ORDINANCE NO. 2093

AN ORDINANCE of the City of Kent, Washington, regulating the construction, maintenance and operation of a cable communications system within the City of Kent, establishing and defining terms, conditions, rates and charges, requirements, obligations and duties, setting forth penalties.

WHEREAS the City Council of the City of Kent has found and determined that the public necessity and convenience of the City of Kent would be served by the construction, maintenance and operation of a cable communications system by franchise within the City of Kent, and

WHEREAS the City Council has concluded full and open public hearings on the franchise for the operation of a cable communications system by franchise within the City of Kent, after public notice of such hearings was duly published in the official city newspaper, during which any and all applicants, interested parties and members of the public desiring to make applications and/or present statements concerning the grant of a cable communications franchise were afforded an opportunity to do so. The legal, character, financial, technical and other qualifications and adequacies and feasibility of the construction arrangements of all applicants were fully considered, NOW, THEREFORE

Section 1. Title. This Ordinance hereinafter shall be referred to as the "CATV Communications Ordinance".

Section 2. Purpose. The purpose of this Ordinance is to set forth an integrated statement of the conditions, rates and charges, requirements, obligations and duties for the construction, maintenance and operation of a system of cable communications within the City of Kent. All cable communications companies are required by law to be regulated by the political subdivision within those boundaries they operate. The City of Kent desires to grant and regulate franchises for systems of cable communications within the City and all public rights-of-way within its boundaries.

Section 3. Application for Franchise and Renewal of Franchise. Each application for the granting or renewal of a franchise to construct, operate, or maintain any cable communications
system upon a City right-of-way shall be filed with the City Clerk and the Office in a form approved by the City Clerk.

At the time of the application, the following information shall be presented:

1. A detailed statement of the business organization of the applicant, including the following:
   a. The names, residences, and business addresses of all officers and directors of the applicants;
   b. The names and addresses of all persons having control of, or being entitled to have or control, 5% or more of the ownership of the applicant, either directly or indirectly, and the respective ownership share of each person;
   c. A detailed and complete financial statement of the applicant showing the resources required to construct and/or operate the proposed system and the ability of the applicant to accomplish same;

2. A detailed plan of the operation of the applicant, which shall include:
   a. A description of the cable area proposed to be served and a proposed time schedule for installation in each neighborhood or portion of the area;
   b. A statement of schedule setting forth all proposed classifications with rates and charges of any kind to be made against subscribers;
   c. A description of the equipment to be utilized and operational standards to be met as proposed by the applicants;
   d. A statement that the applicant is willing and able to comply with all relevant federal, state and local regulations regarding cable communications.
   e. A franchise holder shall have a valid certificate of compliance issued by the Federal Communications Commission or a
pending application before operating
or maintaining transmission and dis-
tribution lines for cable communica-
tions in the City of Kent.

Section 4. Terms of the Franchise. Any franchise to be granted under the CATV Communications Ordinance shall not be deemed and held to be an exclusive franchise or permit and shall not in any manner prevent the City of Kent from granting other or further franchises or permits in, along, over, through, under, below or across any of the public rights-of-way, streets, avenues, and other public land and properties of every type and description, and such franchise and permit shall in no way prevent or prohibit the City of Kent from using any of said roads, rights-of-way, streets or other public properties or affected jurisdiction over them or any part of them, with full power to make all necessary changes, relocations, repairs, maintenance and improvement of all rights-of-way and thoroughfares and other public properties of every type. The franchise Grantee must agree and covenant, at its sole cost and expense, to protect, support, temporarily dis-connect, relocate or remove from any street or other public prop-
erty any of its installation when so required by the City of Kent by reason of traffic condition, public safety, street vacation, dedications of new rights-of-way and the establishment or improve-
ment or structure by any governmental agency acting in a govern-
mental capacity, provided that the Grantee shall in all cases have the privilege to temporarily bypass, in the authorized portion of the same street or right-of-way upon approval by the City of Kent, any section of its cable or appurtenances to be so temporarily disconnected or removed.

