

Chapter 14.36

TCI CABLEVISION FRANCHISE

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14.36.010 Purpose.

This franchise shall constitute an agreement between Kitsap County (hereinafter the "county") and TCI Cablevision of Washington, Inc. (hereinafter the "operator"). The operator promises to construct, maintain, and operate a cable television system for the distribution of television and other electronic signals pursuant to the terms of this franchise. The county agrees to grant the operator all necessary rights and privileges to use public rights-of-way necessary for a cable television system. This agreement shall, as of its effective date, supersede and replace all existing franchises previously granted by Kitsap County to the operator or any of its predecessors, subsidiaries or affiliated companies.

(Ord. 160 (1994) § F1, 1994)

14.36.020 Length of franchise.

The length of this franchise shall be for a term of fifteen years from April 4, 1994, through midnight April 3, 2009.

(Ord. 160 (1994) § F2, 1994)

14.36.030 Application.

An operator making application for such a franchise shall submit the application on applicable forms and furnish a nonrefundable filing fee of seven thousand five hundred dollars which is not in lieu of franchise fees or other contributions to the county.

(Ord. 160 (1994) § F3, 1994)

14.36.040 Service area.

The operator's service area shall be the entire unincorporated area of Kitsap County, in its present unincorporated form or in any later reorganized, enlarged or consolidated form.

(Ord. 160 (1994) § F4, 1994)

14.36.050 Franchise fee.

The operator shall pay to the county quarterly, on or before the thirtieth day of each January, April, July and October, a sum equal to five percent or greater of gross revenues, for the preceding three calendar months, as defined in Chapter 14.32 of this code.

Revenues that are derived as a portion of a national or regional service shall be computed on a per-subscriber basis if such determination cannot be achieved by other means. Franchise fees, however, shall not be payable on services that do not make use of public rights-of-way such as direct broadcast satellite services.

The county may raise the franchise fee, if so permitted by federal and state law. Prior to implementation of any increase in franchise fees the operator may request a public hearing by the county commissioners to discuss said increases. Following such a hearing the county commissioners may require the implementation of such increase in accordance with the provisions of this franchise ordinance.

(a) Late Payment. Any quarterly franchise fee not paid by the operator within thirty days of the end of a quarter shall bear interest at the rate of twelve percent per annum or whatever maximum amount is allowed under state law, whichever is greater, from the due date until paid.

(b) Financial Reports. Each franchise fee payment shall be accompanied by a financial report on a form provided by the county showing the basis for the operator's computation separately indicating revenues received by the operator within the county from basic and expanded basic service, pay TV service, other applicable sources of revenue, and such other information directly related to confirming the amount of the operator's gross revenues as may be reasonably required by the county.

(c) Audit by County. The county shall have the right, upon reasonable notice or no less than two working days, to inspect the books and records of the operator during normal business hours, for the purpose of ascertaining the actual gross revenues collected by the operator. In the event that such audit discloses a discrepancy of more than ten percent between the financial report submitted by the operator with a quarterly payment and the actual gross revenues collected by the operator, the operator agrees to pay to the county the costs of such audit. The county's right to audit records shall extend to franchise fee payments for the preceding five years. In the event that such audit results in a determination that additional franchise fees are due the county, the operator further agrees to pay interest as required for late payment on such additional franchise fees computed from the date on which such additional franchise fees were due and payable.

(d) Nonwaiver. Acceptance of any franchise fee payment by the county shall not be construed as an agreement by the county that the franchise fee paid is in fact the correct amount, nor shall acceptance of payment by the county be construed as a release or waiver of any claim the county may have for further or additional sums payable under the provisions of this franchise ordinance.

(e) Taxes. Nothing in this section shall limit the operator's obligation to pay applicable local, state, or federal taxes.

(Ord. 160 (1994) § F5, 1994)

14.36.060 Future provisions.

A. Upgrading. The operator shall complete the upgrading of the cable television system to no less than fifty-four channel availability no later than twenty-four months from the effective date of the franchise. Such channel availability may be by whatever method suitable to the operator's engineering analysis including amplifier respacing, electronics replacement, digitalization, compression, fiber optics or other means provided that such upgrades meet the requirements of Section [14.32.260](#), Technical Standards, of the Kitsap County Master Cable Television Ordinance.

B. Other Features. Notwithstanding the conditions above, the operator shall furnish interactive services such as addressability, security, and computer interaction within twenty-four months of the showing by the county that forty percent of the operator's franchised areas in the King-Pierce-Snohomish County area in the state of Washington have been provided such services on a permanent basis. Operator shall not be required to supply any service if the provision of such a service subjects the operator to regulation by any governmental agency such as a utility or common carrier.

Prior to implementation of any such service the operator may request a public hearing by the county commissioners to discuss the benefits of said features to the citizens of the county. Upon a finding by the county commissioners that such features are reasonably required to meet community needs, taking into consideration the expense of providing such services and the potential costs to subscribers, the county commissioners may require the implementation of such features in accord with the provisions of this agreement. If the commissioners deem it necessary, they may at their own option, extend the time requirements established in this section.

