

ORDINANCE NO. 08-5471

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA, CITY CODE BE AMENDED BY ADDING A NEW ARTICLE 7-900-1; PROVIDING PROCEDURES, POLICIES, TERMS, AND CONDITIONS FOR GRANTING, MODIFYING, RENEWING, TRANSFERRING, AND REGULATING CABLE FRANCHISES; AND, PROVIDING FOR FEES AND ENFORCEMENT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That the Billings, Montana, City Code be amended by adding a new Article 7-900-1, to read as follows:

**“ARTICLE 7-900-1
CABLE SYSTEM FRANCHISE**

SECTION 7-901.1 PURPOSE

This Article is adopted for the purpose of establishing the procedures, policies, terms, and conditions for granting, modifying, renewing, transferring, and regulating Cable Franchises.

SECTION 7-901.2 DEFINITIONS

For the purpose of this Article, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. 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. Any word or phrase not defined in this Section shall have the same meaning as in 47 U.S.C. § 521 et seq. (“Cable Act”) and associated Federal Communications Commission (“FCC”) rules and regulations. Otherwise, words shall have their ordinary and common meaning.

- A. Applicant” shall mean any Person submitting an application within the meaning of this Article; in the case of a Transfer, the Applicant is the transferee.
- B. “Cable System” shall mean a 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, or Video Programming Service, regardless of the transmission technology used and which is provided to multiple Subscribers within the Service Area. Such term specifically includes an open video system, as that term is used in the Cable Act, and a system that delivers video using Internet Protocols (“IP Video”), 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 subscribers without using any public way;
- (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§ 201 et seq., except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541 (c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (d) any facilities of any electric utility used solely for operating its electric utility systems.
- (e) a facility that delivers Video Programming solely via the public internet.

The term includes wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary to the operation of the Cable System to provide cable services or video programming services.

C. "Franchise" means the authorization Franchised by the City to a Cable System operator giving the operator the non-exclusive right to occupy, place or use facilities upon, across, beneath or over any public Right-of-Way in the City to provide cable service or video programming service within a Franchise Area. The term Cable Franchise does not include:

- (a). Any other permit or authorization required by applicable law for transacting and maintaining a business within the City;
- (b). Any other permit, agreement, or authorization required for using public way or other public property including, by way of example and not limitation, street cut permits, or conduit or pole leases.

D. "Construction," "operation," "repair," and similar formulations of those terms, means any actions associated with servicing the Cable System such as installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation, tree trimming, and management of the same. Reference to these terms should be construed as broadly as permitted under applicable law.

E. "Franchise Area" means the area of the City that a Grantee is authorized to serve

by its Cable Franchise.

- F. "Grantee" means any Person holding a Cable Franchise.
- G. "Gross Revenue" means revenue derived by Grantee, or any affiliate of Grantee from the operation of the Cable System, provided, however, that such phrase shall not include: unrecovered bad debt, to the extent reported as revenue on Grantee's books.
- H. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- I. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses held by the City in the Service Area and which by their nature entitle the City and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining a Cable System.
- J. "Service Area" means the area a Franchise authorizes a Grantee to serve within the City.
- K. "Subscriber" means any Person who lawfully receives cable service.
- L. "Transfer" means any transaction in which:
 - (a). The Cable System is sold or assigned;
 - (b). There is any change, acquisition, or transfer of control of the Grantee or its direct or indirect parents, whether by merger, consolidation, sale of assets or ownership interests, or by any other means. A Transfer shall be deemed to have occurred whenever there is a change, acquisition or conveyance of control of a general partner, or of more than a twenty percent (20%) ownership in a Grantee or its direct or indirect parents by any entity, or a group of entities acting in concert. However, a Transfer also occurs whenever there is a change in actual working control, in whatever manner exercised, over the affairs of a Grantee or its direct or indirect parents; or
 - (c). The rights and/or obligations held by a Grantee under a Cable Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party.

SECTION 7-901.3 CABLE FRANCHISE REQUIRED

Except as provided by applicable law, it is unlawful for a Person, other than City, to construct or operate a Cable System without a valid Cable Franchise.

SECTION 7-901.4 GRANT OF CABLE FRANCHISE

The City may grant one or more Cable Franchises in accordance with and subject to the provisions of the City Charter and this Code. Nothing contained in this Code is, nor should it be construed to be, a contract between the City and a Grantee. Nothing contained in this Code, or in a Franchise issued pursuant to this Code, prohibits, or should be construed to prohibit the City from amending and applying this Code to a Grantee. Terms of a Franchise shall be read consistent with the Code, and shall not be deemed to supersede or waive any provisions of the Code except as specifically stated therein. Any action on a franchise application, whether for a initial franchise, renewal franchise, or transfer shall be taken in accordance with time limits established by federal or state law. The City is not required to follow any procedure that would result in the City failing to meet any such time limits.

