

February 16, 1993

Introduced by: Ron Sims

Proposed No.: 93 - 55

10731

ORDINANCE NO.

AN ORDINANCE relating to competition among cable television systems and service providers, amending and adding a new section to Ordinance 10159 and K.C.C. 6.27A.

PREAMBLE:

- A. Cable service is important to the public. Many county residents cannot receive clear over-the-air television broadcasts and thus are deprived of entertainment, news and other television programming unless they subscribe to cable. In addition, cable systems offer programming which is not available over-the-air.
- B. Cable subscribers are best served by free, open and vigorous competition in the cable services market. To the extent that individuals wrongfully restrict services and equipment to local cable systems, the restriction injures local subscribers as well as cable systems.
- C. Federal and state antitrust laws prohibit anticompetitive behavior and allow for private enforcement of antitrust laws. This enforcement may be time-consuming and expensive and thereby deprive an injured cable system, programmer or local subscribers of the needed services or equipment while an action is pending in court.
- D. Federal and state antitrust, communications and copyright laws are consistent with the purpose of the county in adopting this ordinance. This ordinance is intended to be and should be interpreted consistent with such laws.

A hearing was held by the King County council on the 8th + 16th day of February, 1993.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 10159, Section 3 and K.C.C.

6.27A.010 are hereby amended as follows:

Definitions. For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined herein shall be given the

1 meaning set forth in the Cable Act. Words not defined in this
2 chapter or the Cable Act shall be given their common and
3 ordinary meaning.

4 A. Abandonment means failure by the franchisee to operate
5 the entire cable system for ten (10) consecutive days without
6 just cause. Just cause shall include circumstances beyond the
7 franchisee's control, such as natural disasters and material
8 breakdown of the system that is not the result of the
9 franchisee's fault or negligence.

10 B. Access channel means any channel or bandwidth on a
11 cable system set aside for public, educational and/or
12 governmental use.

13 C. Basic cable service means any service tiers which
14 include the retransmission of local television broadcast
15 signals.

16 D. Bulk rate means a rate charged to an owner of a
17 structure or parcel of land containing multiple dwelling units
18 in return for the provision of cable service to those units.

19 E. Cable Act means the Cable Communications Policy Act of
20 1984, codified at 47 U.S.C. §§521 et seq., and as hereafter may
21 be amended.

22 F. Cable manager means the manager of the cable office.

23 G. Cable office means the King County office of cable
24 communications, an office of the King County department of
25 executive administration.

26 H. Cable rules means rules promulgated by the King County
27 department of executive administration for the purpose of
28 administering the terms and requirements of this chapter.

29 I. Cable service means the transmission of video or other
30 service over a cable system to subscribers together with any
31 subscriber interaction provided in connection with such
32 service.

33 J. Cable system means a facility, consisting of a set of
34 closed transmission paths and associated signal generation,
35 reception and control equipment that is designed to provide

1 cable service that includes video programming and that is
2 provided to subscribers within King County. A cable system
3 does not include:

4 1. a facility that serves only to retransmit the
5 television signals of one or more television broadcast
6 stations;

7 2. a facility that serves only subscribers in one or
8 more multiple unit dwellings under common ownership, control,
9 or management, unless such facility uses any public right-of-
10 way;

11 3. a facility of a common carrier that is subject, in
12 whole or in part, to the provisions of Title II of the
13 Communications Act of 1934, codified at 47 U.S.C. §201 et seq.,
14 except that such facility will be considered a cable system to
15 the extent it is used in the transmission of video programming
16 directly to subscribers; or

17 4. any facilities of any electric utility used solely
18 for operating its electric utility systems.

19 K. Channel means a portion of the electromagnetic
20 frequency spectrum which is used in a cable system and which is
21 capable of delivering a television channel (as television
22 channel is defined by the FCC by regulation).

23 L. Commercial rate means a rate charged to a business in
24 return for the provision of cable service to that business.

25 M. Council means the King County council.

26 N. County means the King County government or its
27 officers, employees or authorized agents while acting within
28 the scope of their official duties.

29 O. Disabled subscriber means a subscriber with a physical
30 or mental impairment that substantially limits one or more of
31 the major life activities of such individual.

32 P. Senior Citizen subscriber means a subscriber sixty-five
33 years of age or over.

34 Q. Equitable price means the price that a willing buyer
35 would pay to a willing seller for a going concern, less any

1 value attributed to the franchise itself, less the amount of
2 harm to the community, and less any expenses incurred by the
3 county as result of the actions giving rise to the revocation.

4 R. Executive means the King County executive, as
5 established by Article 3 of the King County Charter, or his
6 designee.

7 S. Fair market price means the price that a willing buyer
8 would pay to a willing seller for a going concern, less any
9 value attributed to the franchise itself.

10 T. FCC means the Federal Communications Commission and any
11 legally appointed, designated or elected agent or successor.

12 U. Franchise means the right granted by the county to a
13 franchisee to construct, reconstruct, repair, maintain and
14 operate a cable system over, on, along, or under any public
15 rights-of-way within all or specified areas within
16 unincorporated areas of the county. The term does not include
17 any license or permit required by other laws, ordinances or
18 rules of the county for the privilege of transacting and
19 carrying on a business within the county, or for construction,
20 reconstruction, repair or maintenance on, over or under or use
21 of any public rights-of-way.

22 V. Franchise agreement means a document entered into
23 between the county and a franchisee that sets forth the terms
24 and conditions under which the franchise will be exercised.

25 W. Franchisee means any person granted a franchise
26 pursuant to this chapter who has entered into a franchise
27 agreement with King County.

28 X. Gross revenues means the annual gross revenue of the
29 franchisee from all sources in the operation of the cable
30 communications system, excluding any bad debt, sales tax,
31 excise tax, or other taxes collected for direct pass-through to
32 local, state or federal government.

33 Y. Installation means the connection and/or activation of
34 the system from feeder cable to subscriber terminals.

1 Z. Institutional network means a voice, data and/or video
2 communications system, whether physically integrated with a
3 cable system or not, that is constructed, operated or
4 maintained by a franchisee, whose transmissions are principally
5 available to persons other than cable televisions subscribers.

6 AA. Interconnect means the sharing of video, audio
7 and/or data transmissions between two or more cable systems,
8 institutional networks and/or users.

9 BB. Minority persons means African-Americans, Hispanics,
10 Mexican-Americans, Asian-Americans, Pacific Islanders, American
11 Indians and Alaska Natives.

12 CC. Person means any individual, corporation,
13 partnership, limited partnership, association, joint venture,
14 organization, or any other legal entity of any kind, and any
15 lawful trustee, successor, assignee, transferee or personal
16 representative thereof.

17 DD. Public rights-of-way means the surface of and the
18 space along, above and below any street, road, highway,
19 freeway, lane, sidewalk, alley, court, boulevard, parkway,
20 drive, utility easement, and road right-of-way now or hereafter
21 held or administered by the county.

22 EE. State means the State of Washington

23 FF. Subscriber means any person who legally receives
24 cable service delivered over the cable system.

25 GG. Transfer means any transaction in which:

26 1. an ownership or other interest in a franchisee is
27 transferred from one person to another person so that control
28 of the franchisee is transferred, or

29 2. the rights held by the franchisee under a franchise
30 agreement are transferred or assigned, in whole or in part, to
31 another person.

32 Provided, the transfer of ownership or other interest in a
33 franchisee between members of the same immediate family shall
34 not be a transfer for the purpose of this chapter so long as
35 the county is notified of the fact of the transfer of ownership

1 or other interest no later than fourteen (14) days prior to the
2 transfer of ownership or other interest, except where the
3 transfer of ownership or other interest occurs due to death or
4 disability, in which case the county shall be notified within
5 fourteen (14) days after the transfer of ownership or other
6 interest. The franchisee shall insure that its insurance
7 coverage and all other commitments continue in force without
8 interruption and provide evidence of the same to the county.

9 For the purposes of this provision, a transfer shall be
10 deemed to be between members of the same family if the
11 transferee is the spouse, parent, sibling, adopted or natural
12 child or other lineal descendant of the transferor, or if the
13 transferee is a trust established for the benefit of such a
14 person or for the benefit of the transferor. If the ownership
15 or other interest in the franchisee is held by the trustee of a
16 trust, then a transfer shall be deemed to be between members of
17 the same family if the transferee is the spouse, parent,
18 sibling, adopted or natural child or other lineal descendant of
19 any other beneficiary of the trust, or any trust created for
20 the benefit of such a person.

21 Provided further that, the transfer of ownership or other
22 interest in a franchisee in connection with an internal
23 reorganization or internal merger to a direct or indirect
24 parent, subsidiary or affiliated entity under common control
25 with the franchisee shall not be a transfer for the purpose of
26 this chapter so long as:

27 1. the county is notified of the proposed transfer no
28 later than thirty (30) days prior to the transfer of ownership
29 or other interest;

30 2. the transferee shall insure that insurance coverage
31 and all other commitments under the franchise agreement
32 continue in force and without interruption and provide evidence
33 to the same of the county no later than thirty (30) days prior
34 to the proposed transfer; and

1 3. there is no increased risk of liability to the
2 county or non-performance of the terms of the franchise
3 agreement.

4 HH. Two-way capability means the capacity for two-way
5 transmission, over the cable system.

6 II. "Video programming vendor" means a person engaged in
7 the production, creation, or wholesale distribution of video
8 programming for sale.

9 NEW SECTION. SECTION 2. No cable operator or holder of a
10 franchise to provide cable services or other multichannel video
11 programming distributor providing or intending to provide
12 services in King County shall:

13 A. Engage in unfair methods of competition or unfair or
14 deceptive acts or practices.

15 B. Monopolize or attempt to monopolize or combine or
16 conspire with any other person or persons to monopolize any
17 part of the production, control or sale of cable services,
18 video programming or equipment.

19 C. Lease or make a sale or contract for the sale of goods
20 or services used in the provision of multichannel video
21 programming in King County when the purpose or effect of such
22 lease, sale, or contract may be to:

23 1. substantially lessen competition, or

24 2. tend to create a monopoly; or

25 3. to hinder significantly or prevent any multichannel
26 video programming distributor from providing video programming
27 to subscribers or consumers when the purpose or effect is to
28 substantially lessen competition or to tend to create a
29 monopoly.

30 D. Require a financial interest in a program service as a
31 condition of carriage on one or more of its systems when the
32 purpose or effect is to substantially lessen competition or to
33 tend to create a monopoly.

34 E. Coerce a video programming vendor to provide, or
35 retaliate against such a vendor for failing to provide,

1 exclusive rights against other multichannel video programming
 2 distributors as a condition of carriage on a system when the
 3 purpose or effect is to substantially lessen competition or to
 4 tend to create a monopoly.

5 F. Engage in conduct the effect of which is to
 6 unreasonably restrain the ability of a video programming vendor
 7 to compete fairly by discriminating in video programming
 8 distribution on the basis of affiliation or nonaffiliation of
 9 vendors in the selection, terms, or conditions for carriage of
 10 video programming provided by such vendors when the purpose or
 11 effect is to substantially lessen competition or to tend to
 12 create a monopoly.

13 SECTION 3. Severability. If any provision of this
 14 ordinance or its application to any person or circumstance is
 15 held invalid, the remainder of the ordinance or the application
 16 of the provision to other persons or circumstances is not
 17 affected.

18 INTRODUCED AND READ for the first time this 19th day
 19 of January, 1993
 20 PASSED this 16th day of February, 1993.

21 KING COUNTY COUNCIL
 22 KING COUNTY, WASHINGTON

23 Cubrey Meyer
 24 Chair

25 ATTEST:

26 Guadalupe P. P. P.
 27 Clerk of the Council

28 APPROVED this 26th day of February, 1993.

29 J. J. J.
 30 King County Executive