violations</b>		
	Included as Revocation for Cause	N/A. Moved to franchise agreement and expanded to include Assessment for Liquidated Damages.
<b>Renewal and Transfer</b>		
	Included	Included with very limited requirements. Specific requirements included in franchise agreement

### **FISCAL IMPACT:**

The proposed Cable System Regulations include a new Application section (Section 7) which requires the applicant for an initial franchise fee of \$20,000 to cover the costs associated with process the application including administrative staff review, financial, legal and technical evaluation of the applicant, notice and publication requirements and document preparation expenses.

If the costs exceed the application fee, the applicant pays the difference to the city. If the costs are less than the application fee, then the City will refund the difference to the applicant.

The City spent approximately \$xxx over the last four years in legal and technical fees, staff time and expense negotiating the proposed franchise agreement with Comcast.

**ANALYSIS:**

The City of Sultan has been working with other members of the consortium for over 4 years to complete the cable television franchise agreement with Comcast and revise SMC 5.28 (CATV Systems). The City has assigned a number of different staff people to the task due to staffing changes and work load. Sultan is depending on the expertise of its consortium partners and professional consultant, Tom Duchen to guide the City's efforts.

The cities of Monroe, Snohomish and Lake Stevens have held first readings to adopt the franchise agreement and corresponding regulations.

The proposed regulations are purposefully limited with specific requirements included in the franchise agreement.

**RECOMMENDED ACTION:**

Have First Reading of Ordinance No. 987-08 to enact cable system regulations that govern granting cable system franchises and the construction, operation, and maintenance of cable systems and repealing Chapter 5.28 (Attachment B) of the Sultan Municipal Code (SMC).

**ATTACHMENTS:**

- A. Ordinance No. 987-08 Proposed Cable System Regulations - Repeals SMC 5.28
- B. Ordinance No. 503 Franchise Agreement (SMC 05.28)

**ATTACHMENT A**

**CITY OF SULTAN**  
Sultan, Washington

**ORDINANCE NO. 987-08**

**AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON,  
ENACTING CABLE SYSTEM REGULATIONS THAT GOVERN  
THE GRANTING OF CABLE SYSTEM FRANCHISES AND THE  
CONSTRUCTION, OPERATION, AND MAINTENANCE OF  
CABLE SYSTEMS AND REPEALING CHAPTER 5.28 OF THE  
SULTAN MUNICIPAL CODE.**

WHEREAS, the City wishes: (i) to promote the availability of high-quality and diverse Cable Services to residents, the City and other public institutions; (ii) to promote the availability of diverse information resources to the community; (iii) to promote competitive Cable Services and rates; (iv) to take advantage of technologies; (v) to enhance educational opportunities throughout the community and provide opportunities for building a stronger community; and (vi) to allow flexibility to respond to changes in technology, Customer interests and competitive factors within the cable television industry that will positively affect the health, welfare and well-being of the community;

WHEREAS, the City, pursuant to applicable federal law, is authorized to grant one or more nonexclusive Franchises to construct, operate and maintain Cable Systems within the City; and

WHEREAS, because of the complex and rapidly changing technology associated with Cable Systems, the City Council further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers that should be vested in the City. It is further the intent of this Chapter and subsequent amendments to provide for and specify the means to attain the best possible Cable Service to the public. It is the further intent of this Chapter to establish regulatory provisions that permit the City to regulate Cable System Franchises to the maximum extent permitted by federal and State law, including, but not limited to, the Cable Act, applicable Federal Communications Commission regulations and Washington law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON DO  
ORDAIN AS FOLLOWS:

**Section 1. Repeal.** Chapter 5.28 of the Sultan Municipal Code is hereby repealed.

**Section 2. Short Title.** This Chapter shall constitute the "Cable System Regulations" of the City of Sultan and may be referred to as such.

**Section 3. Definitions.**

For the purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meanings given herein where capitalized. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words otherwise not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1. "Applicant" means any person or entity that applies for an initial Franchise.
2. "Cable Act" means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as any of them may be amended.
3. "Cable Operator" means any person or group of persons, including a Franchisee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.
4. "Cable Service" means the one-way transmission to Customers of video programming or other programming service, and Customer interaction, if any, which is required for the selection or use of such video programming or other programming service.
5. "Cable System" means any facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Customers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Customers without using any public Right-of-Way; (C) 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 Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Customers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes and regulations; or (E) any facilities of any electric utility used solely for operating its electric utility systems.
6. "City" means the City of Sultan, a municipal corporation of the State of Washington, and all of the area within its boundaries, as such may change from time to time.
7. "City Council" means the Sultan City Council, or its successor, the governing body of the City.
8. "Customer" means any person who or which elects to subscribe to, for any purpose, Cable Service provided by a Franchisee by means of or in connection with the Cable System and whose premises are physically wired and lawfully activated to receive Cable Service from Franchisee's Cable System.
9. "Customer Service Representative" or "CSR" shall mean any person employed by the Cable Operator to assist or provide service to Customers, whether by answering public telephone lines, answering Customers' questions or performing other Customer service related tasks.
10. "Customer Service Standards" means those Customer Service Standards set forth herein and as hereafter amended that are applicable to Cable Operators.
11. "FCC" means the Federal Communications Commission.
12. "Franchise" means an agreement that authorizes a person or entity to construct, operate, maintain or reconstruct a Cable System. Upon the written acceptance by a Franchisee, the agreement constitutes a contract between the City and Franchisee.

13. "Franchise Area" means the area within the jurisdictional boundaries of the City to be served by a Franchisee as specified in the Franchise.

14. "Franchisee" means the person, firm, corporation or entity to whom or which a Franchise, as hereinabove defined, is granted by the City Council under this Chapter and the lawful successor, transferee or assignee of said person, firm, corporation or entity.

15. "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.

16. "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 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.

17. "Right-of-Way" or "Rights-of-Way" means all of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and are located within the City: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements and similar public property and areas.

18. "Service Interruption" shall mean the loss of picture or sound on one or more cable channels.

#### **Section 4. Franchise Grant.**

It is unlawful to engage in or commence construction, operation or maintenance of a Cable System in the City without a Franchise issued under this Chapter. The City Council may, by ordinance, issue a nonexclusive Franchise to construct, operate and maintain a Cable System within the City to any person or entity, whether operating under an existing Franchise or not, who applies for authority to furnish Cable Service which complies with the terms and conditions of this Chapter, and provided that such person or entity also agrees to comply with all of the provisions of the Franchise. However, this shall not be deemed to require the grant of a Franchise to any particular person or entity. The City Council may restrict the number of Franchises should it determine such a restriction would be in the public interest.

