

November 15, 1989

INTRODUCED BY Bruce Laing Gary Grant

PROPOSED NO. 90-3

MOTION NO. **7825**

A MOTION authorizing the King County executive to amend the cable television franchise with Summit Communications, Inc. to allow said company to extend its cable service boundaries in King County.

WHEREAS, Summit Communications, Inc. presently operates a franchise in King County, and

WHEREAS, the Office of Cable Communications and the Franchise Review Committee have reviewed said request and have recommended approval of said franchise amendment, and

WHEREAS, upon execution of an amended cable franchise agreement with the county, Summit Communications, Inc. shall agree to comply with all the terms, conditions and obligations of said franchise amendment and King County Code 6.27A and the King County Cable Communications Regulations;

NOW, THEREFORE, BE IT MOVED by the Council of King County:

A) We hereby authorize the executive to amend the franchise with Summit Communications, Inc. for the purpose of operating a cable system in King County.

B) If within 30 days after passage of this motion, Summit Communications, Inc. shall have failed to sign said franchise amendment, approval of said franchise amendment application shall be denied and said approval shall be null and void.

PASSED this 12th day of February, 1990.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Lois North
CHAIR

ATTEST:

J. Crawford #
Clerk of the Council

Summit Communications, Inc. currently operates a cable television system in King County pursuant to King County cable television franchise # 5602. Summit Communications, Inc. has requested to amend said franchise to include the following areas:

1. Sections 1 through 36, Township 26 North, Range 6 East.
2. Sections 1 through 36, Township 27 North, Range 6 East.

Upon approval of said amended franchise, the following terms and conditions, numbered 1 through 35, will replace those terms and conditions, numbered 1 through 31, listed in the present franchise # 5602, and the franchise boundaries shall be extended to include the areas listed above.

Terms and Conditions:

1. The franchise shall at all times use existing poles when available and practicable, unless waived in writing by the King County Engineer, through a joint-use pole agreement with any other public utility which has previously installed and maintains poles along and across the public roads and rights-of-way within the franchise boundaries described in this franchise document. The grantee shall likewise extend the right to use its poles to other and similar franchise holders having franchises and permits to maintain their lines and facilities upon the same road or right-of-way. Where a line of poles is shared by two or more franchise holders, the owner of the line of poles may charge the additional users a use charge that is proportionate to the number of franchise holders using the line of poles and proportionate to the fair value of the line of poles. Whenever the line of poles or parts thereof, are required to be removed, repaired, raised, lowered or relocated, by, or under the terms of this franchise, such costs or charges are to be apportioned to the franchise holders using such line of poles in such a manner as is reflected in the use charge.
2. Grantee shall have the right to install its facilities in an underground conduit, notwithstanding Section 1 herein, and may be required to install or remove existing facilities and reinstall its facilities in an underground conduit if so deemed by the King County Engineer, provided that all other utility service providers are or have also been required to install their facilities underground.
3. The grantee shall have the right and authority to enter upon the County roads and rights-of-way described herein and situated without any incorporated cities and towns, for the purpose of constructing, extending, repairing or replacing, servicing and otherwise operating and maintaining its transmission and distribution lines or cables, and appurtenant facilities, and connecting the same to consumer service lines, upon the condition that prior to such work within the County road or right-of-way, the grantee shall first obtain a work permit from the King County Engineer.

All permits, whether the work to be done thereunder be by the grantee, its contractor, or by third parties connecting to the lines or cables or appurtenant facilities of the grantee, shall be applied for and issued in the name of the grantee who shall be held responsible for all work done thereunder.

Applications for work permits shall be presented to the King County Engineer, who may require copies of plans, blueprints, cross sections or such further detail of the work to be done. All work done hereunder shall include necessary paving, patching, grading and other reasonably necessary repair or restoration, to the preexisting County road or right-of-way, and shall be to the satisfaction of the King County Engineer and Title 14.44 of the King County Code.

4. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner and may be subject to the supervision, inspection and approval of the King County Engineer, or such agent or employee as he may appoint, in accordance with the laws of the State of Washington applicable thereto. All trees and brush cut or pruned shall be promptly removed from the road or right-of-way.
5. All wires used by the grantee shall be carefully insulated, connected and fastened, so as not to be or come within direct contact with any object through which a "ground" could be formed. All facilities including wires shall be so positioned and stretched as not to interfere with the free and undisturbed use of the road or right-of-way. In such instance as the movement of special equipment upon the road or right-of-way shall necessitate the raising or temporary removal of the lines of the grantee, they shall be raised or temporarily removed at the grantee's expense upon written notice by the King County Engineer of at least twenty-four (24) hours in advance of the time for such raising or removal.

Whenever the grantee shall permanently discontinue the use of any poles or lines erected by it which are not lawfully in use by any other franchise holder, such unused poles or lines shall be immediately removed by the grantee.

Whenever the poles, lines or cables of the grantee shall be contiguous to any airport, landing field or airplane approach pattern, whether private or public, as such airport, landing field or airplane approach pattern now exists or as may come into existence, in whole or in part, the grantee shall immediately modify its lines, cables and other appurtenant facilities to conform to the regulations of any governmental agency having jurisdiction and authority over such airport or landing field, on written notice from the King County Engineer. Where applicable, the grantee may elect either to lower its poles, lines or cables, or to install such lines or cables in an underground conduit.

6. None of the rights granted to the grantee under this document shall be construed to preclude King County from performing work upon its roads, rights-of-way or appurtenant drainage facilities, including but not limited to, construction, altering, renewing, paving, widening, grading, blasting or excavating.

In such instance as work upon a road, right-of-way or appurtenant drainage facility by King County shall reasonably necessitate the removal and relocation of the lines, cables or appurtenant facilities of the grantee, the same shall be promptly removed or relocated at grantee's expense upon written notice by the King County Engineer to the grantee. In the event that the grantee shall fail to remove or relocate its line, cable, or appurtenant facility as requested by written notice, King County may do so, and the grantee, upon receipt of a bill therefore shall be liable for all reasonably necessary costs, including labor and equipment, incurred in the removal, and relocation of the same. Any damage suffered to the line, cable or appurtenant facility by the removal or relocation by King County, after failure of grantee to promptly remove and relocate upon written notice, shall be without remedy or compensation from King County.

7. The grantee, its successors and assigns, shall indemnify King County and save it harmless from any and all cost, claims, loss, damage or liability by reason of injury or damage to any persons or property caused by or arising out of grantee's activities pursuant to this franchise. In the event any cause, demand, suit or action is brought against King County, its officers, agents or employees, based upon or alleged to arise out of grantee's activities pursuant to this franchise, King County shall give written notice of such suit or action to grantee and the grantee shall defend the same at its own cost and expense. If final judgement shall be rendered or given against King County, its officers, agents or employees and grantee, the same shall be paid and satisfied in full by the grantee, its successors and assigns.
8. The grantee shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or damage to property which may arise from, or in connection with, activities of the grantee, his agents, representatives, employees or subcontractors. The cost of such insurance shall be paid by the grantee.
 - A. Insurance coverage shall be at least as broad as:
 1. Insurance Services Office form number G10002 (Ed. 1-73) covering Comprehensive General Liability and Insurance Services Office form number GL0404 (Ed. 5-81) covering broad form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage "occurrence" form CC0001 (Ed. 11-85) or equivalent form.
 2. Insurance Services from number CA0001 (Ed. 1-80) covering Automobile Liability, code 1 "any auto" and endorsement CA0025 (Ed. 1-86) or equivalent form.
 3. Worker's Compensation coverage as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal law.
 - B. Grantee shall maintain insurance limits no less than.
 1. Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies where aggregates are applicable, a \$2,000,000 aggregate limit.

