SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: C-7

DATE: August 14, 2008

SUBJECT: Second Reading 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 Second 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 of the Sultan Municipal Code (SMC).

STAFF RECOMMENDATION:

Have Second 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 of the Sultan Municipal Code (SMC).

SUMMARY:

This proposed action is a result of reviewing and renegotiating the City's franchise agreement with Comcast. The City Council had First Reading of Ordinance 987-08 on July 10, 2008.

Second Reading was delayed pending the City Attorney's review of the proposed regulations to ensure compliance with a recent Sixth Circuit Court of Appeals decision in June to uphold the Federal Communications Commission's authority to set rules making it easier for new cable companies in a community obtain local franchises needed to compete.

The City Attorney determined Ordinance No. 987-08 was unaffected by the Court's decision.

On July 24, 2008, the Council approved Ordinance No. 988-08 a five year non-exclusive franchise agreement with Comcast to provide cable television services to the Sultan community.

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.

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

	SMC 5.28 CATV Systems	Ordinance No. 987-08
Definitions		
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
Franchise Grant		
Term	Included	General information. Specifics provided in the franchise agreement
Hearing	Required	Required
Application	**SMC 5.28 CATV Systems**	**Ordinance No. 987-08**
	Not Required	Required. Establishes an application fee of $20,000
Franchise Fees and Financial Controls		
• Franchise Fees • Payments • Maximum Franchise Fee • Fee Reports • Audits • Unlawful to Evade Franchise fees	Included	N/A. Specific requirements moved to franchise. New sections include Maximum Franchise Fee and Unlawful to Evade
Administration and Regulation		
	Included	N/A. Specific requirements moved to franchise
Financial and Insurance Requirements		
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

Customer Service Standards		
	Included	Expanded to include: Customer Service; Responsiveness; Repiars and outages; Bills, Credits, Refunds and Deposits; Treatment of Property; Services for Customers with Diabilities; Customer Information; Safety; Complaints to the City; Remedy and Violations.
Reports and Records		
	Included	N/A. Moved to franchise agreement. Expanded to include map of facility locations
Programming		
	Included	N/A. Moved to franchise. Requires broad programming categories.
Access	**SMC 5.28 CATV Systems**	**Ordinance No. 987-08**
	Included as PEG (public education and govt.) $15,000 contribution	N/A. Moved to franchise. $2,994 contribution.
General ROW Use and Construction		
	Included with specific requirements	Included with very limited requirements. Specific requirements included in franchise agreement.
Technical Standards		
	Included	Included with very limited requirements. Specific requirements included in franchise agreement
Service Extensions and Complimentary Service		
	Included	N/A. Moved to franchise agreement.
Franchise Violations		
	Included as Revocation for Cause	N/A. Moved to franchise agreement and expanded to include Assessment for Liquidated Damages.

Renewal and Transfer		
	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 Second 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

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: _____