#### **Section 5. Franchise Purposes.**

A Franchise granted by the City under the provisions of this Chapter shall:

A. Permit the Franchisee to engage in the business of operating a Cable System and providing Cable Service within the City;

B. Permit the Franchisee to erect, install, construct, repair, reconstruct, replace and retain wires, cables, related electronic equipment, conduits and other property in connection with the operation of the Cable System in, on, over, under, upon, along and across Rights-of-Way within the City; and

C. Set forth the obligations of the Franchisee under the Franchise.

**Section 6. Nonexclusive Franchise.**

Any Franchise granted pursuant to this Chapter shall be nonexclusive and not preclude the City from granting other or future Franchises or permits.

**Section 7. Application.**

A. An Applicant for an initial Franchise shall submit to the City a written application on a form provided by the City, at the time and place specified by the City for accepting applications, and accompanied by the designated application fee. An application fee in the amount of \$20,000 shall accompany the application to cover costs associated with processing the application, including, without limitation, costs of administrative review, financial, legal and technical evaluation of the Applicant, notice and publication requirements, and document preparation expenses. In the event such costs exceed the application fee, the Applicant shall pay the difference to the City within thirty (30) days following receipt of an itemized statement of such costs. Conversely, if such costs are less than the application fee, the City shall refund the difference to the Applicant.

B. An application for an initial Franchise for a Cable System shall contain, at a minimum:

1. A statement as to the proposed Franchise and information relating to the characteristics and location of the proposed Cable System;
2. A resume of prior history of the Applicant, including the expertise of the Applicant in the Cable System field;
3. Information demonstrating the Applicant's legal, technical and financial ability to construct and operate the proposed Cable System;
4. A list of the partners, general and limited, of the Applicant, if a partnership, members, if a limited liability company, or the percentage of stock owned or controlled by each stockholder having a five percent (5%) or greater interest, if a corporation;
5. A list of officers, directors and key employees of the Applicant, together with a description of the background and experience of all such persons;
6. The names and addresses of any parent entity or subsidiary of the Applicant or any other business entity owning or controlling the Applicant in whole or in part, or owned or controlled in whole or in part by the Applicant;
7. A proposed construction and service schedule;
8. Any other reasonable information that the City may request.

The City shall be allowed the opportunity to ask relevant follow-up questions and obtain further information from whatever source. A refusal by an Applicant to cooperate or provide requested information is sufficient grounds for the City to deny an application.

C. Upon receipt of an application for an initial Franchise and after obtaining any additional information the City in its sole discretion deems appropriate from any source, a hearing shall be scheduled

to allow public comment. At the hearing, the City Council shall receive public comment regarding the following:

1. Whether the public will benefit from granting a Franchise to the Applicant;
2. Whether the Applicant appears to have adequate legal, financial and technical qualifications and capabilities to build, operate and maintain a Cable System in the City;
3. Whether the Applicant has any conflicting interests, either financial or commercial, that will be contrary to the interests of the City;
4. Whether the Applicant will comply with all of the terms and conditions placed upon a Franchisee by the Franchise, this Chapter and other lawfully applicable local laws and regulations;
5. Whether the Applicant will comply with all relevant federal and State laws and regulations pertaining to the construction, operation and maintenance of the Cable System.

D. Within the timeframe prescribed by applicable law, the City Council shall decide whether to grant a Franchise and on what conditions. The City Council's decision shall be based upon the application, any additional information submitted by the Applicant or obtained by the City from any source and public comments. The City Council may grant one (1) or more Franchises or may decline to grant any Franchise.

**Section 8. Duration.**

The term of any Franchise, and all rights, privileges, obligations and restrictions pertaining thereto, shall be specified in the Franchise. The effective date of any Franchise shall be as specified in the Franchise.

**Section 9. Police Powers.**

In accepting any Franchise, the Franchisee acknowledges that its rights thereunder are subject to the police powers of the City to adopt and enforce ordinances necessary for the health, safety and welfare of the public, and it agrees to comply with all applicable laws enacted by the City pursuant to such power.

**Section 10. Use of Rights-of-Way.**

For the purposes of operating and maintaining a Cable System in the City, a Franchisee may place and maintain within the Rights-of-Way such property and equipment as are necessary and appurtenant to the operation of the Cable System. Prior to construction of the Cable System in the Rights-of-Way, the Franchisee shall procure all necessary permits, pay all applicable fees in connection therewith and comply with all applicable laws, regulations, resolutions and ordinances, including, but not limited to, land use and zoning requirements.

**Section 11. Pole or Conduit Agreements.**

No Franchise shall relieve Franchisee of any of its obligations involved in obtaining pole or conduit agreements from any department of the City, any utility company or from others maintaining facilities in the Rights-of-Way.

**Section 12. Franchise Fees.**

The Franchisee shall pay the City franchise fees in accordance with the terms of the Franchise and applicable law.

**Section 13. Taxes.**

Nothing in this Chapter shall limit the Franchisee's obligation to pay applicable local, State and federal taxes.

**Section 14. Customer Service Standards.**

A. Policy. A Cable Operator will first resolve Customer inquiries and complaints without delay and without involvement of the City. Where a given complaint is not addressed by the Cable Operator to the Customer's satisfaction, the City may intervene.

These standards are intended to be of general application. A Cable Operator is free to exceed these standards for the benefit of its Customers. However, the Cable Operator shall be relieved of obligations hereunder if it is unable to perform due to a force majeure event affecting a significant portion of the Franchise Area.

B. Customer Service.

1. Courtesy. All employees of the Cable Operator shall be courteous, knowledgeable and helpful and shall provide effective and satisfactory service in all contacts with Customers.

2. Availability and Accessibility – In Person. The Cable Operator must maintain, at a minimum, one (1) customer service center located in Everett. This customer service location shall at all times allow Customers to make payments, return equipment or get assistance from knowledgeable staff. The customer service center shall be open Monday through Saturday, excluding legal holidays, with sufficient hours necessary to meet Customer demand. The customer service center will be staffed to meet all Customer needs with on-site Customer Service Representatives. If, however, the customer service center is required to relocate, the Cable Operator shall be allowed a reasonable period of time to establish a new location.

3. Availability and Accessibility – On the Telephone. A CSR will be available to respond to Customer inquiries during Normal Business Hours. The Cable Operator shall maintain local or toll free telephone access lines that shall be available during Normal Business Hours for service/repair requests and billing inquiries.

The Cable Operator shall retain sufficient CSRs and telephone line capacity to ensure that, during Normal Operating Conditions, telephone calls to service/repair and billing inquiry lines are answered within thirty (30) seconds or less, and that any transfers are made within thirty (30) seconds. This standard shall be met no less than ninety (90) percent of the time, measured on a quarterly basis under Normal Operating Conditions. Under Normal Operating Conditions, the total number of calls receiving busy signals shall not exceed three percent (3%) of the total telephone calls.

The Cable Operator shall not be required to acquire equipment or perform surveys to measure compliance with any of the telephone answering standards above unless and until the City

requests such actions based on a historical record of Customer complaints indicating a clear failure to comply.

