

Chapter 5.12

CATV FRANCHISES

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5.12.010 Definitions. For the purpose of this chapter the following terms, phrases, words, abbreviations, and their derivations shall have the meanings given in this section. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

"Basic CATV service" means the distribution of broadcast television and radio signals and original cablecast programming by the company.

"CATV" means a cable television system as defined in this section.

"Cable television system" means a system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable audio and/or visual radio, television, electronic or electrical signals to and from persons subscribers and locations in the franchise area.

"City" means the city of Scappoose.

"Company" or "franchisee" means the grantee of franchise rights.

"Council" means the governing body of the city.

"Expanded basic CATV service" means a category of cable service or other service provided by the operator for which a separate rate is charged, including satellite delivered programming, but not including premium channels.

"Franchise area" means that area within the corporate limits of the city.

"Gross annual revenues" means any and all compensation and other consideration received directly by the company in payment for expanded basic CATV service, basic CATV service, premium service, installation fees, advertising and any other services or goods provided or sold by the company. Gross annual revenues shall not include any taxes on services furnished by the company imposed directly on any subscriber or user by the city, state or governmental unit and collected by the company for such governmental unit.

"Person" means any person, firm, partnership, association, corporation, company or organization of any kind.

"Premium channel" means a channel offered on a cable system with a fee assessed in addition to charges for basic CATV services or expanded basic CATV services.

"Property of company" means all property owned, installed, or used by the company in the conduct of a CATV business in the city.

"Street" means the surface of and the space above and below any public street, right-of-way, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, communications or utility easement, now or hereafter existing as such within the franchise area.

"Subscriber" means any person or entity receiving basic CATV service. (Ord. 561 §§1--3, 1990; Ord. 425 §1, 1981)

5.12.020 Term of franchise. The franchise and rights under this chapter shall take effect and be in force thirty days from and after final acceptance of franchise proposal and upon filing of acceptance by the franchisee and shall continue in force and effect for a term of fifteen years after the effective date of the franchise. The franchise may be renewed for such additional periods as are mutually agreed upon following full public proceedings affording due process. Franchise fees and other provisions may be renegotiated for any option period on written request of either party. (Ord. 425 §2, 1981)

5.12.030 Conditions of street occupancy. A. All transmission and distribution structures, lines and equipment erected by the company within the franchise area shall be so located as to cause minimum interference with the proper use of streets, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of the property owners who adjoin any of the said street or other public ways and places. The CATV system shall be constructed and operated in compliance with all city, state and national construction and electrical codes and shall be kept current with new codes. The company shall install and maintain its wires, cables, fixtures, and other equipment in such manner that they will not interfere with any installations of the city or of a public utility serving the city.

B. In case of disturbance of any street, public way, or paved area by the company, the company shall, at its own cost and expense and in a manner approved by the city, replace and restore such street, public way or paved area in as good a condition as before the work involving such disturbance was done.

C. If at any time during the period of franchise, the city shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the company upon reasonable notice by the city, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

D. Any poles or other fixtures placed in any public way by the company shall be placed in such manner as not to interfere with the usual travel on such public way.

E. The company shall, on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of the building. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the company shall have the authority to require such payment in advance. The company shall be given not less than forty-eight hours advance notice to arrange for such temporary wire changes.

F. The company shall have the authority to trim trees upon and overhanging streets and public ways and public 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 company.

G. In all sections of the franchise area where the cables, wires or other like facilities of public utilities are placed underground, the company shall place its cables, wires or other like facilities underground to the maximum extent that existing technology reasonably permits the company to do so.

H. The company shall at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the company when required by the city by reason of traffic conditions, public safety, street vacation, freeway and street construction, change of establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracts or any other type of structure or improvements by public agencies; provided, however, that the company shall in all such cases have the rights and obligations of abandonment of property of the company, subject to city ordinances.