Section 5. Rates and Charges. The Grantee shall charge no more for basic services in the City of Kent than is charged by the cable industry in surrounding areas unless Grantee can show cause why such rates should be higher.

The Grantee shall keep on file with the City of Kent and the Office a copy of the current rates and charges for all services offered.

The Grantee shall give subscribers, the Office and the City of Kent sixty (60) days written notice of any changes in subscriber rates and charges.
Section 6. Franchise Fee. The Grantee shall pay unto the City of Kent quarterly, on or before the 10th day of each April, July, October and January, a sum equal to three percent (3%) of the gross revenue received by the Grantee within the corporate limits of the City of Kent as now or hereafter fixed. The City of Kent or his authorized agents shall have the right, at all reasonable times, to inspect the books and records of the Grantee for the purpose of ascertaining accurately the actual basic subscriber receipts of Grantee and Grantee shall furnish promptly unto the City of Kent, with each payment, a statement outlining the basic subscriber receipts upon which payment is based.

The City of Kent shall have the right to renegotiate the franchise fee if at any time the Federal Communications Commission amends or changes its rules. The franchise fee collected by the City of Kent shall be used for the regulation and administration of cable communications.

Section 7. Length of Franchise. Each franchise granted hereafter by the City of Kent under this Ordinance shall be for a term of fifteen (15) years. Grantee shall have first option to renew said franchise for additional fifteen (15) years provided Grantee continues satisfactory performance of its obligations under this Ordinance.

The City of Kent may terminate the franchise by ordinance enacted for such purpose pursuant to the provisions of this Ordinance, in the event of the wilful failure, refusal or neglect by the Grantee to do or comply with any material and substantial requirements contained in this Ordinance, or rules and regulations of the Federal Communications Commission. Prior to any such action, the Grantee shall be notified in writing of such alleged failure or refusal to comply, pursuant to Section 8 of this Ordinance, and shall have a period of at least ninety (90) days to remedy such noncompliance.

Section 8. Procedures for Termination.
1. Any inquiry, investigation, or other proceeding to be taken or proposed to be taken by the City in regard to the operation of the Grantee's cable communications system shall be taken only after:
   a. Reasonable public notice of such action or proposed action is published in a local daily
or weekly newspaper having general circulation in the City. Such notice shall be published at least thirty (30) days prior to the date of the proposed action; and

b. A copy of such action or proposed action is served directly on the Grantee at least thirty (30) days prior to the proposed action; and
c. The Grantee has been given an opportunity to respond in writing and/or at hearings as may be specified by the City.

2. The public notice required by this Section shall state clearly the action or proposed action to be taken, the time provided for any response, the person or persons in authority to whom such response be addressed, and such other procedures as may be specified by the City. If a hearing is to be held, the public notice shall give the date, time and place of such hearing, whether public participation will be allowed, and the procedures governing such public participation. The Grantee shall be an indispensable party to any hearing conducted in regard to its operations.

Section 9. Modification. If any portion of this Ordinance should be inconsistent with any rule or regulation now or hereafter adopted by the Federal Communications Commission, then to the extent of the inconsistency, the rule or regulation of the Federal Communications Commission shall control for so long, but only for so long, as such rule or regulation shall remain in effect, but the remaining portions of this Ordinance shall not hereby be affected.

This Ordinance must be amended whenever possible, to conform with the rules and regulations of the Federal Communications Commission as they are amended, and such amendments must be made within one (1) year after the passage of such rules and regulations.

Grantee shall file with the City of Kent and the Office a current copy of its affirmative action plan.

Section 11. Complaints. The Office shall investigate all unresolved CATV complaints and inquiries and resolve them by conciliation, if possible, and the determination of the Office shall be final.