C. Responsiveness.

1. The Cable Operator shall complete all standard aerial installations within seven (7) days after an order has been placed, unless otherwise requested by the Customer. The Cable Operator shall schedule all standard underground installations within seven (7) days after an order has been placed, unless otherwise requested by the Customer. "Standard" installations shall include those that are located within 125 aerial feet or sixty (60) underground trench feet of the Cable Operator's distribution system. This standard must be met ninety-five percent (95%) of the time under Normal Operating Conditions as measured on a quarterly basis. If the Customer requests a non-standard installation, or the Cable Operator determines that a non-standard installation is required, the Cable Operator shall provide the Customer in advance with a total installation cost estimate and an estimated date of completion.

2. Under Normal Operating Conditions, all temporary cable drops shall be converted to a permanent drop within no more than three (3) calendar weeks from the initial installation or at a time mutually agreed upon between the Cable Operator and Customer.

3. Customers requesting installation of Cable Service or repair service to an existing installation may choose any available four (4) hour block of time for the appointment during Normal Business Hours.

4. The Cable Operator shall be deemed to have responded to a request for service under the provisions of this subsection when a technician arrives within the agreed upon time. If the Customer is absent when the technician arrives, the technician shall leave written notification of timely arrival. A record that notice was provided shall be kept by the Cable Operator.

5. If a Cable Operator representative fails to keep an installation or service appointment for any reason, the Cable Operator will contact the Customer before the end of the scheduled appointment and reschedule the appointment at a time convenient for the Customer.

6. The Cable Operator shall respond to a Customer's letter in writing within two (2) weeks of receipt of the letter. The Cable Operator shall initiate resolution to a Customer's inquiry, complaint, general question or comment made by telephone or e-mail within forty-eight (48) hours.

7. Any difficulties that cannot be resolved by the CSR shall be referred to the appropriate supervisor who shall use his/her best efforts to contact the Customer within twenty-four (24) hours of initial contact and resolve the problem within a mutually agreeable timeframe.

D. Repairs and Outages.

1. The Cable Operator shall interrupt service only for good cause and for the shortest time possible. Scheduled interruptions that the Cable Operator anticipates will last more than four (4) hours shall occur during periods of minimum use of the Cable System as reasonably determined by the Cable Operator.

2. If a Customer calls to report poor signal quality or interruptions attributable to the Cable Operator's equipment, the Cable Operator shall begin working on the problem no later than the next day following the Customer's call, provided that the Customer is available or at such later time as is

convenient for the Customer. If an appointment is necessary, the Customer may choose a four (4) hour block of time during Normal Business Hours.

3. Upon discovery of an outage affecting three (3) or more Customers, the Cable Operator shall initiate its outage repair process within two (2) hours, under Normal Operating Conditions.

4. A Cable Operator shall initiate repairs to Customer reported Service Interruptions, for any cause beyond the control of the Cable Operator, within twenty-four (24) hours after the conditions beyond its control have been corrected.

5. Under Normal Operating Conditions, if after twenty-four (24) hours service is not restored to a Customer, a Cable Operator shall, upon a Customer's request, provide a refund or credit or other compensation of equal or greater value.

6. The Cable Operator will track and record all outages and Service Interruptions that occur within the Franchise Area.

E. Bills, Credits, Refunds and Deposits. If a Customer requests disconnection of any or all services, billing for affected services shall end on the same day as the request, or on the future date for which the disconnect is ordered. However, the Customer may continue to be billed for equipment until returned to the Cable Operator. The Cable Operator shall issue a credit or refund to a Customer within thirty (30) business days after the close of the billing cycle following the return of the equipment and request for disconnection. If a Customer was required to provide a deposit, that deposit must be returned when appropriate.

F. Treatment of Property.

1. Removal or trimming of trees and shrubs in the Right-of-Way will be subject to the regulations of the City.

2. The Cable Operator shall repair any damage or restore any property to as good a condition as before the work causing such damage or disturbance was initiated. The Cable Operator shall repair, replace or compensate all property owners for damages resulting from the Cable Operator's installation, construction, service or repair activities.

3. Except in the case of an emergency involving public safety or Service Interruption to a large number of Customers, 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; provided that, in the case of planned construction operations, such notice shall be delivered or provided at least twenty-four (24) hours prior to entry. All work done in the Right-of-Way shall be subject to time requirements of the permit.

4. Nothing herein shall be construed as authorizing access or entry to private property, or any other property, where such right to access or entry is not otherwise provided by law.

5. For major construction or installation projects, the Cable Operator shall notify by mail or door hanger the adjacent property owners/legal tenants in advance of the Right-of-Way work. In the case of an emergency, the Cable Operator shall attempt to contact the property owner or legal tenant in person, and in the event personal contact is not made, the Cable Operator shall leave a door hanger notice.

6. The Cable Operator shall clean all areas surrounding any work site of debris caused by the Cable Operator's activities.

G. Services for Customers with Disabilities.

1. For any Customer with a disability, the Cable Operator shall upon a Customer request and at no charge deliver and/or pick up converters at the Customer's home.

2. The Cable Operator shall provide TDD/TYY service with trained operators who can provide assistance for hearing-impaired Customers at no charge.

3. The Cable Operator shall comply with the Americans with Disabilities Act.

H. Customer Information.

1. The Cable Operator shall provide to Customers an accurate, comprehensive service agreement and Customer installation packet upon installation, including the following information:

a. Products and services offered by the Cable Operator, including channel positions of programming carried on the Cable System.

b. The Cable Operator's complete range of service options and the prices for those services and conditions of subscription to programming and other services.

c. Installation and service maintenance policies, including the Customer's and Cable Operator's responsibilities for equipment.

d. Billing and complaint procedures for investigation and resolution of Customer service complaints, including the address and telephone number of the Cable Operator's office(s), the Cable Operator's policies on deposits, credit balances and returned check charges.

e. Policies concerning protection of Customer privacy as required under law.

f. The availability of a parental control/lock out device and the procedures for channel blocking.

g. Service termination procedure.

h. A description of the manner that will be used to provide notice of changes in rates, services or service terms and conditions.

i. The phone number of the Customer Service Department that is responsible for handling cable questions and complaints for the Cable Operator. This information shall be prominently displayed in the installation packet.

2. The Cable Operator shall provide Customers with written notification of any changes in rates, programming, services or channel positions as soon as possible in writing. Customers shall be given a description of the changes, a phone number for questions and the effective date. Notice must be given to Customers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Cable Operator.

3. All officers, agents and employees of the Cable Operator, its contractors and subcontractors who are in personal contact with Customers shall have visible identification cards bearing their name and photograph.

4. Every vehicle of the Cable Operator, its contractors and subcontractors, shall be clearly identified to the public as a vehicle of the Cable Operator.