I. The city shall have the right to make additional use, for any public or municipal purposes, of any poles or conduits controlled or maintained exclusively by or for company in any street, provided such uses by city does not interfere with use by company. The city shall indemnify and hold harmless company against and from any and all claims, demands causes of actions, suits, proceedings, damages, cost of liabilities of every kind and nature whatsoever arising out of such use of company's poles or conduits.

J. Company shall give thirty days' notice in writing prior to any installation work on public streets or in public areas and shall be solely responsible for obtaining permits from the county and the state for installations on their roads and streets. (Ord. 425 §3, 1981)

5.12.040 Proposals submitted. The city shall require that written proposals be submitted prior to acceptance of a franchisee. Said written proposal of company shall be made a part of the franchise agreement and shall also by reference be made a part thereof. (Ord. 425 §4, 1981)

5.12.050 Safety requirements. A. The company shall at all times employ ordinary care and shall install and maintain in 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. (Ord. 425 §5, 1981)

5.12.060 Operational standards. The company shall operate and maintain its cable television system in full compliance with the standards set forth by the Federal Communications Commission, Section 76.31. (Ord. 425 §6, 1981)

5.12.070 Local office--Complaints. The company shall maintain a business office or agent which subscribers may contact during regular business hours without incurring added message or toll charges so that CATV maintenance services shall be promptly available. Should a subscriber have an unresolved complaint regarding the quality of cable television service, equipment, malfunctions, or similar matters, the subscriber shall be entitled to meet with a representative of the company within thirty days to fully discuss and resolve such matters. (Ord. 425 §7, 1981)

5.12.080 Preferential or discriminatory practices prohibited. The company shall not, as to rates, charges, service facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage; provided that nothing in this franchise 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 providing further that connection and service charges may be waived or modified during promotional campaigns of company. (Ord. 425 §8, 1981)

5.12.090 Franchise payment. A. The company shall pay to the city, on or before March 1st each year, a minimum three percent franchise fee based on gross annual revenues received for cable television operation in the city for the preceding calendar year, excepting installation revenues and gross revenues by the grantee for pay or premium channels. No other fees or consideration shall be imposed. Sales tax or other taxes levied directly on a per-subscription basis and collected by the company shall be deducted from the gross annual revenues before computation of sums due the city is made. The company shall provide a sworn, semiannual summary report showing gross

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revenues received during the preceding period.

B. Beginning July 1, 1990 until June 30, 1996, the franchise fee referred to in subsection A of this section shall equal five percent of company's gross annual revenues received for the preceding calendar year from all sources excepting installation revenues and revenues received from premium channels.

C. Beginning July 1, 1996, the franchise fee referred to in subsection B of this section shall equal five percent of company's gross annual revenues received for the preceding calendar year.

D. No other fees or consideration shall be imposed. Sales tax or other taxes levied directly on a per-subscription basis and collected by the company shall be deducted from the gross annual revenues before computation of sums to the city is made. The company shall provide a sworn, semiannual summary report showing gross revenues received during the preceding period.

E. All payments required by this section shall be made on or before the March 1st after each calendar year. (Ord. 561 §4, 1990; Ord. 425 §9, 1981)

5.12.100 Indemnification of city. A. The company shall at all times protect and hold harmless the city from all claims, actions, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs, attorney's fees and shall pay defense costs and expenses incurred by city to defend any claim arising out of this agreement which may accrue to or be suffered or claimed by any persons arising out of the negligence of this company in the ownership, construction, repair, replacement, maintenance and operation of said cable television system and by reason of any license, copyright, property right or patent of any articles or system used in the construction or use of said system.