SECTION 7-901.5 TRANSFERS OF CABLE FRANCHISES

- A. Transfers shall not occur without the City's prior written approval, except where a request for approval or sale is subject to a deadline for action under 47 U.S.C. § 537, and the City fails to act by the time required under 47 U.S.C. § 537. The City, among other remedies, may terminate the Franchise if it is transferred without the City's approval. The granting of approval for a Transfer in one instance shall not render unnecessary the City's approval of any subsequent Transfer.
- B. Notwithstanding the foregoing, the City's prior approval is not required for the following:
 - 1. Pledges in trust or mortgages of the assets of, or a grant of a similar security interest in, a Cable System or Cable Franchise to secure the construction, operation or repair of the Cable System; provided that:
 - a. Arrangements are not made that would prevent a Grantee or any successor from complying with the Cable Franchise and applicable law;
 - b. Arrangements do not permit a third party to succeed to the interest of a Grantee, or to own or control the Cable System, without the City's prior consent;

- c. Any such mortgage, pledge, or security interest will be subject and subordinate to the rights of the City under the Cable Franchise and/or applicable law.

SECTION 7-901.6 CABLE FRANCHISE CHARACTERISTICS

- A. A Cable Franchise is non-exclusive and does not explicitly or implicitly preclude the City from granting other Cable Franchises or affect the City's right to construct, operate, or maintain its own Cable System. The City may refuse to issue a Cable Franchise to a Grantee that will result in any person obtaining an exclusive right to serve any portion of the City.
- B. All privileges prescribed by a Cable Franchise are subordinate to any prior lawful occupancy of Public Way. The City has the right to designate where a Grantee's facilities may be placed within Public Way.
- C. A Cable Franchise is a privilege held in public trust by the Grantee.
- D. A Grantee shall not require a Subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing or continuing cable service. However, nothing prevents a Grantee from entering into an otherwise lawful exclusive consensual arrangement with a building owner or manager of a multiple dwelling unit or commercial Subscriber.
- F. Nothing in any Cable Franchise shall be read to waive any of the City's governmental rights or police powers.

SECTION 7-901.7 RATE REGULATION

The City may regulate rates and charges of each Grantee, and order refunds of unreasonable rates charged, except to the extent that it is preempted from doing so by applicable law. The City shall follow any applicable state or federal procedures for reviewing rates.

SECTION 7-901.8 NO RECOURSE AGAINST CITY

Every Cable Franchise Franchised pursuant to the provisions of this Code shall provide that, to the fullest extent permitted by Montana law, without limiting such immunities as the City or other Persons may have under applicable law, a Grantee shall not have any monetary recourse against the City or its officials, boards, commissions, public agencies when acting on the City's behalf, or employees for any loss, costs, expense, or damage arising out of the construction, operation or repair of its Cable System, or the activities of the City or any entity authorized by the City to use Public Way or other public property unless the same was caused by the City's criminal acts or gross negligence. Nothing in this section waives claims a Grantee might otherwise have against third parties.

SECTION 7-901.9 ACTS AT GRANTEE'S EXPENSE

Any act that a Cable Franchise or this Ordinance requires or allows a Grantee to perform, shall be performed at the Grantee's expense, unless expressly provided for otherwise in the Cable Franchise, this Ordinance, or state law.

SECTION 7-902.1 APPLICATIONS FOR CABLE FRANCHISE GRANTS, RENEWALS OR TRANSFERS

An application shall be filed with the City for:

- A. Grant of an initial Cable Franchise;
- B. Renewal of a Cable Franchise, except that an application is not required for a proposal for renewal submitted pursuant to 47 U.S.C. § 546(h);
- C. Transfer.

All applications shall be available for public inspection unless otherwise provided by applicable law.

SECTION 7-902.2 APPLICATIONS - FEES

From and after October 1, 2006, each Applicant for the grant, renewal or Transfer of a Cable Franchise shall reimburse the City for all expenses incurred by it in reviewing the application. Each application shall be accompanied by a check for \$5,000 which shall be credited against amounts owed. The City may submit invoices to an Applicant from time to time to recover its expenses, which invoices shall be paid within thirty (30) days of rendering. Any amounts paid by an Applicant, but not actually expended by the City, shall be returned to the Applicant. Nothing herein prevents an Applicant from claiming that a particular application fee, as applied, violates 47 U.S.C. § 542.

SECTION 7-902.3 APPLICATIONS FOR INITIAL OR RENEWAL FRANCHISE

An application for an initial or renewal Cable Franchise shall be in a form prescribed by the City Manager, or if there is no form, shall provide the following information and additional information, if any, required by federal or state law.

- A. The names and addresses of Persons authorized to act on behalf of the Applicant with respect to the application;
- B. The name and address of the Applicant and identification of Applicant's ownership and control, including the names and addresses of the ten (10) largest holders of an ownership interest in the Applicant and all Persons in the Applicant's direct ownership chain;

- C. A demonstration of the Applicant's technical ability to construct and/or operate the proposed Cable System, including identification of key personnel;
- D. A demonstration of the Applicant's legal qualifications to construct and/or operate the proposed Cable System;
- E. A statement prepared by an independent certified public accountant or independent financial institution regarding the Applicant's financial ability to complete the construction and operation of its proposed Cable System;
- F. A description of the Applicant's prior experience in Cable System ownership, construction, and operation;
- G. Identification of Montana cities and counties where the Applicant or its principals have an interest in a Cable Franchise. If there is no Montana city or county, the information shall be provided for systems in other states.
- H. Identification of the proposed Service Area's boundaries;
- I. A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities;
- J. Where applicable, a proposed construction schedule;
- K. A demonstration of how the Applicant will reasonably meet the community's future cable-related needs and interests, including descriptions of the capacity, facilities, and support for public, educational, and governmental use of the Cable System (including institutional networks);
- L. An affidavit or declaration of the Applicant or its authorized officer certifying the truth and accuracy of the information in the Application.

SECTION 7-902.4 CABLE FRANCHISE TRANSFER APPLICATIONS

A Cable Franchise Transfer application shall be submitted by the proposed transferee and contain the following:

- A. All information and forms required under applicable law;
- B. All information required by Section 7-902.3 (A)-(G), (L);
- C. Any contracts or other documents that relate to the proposed Transfer, including all documents, schedules, exhibits, or the like referred to therein and all material

facts concerning the effect of the Transfer on the financial position of the Cable System and the Grantee;

- D. Any shareholder reports or filings with the Securities and Exchange Commission ("SEC") that discuss the proposed Transfer;
- E. Complete information regarding anticipated impact of the Transfer on Subscriber rates and service;

SECTION 7-902.5 APPLICATIONS - LEGAL QUALIFICATIONS

- A. For purposes of this Section, the term "Applicant" refers to the Applicant and any of its affiliates.
- B. In order to be legally qualified to obtain an initial or renewal Cable Franchise or a Transfer of a Cable Franchise:
 - 1. The Applicant shall be willing and able to comply with the provisions of applicable law and to comply with requirements of the Cable Franchise. The Applicant's prior compliance with the requirements of this Ordinance may be considered in determining whether the Applicant is willing and able to comply.
 - 2. The Applicant shall not have had any Cable Franchise revoked by the City within three (3) years preceding the submission of the application. If Grantee challenges a revocation, it may not apply while the appeal is pending, or for three (3) years after the final resolution of the appeal if the revocation is valid.
 - 3. The Applicant shall not have had an application to the City for an initial or renewal Cable Franchise denied on the ground that the Applicant failed to propose a Cable System meeting the cable-related needs and interests of the community. If Grantee challenges a denial, it may not apply while the appeal is pending, or for three (3) years after the final resolution of the appeal if the denial is valid.
 - 4. The Applicant shall not be issued a Cable Franchise if, at any time during the ten (10) years preceding the submission of the application, the Applicant was convicted of fraud, racketeering, anti-competitive actions, unfair trade practices or other conduct of such character that the Applicant cannot be relied upon to deal truthfully with the City and the Subscribers, or to substantially comply with its obligations.
 - 5. The Applicant shall have the necessary authority under Montana and federal law to operate a Cable System, or show that it is in a position to obtain such authority.

6. The Applicant shall not be issued a Cable Franchise if it files materially misleading information in its application or intentionally withholds information that the Applicant is required to provide by applicable law.

C. An Applicant shall be provided a reasonable opportunity to show that a Cable Franchise should be issued even if the requirements of Section 7-902.5(B)(1)-(4) are not satisfied, by virtue of the circumstances surrounding the matter and the steps taken by the Applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the Applicant's principals, or the remoteness of the matter from the construction, operation or maintenance of a Cable System.

SECTION 7-902.6 TIMING AND REVIEW OF APPLICATIONS

A. An application may be submitted at any time, except that an application for renewal pursuant to 47 U.S.C. § 546(a)-(g) may only be submitted after the City completes the proceedings required by 47 U.S.C. § 546(a). An application for Transfer shall be submitted at least one hundred twenty (120) days prior to the proposed date of the Transfer.

B. The City shall deny an application if the Applicant or Grantee fails to provide information required by this Ordinance, and may deny an application if Applicant or Grantee fails to respond to requests for additional information to permit review of its Application in accordance with this Ordinance.

C. The City shall promptly consider any complete application in accordance with deadlines established by federal or state law.

SECTION 7-902.7 REVIEW OF TIMELY CABLE ACT RENEWAL APPLICATIONS

Timely requests for renewal under 47 U.S.C. § 546(a) shall be received, reviewed and acted upon in a manner consistent with 47 U.S.C. § 546. The provisions of Sections 7-902.8 and 9 shall not apply to such renewal requests. Subject to the City Council's review, the City Manager may issue rules for conduct of any such renewal proceedings, and conduct studies and take such other actions necessary to comply with applicable law. An Applicant or Grantee may request the City Council to review any action taken by the City Manager under this section.

SECTION 7-902.8 REVIEW OF OTHER INITIAL AND RENEWAL FRANCHISES

A. When evaluating other initial and renewal Cable Franchise applications, the City shall consider the following and such matters as it is required or entitled to consider under applicable law:

1. Whether the Applicant substantially complied with applicable law and the material terms of any existing City Cable Franchise grant;
2. The completeness of the application and Applicant's responses to questions regarding the application;
3. Whether the quality of the Applicant's service under any existing City Cable Franchise, including, without limitation, signal quality, response to customer complaints, and billing practices, is reasonable in light of community needs and interests;
4. Whether the Applicant has the financial, technical, and legal qualifications to hold a Cable Franchise;
5. Whether the application satisfies minimum requirements established by the City to meet the community's future cable-related needs and interests, taking into account the cost of meeting such needs and interests;
6. Whether the Applicant is able and willing to provide adequate public, educational, and governmental use capacity, facilities, or financial support;
7. Whether granting the application will result in redlining, discrimination in the provision of services, or grant the Applicant an unfair competitive advantage;
8. Whether the schedule for building out the system is reasonable; and
9. Whether approving the application would eliminate or reduce competition in the delivery of cable service.

SECTION 7-902.9 STANDARDS FOR REVIEW OF TRANSFER APPLICATIONS

- A. In determining whether to grant, deny, or grant subject to conditions an application for a Transfer of a Cable Franchise, the City may consider:
 1. The legal, financial, and technical qualifications of the Applicant to operate the Cable System, or in the case of a change in control where the Grantee will not change, whether the change in control may adversely affect the legal, financial, and technical qualifications of the Grantee;
 2. The impact of the Transfer on Subscriber rates or services;
 3. Whether the incumbent Grantee is in compliance with its Cable Franchise and applicable law and, if not, the Applicant's commitment to cure such noncompliance;

4. Whether the Applicant owns or controls any other Cable System in the City, and whether operation by the Applicant may eliminate or reduce competition in the delivery of cable service in the City;
 5. Whether the City and Subscribers are protected against losses and costs associated with acts and omissions, or obtaining correction of acts and omissions, of the previous Grantee under the Cable Franchise and applicable law; and
 6. Whether operation by the Applicant or approval of the Transfer would adversely affect Subscribers, the public, or the City's interest under the Cable Franchise, or applicable law.
- B. In reviewing a change of control where the named Grantee does not change, the Applicant is the company succeeding to the control of the Grantee.
- C. Requests for approval of a Transfer shall not be unreasonably denied, or conditioned.

SECTION 7-902.10 APPROVAL OR DENIAL OF CABLE FRANCHISES

- A. Before deciding whether to grant a Cable Franchise, the City shall hold one or more public hearings or implement other procedures for obtaining public input.
- B. If the City finds that it is in the public interest to issue a Cable Franchise, considering the factors described above, the City shall tender Applicant a Cable Franchise, and the Applicant shall be entitled to exercise all of the Franchise rights provided for therein upon its acceptance of the terms and conditions of such Franchise, in a form prescribed by the City.
- C. If the City finds that it is in the public interest to approve a Transfer, considering the factors described above, the City shall approve the same, subject to appropriate conditions.
- D. It is the policy of the City to promote competition in the provision of cable services, but there is a presumption that a Cable Franchise, or Franchise or franchise to use the public Rights-of-Way to deliver multichannel video programming services, that would result in redlining on economic or racial grounds, or otherwise give the Applicant an unfair competitive advantage shall not be Franchised.
- E. It is the policy of the City that each Franchise Agreement shall require a Grantee to extend service upon request to any entity requesting service within its Service Area, in accordance with the provisions of this Ordinance or service extension policies set forth in the Cable Franchise.

- F. If the City denies a Cable Franchise, it shall issue a written decision explaining its denial.

SECTION 7-902.11 NO EFFECT ON 47 U.S.C. § 546(h); CONSISTENCY WITH OTHER LAWS

Nothing in this Ordinance prohibits a Grantee from submitting a renewal proposal pursuant to 47 U.S.C. § 546(h), which proposal may be Franchised or denied in accordance with the provisions of 47 U.S.C. § 546(h). Nothing in this Ordinance shall be read to require or permit the City to consider any factors that it is prohibited from considering in granting or transferring a franchise under applicable state or federal statutes or regulations.

SECTION 7-903.1 FACILITIES CONSTRUCTION STANDARDS; APPLICATION

As used in Section 7-003, the term "Facilities" refers to a Cable System, and to the extent located in the Public Way, other systems and all devices, facilities or structures appurtenant thereto used or designed to be used by any entity that owns or controls the system, or by an affiliate, to provide cable services. Nothing in this Section authorizes construction, operation or repair of a Cable System as defined under Section 7-1-002, or any other system without a Franchise from the City.