I. Safety.

1. The Cable Operator shall install and locate its facilities, Cable System and equipment in compliance with all federal, State, local and company safety standards, and in such manner as shall not endanger persons or property.

2. 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.

J. Complaints to the City.

1. Any Customer shall be entitled to lodge any complaint directly with the City. The Customer may lodge the complaint either by calling the City or by filing a written complaint, by letter or in electronic form.

2. If the City decides that further action is warranted, the City may intercede and attempt to help reach a resolution and/or require the Cable Operator to address the inquiry in a timely manner. Upon request by the City, the Cable Operator shall notify the City of the status of the inquiry and any subsequent resolution.

3. The Cable Operator shall maintain, in a manner consistent with the privacy rights of Customers, an accurate and comprehensive file of complaints regarding the Cable System or the Cable Operator's operation of the Cable System, by number and type and their disposition; service requests, identifying the number and nature of the requests and their disposition; and outages, Service Interruptions and their disposition.

K. 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 noncompliance. If the noncompliance is not remedied to the satisfaction of the City, the City may opt to follow the liquidated damages procedures or seek other remedies set forth in the Franchise, or pursue any other remedies at law or in equity.

**Section 15. Other Authorizations.**

Franchisee shall comply with and obtain, at its own expense, all permits, licenses and other authorizations required by federal, State and local laws, rules, regulations and applicable resolutions and ordinances which are now existing or hereafter lawfully adopted.

**Section 16. Rules and Regulations of the City.**

The right and power is reserved by the City to promulgate such additional rules and regulations as it may find necessary in the exercise of its lawful police powers and in furtherance of the terms and conditions of a Franchise and this Chapter, and as permitted by applicable State and federal law. In the event of a conflict between a Franchise and this Chapter, the Franchise shall govern.

**Section 17. Delegation of Powers.**

Any right or power of the City may be delegated by the City to any officer, employee, department or board of the City, or to such other person or entity as the City may designate to act on its behalf.

**Section 18. Technical Standards.**

Franchisee shall construct, install, operate and maintain its Cable System in a manner consistent with all applicable federal, State and local laws and regulations, FCC technical standards and the Franchise.

**Section 19. Construction Standards.**

A. All facilities constructed or operated under this Chapter shall be installed and maintained at such places in or upon such Rights-of-Way and public places as shall not interfere with the free passage of traffic, and shall conform to federal standards, State requirements and City regulations.

B. Franchisee shall be subject to any and all requirements established by the City with regard to the placement of Franchisee's facilities and equipment located in the Rights-of-Way and on other public property.

**Section 20. Street Cut or Repair.**

The Franchisee shall guarantee the durability and structural integrity of any street cut or repair made by it or its agents which is necessary for the construction, installation, operation, repair or maintenance of Franchisee's facilities, provided that no action by an unrelated third party materially affects the integrity of Franchisee's street cut or repair. Franchisee shall repair or replace, at no expense to the City, any failed street cut or repair which was completed by Franchisee or Franchisee's agent(s).

**Section 21. Safety Requirements.**

The Franchisee shall, at all times, install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries to the public. In furtherance thereof, the Franchisee must comply with the City's traffic control requirements, including, for example, but without limitation, the use of signal devices, warning signs and flaggers when appropriate. All of Franchisee's structures, cables, lines, equipment and connections in, over, under and upon the Rights-of-Way and public ways or other places in the Franchise Area, wherever situated or located, shall at all times be kept and maintained in a safe condition.

**Section 22. Regulation of Rates and Charges.**

The City may regulate Franchisee's rates and charges to the full extent permitted by law.

**Section 23. Discriminatory Practices Prohibited.**

A. The Franchisee shall not deny Cable Service or otherwise discriminate against Customers or others on the basis of race, color, religion, national origin, sex, age, disability or other protected classes.

B. Access to Cable Service shall not be denied to any group of potential residential Cable Customers because of the income of the residents of the local area in which such group resides.

**Section 24. Equal Employment Opportunity.**

The Franchisee shall strictly adhere to and comply with the equal employment opportunity requirements of federal, State and local laws.

**Section 25. Reimbursement.**

To the extent allowed by applicable law, the City may require a Franchisee to reimburse the City for the City's reasonable processing and review expenses in connection with a sale or transfer of a Franchise or a change in control of a Franchise or Franchisee. In connection with the foregoing, the City will send Franchisee an itemized description of all such charges, and Franchisee shall pay such amount within thirty (30) days after the receipt of such description.

**Section 26. Franchise Renewal.**

Franchise renewals shall be conducted in accordance with applicable law. The City and Franchisee, by mutual consent, may enter into renewal negotiations at any time during the term of a Franchise.

**Section 27. Franchise Revocation.**

Any Franchise granted by the City may be revoked during the period of such Franchise, as provided in the Franchise, subject to the procedural requirements provided for therein. A failure by the Franchisee to comply with any of the material provisions of this Chapter shall be deemed a violation of the City Code.

**Section 28. Miscellaneous Provisions.**

A. This Chapter shall be construed in a manner consistent with all applicable federal, State and local laws, and shall apply to any Franchise hereafter accepted by a Franchisee.

B. The captions throughout this Chapter are intended to facilitate the reading hereof. Such captions shall not affect the meaning or interpretation of any part of this Chapter.

C. A Franchisee shall not be relieved of its obligations to comply with any or all of the provisions of this Chapter by reason of any failure of the City to demand prompt compliance.

D. The provisions of this Chapter shall apply to all Cable Operators and Cable Systems as permitted under applicable law.

**Section 29. Severability.**

If any section, subsection, paragraph or provision of this Chapter is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other section, subsection, paragraph or provision of this Chapter, all of which will remain in full force and effect.

PASSED by the City Council and APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF SULTAN, WASHINGTON

By \_\_\_\_\_  
Mayor

ATTEST:

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

Approved as to form:

By \_\_\_\_\_  
City Attorney

Date of Publication: \_\_\_\_\_

Effective Date: \_\_\_\_\_

**Sultan Municipal Code**

**Chapter 5.28  
CATV SYSTEMS**

5.28.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings set out in this section.

A. "Act" means the Cable Communications Policy Act of 1984 and any subsequent amendments.

B. "Addressability" means the ability of a system allowing the franchisee to authorize by remote control customer terminals to receive, change or to cancel any or all specified programming.

C. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with franchisee.

D. "Applicant" means any person or entity that applies for a franchise.

E. "Basic services" means those broadcast and nonbroadcast services provided by the cable franchisee at the lowest monthly charge as defined by the Act or rules now or subsequently adopted by the FCC.

F. "Cable services" means (1) the one-way transmission to subscriber of video programming or other programming service, and (2) subscriber interaction, if any, which is required for the selection by the subscriber of such video programming or other programming service.