2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

C. Any deductibles or self-insured retentions must be declared to and approved by King County. The deductible and/or self-insured retention of the policies shall not limit or apply to the grantee's liability to the County and shall be the sole responsibility of the grantee.

D. The policy is to contain, or be endorsed to contain, the following provisions:

1. King County, its officers, officials, employees and agents are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the grantee; products and completed operations of the grantee; premises owned, leased or used by the grantee; automobiles owned, leased, hired or borrowed by the grantee. The coverage shall contain no special limitations on the scope of protection afforded to King County, its officers, officials, employees or agents.

2. The grantee's insurance coverage shall be primary insurance as respects to King County, its officers, officials, employees and agents. Any insurance or self-insurance maintained by King County, its officers, officials, employees or agents shall be excess of the grantee's insurance and shall not contribute with it.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to King County, its officers, officials, employees or agents.

4. The grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

5. Coverage shall not be suspended, voided, canceled, or reduced in coverage or limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to King County.

E. Insurance is to be placed with insurers with a Best's rating of no less than A:VII, or if not rated by Best's with minimum surpluses the equivalent of Best's VII rating.

F. The grantee shall furnish King County with certificates of insurance and with endorsements effecting coverage required by this contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be received and approved by King County and are to be received and approved by King County before work commences. King County reserves the right to require complete, certified copies of all required insurance policies at any time.

9. If any pole, line, cable or appurtenant facility of the grantee or its construction, operation or maintenance shall increase the hazard of travel along the road, upon demand of the King County Engineer, the grantee shall install, maintain and operate sufficient safety lights and warning devices as specified and approved for use on public roads of King County.

10. The grantee shall be subject to all authority now or hereafter possessed by King County or any other governmental body having competent jurisdiction to regulate just, reasonable and compensatory service rates.

The grantee shall offer service to all persons or businesses desiring to subscribe to the services of the grantee for a minimum period of one year, where such person resides within the area of this franchise and the point of reception is within three hundred (300) feet of the nearest existing facility of the grantee, or to subscribers numbering two or more at the ratio of one subscriber per three hundred (300) feet of distance from the existing facilities. The cost of extending facilities along the road or right-of-way shall be borne by the grantee and the cost of extending lines from the road or right-of-way to the subscriber may be contracted for between the grantee and subscriber, provided the charges for extension and connection are reasonable. The foregoing shall not be construed to preclude the grantee from extending services to subscribers where the point of reception is beyond the distance computed at the ratio of one subscriber per three hundred (300) feet, or multiple thereof. In no event shall grantee extend services where the point of reception is outside of the franchise area, unless approved pursuant to the King County Cable Communications Ordinance and Regulations. In the event of disputes as to what is a reasonable charge for line extensions, King County's Manager of the Office of Cable Communications or designee shall mediate such disputes.

11. This franchise and all lines, cables and appurtenant facilities constructed and maintained hereby are subject to the exercise of eminent domain. The value to be attributed to all the rights granted under this franchise in the instance of an exercise eminent domain shall in no instance exceed the actual cost paid by King County in obtaining this franchise.
12. Whenever the decision, requirement or approval is by this document to be a determination of the King County Engineer, that determination shall be conclusive upon the parties hereto, except in such instance where the determination is arbitrary and capricious or made in bad faith.
13. All rights arising to the grantee herein are non-exclusive, and King County reserves the right to grant other and similar franchises to other and similar persons, private corporations and municipal corporations upon the County roads and rights-of-way subject to the franchise, to the extent that such other and similar franchises are in the public interest.

In the event the County enters into a franchise or other similar agreement with another person or entity for the same franchise area described in this amendment and such agreement contains terms more favorable to that person or entity than similar provision of this franchise then this franchise shall be deemed amended as of thirty (30) days of the effective date of such other franchise or agreement, so as to give grantee the benefit of any such favorable terms.