Section 12. Prohibited Program Content. No Grantee may exercise control over program content on an access channel, except to the extent necessary to prevent the presentation of program material prohibited by the rules and regulations of the Federal Communications Commission.

Section 13. Discrete Areas. The City of Kent shall be considered part of south King County as to recognition of discrete communities for purposes of cable communications and the importation of distant signals.

Section 14. Access Channel. The Grantee shall at all times adhere to the Federal Communications Commission's rules as now in force or at any time amended.

Section 15. Unlawful to Steal Service. Every person who knowingly and wilfully makes unauthorized connection whether physically, electrically, inductively, or attaches any unauthorized device or devices to any cable wire, or other components of a franchised cable communications system or to a television set, for the purpose of intercepting any program carried by franchised cable communications service system which such person is not authorized to receive, shall upon conviction thereof be guilty of a misdemeanor, and may be punished by a fine not exceeding two hundred and fifty ($250) dollars.

Section 16. Upon recommendation of the Office, a review of this Ordinance may periodically be made by the Kent City Council. The City Council under its police powers reserves the right to amend any section of this Ordinance at any time.

Section 17. Any franchise shall be a privilege to be held in personal trust by the original Grantee. The franchise cannot be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, merger, consolidation or otherwise without prior written approval of the City of Kent. Said approval shall be granted by the Kent City
Council only after a public hearing and under the same terms and conditions as an original application. Said application shall not be refused unless the Council finds that the public interest will not be served by the proposed transfer.

In the event the Grantee is a corporation, an assignment of the franchise shall be deemed to occur if there is an actual change in control or where ownership of more than fifty percent (50%) or more of the voting stock of the Grantee is acquired by a person or a group of persons acting in concert, none of whom already own fifty percent (50%) or more of the voting stock singularly or collectively. Any such transfer or assignment shall be made only by an instrument of writing, such as a bill of sale or similar document, a duly executed copy of which shall be filed in the Office within thirty (30) days after such transfer or assignment.

Section 18. Hearing. The Kent City Council shall conduct a public hearing to determine the following:

1. That the public will be benefited by the granting of the requested franchise;
2. That the applicant has the necessary resources to build, operate and maintain a cable communications system in the franchised area;
3. That the applicant will comply with all terms and conditions placed upon the franchisee by the City Council; and
4. That the applicant is willing and able to comply with all relevant federal, state and local regulations.

Section 19. Consumer Protection. Subscribers and users in the City of Kent shall have the protection described in this Section in addition to all other rights conferred in this Ordinance.

1. Upon request, each Grantee shall furnish to the Office and the Office shall compile and maintain for public inspection during regular business hours, copies of:
   a. All applications and other communications submitted by the franchise applicants or Grantees to the City of Kent, the Federal...
Communications Commission or any federal, state or local regulatory body having jurisdiction with respect to cable communications within the City of Kent.

b. Current information on ownership and management of the Grantee.

c. Current information on forms of subscriber agreements used by the Grantee, complaint procedures followed by the Grantee and non-basic services provided by the Grantee and the rates and charges thereof.

c. Records of all written requests for use of public access channels and leased channel time and the disposition of such requests, and records of all signals and programs carried (other than radio and television broadcast signals).

2. The Office shall also compile and maintain for public inspection during regular business hours, copies of:

a. All federal, state and local laws and regulations applicable to cable communications within the City of Kent.

b. Records of all written complaints filed with the Office and the disposition thereof.

c. Policy statements and administrative staff operating procedures of the Office.

3. No Grantee shall cause or permit the viewing habits of any subscriber to be monitored without the subscriber's expressed consent.

4. Whenever a Grantee shall offer a new service or facility, or changes in channel allocation or assignment, the Grantee shall give notice thereof to the subscribers and the Kent City Clerk.

5. With respect to basic services, the Grantee shall provide if technically practicable, all basic subscriber services and a tie-in connection without cost (except for actual cost of installation) to one outlet (one television connection) to each state accredited public or private educational
institution and each building designated by the City Clerk or Office, which is owned and controlled by the City of Kent and used for public purposes and not for residential use, when such recommended building is within 300 feet of the distribution cable.

Section 20. Construction Variances. The Grantee is required in all cases to request and apply for all construction variances for system extension, subscriber installations, or any other variances that may be required by the City of Kent.

Section 21. Rights Reserved to the City. A Grantee shall upon request of the City of Kent or the City Council make his/her facilities immediately available to the City for emergency use during the period of any emergency or disaster declared by the Mayor or the City Council.

Section 22. Limitations and Conditions.
1. A Grantee's facilities shall be so located or re-located and so erected so as to interfere as little as possible with traffic or with such streets, avenues, highways, bridges and other public places and easements, ingress to abutting property, provided, however, the Grantee shall not break up, block or disturb any streets or other public thoroughfare without prior written permission from the City. All such construction and installation work, whenever same crosses any of the public properties shall be done under the supervision of and upon the inspection of the City and the Grantee shall timely submit to the City, prior to any such work, detailed plans and specifications of any such proposed work. The location of any franchise property in a street or other public area shall be subject to the approval of the City and such approval shall be given in writing and Grantee shall be subject to all applicable ordinances, regulations, permits or licenses as provided by the ordinances of the City of Kent as they now exist or as they are amended.

2. During any period of construction, all surface
structures, if any, shall be erected and used in such places and positions within said public rights-of-way and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property, and Grantee shall at all times post and maintain proper barricades during any such period of construction as is required by the laws and statutes of the State of Washington. Any portion of the streets so excavated shall within a reasonable time as quickly as possible after said excavation be restored and replaced by the Grantee at its sole cost and expense in at least as good condition as it was immediately prior to the time of such excavation, and all to be performed in accordance with the applicable rules and regulations of the City of Kent.

3. Grantee, its successors and assigns shall commence construction under any franchise within one (1) year from the after the date of granting thereof, and all such work shall be done and completed with the greatest amount of dispatch so as to reduce any interference with the vehicular and pedestrian traffic and the public safety to a minimum. If Grantee has failed or neglected to commence such construction within said period of one (1) year, then all rights, privileges and authorities herein granted shall cease and terminate and the franchise shall be of no further force and effect.

4. Grantee, its successors and assigns shall properly repair any damage to City property of every type and nature and all other improvements caused by the failure or workmanship of Grantee's work during the life of any franchise. Grantee shall comply with all ordinances and regulations of the City of Kent regarding such excavation and whenever deemed necessary by the City, shall be required to post a performance bond in favor of the City, warranting, among other things, that such rest-
oration work will be done promptly and in the proper, workmanlike manner.

Section 23. Indemnity and Hold Harmless Waiver of Damages.

1. Grantee, its successors and assigns shall indemnify and hold harmless the City of Kent from any and all liabilities, fees, cost and damages, whether to person or property, or expense of any type or nature which may accru[e] to the City by reason of the construction, operation, maintenance, repair and alteration of Grantee facilities; provided, however, that in case of any suit or action is instituted against the City by reason of any such damage or injury, the City shall cause written notice thereof to be given to Grantee and Grantee thereupon shall have the duty to defend any suit or action without cost or expense to the City.

2. Grantee shall have no recourse whatever against the City of Kent for any loss, expense or damage arising out of any provision or requirement of any franchise with the enforcement thereof. No privilege or exemption will be granted or conferred unto Grantee by a franchise except those specifically prescribed herein, and any such privilege claimed under this franchise by the Grantee in any street shall be subordinate to any prior lawful occupancy of the street or any subsequent improvement or installation therein.

Section 24. Bond and Insurance. Grantee shall, before construction file a good and sufficient bond or other surety, as determined by the City of Kent executed by a surety company authorized and qualified to do business in the State of Washington, conditioned upon the faithful performance of all duties and obligations to be performed by the Grantee under the terms of this Ordinance, including the payment of all gross revenue payments imposed by the terms of this Ordinance, and the removal of said system, and including repair and restoration of streets, and all public utilities of every type and nature incident to all work done by the Grantee pursuant to the terms of any franchise, and

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such bond or other surety to be renewed by the Grantee annually and kept in full force and effect at all times and during the life of any franchise.

Grantee shall forfeit all rights and privileges conferred by any ordinance, and the franchise shall be null and void and of no force and effect whatever unless Grantee shall, before commencing construction of any part of said cable communications system, file with the City Clerk proper evidence that it has in full force and effect and shall keep in full force and effect covering all operations during the life of the franchise, public liability insurance, naming the City of Seattle and the City of Kent as additional insureds with coverage of not less than $500,000 property damage liability per occurrence and $500,000 bodily injury liability per person per occurrence.

Section 25. Codes. All work done by the Grantee pursuant to any franchise shall be in full compliance with the Uniform Building Code and all applicable laws of the State of Washington and ordinances of the City of Kent then in effect. In the event the Grantee fails at any time to furnish any required safeguards, signs, signals, and/or lights to promptly repair any damage to City utilities or promptly backfill excavations as required by law, ordinance or regulation then the City reserves the right to proceed as may be required to so comply, and in such event the Grantee agrees and covenants to promptly reimburse the City for all expenses of such work.

Section 26. Raising and Moving of Wires. If the raising and moving of cable wires is required by any party at any time to enable use of the streets, or other public rights-of-way or properties, such party shall make written application at least five (5) days in advance of such required use, and Grantee shall raise and move said cable, wires and/or other equipment at the expense of the applicant and payment shall be made in advance.

Section 27. Street Use Permit. Whenever it shall be necessary to the erection of poles or in the construction of underground pipes or conduits, to excavate in any portion of any street, the Grantee shall file with the City Engineer a petition therefor together with plans, designs and drawings or a reasonable scale, setting forth the streets to be disturbed and obtain a permit from and approval of the City Engineer for so doing before beginning
such work. After any poles are erected, or such pipes or conduits constructed, Grantee shall promptly replace any portion of the street disturbed by such work, in a neat and workmanlike manner to its original condition and as required and approved by the City Engineer.

At all times during the period of this grant, the Grantee shall keep on deposit in the City Treasury to the credit of the City Engineering Department, the sum of Five Hundred (500) Dollars in cash to be used by said City Engineering Department for the purpose of restoring streets in the manner prescribed by said City Engineer, to pay the reasonable cost of any City inspection necessitated by Grantee's actions pursuant to this franchise and to pay the cost of raising or removing of any wires, cables, or conductors as provided in Section 26 hereof.

Section 28. CATV Construction System Expansion. The construction of new cable facilities and the expansion of existing cable facilities by the Grantee shall be done in accordance with an overall plan or design first submitted to and approved by the Director of Utilities, the Office and the City Manager of the City of Kent. Such plan or design must be submitted within six (6) months from acceptance of a franchise and shall cover a period of not less than two (2) years under the provisions of this Ordinance.

The Grantee shall at all times comply with this Ordinance and any (Street Use Ordinance) adopted by the City of Kent or as hereafter amended.

Section 29. Severability Clause. If any part of this Ordinance is found to be unconstitutional or void, such finding shall not affect the remaining sections which shall remain in full force and effect.

Section 30. This Ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as provided by law.

ISABEL HOGAN, MAYOR
ATTEST:

BETTY GRAY, DEPUTY CITY CLERK

APPROVED AS TO FORM:

DONALD E. MIRK, CITY ATTORNEY

PASSED the 15th day of May, 1978.
APPROVED the 16th day of May, 1978.
PUBLISHED the 19th day of May, 1978.

I hereby certify that this is a true copy of Ordinance No. 2093, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BETTY GRAY, DEPUTY CITY CLERK