G. "CATV" means a community antenna television system as hereinafter defined.

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

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

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

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

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

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

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

O. "Franchisee" means the person, firm or corporation to whom or which a franchise, as hereinabove defined, 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 in city ordinance.

P. "Gross subscriber revenues" means income collected by franchisee for the provision of cable communications service; including basic service, premium services, tiered services, advertising, leased access channels, and all other sources derived from the operation of a cable communications system utilizing the public rights-of-way. Gross subscriber revenues shall not include uncollectable subscriber revenues, nor receipts attributed to taxes on the services furnished by the franchisee and imposed directly on any subscriber in any county, state or other governmental unit and collected by the franchisee for such governmental unit.

Q. "Headend" means the electronic equipment located at the start of a cable system, usually including antennas, preamplifiers, frequency converters, demodulators and related equipment.

R. "Interactive services" means services provided to subscribers where the subscriber either (1) both receives information consisting of either television or other signals and transmits signals generated by the subscriber or equipment under his/her control for the purpose of selecting what information shall be transmitted to the subscriber or for any other purpose; or (2) transmits signals to any other location for any purpose.

S. "Office" means the person or entity designated by the city as being responsible for the administration of the franchise for the city.

T. "Operator" means the person, firm or corporation to whom a franchise is granted pursuant to the provisions of this chapter.

U. "Property of franchisee" means all property owned, installed or used by a franchisee in the conduct of a CATV business in the city under the authority of a franchise granted pursuant to this chapter.

V. "Public way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the city in the service area which shall entitle the city and the franchisee to the use thereof for the purpose of installing, operating, repairing and maintaining the cable system. Public way shall also mean any easement now or hereafter held by the city within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the city and the franchisee to the use thereof for the purpose of installing or transmitting franchisee's cable service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, attachments and other property as may be ordinarily necessary and pertinent to the cable system.

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

X. "City" means the city of Sultan, a municipal corporation of the state of Washington. (Ord. 502 § 1, 1988)

#### 5.28.020 Terms of franchise.

A. Authority to Grant Franchises or Licenses for Cable Television. It shall be unlawful to engage in or commence construction, operation or maintenance of a cable communications system without a franchise issued under this chapter. The 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 roads, rights-of-way, streets or other public properties or affect its jurisdiction over them or any part of them, or limit the full power of the city to make all necessary changes, as the city in its sole discretion shall decide, including the dedication, establishment, maintenance and improvements of all new rights-of-way and thoroughfares and other public properties of any type. In the event the city grants another cable franchise, the new franchise shall be granted on the same terms as the existing franchise.

B. Incorporation by Reference. The provisions of this chapter shall be incorporated by reference in any franchise ordinances or licenses approved hereunder.

C. Nature and Extent of the Grant. Any franchise granted hereunder by the city shall authorize the franchisee, subject to the provisions herein contained:

1. To engage in the business of operating and providing cable service and the distribution and sale of such service to subscribers within the city;

2. To erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street, such amplifiers and appliances, lines, cables, conductors, vaults, manholes, pedestals, attachments, supporting structures and other property as may be necessary and appurtenant, to the cable communications system; and, in addition, so to use, operate and provide similar facilities, or properties rented or leased from 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 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. This franchise or renewal and all rights, privileges, obligations and restrictions pertaining thereto shall commence on the effective date of Ordinance No. 502 and shall expire on August 8, 2004. Notwithstanding SMC 5.28.360 relating to franchise renewal, negotiations for renewal of the franchise agreement shall commence in the year 2001. (Ord. 699-99 § 1; Ord. 502 § 2, 1988)

#### 5.28.030 Hearing.

Prior to the granting of a franchise, the city council shall conduct a public hearing to determine the following:

A. That the public will be benefited by the granting of a franchise to the applicant;

B. That the applicant has requisite financial and technical resources and capabilities to build, operate and maintain a cable television system in the area;

C. That the applicant has no conflicting interests, either financial or commercial, which will be contrary to the interests of the city;

D. That the applicant will comply with all terms and conditions placed upon the franchisee by this chapter;

E. That the applicant is capable of complying with all relevant federal, state and local regulations pertaining to the construction, operation and maintenance of the facilities and systems incorporated in its application for a franchise. (Ord. 502 § 3, 1988)

5.28.040 Acceptance.

A. No franchise granted pursuant to the provisions of this chapter shall become effective unless and until the ordinance granting same has become effective.

B. Within 30 days after the effective date of the ordinance awarding a franchise, or within such extended period of time as the council in its discretion may authorize, the franchisee shall file with the city clerk/treasurer its written acceptance, in form satisfactory to the city attorney, of the franchise, together with the insurance policies required by SMC 5.28.430. (Ord. 502 § 4, 1988)

5.28.050 Police powers.

In accepting any franchise, the franchisee acknowledges that its rights hereunder are subject to the police power of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public and it agrees to comply with all applicable general laws enacted by the city pursuant to such power. (Ord. 502 § 5, 1988)

5.28.060 Rules and regulations by the city.

A. In addition to the inherent powers of the city to regulate and control any franchise it issues, the authority granted to it by the Act, and those powers expressly reserved by the city, or agreed to and provided for in a franchise, the right and power is hereby reserved by the city to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers provided they are consistent with the terms and conditions of this chapter and provided further they do not increase the material burdens nor diminish the rights of the franchisee.

B. The city council reserves the right to delegate its authority for franchise administration to a designated agent. (Ord. 502 § 6, 1988)

5.28.070 Technical standards.

A. Franchisee shall comply with FCC Rules, Part 76, Subpart K, Section 76.601 through 76.610 and as amended, at the minimum, the following:

1. Applicable city, county, state and national/federal codes and ordinances;
2. Applicable Utility Joint Attachment Practices;
3. The National Electrical Safety Code; ANSI C2;
4. Local Utility Code Requirements;
5. Local rights-of-way procedures;

6. NCTA Manual 741 Signal Leakage and Interference Control.

B. Preventative Maintenance. A comprehensive routine preventative maintenance program shall be developed, effected and maintained for each system by the respective franchisee to ensure continued top quality cable communications operating standards in conformance with FCC Part 76. (Ord. 502 § 7, 1988)

5.28.080 Coverage.

Within 12 months from the date of the franchise, franchisee shall have completed the installation of cable in all areas of the city subject to the condition of SMC 5.28.190. All annexed and newly developed areas shall be provided cable service, if such areas are contiguous to the city limits, within six months from the time of obtaining necessary permits subject to the same conditions. (Ord. 502 § 8, 1988)

5.28.090 Public buildings.

Franchisee shall provide without charge for installation, basic service, outlet and converter at such public buildings as specified in Table 5.28.090 and that may be constructed during the period of the franchise provided that such installation will not require undergrounding cable through or under pavement or other physical obstructions other than open earth, extension of the trunk or distribution lines from the nearest point of connection to the existing cable system, or other modifications, additions or improvements to the existing cable television system which would cost franchisee in excess of normal installation costs.

Table 5.28.090

City-owned and maintained buildings include the following:

<b>Building</b>	<b>Address</b>
Sultan Library	515 Main Street
Museum	102 4th Street
City Hall	703 1st Street
Barricks Building	705 1st Street
Community Meeting Room	707 1st Street
Fire Station	304 Alder Street
School District Properties:	
Administration Building	514 4th Street



B. Extension of the Emergency Override System. In support of the enhancement, the emergency communication goals of the consortium and with permission of the city of Sultan, franchisee will expand the emergency override capability currently available in the city of Sultan to all consortium member communities. The consortium shall file with the franchisee a list of authorized officials who will be granted permission to access and utilize the system. Access of the emergency override system will be made solely in the case of extreme local emergency as a form of disaster control and/or warning only when all other means of notification are inadequate in view of the urgency of the communication crisis. The consortium shall save, defend, indemnify and hold harmless franchisee for any claims or judgments arising out of operation of the emergency override system. Also, the consortium agrees to test the system yearly and at a time that is least disruptive to the communities. (Ord. 699-99 § 4; Ord. 502 § 13, 1988)

#### 5.28.135 PEG equipment and support.

The franchisee shall contribute to the consortium certain equipment, software and user training to initiate and support public, educational and governmental access not to exceed \$15,000 and as specified in Exhibit A, Capital Contribution\*. The cost of additional capital equipment, software or training beyond that described above to enhance PEG access requested by the consortium shall be allocated to the member communities on a per subscriber basis. Once franchisee completes its initial PEG contribution for a PEG access with equipment, software and training, the city agrees that such additional allocated equipment costs paid by the franchisee as the capital contribution may be added to the price of cable services and recovered from customers in the city as "external costs," as such term is used in 47 CFR Section 87.022 on the date of the agreement. In addition, all amounts paid as the capital contribution may be separately stated on customer's bill as permitted in 47 CFR Section 76.985. (Ord. 699-99 § 3)

\*Code reviser's note: Exhibit A, attached to Ordinance 699, is available in the office of the city clerk/treasurer.

#### 5.28.140 Construction standards.

All facilities constructed under this chapter shall be placed and maintained at such places and positions in or upon such streets, avenues, alleys and public places as shall not interfere with the passage of traffic and the use of adjoining property, and shall conform to the applicable section of the National Electrical Code, codes of state of Washington and city regulations pertaining to such construction. Whenever the city imposes as a condition to its approval of a tentative map or a parcel map a requirement that necessitates replacing, undergrounding or permanently or temporarily relocating existing facilities of the cable system, the builder,

developer or subdivider shall reimburse the franchisee for all costs of the replacement, undergrounding or relocation. (Ord. 502 § 14, 1988)

5.28.150 Construction notification.

The city may establish reasonable minimum requirements for advance notification to residents adjacent to proposed construction areas. (Ord. 502 § 15, 1988)

5.28.160 Undergrounding.

In those areas and portions of the city where the transmission or distribution facilities of both the public utility providing telephone service and those of the utility providing electric service are underground or hereafter may be placed underground, then the franchisee shall likewise construct, operate and maintain all of its transmission and distribution facilities in the same area underground. Amplifiers and associated equipment in franchisee's transmission and distribution lines may be in appropriate housing upon the surface of the ground as approved by the city. (Ord. 502 § 16, 1988)

5.28.170 Safety requirements.

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

B. All structures and all lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

C. The city reserves the general right to see that the system of the franchisee is constructed and maintained in a safe condition. If an unsafe condition is found to exist by the city, it may order the franchisee to make necessary repairs within 30 days from the receipt of the city's notification thereof, the city may make the repairs itself or have them made, and collect all reasonable costs thereof from the franchisee. (Ord. 502 § 17, 1988)

5.28.180 New developments.

A. The developer or property owner shall, at its cost, provide the franchisee with sufficient space for conduit, vaults, pedestals and laterals. The franchisee shall provide specifications for such construction as required.

B. The franchisee shall be given written notification of when such trenches will be open. If the franchisee fails to place its equipment in such open construction after five working days, the cost of new trenching shall be borne by the franchisee.

C. The franchisee's amplifiers and essential connection thereto may be placed in appropriate housing above ground as approved by the city. In any case, the city shall not be responsible for any costs in placing such equipment underground. (Ord. 502 § 18, 1988)

5.28.190 Line extension.

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

B. In the event request is made for service by a resident living in an area not meeting such criteria, the franchisee may make such installation available to the requesting subscriber on a time and material cost basis. (Ord. 502 § 19, 1988)

5.28.200 Building moving.

Whenever any person shall have obtained permission from the city to use any street for the purpose of moving any building, the franchisee, upon seven days' written notice from the city, shall raise or remove, at the expense of that person desiring to move the building, any of its or their wires which may obstruct the removal of such building; provided, that the moving of such building shall be done in accordance with regulations and general ordinances of the city. Where more than one street is available for the moving of such building, the building shall be moved on such street as shall cause the least interference with the lines of franchisee and other franchise holders. It is further provided that the person or persons moving such building shall indemnify and save harmless said franchisee of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly for such temporary arrangement of the lines and poles of the franchisee. (Ord. 502 § 20, 1988)

5.28.210 Tree trimming.

With city approval, which shall not be unreasonably withheld, the franchisee shall have the authority to trim trees upon and overhanging streets and public ways and places of the franchise area so as to prevent the branches of such trees from coming in contact with the wires and cables of the franchisee and if necessary to clear the microwave path and shall be responsible for debris removal from such activities. At the option of the city, and with advance written notice to the franchisee, such trimming may be done by it or under its supervision and direction, with reasonable costs to be borne by franchisee. (Ord. 502 § 21, 1988)

5.28.220 Rates.

Within 60 days after the grant of any franchise hereunder, franchisee will file with the city a complete schedule of all rates to be charged to all subscribers. Prior to implementation of any change in rates or charges for

any service or equipment provided by franchisee, franchisee shall provide the city and all subscribers a minimum of 30 days' prior written notice of such change. However, this requirement shall not pertain to pay-per-view and other like services. (Ord. 502 § 22, 1988)

#### 5.28.230 Discounts.

Franchisee shall offer a discount to those individuals permanently disabled or 62 years or older who are the legal owner or lessee/tenant of their residence; provided, that their combined disposable income from all sources does not exceed the federal poverty level for the current and preceding calendar year. Such discounts will consist eight and one-half percent from the normal charge for basic residential services as well as a 50 percent reduction in normal residential installation charges. The city of Sultan or its designee shall be responsible for certifying to the franchisee that such applicants conform to the specified criteria. (Ord. 502 § 23, 1988)

#### 5.28.240 Franchise fee.

Franchisee shall pay to the city a sum equal to five percent of gross revenues as defined in this chapter. Such payments will be made on a quarterly basis. (Ord. 502 § 24, 1988)

#### 5.28.250 Record inspection.

Subject to statutory and constitutional limits and reasonable advance notice, the city reserves the right to inspect the records of the franchisee at any time during normal business hours; provided, the city shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the franchisee. Such documents shall include such information as financial records, subscriber records within the context of Section 631 of the Act, tax returns and plans. Such data, however, is understood to be limited to such information that pertains solely to the operation and maintenance of the cable television system within the city of Sultan. (Ord. 502 § 25, 1988)

#### 5.28.260 Reports.

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

- A. Most recent annual report;
- B. A copy of the 10-K report, if required by the Securities and Exchange Commission;
- C. The number of homes passed;
- D. The number of subscribers with basic services;
- E. The number of subscribers with premium services;
- F. The number of hookups in period;

- G. The number of disconnects in period;
- H. Total number of miles of cable in city;
- I. Summary of complaints received by category, length of time taken to resolve and action taken to provide resolution;
- J. A statement of its current billing practices;
- K. A current copy of its subscriber service contract;
- L. Report on operations; such other reports with respect to its operation, affairs, transactions or property that may be appropriate. (Ord. 502 § 26, 1988)

#### 5.28.270 Periodic meetings.

Upon request, the franchisee shall meet with designated city officials and/or designated representative(s) to review the performance of the franchisee over the preceding period. The subjects shall include, but not be limited to those items covered in the periodic reports and performance tests. (Ord. 502 § 27, 1988)

#### 5.28.280 Performance tests.

A. If the city determines that reasonable evidence exists of inadequate cable system performance pursuant to SMC 5.28.070, it may require franchisee to perform tests and analyses directed toward such suspected inadequacies at the franchisee's own expense. Franchisee shall fully cooperate with city in performing such testing and shall prepare results and the report prepared by franchisee shall include at least:

1. A description of the problem in CATV system performance which precipitated the special tests;
2. What CATV system component was tested;
3. The equipment used and procedures employed in testing;
4. The method, if any, by which such CATV system performance problem was resolved;
5. Radiation limits tests, such as those heretofore required by the FCC;
6. Any other information pertinent to said tests and analyses which may be required by the city, or determined when the test is performed.

B. If the results of testing shall indicate that the franchisee was operating within the established parameters as described in SMC 5.28.070; then the city shall be responsible for the costs of such tests. If the technical analysis shows that the franchisee is in violation of such parameters, the franchisee shall reimburse the city for such actual costs of testing. If such violation is shown, franchisee shall correct all violations within 60 days after written notice from the city. (Ord. 502 § 28, 1988)

5.28.290 Customer service.

A. Upon the written request of the city at a time no sooner than five years from the date of the franchise, franchisee shall establish at least a part-time facility to enable residents to exchange converters, pay bills and receive appropriate information. It is contemplated that such a facility would be operated no less than two days a week for three hours per day. However, if at that time, franchisee demonstrates that it is not economically feasible to do so or that suitable alternative methods exist, such requirement shall be waived. Such waiver shall not be unreasonably denied.

B. Franchisee shall render repair service to restore the quality of the signal at no less than the same standards existing prior to the failure or damage of the component causing the failure and make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during a period of minimum use of the system. A written or computerized log shall be maintained for a period of one year for all service interruptions which can be inspected upon notice.

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

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

E. Franchisee will maintain a sufficient repair force to respond to individual customer complaints or requests for repair service within 24 hours, after receipt of the complaint or request except Saturday, Sunday and legal holidays. All complaints shall be resolved within seven days, to the extent reasonable. Upon a request by customer, no charge for the period of the outage shall be made to the customer if the customer was without service for a period exceeding 24 hours, unless the outage was due to acts of God or events beyond the reasonable control of franchisee.

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

G. Franchisee shall supply at the time of a new connection, and periodically at least once a year, the title, address, and telephone number

of the Sultan city official or his/her designee, to whom system subscribers may direct their concerns.

H. All customers and members of the general public may direct comments regarding the company's service or performance to the city or its designee. The city will provide a method whereby all customers and members of the general public have recourse to a review by the city or its designee regarding any complaints. (Ord. 502 § 29, 1988)

#### 5.28.300 Subscribers' right of privacy.

The franchisee shall comply with all of the provisions of Section 631 of the Act. (Ord. 502 § 30, 1988)

#### 5.28.310 Programming.

For informational purposes only, the franchisee shall file, upon granting of the franchise, a complete listing of its cablecast programs including a breakdown of its basic and premium schedule. Such listing shall become the initial programming and cost schedule to be considered as the basis from which any changes may be contemplated in the future. This information, however, does not accord the city any greater rights of regulation than those granted in the Act. (Ord. 502 § 31, 1988)

#### 5.28.320 Modification.

In the event the franchisee shall seek to have the existing franchise modified, Section 625 of the Act shall govern the procedure for the modification request unless city and franchisee shall otherwise agree. The request, which shall specify all items to be negotiated shall be made upon the other party in writing and both parties shall act in good faith to reach agreement. (Ord. 502 § 32, 1988)

#### 5.28.330 Nondiscrimination.

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

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

C. The franchisee will not deny access to cable communications service to any group of potential residential subscribers because of the income of the residents of the local area in which the group resides. (Ord. 502 § 33, 1988)

5.28.340 Equal employment opportunity.

The franchisee shall comply with all provisions of Section 634 of the Act. (Ord. 502 § 34, 1988)

5.28.350 Continuity of service.

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

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

B. In the event the franchisee fails to operate a system for 72 continuous and consecutive hours without prior notification to and approval of the city council or without just cause such as an impossibility to operate the system because of the occurrence of an act of God or other circumstances reasonably beyond franchisee's control, the city may, after notice and an opportunity for franchisee to commence operations at its option, operate the system or designate someone to operate the system until such time as the franchisee restores service to conditions acceptable to the city council or a permanent franchisee is selected. If the city is required to fulfill this obligation for the franchisee, the franchisee shall reimburse the city for all reasonable costs or damages in excess of revenues from the system received by the city that are the result of the franchisee's failure to perform. (Ord. 502 § 35, 1988)

5.28.360 Franchise renewal.

The provision of Section 626 of the Act will govern the actions of the city and the franchisee in proceedings relating to franchise renewal. The city expressly reserves the right to establish guidelines and monitoring systems in accordance with the provisions of the Act to measure the effectiveness of the franchisee's performance during the term of such franchise. (Ord. 502 § 36, 1988)

5.28.370 Transfer of ownership.

A. Any franchise awarded by the city shall be based upon an evaluation by the city of each application, the qualifications, and other criteria as such pertain to each particular applicant. No franchise can be sold, transferred, leased, assigned or disposed of in whole or in part either by sale, voluntary or involuntary, merger, consolidation or otherwise, unless approval is granted by the city council under the same terms and conditions as the original franchise or as it may be subsequently amended by mutual agreement to insure a review of unforeseen circumstances not present at the time of the original franchise. The city's approval shall not be unreasonably withheld. Such costs associated with this process shall be reimbursed to the city by the new prospective franchisee.