14. Subject to federal, state and local law, if upon expiration of this franchise, the grantee shall not have renewed or caused to have reissued a franchise for its lines, cables and appurtenant facilities, upon the County roads and rights-of-way included herein, King County shall have the right to remove or relocate the same. Costs of said removal or relocation by King County shall be paid by the grantee. If the grantee shall have failed to apply for a renewal or re-issuance of a franchise within the two years prior to the expiration hereof, all right, title and interest to its lines, cables and appurtenant facilities shall be forfeited unto King County at the election of the King County Council.

In no event, upon expiration of this franchise, shall the grantee have any right to the operation, maintenance or revenue from the installation, operation or maintenance of the lines, cables or appurtenant facilities or rights created or existing hereby.

15. The King County Council (the "Council"), upon giving thirty (30) days written notice to the grantee of its intention, may amend, alter, change or supplement the rights and responsibilities created hereby.

If the grantee, its successors or assigns, violate or fail to comply with any of the terms or conditions of this franchise, for a period of thirty (30) days after receiving written notice from the Council of such violation or failure to comply with this franchise, then this franchise may be revoked by the Council, after the Council has conducted a public hearing at which such revocation is found to be in the public interest. The rights established in this section are in addition to those rights of enforcement granted pursuant to the King County Cable Communications Ordinance and Regulations.

16. The grantee shall not have the right to assign this franchise without the consent of the Council. Said consent shall not be unreasonably withheld. No such assignment shall be of any force or effect unless the assignee accepts all of the rights, conditions, terms, provisions and responsibilities contained herein, and posts all surety bonds deemed necessary by the Office of Cable Communications or the Council.

17. The grantee, its successors and assigns, shall be deemed to have forfeited and abandoned all rights granted hereby, unless the grantee shall execute its acceptance of the rights, privileges, obligations and responsibilities provided herein within thirty (30) days after the granting of this franchise. Additionally, this franchise shall be declared null and void and of no force or effect, unless the grantee files its written acceptance of the rights and privileges hereby conferred and the terms, conditions and restrictions hereby imposed with the Council within thirty (30) days after the effective date of this motion; and, at the same time, files with the Council a surety bond in the sum of twenty-five thousand dollars (\$ 25,000.00) to be executed by a surety company authorized and qualified to do business in the State of Washington as a surety, upon the condition that the grantee shall strictly comply with each and every condition and term of this franchise document and the ordinance authorizing it. When in the judgment of the Council, after consultation with the grantee, any bond or bonds provided by the grantee herein shall be deemed insufficient, the grantee shall upon demand furnish a new or additional bond in such amount as may be specified by the Council.

18. As rental and compensation for the use of County roads and rights-of-way, and to assist in reimbursing King County for the occupancy of such roads and rights-of-way, the grantee shall pay King County on the 10th day of February, the 10th day of May, the 10th day of August and the 10th day of November each year an amount equal in the aggregate to five percent (5%) of the grantee's annual gross receipts. "Gross receipts" are defined in the King County Cable Communications Ordinance and Regulations. The definition may, after consultation with the grantee, be modified by future amendments to the ordinances and regulations and the definition as amended will be applicable to the calculations and payments provided for herein. As currently defined, it means the annual gross receipts or revenue of the grantee from all sources in the operation of the cable communication system, excluding any bad debt, sales tax, or other taxes collected for direct pass-through to local, state or federal government. Such quarterly payments shall be based on the gross receipts from such operation for the three-month period ending respectively on December 31st, March 31st, June 30th and September 30th of each year. Such quarterly payments shall become delinquent if not paid on or before thirty (30) days after the due date and shall thereafter bear interest at the rate of twelve (12%) percent per annum of the amount due until paid.

Grantee shall make available at all times its records and books of account relative to its operations in King County for inspection by an authorized representative of the County. Consistent with applicable law, such information gained by inspection of said records and books of account shall be confidential between grantee and the County, except that the same be used to enforce the provisions of this franchise.