(Ord. 160 (1994) § F6, 1994)

14.36.070 Access channels.

Effective within twelve months of the effective date of the franchise, when so directed by the county, the operator shall interconnect with the cable television system of Falcon Cable Television as specified in Section [14.32.370](#) of the Kitsap County Master Cable Television Ordinance so that the existing public, educational and government (PEG) access channel carried in the city of Bremerton may be carried on Falcon's and the operator's system in Kitsap County.

Upon completion of the upgrade as required in Section [14.36.060](#), Future Provisions, the operator will provide Kitsap County with a second PEG channel solely for the use of the county.

An additional channel over and above these shall be made available for county purposes when any of the designated channels is in use for access purposes with nonrepetitive programming during fifty percent of the hours between 10:00 a.m. and 10:00 p.m., during any consecutive ten-week period. Character generated messages are not considered repetitive programming. The operator shall, within six months following a request by the county, subject to the restrictions above, provide another designated access channel for this purpose. In no event shall the operator be required to carry more than six PEG channels during the term of this franchise.

Programming on additional required channels shall be nonrepetitive of the previous channel. If additional channels are designated for PEG use, but after one year such channel(s) are not programmed at least twenty-five percent of the hours between 10:00 a.m. and 10:00 p.m. with programming, the channel shall then revert to the operator for its unrestricted use within the terms and conditions of this franchise ordinance. The operator shall give the county a minimum of six months' notice of its intention to withdraw any such channels. The channel, however, shall not revert if, during this caution period, the channel fulfills the requirements as discussed above. The reversion will be for a minimum of two

years. After this period the county may reacquire such channel(s) upon demonstrated demand that it will fulfill the conditions of programming usage.

(Ord. 160 (1994) § F7, 1994)

14.36.080 Institutional networks.

The operator shall provide bi-directional NTSC standard audio and video capability, excluding telephone services, between and among the sites listed in Appendices A* and B.* The operator's obligation to provide this capability shall commence subsequent to the upgrade of the system and as soon as Falcon Cable Television or its successors and assigns has entered into franchise agreements requiring the provision of similar capabilities and services. The operator shall make necessary arrangements concerning interconnection with the other operator. The services described in this section may be provided by any technical means deemed appropriate by the operator, including but not necessarily limited to, microwave, coaxial cable and fiber facilities. Operator shall be responsible for maintenance of the distribution cable system but will not assume the responsibility for the purchase, operation, and maintenance of all on-site equipment which shall include but will not be limited to all studio equipment and switching equipment (whether installed in the headend or other appropriate site) located in the sites defined in Appendix A* and Appendix B* and future sites as defined in Section [14.36.110](#). The operator may pass through in the manner described in Section [14.36.090](#), Access and Institutional Network Equipment, the cost of institutional network capabilities. Operator's liability for failure or interruption of the services described in this section shall be limited to repair of any network service provided by operator.

Operator will not be required to provide any service under this section that will subject it to regulation by any governmental agency as a common carrier or public utility.

(Ord. 160 (1994) § F8, 1994)

* The appendices referred to herein are not codified: they may be found on file in the department of administrative services.

14.36.090 Access and institutional network equipment.

Recognizing that the county does not at the present have a detailed plan to utilize the PEG access or institutional networks, but that future use of such features should not be precluded, the operator shall make contributions to the county to establish a fund to purchase equipment or for other uses required to implement and maintain these functions. The contributions, which shall be in the amount of twenty-one cents per customer per month, shall be paid to the county quarterly, on or before the thirtieth day of each January, April, July and October. Such payment is not in lieu of franchise fees or other taxes which may lawfully be assessed by the county and shall not be deducted from any such payments.

At the option of the county, the amount of the per-customer contributions may be adjusted every five years by the Gross National Product Price Index (GNP-PI) published by the U.S. Department of Commerce.

Operator may pass all contributions through to subscribers on a pro rata basis.

(Ord. 160 (1994) § F9, 1994)

14.36.100 Coverage.

The operator shall provide cable television service in the entire franchise area except that it is not required to furnish cable to those areas having cable television service provided by another operator. If full coverage does not now exist, the operator shall complete such wiring and be in a position to offer cable reception to all residents within twenty-four months from the grant of the franchise. In those areas which are adjacent to

an unbuilt area, the operator with the nearest trunk and/or distribution line will be responsible to furnish cable service. All provisions in this section are subject to Section [14.32.350](#), Extraordinary Installation, of the Kitsap County Master Cable Television Ordinance.

(Ord. 160 (1994) § F10, 1994)

14.36.110 Discounts.

The operator shall offer a discount of thirty percent from the normal charge for basic services and installation at such time that the basic service charge exceeds twelve dollars. The discount shall apply to those individuals age sixty-two or older or disabled who are the legal owner or lessee/tenant of their residence provided that the combined household disposable income from all sources does not exceed the poverty income guidelines for all states (except Alaska and Hawaii) and the District of Columbia, published by the U.S. Department of Health and Human Services.

(Ord. 160 (1994) § F11, 1994)

14.36.120 Public buildings.

The operator shall provide without charge for installation or monthly rate, basic service, one outlet, and converter, if needed at such public buildings and schools as specified in Appendices A and B* as well as other such buildings that may be constructed (excluding governmental housing) during the period of the franchise that are passed by cable and within five hundred feet of the trunk or distribution system within the cabled areas of the operator.

(Ord. 160 (1994) § F12, 1994)

* The appendices referred to herein are not codified: they may be found on file in the department of administrative services.

14.36.130 Independent contractors.

This agreement shall not be construed to provide that the operator is the agent or legal representative of the county for any purpose whatsoever. The operator is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the county or to bind the county in any manner or thing whatsoever.

(Ord. 160 (1994) § F13, 1994)

14.36.140 Entire agreement.

This agreement, and the master cable ordinance and exhibits that are attached hereto, on file in the department of administrative services and incorporated herein by reference, represents all of the covenants, promises, agreements, and conditions, both oral and written, between the parties and supersede all previous negotiations and representations. However, the county reserves the right to waive its rights under any of these sections without affecting the applicability of other sections not so specifically waived. Waiver of any franchise requirement or ordinance sections by the county shall be in writing in order to be effective.

(Ord. 160 (1994) § F14, 1994)

14.36.150 Successors or assigns.

This franchise agreement, including all addenda, and the county's master cable ordinance shall be binding to the operator, its heirs, successors, and assigns.

(Ord. 160 (1994) § F15, 1994)

14.36.160 Franchise renewal.

The operator shall pay to the county upon acceptance of any initial franchise or renewal franchise granted hereunder, the county's out-of-pocket costs associated with the franchising process. Costs shall include such items as consulting fees, expenses, and the costs of publishing notices and ordinances, etc. Payment will not exceed eight thousand five hundred dollars including the filing fee as required in Section [14.36.030](#). Such payment is not to be considered in lieu of franchise fee payments. Payment is due within thirty days of receipt of appropriate invoice from the county.

(Ord. 160 (1994) § F16, 1994)

14.36.170 Utility pole attachments.

Operator shall enter into utility pole attachment agreements as necessary to fulfill its obligations under this franchise, and on such terms as are mutually agreeable between operator and the applicable utility.

(Ord. 160 (1994) § F17, 1994)

14.36.180 Emergency override.

If permitted by federal law, the operator may pass through the cost of emergency override capabilities prescribed by the county emergency management board in the manner described in Section [14.36.090](#).

(Ord. 160 (1994) § F18, 1994)

14.36.190 Proof of insurance.

Operator shall file with the county a certificate of insurance documenting compliance with Section [14.32.480](#), Insurance, of the master ordinance.

(Ord. 160 (1994) § F19, 1994)

14.36.200 Security.

As contemplated by Section [14.32.490](#), Performance Bond, of the master ordinance, operator shall be required to provide within sixty days of execution of this franchise a corporate guarantee in lieu of bond in the amount of seventy-five thousand dollars.

(Ord. 160 (1994) § F20, 1994)

14.36.210 Acceptance.

This grant of franchise and its terms and provisions shall be accepted by the operator by the submission of a written instrument, executed and sworn to by a corporate officer of the operator before a notary public, and filed with the county within sixty days after the effective date of this franchise. Such instrument shall evidence the unconditional acceptance of this franchise and the promise to comply with and abide by all its provisions, terms and conditions.

(Ord. 160 (1994) § F21, 1994)

14.36.220 Effective date.

This franchise ordinance shall take effect five days from and after its passage, publication and written acceptance by the operator.

(Ord. 160 (1994) § F22, 1994)

14.36.230 Notice.

Written notices shall be deemed to have been duly served if delivered in person to the individual or entity for whom it was intended, or if delivered at or sent by registered or certified United States mail to the last business address known to the party who gives the notice.

All notices and requests shall be addressed to Kitsap County and the operator as follows:

County:

Kitsap County Courthouse
Department of Administrative Services
614 Division Street
Port Orchard, WA 98366

Operator:

TCI Cablevision of Washington, Inc.
1225 Sylvan Way
Bremerton, WA 98310

With a copy to:

TCI Cablevision of Washington Inc.
P.O. Box 91220
Bellevue, WA 98009-9220
(Ord. 160 (1994) § F23, 1994)

This page of the Kitsap County Code is current through Ordinance 421-2008, passed December 28, 2008.

Disclaimer: The Clerk of the Board's Office has the official version of the Kitsap County Code. Users should contact the Clerk of the Board's Office for ordinances passed subsequent to the ordinance cited above.

County Website: <http://www.kitsapgov.com/> (<http://www.kitsapgov.com/>)

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