B. An assignment of a franchise shall be deemed to occur if there is an actual change in control or where ownership of 50 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.

C. The franchisee shall promptly notify the city prior to any proposed change in, or transfer of, or acquisition by any other party of control of the franchisee's company. Every change, transfer or acquisition of control of the franchisee's company shall make the franchise subject to cancellation unless and until the city shall have consented thereto. In the event that the city adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the city may cancel the franchise unless control by the franchisee is restored to a status acceptable to the city council.

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

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

F. Any transfer or assignment approved by the city shall be evidenced by a written instrument, a duly executed copy of which shall be filed in the office within 60 days after the approval of the transfer or assignment by the city. By said instrument, the assignee shall agree to comply with all terms of the ordinance codified in this chapter, the franchise ordinance and the assignor's application. The city shall have the right, at its sole discretion, to require that any conditions in the original franchise be fulfilled prior to such transfer. (Ord. 502 § 37, 1988)

#### 5.28.380 Right of city to purchase.

The city reserves the right to purchase the existing system pursuant to Section 627 of the Act. (Ord. 502 § 38, 1988)

#### 5.28.390 Removal and abandonment of property of franchisee.

A. The city may direct the franchisee to temporarily disconnect or bypass any equipment of the franchisee in order to complete street

construction or modification, install and remove underground utilities, or for other reasons of public safety and efficient operation of the city. Such removal, relocation or other requirement shall be at the sole expense of the franchisee.

B. In the event that the use of any part of the cable system is discontinued for any reason for a continuous period of 12 months, or in the event such system or property has been installed in any street or public place without complying with the requirements of this chapter or other city ordinances or the ordinance codified in this chapter has been terminated, canceled or has expired, the franchisee shall promptly, upon being given 10 days' notice, remove within 90 days from the streets or public places all such property and poles of such system other than any which the city may permit to be abandoned in place. In the event of such removal, the franchisee shall promptly restore the street or other areas from which such property has been removed to a condition similar to that condition existing before such removal.

C. Any property of the franchisee remaining in place 90 days after the termination or expiration of the franchise shall be considered permanently abandoned. The city may extend such time not to exceed an additional 90 days.

D. Any property of the franchisee to be abandoned in place shall be abandoned in such manner as the city shall prescribe. Upon permanent abandonment of the property of the franchisee in place, the property shall become that of the city, and the franchisee shall submit to the city clerk/treasurer an instrument in writing, to be approved by the city attorney, transferring to the city the ownership of such property. None of the foregoing affects or limits franchisee's rights to compensation for an involuntary abandonment of its property under state, federal law or the Constitution. In the event the city and the franchisee are unable to agree as to whether an abandonment is voluntary for the purposes of this section, either party may invoke arbitration to resolve such question. (Ord. 502 § 39, 1988)

#### 5.28.400 Revocation for cause.

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

1. Failure by the franchisee to substantially comply with material provisions of this chapter;

2. Failure of the franchisee to comply with FCC regulations, or other provisions of the Act.

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

1. City council will direct in writing franchisee to correct such deficiencies or comply with such regulations within 30 days or a reasonable period of time;

2. Failure to do so will cause the matter of termination to be brought before the city council;

3. At such hearing the franchisee and other interested parties may offer evidence explaining or mitigating such noncompliance. The city council in its sole discretion, will make the determination as to whether such noncompliance was without just cause. In the event the city council finds that such noncompliance was without just cause, the city council may at its sole discretion fix an additional time period to cure such deficiency(ies). If the deficiency has not been cured at the expiration of any additional time period or if the council does not grant any additional period, the city council may by ordinance declare the franchise to be terminated and forfeited;

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

5. Provided, nothing contained in the above subsections of this section shall prevent the issuance of a new franchise containing terms substantially the same or identical to a franchise which previously was revoked, on satisfactory assurances made to the city council that the terms and conditions of this chapter can be met by the franchisee. (Ord. 502 § 40, 1988)

#### 5.28.410 Effect of termination for noncompliance.

Subject to state and federal law, if any franchise is terminated by the city by reason of the franchisee's noncompliance, that part of the system under such franchise located in the streets and public property, shall, at the election of the city, become the property of the city at a cost consistent with the provisions of Section 627(b)(1) of the Act. If the city, or a third party, does not purchase the system, the franchisee shall, upon order of the city council, remove the system as required under SMC 5.28.390. (Ord. 502 § 41, 1988)

#### 5.28.420 Indemnify and hold harmless.

The franchisee will indemnify and hold harmless the city from any and all liabilities, fees, costs and damages except in the case of negligence or willful misconduct on the part of the city, whether to person or property, or expense of any type or nature which may occur to the city by reason of the construction, operation, maintenance, repair and alterations of franchisee's facilities or any other actions of franchisee in the city of Sultan. In any case in which suit or action is instituted against the city by reason or damages or injury caused by franchisee, the city shall cause

written notice thereof to be given to the franchisee and franchisee thereupon shall have the duty to appear and defend in any such suit or action, without cost or expense to the city. (Ord. 502 § 42, 1988)

#### 5.28.430 Insurance.

A. The franchisee shall concurrently with the filing of an acceptance of award of any franchise granted hereunder, furnish to the city and file with the city clerk/treasurer and at all times during the existence of any franchise granted hereunder, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy, in protection of the city, its officers, boards, commissions, agents and employees, protecting the city and all persons against liability for loss or damage for personal injury, death and property damage, and errors or omissions, occasioned by the operations of franchisee under such franchise, with minimum limits of \$1,000,000 for both personal injury and/or property damage.

B. The policies mentioned in subsection (A) of this section shall name the city, its officers, boards, commissions, agents and employees, as additional insureds and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the city 30 days in advance of the effective date thereof; if such insurance is provided by a policy which also covers franchisee or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement. (Ord. 502 § 43, 1988)

#### 5.28.440 Inconsistency.

If any portion of this chapter should be inconsistent with any rule or regulation now or hereinafter adopted by the FCC or other federal legislation, then to the extent of the inconsistency, the rule or regulation of the FCC or other federal legislation shall control for so long, but only for so long, as such rule or regulation shall remain in effect, but the remaining provisions of this chapter shall not hereby be effected. (Ord. 502 § 44, 1988)

#### 5.28.450 Force majeure.

In the event that the franchisee's performance of any of the terms, conditions, obligations or requirements of this chapter is prevented or impaired due to any cause(s) beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof. (Ord. 502 § 46, 1988).