SECTION 7-903.2 FACILITIES SYSTEM CONSTRUCTION

- A. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable federal, state, and local regulations and the National Electric Safety Code and the National Electrical Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.
- B. Facilities construction, operation and repair shall be performed so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

SECTION 7-903.3 LOCATION OF EQUIPMENT

- A. Except in underground utility districts or as otherwise provided in a Cable Franchise or applicable law, a Grantee may install Facilities overhead where transmission or distribution facilities of the incumbent local exchange carrier or distribution facilities of public utilities providing electric services are overhead. Wherever the owner of the poles on which the Facilities are located moves its plant from overhead to underground placement in an area, all Facilities in that area must be promptly moved underground.

- B. Where Facilities are not entitled to be placed aboveground under Section 7-903.3(A), or where they must otherwise be moved underground, all Facilities shall be undergrounded in accordance with then-existing City ordinances and requirements of the City Engineer.
- C. On application, the City may waive any requirement in this Section for good cause shown where it is demonstrated that (a) it is technically infeasible to place Facilities underground; (b) reasonable steps have been taken to minimize the impact of the aboveground Facilities; (c) the Facilities are otherwise being constructed in compliance with the Billings City Code.

SECTION 7-903.4 REPAIRS

- A. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition better than, or equal to the condition of the Public Way existing immediately prior to such disturbance.
- B. Any other disturbance or damage to public property or private property caused by Facilities construction, operation or repair shall be promptly repaired at no cost to the entity whose property was damaged. Property shall be restored to its prior condition, except where applicable law imposes a stricter standard for repair.

SECTION 7-903.5 RELOCATION – PUBLIC PROJECTS

Upon its receipt of reasonable advance written notice, to be not less than five (5) business days, the Grantee at its expense shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when required by the City or any government entity by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements. The Grantee shall in all cases have the right of abandonment of its property, provided that, if property is abandoned, Grantee upon request must provide City title to the property, free and clear of encumbrances.

SECTION 7-903.6 UTILITY RELOCATIONS

Grantee shall promptly protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee as required to enable another person authorized to place facilities in the rights of way (other than a person described in Section 7-903.5 to construct, modify, repair or maintain such facilities, with the cost therefore to be borne in accordance with applicable law.

SECTION 7-903.7 TEMPORARY RELOCATION UPON REQUEST

The Grantee shall, on the request of any Person holding a lawful permit issued by the City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days.

SECTION 7-903.8 TREE TRIMMING

The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System, subject to the supervision of the City. Nothing in this section relieves Grantee of any liability it may have to persons for damage caused to public or private property.

SECTION 7-903.9 CONTRACTORS AND SUBCONTRACTORS

Any contractor or subcontractor used by a Facilities owner or Grantee shall be properly licensed under applicable law. Each contractor or subcontractor has the same obligations with respect to its work as the owner or Grantee would have under this Code and applicable law if the work were performed by owner or Grantee. A Facilities owner or Grantee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with its Franchise and applicable law; and shall be responsible for all acts or omissions of contractors or subcontractors inconsistent with its Franchise or applicable law governing the construction, operation or maintenance of the Cable System.

SECTION 7-903.0010 CONSTRUCTION COORDINATION

- A. A Facilities owner or Grantee shall cooperate in planning, locating, and constructing its Facilities in utility joint trenches or common duct banks with other utilities, including cable and telecommunications providers, and shall comply with any requirements that the City lawfully may adopt regarding the same.
- B. A Facilities owner or Grantee shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark, at its sole cost and expense, the locations of its underground Facilities upon notification in accordance with applicable law.
- C. Where it appears that a Facilities owner or Grantee is engaging in practices that endanger the public or other facilities in the public Rights-of-Way, the City may order that work to stop until the practices are corrected. Where a Facilities owner or Grantee engages repeatedly in such practices after receiving notice and

having had an opportunity to cure, the City may revoke any Franchises or permits issued to the Facilities owner or Grantee.

SECTION 7-903.0011 INTERCONNECTION

Upon the City's request, Grantees or Facilities operators required to provide capacity for public, educational or governmental use (including institutional network capacity) within the City shall negotiate in good faith the terms and conditions of interconnection so that public, educational and governmental signals may be seamlessly exchanged to or from systems. Except to the extent the terms and conditions are subject to regulation by the state or federal governments, or regulation is prohibited by law, the City may establish terms and conditions for interconnection and establish deadlines for completion of the interconnection if the interconnecting parties are unable to agree to terms, but conditions for interconnection established by the City shall not place an undue burden or grant an undue benefit to one operator compared to another.

SECTION 7-903.0012 ABANDONMENT

A Facilities owner or Grantee may abandon any property in public Rights-of-Way that is in place upon written notice to the City and separate notice to the City Public Works Director, unless the City determines, in the exercise of its reasonable discretion exercised within ninety (90) days of the date the required written notices are received, that the safety, appearance, functioning or use of public Rights-of-Way and Facilities in public Rights-of-Way will be adversely affected. Abandonment shall be effected in a manner acceptable to the City Engineer.

SECTION 7-904.1 SERVICE - TIME FOR EXTENSION

- A. A Grantee shall extend service to any Person or to any City building in the Franchise Area upon request, weather permitting:
1. Within seven (7) business days of the request, where service can be provided by activating or installing a standard drop;
 2. Within ten (10) business days if the Person cannot be served through installation of a standard drop, but can be served by activating or installing a drop;
 3. Within ninety (90) days of the request where an extension of one-half mile or less is required; or
 4. Within six (6) months where an extension of more than one-half mile is required.

5. Requests for additional outlets, service upgrades or other connections separate from the initial installation shall be performed within seven (7) business days after an order has been placed.
- B. A Cable Franchise specifying a time for completion of initial construction or rebuild of a Cable System may suspend or modify the requirements of this Section for the period of the construction or rebuild. A Cable Franchise may specify minimum density requirements for Cable System extensions.
- C. A "standard drop" is an aerial drop not exceeding 150 feet. The City Manager may grant an extension of the time limits set forth in this Section where a Grantee shows that, because of exceptional circumstances, the standards could not be satisfied even with due diligence.

SECTION 7-904.2 SERVICE - MINIMUM CUSTOMER SERVICE STANDARDS

Each Grantee shall satisfy the customer service standards established by the FCC, and such additional or stricter customer service or consumer protection requirements as the City may adopt from time to time by resolution, or as may apply under applicable law. Provided that, the City will provide each Grantee an opportunity to comment on any proposed additional cable-specific customer service standards before they are adopted. Each Grantee shall maintain accurate records of its performance under the FCC standards and under other customer service and consumer protection standards established or enforced by the City.

SECTION 7-904.3 SERVICE - NO DISCRIMINATION

A Grantee shall not deny service, levy different rates, or otherwise discriminate against any Person or group on the basis of race, color, creed, national origin, sex, age, conditions of physical handicap, religion, ethnic background, or marital status or on the basis of the income of the residents of the local area in which such Person or group resides.

SECTION 7-904.4 SERVICE - PRIVACY

A Grantee shall at all times protect the privacy of all Subscribers pursuant to the provisions of 47 U.S.C. § 551. A Grantee shall not condition Subscriber service on the Subscriber's grant of permission to disclose information which, pursuant to applicable law, cannot be disclosed without the Subscriber's explicit consent.

SECTION 7-904.5 SERVICE - TECHNICAL STANDARDS

Any Cable System within the City shall meet or exceed the technical standards set forth in 47 C.F.R. § 76 Subpart K and any other applicable technical standards lawfully adopted by the City.

SECTION 7-905.1 OVERSIGHT - BOOKS AND RECORDS

- A. The City may inspect and copy at any time during normal business hours such books and records as the City reasonably deems necessary to enforce or monitor compliance with the terms of this Ordinance, or a Cable Franchise or state or federal law governing cable systems. The City may establish reasonable deadlines for the production of the books and records. Books and records requested pursuant to this Section shall be timely produced to the City unless the Grantee obtains a court order that the books and records need not be produced.

- B. Each Grantee shall be responsible for promptly collecting and producing requested books and records to the City at the City Hall. However, if books and records requested pursuant to this Ordinance or a Cable Franchise are too voluminous, or cannot be copied and moved for security reasons or because the requested records contain trade secrets, then a Grantee may produce the records at some other location, provided that: the Grantee shall make necessary arrangements for copying documents selected by the City after its review; and the Grantee shall pay all reasonable travel and additional expenses in connection with such inspection.

- C. The term "books and records" shall include information in whatever format stored, including, without limitation, information stored in electronic form. The term "books and records" includes books and records held by an Affiliate or any person holding any form of management contract for the Cable System.

- D. All proprietary information received by the City from a Grantee and clearly marked as such shall not be publicly disclosed to the extent allowed by the Montana Public Records Law, and other applicable law. The City shall notify a Grantee if any third party seeks access to any document that is marked confidential, and shall withhold disclosure of the document for the maximum period permitted by law to permit the Grantee to seek court protection against the release of the requested documents.

SECTION 7-905.2 OVERSIGHT - REPORTS

- A. The City may require a Grantee to prepare such reports and maintain such records as the City reasonably deems necessary to enforce or monitor compliance with the terms of this Ordinance, or a Cable Franchise or state or federal law governing cable systems. The City may establish reasonable deadlines for the preparation of the reports. Reports requested pursuant to this Section shall be timely produced to the City unless the Grantee obtains a court order that the reports need not be produced.

- B. In addition to any other reports it is required to produce, each Grantee shall file a financial statement certified as true by the chief financial or operating officer of

the Grantee, showing in detail the Gross Revenues of the Grantee by revenue category for the year.

- C. In addition to other reports and books and records it may be required to produce, upon request, the Grantee shall provide accurate maps for its Cable System identifying the location of system components in the Rights-of-Way.
- D. Nothing in this Ordinance shall be read to require a Grantee to violate state or federal law governing Subscriber privacy. However with respect to Subscriber privacy, each Grantee shall be responsible for redacting any information that applicable law prevents it from providing to the City.
- E. Any material misrepresentation made by the Grantee in any report, or in books and records provided to the City shall be treated as a violation of the Grantee's obligations under this Ordinance.

SECTION 7-905.4 OVERSIGHT - TESTING

Upon request of the City, for good cause as reasonably determined by the City, a Grantee shall perform tests necessary to demonstrate compliance with the requirements of the Cable Franchise and this Ordinance. The request shall also state with reasonable specificity the cause for the requested testing. Tests shall be conducted in accordance with the sound engineering practices, and the results promptly shared with the City. For good cause as reasonably determined by the City, the City may independently test the Cable System. Grantee shall cooperate with such independent tests. Tests shall be conducted in accordance with sound engineering practices, and shall be scheduled to minimize service or operational disruptions. Grantee may observe any tests conducted by the City.

SECTION 7-906.1 FRANCHISE FEE

- A. A Grantee shall pay the City a Franchise fee as specified in the Franchise agreement, or a fee in lieu of a Franchise fee, in the case of an open video system (collectively referred to in this ordinance as "Franchise fees." Should any person provide cable service without a Franchise issued by the City, it must pay the highest Franchise fee permitted by law.
- B. Should the City not receive a Franchise fee payment on or before the due date or should the Grantee fail to make full payment of the Franchise fee due and owing to the City, the Grantee shall be charged interest from the due date at an interest rate equal to one percent (1%) per month on the unpaid balance.
- C. The City's acceptance of any Franchise fee payment shall not be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of such Franchise fee payment be construed as a release of any claim the City may have for additional sums payable.

- D. The Franchise fee is not a payment in lieu of any tax, fee, or other assessment of general applicability (including any such tax, fee or assessment imposed on both utilities and cable operators or their services), consistent with 47 U.S.C. § 542(g)(2).
- E. In the event of a Transfer, or where a Grantee stops providing Cable Service within the City, the Grantee shall file a final statement of Gross Revenues within thirty (30) days of the Transfer or stoppage. The statement shall be certified as accurate by an authorized representative on behalf of the Grantee, cover the period from the beginning of the calendar year in which the Transfer or stoppage occurred, identify Gross Revenues by category, Franchise fees paid on Gross Revenues, and Franchise fees owed on Gross Revenues up through the date of Transfer or stoppage. The statement shall be accompanied by a check for the Franchise fee owed through the date of Transfer or stoppage.

SECTION 7-907.1 ENFORCEMENT/SECURITIES - INSURANCE AND INDEMNIFICATION

- A. Each Grantee shall maintain adequate insurance against claims for injuries to persons or damages to property which in any way relate to, arise from, or are connected with the holding of the Cable Franchise, or the construction, operation or repair of the Cable System by the Grantee, its agents, representatives, contractors, subcontractors and employees.
- B. Each Cable Franchise shall contain an indemnification provision that provides, to the extent permitted by applicable law that:
 - 1. The Grantee agrees to indemnify, save and hold harmless, and defend the City, its officers, boards and employees, from and against any liabilities, judgments, fines, penalties, litigation or administrative hearing costs including reasonable attorneys fees incurred by City arising from claims for property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System. Notwithstanding the foregoing, the Grantee shall not indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence solely attributable to the City.
 - 2. A Cable Franchise may be revoked by the City for failure to maintain the insurance required, or for failure to indemnify the City.

SECTION 7-907.2 ENFORCEMENT/SECURITIES - LETTER OF CREDIT AND BONDS

In addition to any securities required by a Franchise, before any Cable System construction, upgrade, or other work in public Rights-of-Way, a Grantee shall obtain any

required bonds in amounts and subject to such terms established by the City consistent with its normal practices.

SECTION 7-907.3 ENFORCEMENT/SECURITIES - REVOCATION AND TERMINATION

- A. A Cable Franchise issued pursuant to this Ordinance may be revoked or shortened for any material violation of this Ordinance or a Cable Franchise; or for defrauding, or attempting to defraud, the City or Subscribers; or for submission of false or misleading information; or if the Grantee abandons its Cable System without the City's approval; or willfully refuses to provide services to the City or any part of the City. The following procedures shall apply:
1. Before revoking or shortening the Cable Franchise, the City shall give the Grantee written notice, which notice shall describe the nature of the alleged violation or breach and, except as provided herein, shall provide the Grantee with a reasonable opportunity to cure.
 2. If within thirty (30) calendar days following receipt of written notice from the City to the Grantee the Grantee has not corrected the default, or shown to the City's satisfaction that there was no violation or breach, the City may give written notice to the Grantee of its intent to consider revocation or shortening of the Cable Franchise.
 3. Not sooner than thirty (30) calendar days after notifying the Grantee of its intent to consider revoking the Cable Franchise, the City Council shall hold a public hearing at which the Grantee and the public shall be given an opportunity to be heard.
 4. Following the public hearing the City Council shall determine whether a violation or breach occurred, and whether to revoke or shorten the Cable Franchise based on the evidence presented at the hearing, and any other evidence of record.
 5. If the City Council determines to revoke or shorten a Cable Franchise, it shall issue a written decision setting forth the reasons for its decision.
 6. A copy of such decision shall be transmitted to the Grantee. Grantee may appeal such decision to a court of competent jurisdiction.
- B. Notwithstanding the foregoing, an opportunity to cure shall not be required where the City finds that the defect in performance is due to willful misconduct; or is an adjudicated violation of criminal law; or is part of a pattern of violations where the Grantee has already had notice and reasonable opportunity to cure. With respect to such violations, the City, in lieu of the opportunity to cure requirement of this Section, may provide a written notice of the breach and of its intent to

revoke, and, not sooner than thirty (30) days thereafter, conduct the public hearing proceeding required by this Section.

SECTION 7-907.4 ENFORCEMENT/SECURITIES - BANKRUPTCY

A. Notwithstanding any other provision of this Ordinance:

1. A Cable Franchise shall automatically terminate by force of law one-hundred-twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Grantee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding.
2. However, the Cable Franchise may be reinstated if, within the one-hundred-twenty (120) day period:
 - a. The assignment, receivership or trusteeship is vacated; or
 - b. The assignee, receiver, or trustee has fully complied with the terms and conditions of this Ordinance and the Cable Franchise and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of the Cable Franchise and this Ordinance.

B. Notwithstanding any other provision of this Ordinance:

1. In the event of foreclosure or other judicial sale of any of the Grantee's Cable System facilities, equipment, or property, the City may revoke the Cable Franchise after a public hearing before the City Council, by serving notice upon the Grantee and the successful bidder at the sale.
2. The Cable Franchise shall terminate thirty (30) calendar days after serving such notice, unless:
 - a. The City approves the Transfer of the Cable Franchise to the successful bidder; and
 - b. The successful bidder agrees with the City to assume and be bound by the terms and conditions of the Cable Franchise and applicable law.

SECTION 7-907.5 ENFORCEMENT/SECURITIES - EFFECT OF REVOCATION OR ABANDONMENT

- A. In the event that the City revokes a Cable Franchise Franchised pursuant to the provisions of this Ordinance; or upon expiration of the Cable Franchise; or if the Cable System is abandoned:
1. The City may require the former Grantee to remove the Cable System (or any portion thereof) from the public Rights-of-Way at the former Grantee's sole expense. If the former Grantee fails to do so within a reasonable period of time, the City may have the removal done at the former Grantee's and/or surety's sole expense, except the Grantee may abandon any portion of its Cable System in place with the City's approval pursuant to Section 7-903.0012; and
 2. The City, by City Council resolution, may acquire ownership or effect a Transfer of the Cable System (or any portion thereof):
 - a. At fair market value, where the Cable Franchise expires;
 - b. At an equitable price where the Cable Franchise terminates or is revoked for cause;
 - c. The term "equitable price" shall be interpreted consistent with 47 U.S.C. § 547. Fair market value shall be determined in accordance with 47 U.S.C. § 547(a)(1).
- B. Notwithstanding Section 7-907.6(A)(2), if a Cable System or any part thereof is abandoned by a Grantee, the City may require the Grantee to transfer title to the abandoned portions to it at no charge, free and clear of encumbrances, and the same shall become the City's property and the City may keep, sell, assign, or transfer all or part of the assets of the Cable System, or otherwise dispose of those assets as it sees fit.

SECTION 7-907.6 ENFORCEMENT/SECURITIES - REMEDIES CUMULATIVE

All remedies in this Ordinance and the Cable Franchise shall be cumulative unless expressly stated otherwise."

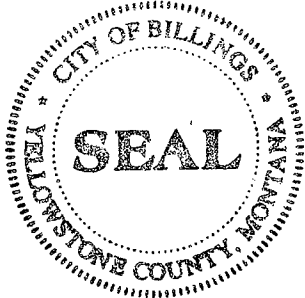
Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 27th day of May, 2008.

PASSED, ADOPTED and APPROVED on second reading this 9th day of June, 2008.



THE CITY OF BILLINGS:

By *Ron Tussing*
Ron Tussing, Mayor

ATTEST:

By *Cari Martin*
Cari Martin, City Clerk