B. The company shall maintain in full force and effect during the life of any franchise, public liability and property damage insurance in insurance companies authorized to do business in the state in such reasonable sums as shall be determined by the city as adequate coverage and as agreed upon in the franchise agreement. (Ord. 425 §10, 1981)

5.12.110 Procedure upon termination. Upon expiration of the franchise, if the company shall not have acquired an extension or renewal thereof and accepted the same, it may have and it is granted the right to enter upon the streets, and public ways of the city for the purpose of removing therefrom any or all of its property and otherwise. In so removing said property, the company shall refill, at its own expense, any excavation that shall be made by it and shall leave said streets and public ways and places in as good condition as that prevailing prior to the company's removal of its property. (Ord. 425 §11, 1981)

5.12.120 Approval of transfer. The company shall not sell or transfer its plant or system to another, other than a parent company or a wholly-owned subsidiary of the company, or transfer any rights under this franchise to another without council approval; providing, that no sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the city clerk an instrument duly executed reciting the fact of such sale, assignment or lease accepting the terms of the franchise and agreeing to perform all the conditions thereof. Such council approval will not be unreasonably withheld and neither this section nor other sections of this franchise shall preclude the assignment of certain rights in the system by the company for the purpose of financing. (Ord. 425 §12, 1981)

5.12.130 New developments. It shall be the policy of the city to liberally amend its franchise and ordinance when necessary, to enable the company to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity to more effectively, efficiently or economically serve its customers. (Ord. 425 §13, 1981)

5.12.140 Miscellaneous provisions. A. When not otherwise prescribed herein, all matters herein required to be filed with the city shall be filed with the city recorder-treasurer.

B. In the case of an emergency or disaster, the company shall, upon request of the city, make available its facilities to the city for emergency use during the emergency or disaster period.

C. All franchise agreements shall be in written form and presented to the city council for approval before they have any effect. (Ord. 425 §14, 1981)

5.12.150 Compliance with applicable laws and ordinances. The company shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the city. The city reserves the right to adopt from time to time in addition to the provisions herein contained, such ordinances as may be deemed necessary to the exercise of police power. Such regulation shall be reasonable and not destructive to the rights herein granted and not in conflict with the laws of the States or other local laws or regulations. (Ord. 425 §15, 1981)

5.12.160 Federal regulation. A. Any modification resulting from amendment of Section 76.31 (Franchise Standards) of the Rules and Regulations of the Federal Communications Commission shall be incorporated into the franchise as of the date such modifications become obligatory under FCC regulations, or in the event no obligatory date is established, within one year of adoption or at the time of franchise renewal, whichever occurs first.

B. The City will follow the FCC Rate Regulations in its regulation of the Basic Service Rates and Charges of the Company and any other cable television system operating in the City, notwithstanding any different or inconsistent provisions in the Franchise.

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C. In connection with such regulation, the City will ensure a reasonable opportunity for consideration of the views of interested parties.

D. The City Manager, or designee, is authorized to execute on behalf of the City and file with the FCC such certification forms or other instruments as are now or may hereafter be required by the FCC Rate Regulations in order to enable the City to regulate Basic Service Rates and Charges. (Ord. 613, §§1--3, 1994; Ord. 425, §19, 1981)

5.12.170 Performance bond. Any franchise application shall be submitted with a five thousand dollar performance bond and a detailed time schedule of project construction. Franchise is subject to revocation by the city council if the approved completion schedule is not met. Revocation would be effective after ninety days written notice. Performance bond to be returned to franchisee upon completion of construction or can be applied to first year's franchise fee at franchisee's discretion. (Ord. 425 §20, 1981)

5.12.180 Violations. A. From and after the effective date of the ordinance codified in this chapter, it is unlawful for any person to construct, install or maintain within any public street in the city or within any other public property of the city, or within any privately owned area within the city which has not yet become a public street, but is designated or delineated as a proposed public street, on any tentative subdivision map approved by the city, any equipment or facilities for distributing any television signals or radio signals through a CATV system, unless a franchise authorizing such use of such street or property or area has first been obtained, and unless such franchise is in full force and effect.

B. It is unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the franchised CATV system within the city for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program or sound without payment to the operator of said system.

C. It is unlawful for any person, without the consent of the owner, to wilfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound. (Ord. 425 §16, 1981)

5.12.190 Penalties. Any person violating or failing to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and for each day of violation or failure to comply may be punished by a fine not to exceed one hundred dollars or by imprisonment for a term not to exceed thirty days or by both such fine or imprisonment. (Ord. 425 §17, 1981)