19. The grantee shall, within six (6) months from the date of executing its acceptance of this franchise as hereinbefore provided, commence and provide a reasonable program for the completion of the new construction and location of its new transmission lines or cables upon the County roads and rights-of-way situated within the area of this franchise. The grantee shall complete the new construction within eighteen (18) months of the date of the granting of this franchise; however, with the approval of the Manager of the Office of Cable Communications, the grantee shall be allowed an additional six (6) months beyond the aforementioned deadline where circumstances have arisen which prevent timely completion of new construction. Failure by the grantee to have constructed said lines and cables within said time shall operate, at the option of the Council, as an abandonment of the rights under this franchise to those areas wherein such lines and cables are not located.
20. This franchise shall be construed to effectuate its purpose and uses consistent with economical and efficient service rendered in the public interest. Should any provision of this franchise be held invalid, the remaining provisions of the franchise shall subsist and remain valid.
21. Grantee must conform to Washington State and King County Environmental Policy Acts (Ordinance 1700) and amendments thereto.

22. In all hiring or employment made possible or resulting from this agreement, there shall be no discrimination against any employee or applicant for employment because of sex, age, race, creed, national origin, marital status, sexual orientation, color or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. This requirement shall apply to but shall not be limited to the following: employment, advertising, lay-off or termination rate of pay, other forms of compensation, and selection for training including apprenticeship.

No person shall be denied, or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this agreement on the grounds of sex, race, color, national origin, age except minimum age and retirement provisions, marital status, sexual orientation or presence of any sensory, mental or physical handicap.

Any violation of this provision shall be considered a violation of a provision of this agreement and shall be grounds for cancellation, termination or suspension in whole or in part, of the agreement by the County and may result in ineligibility for further County agreements.

23. The grantee, its successors or assigns, shall comply with any reasonable request for access channel(s) made by King County pursuant to FCC regulations or King County ordinances.
24. The grantee, its successors or assigns, is hereby made aware of King County's concern for the provision of high quality and effective customer service. King County expects the grantee to respond in a prompt and effective manner to complaints and inquiries and, where necessary, to coordinate its efforts with those of the appropriate county office. Grantee acknowledges that this is a matter of high priority.
25. The grantee agrees that all advertising materials, contracts and similar documents which are to be used in business transactions with cable television customers shall be written in a reasonably clear and easily understood manner.
26. The grantee shall make best efforts to make opportunities for employment or contracting services available to women and minority persons. The grantee recognizes that King County has a policy promoting affirmative action and equal opportunity, and that the County has resources available to assist the grantee in these efforts.
27. The grantee shall use informational devices to inform affected persons of impending construction work. Said devices shall be placed in a prominent area or position on or upon the home or building. This placement shall take place at least three (3) days prior to the commencement of construction activities unless this requirement is specifically waived by King County's Manager of the Office of Cable Communications or designee.

28. Grantee shall construct all new sections of the franchise area to accommodate up to six (6) channels for public, educational and government (PEG) access use. Grantee shall make available, immediately upon execution of this Agreement and upon the request of the Manager of the Office of Cable Communications for King County, up to three (3) channels for public, educational or government (PEG) use. Of the six (6) channels designated, three (3) channels may carry simulcasts of PEG access programming originating from municipal jurisdictions within King County. One (1) channel shall be reserved solely for the use by the Office of Cable Communications for King County. The remaining two (2) channels shall be held in reserve for future access use, as designated by King County.

Grantee also agrees to pay its proportionate share, based on grantee's subscriber level, for King County PEG capital costs/facilities at the direction of the Manager of the Office of Cable Communications.

Grantee shall further keep available facilities for the playing of video tapes or like materials submitted by government and/or members of the public on said channels. Upon request of the Manager of the Office of Cable Communications, the grantee shall develop written policies and procedures on public access in conjunction with King County's Manager of the Office of Cable Communications.

29. The grantee shall offer a Senior Citizen's discount to persons sixty years of age or older, who are economically disadvantaged where such is allowed by law and specifically set and imposed by the King County Council. Grantee shall make available to eligible Senior citizens the most advantageous Senior discount that is currently offered in any incorporated or unincorporated jurisdiction within the geographic boundaries of King County. The Senior citizen discount program shall be administered in conjunction with the King County Division on Aging.
30. All materials submitted by grantee as part of its request for a franchise are hereby made part of this franchise agreement and are incorporated herein by reference. See Attachment A.
31. This agreement incorporates and the grantee agrees to be bound by the provisions of the King County Cable Communications Ordinance and Regulations as now adopted or further amended, as allowed by state and federal law. Should any provision of this franchise conflict with the King County Cable Communications Ordinance or Regulations, said Ordinance and Regulations shall control, where allowed by state and federal law.
32. Grantee shall construct all new sections of the franchise area for the interconnection of the public usage channels of the cable system with any and all other cable systems in the County or in adjacent areas. Interconnection of systems shall permit interactive (two-way) transmission and reception of program material and may be done by direct cable connection, microwave link, satellite, or other appropriate method. At the direction of the Manager of the Office of Cable Communications, the grantee shall immediately initiate negotiations with the other affected system(s), pursuant to Section 9.11 of the King County Cable Television Franchise Regulations. All affected King County cable franchise grantees shall share the cost of interconnection.

33. Grantee represents and warrants that in entering into this Agreement it thoroughly considered the effect of higher interest rates on its business plan; the risks of lower than projected subscriber penetration rates and increased personnel costs; the effect of competition from one or more other cable systems; the risks of alternate technologies; the risks that easements or other means of access to property in the franchise area may not be available for cable television purposes; the risk that obligations to another jurisdiction through the system will affect or impair the grantee's ability to completely satisfy its obligations under this Agreement; and all other foreseeable economic or business risks that might affect the design, construction or operation of the system. Further, the grantee confirms its belief that the system is commercially practicable at the time of its execution of this Agreement and will continue to be commercially practicable throughout the term of this Agreement and any period after expiration of this Agreement during which the grantee continues to operate the system. Notwithstanding anything to the contrary herein, grantee shall not waive any rights under federal, state, or local laws.
34. Should the grantee breach any provisions of this franchise or of the King County Ordinance or Regulations, the Manager of the Office of Cable Communications may assess a monetary penalty of one hundred and fifty dollars (\$150) per day per violation, provided that, prior to each such penalty assessment, the grantee shall be afforded an opportunity to cure any such breach within five (5) days after notice from the Manager of the Office of Cable Communications of the breach. If the grantee is immediately and diligently pursuing to remedy the problem the time period for cure may be extended at the discretion of the Manager of the Office of Cable Communications. The penalty shall be waived if it is determined by the Manager of the Office of Cable Communications that circumstances beyond the control of the grantee prevent cure. This remedy is pursuant to the King County Cable Communications Ordinance and Regulations and is in addition to any other remedies provided for in the King County Code.
35. All rights and privileges conferred under this franchise shall expire eleven (11) years from the original date of the franchise, November __, 1982. Therefore franchise # 5602 shall expire November __, 1993.

Upon approval of this franchise, Summit Communications, Inc. hereby agrees to build any new cable within the boundaries which is required to meet the specifications outlined in Paragraph 10 of franchise # 5602, where all new plant will be designed to a minimum of 54 channel capacity.

Summit Communications, Inc. hereby unconditionally guarantees the performance of any and all obligations, terms and conditions of franchise # 5602. King County hereby consents to the cable television franchise # 5602.

The terms and conditions of amended television franchise # 5602 shall be subject to the provisions of the King County Cable Communications Ordinance as codified in K.C.C. 6.27A and the King County Cable Communications Regulations. