

CABLE TELEVISION REGULATION AND FRANCHISING

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INTRODUCTION

This paper provides an overview of how the City of Seattle regulates and franchises cable television, including the City's authority over and the Council's role in franchising, collection of and expenditure of fees, as well as the public benefits of cable franchises.

As way of background, cable providers may not offer cable television service to areas under the City's jurisdiction without obtaining a City authorization called a franchise agreement. The franchising process is regulated under both federal law and the Seattle Municipal Code (SMC). The City has most recently granted or renewed franchises to three cable providers, each with ten-year terms:¹ Wave Broadband, Comcast and CenturyLink. The [franchise](#) for Wave Broadband (formerly known as "Millennium Digital Media Systems, L.L.C." or "Millennium") expires in the of fall 2017. Comcast's [franchise](#) expires January 20, 2016. In early December, Council voted to renew Comcast's franchise for another 10 years. The Council approved Century Link's application for a [new cable franchise](#) in July 2015.

FRANCHISING AUTHORITY

Cable television is regulated at both federal and local levels. The U.S. Federal Communications Commission (FCC) regulates cable using the Cable Communications Policy Act of 1984 ([Cable Act](#)). The Cable Act establishes that a federal, state, or local governmental entity may act as a franchising authority to authorize a franchise for cable television and provides the procedures and standards by which the franchising authority can grant or deny a new franchise or renew an existing franchise. The Cable Act also governs the types of requirements a franchising authority can impose on cable providers. In addition, the FCC has issued several opinions and orders interpreting the Cable Act as it relates to franchises and franchise fees.²

The City of Seattle is the local franchising authority (LFA) for cable providers who wish to offer cable television service to Seattle residents. Though some states mandate state-level regulation of franchising, Washington State does not, which leaves the regulation responsibility to local authorities. The designation of LFAs and their exclusive jurisdictional boundaries are determined by federal law, and LFAs cannot unilaterally change them. Thus, the City has the ultimate decision-making authority about whether to grant a franchise within its jurisdiction. The City can neither unreasonably refuse to award a competitive franchise nor award an exclusive franchise.³ The Department of Information Technology's (DoIT) Office of Cable Communications (OCC) administers cable franchising under [SMC 21.60](#) (Cable Code). If the

¹ The maximum term permitted for a franchise is 15 years. SMC 21.60.050(H).

² See footnotes 5 and 10 below.

³ 47 U.S.C. § 541(a)(1).

Council finds the franchise to be in the public interest (including but not limited to providing the public with improved access to local television content or Internet access), it grants the franchise by ordinance. The Cable Code covers a variety of issues that the City is authorized to regulate, including the process for obtaining a new franchise; renewal of a franchise; the term of a franchise; franchise fees; designation of public, educational, or governmental (PEG) channels; installation; customer service and privacy; and use of City rights-of-way. In March 2015, the Council overhauled the Cable Code, which was originally passed in 1976 and had not been substantively updated since 2002. The revisions streamlined franchising regulations, reflecting changes in City practices, technology and federal law.

The City has no authority under the Cable Act or the Cable Code to require services unrelated to cable as a condition of franchise approval. The City may authorize non-cable services such as internet or telephone to the extent not prohibited by state or federal law,⁴ but the FCC has clarified that a franchising authority's jurisdiction only extends to the provision of cable services over cable systems.⁵ Even if a cable company operates non-cable services, an LFA cannot deny a franchise based on issues related to non-cable services or facilities. In addition, federal law prevents any LFA from regulating cable rates, except for limited authority over basic cable service. Wave Broadband's federal classification as a small cable operator prevents the City from asserting even this limited authority over its rates.

REVENUE AND EXPENDITURES

The City (as a franchising authority) can implement a fee of up to 5 percent of a cable provider's gross revenue generated from customers within the City.⁶ However, the franchise fee can only be assessed against certain types of revenue. Gross revenue for this purpose excludes revenue from non-cable services, capital costs for building PEG facilities and charges incidental to awarding the franchise.⁷

The City adopted a cable franchise fee of 4.4 percent in 2010 for all cable franchises.⁸ In 2014 the City collected about \$8.2 million in fees in the Cable Television Franchise Subfund.⁹ Cable providers can pass through the amount of the fee to their cable subscribers and separately

⁴ See SMC 21.60.050(D).

⁵ FCC 06-180, First Report and Order, *Implementation of Section 621(a)(1) of the Cable Communication Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311 (adopted Dec. 20, 2006), available at <https://www.federalregister.gov/articles/2007/03/21/E7-5119/implementation-of-section-621a1-of-the-cable-communications-policy-act-of-1984>.

⁶ 47 U.S.C. § 542(b).

⁷ Incidental fees include payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages. 47 U.S.C. § 542 (g)(2)(D).

⁸ Ordinance 123461 ("An ordinance related to cable television, modifying cable television franchise fees, and superseding franchise fees for cable operators imposed by prior ordinance.").

⁹ The City of Seattle, Department of Finance and Administrative Services, *Comprehensive Annual Financial Report, For the Fiscal Year Ended December 21, 2014* at 22 (June 29, 2015), available at <http://www.seattle.gov/Documents/Departments/FAS/FinancialServices/2014CAFRcomplete.pdf>.

itemize that amount on monthly bills.¹⁰ The 2016 proposed budget estimates \$8.5 million in revenues for 2015 and \$10 million in revenues for 2016.¹¹ Fees in the Cable Television Franchise Subfund pay only for the City's administration of the Cable Customer's Bill of Rights (CCBOR) and PEG access costs, operations and capital support of the Seattle Channel, programs and projects promoting citizen technology literacy and access, and use of innovative and interactive technology to provide means for citizens to access City services. The 2016 proposed budget estimates \$8.7 million in expenditures for these purposes in 2015, and \$9.3 million in 2016.

PUBLIC BENEFITS

Peg Channels

The City requires cable providers to provide access to PEG channels without charge and to all subscribers. The cable provider has no control over the programming on these channels. PEG channels for the City are the Seattle Channel, Seattle Community Colleges, Seattle Public Schools, Public Access Television and KCTS+. Regional King County PEG channels include UWTV, King County TV and TVW.

The City has also negotiated with cable providers to pay a fee in support of PEG access. This fee may be passed through to subscribers and itemized on their bills. Specific PEG fees and standards governing PEG access can be found in each of the current franchisees' contracts.

Service to Low Income Households

The City must ensure that cable service is not denied to any potential subscribers because of the income status of the area in which they are located. Until the Cable Code was amended in 2015, the City was divided into five franchise districts. A cable provider was required to build out its system through the entire district in which it had a franchise within seven years. The purpose of these districts was to keep cable providers from "cherry-picking" affluent neighborhoods to serve and leaving low income areas without service.

The 2015 Cable Code amendments eliminated franchise districts and imposed new service and reporting requirements. Within two years of the effective date of a new franchise, a "significant portion" of the total households offered service must be households with lower incomes than the area's median household income.¹² Renewed franchises must meet this requirement upon renewal. "Significant portion" is defined by DoIT's proposed Director's Rule 8-2015 which defined this term as no less than 30 percent of households served by the franchisee. The Director's Rule went into effect October 16, 2015.

To ensure compliance with the low-income household provision, each cable provider must meet with and provide reports to OCC at least semiannually. OCC will then transmit the provider's report and OCC's analysis to the Council each quarter for the first five years of a new franchise and the first two years of a renewed franchise. If the low-income provisions are not

¹⁰ FCC 01-289, Opinion and Order, *City of Pasadena, California The City of Nashville, Tennessee and the City of Virginia Beach, Virginia*, CSR-5441-R, CSR 5373, CSR 5282-R (adopted Oct. 1, 2001).

¹¹ City of Seattle, 2016 Proposed Budget at 436.

¹² SMC 21.60.170(A).

being met, OCC may impose other requirements on cable providers, such as penalties or service expansion.

In addition, all current franchisees provide a discount of at least 10 percent on basic cable services to qualified potential low-income subscribers.¹³

CABLE CUSTOMER BILL OF RIGHTS

The Cable Code includes a [bill of rights](#) (CCBOR) for cable customers. The bill of rights imposes service standards on cable providers with franchises in the City. Cable providers are required to provide one service center for every 75,000 customers served, in a location meeting specific parameters. The CCBOR limits how long cable providers are allowed to make a customer wait before speaking to a customer service representative. Standard installation is limited to a seven day period from the placement of an order, and the CCBOR lays out procedures for service appointments and responding to outages or other service interruptions. The CCBOR also contains specifics regarding billing, damage to an owner's property, service to customers with disabilities, customer privacy and complaint procedures. In addition, customers may be eligible for compensation from the cable provider for the violation of the CCBOR's provisions

¹³ Comcast 2006 Franchise Agreement Section 16.4; Wave 2007 Franchise Agreement Section 16.4; Century Link 2015 Franchise Agreement Section 15.4.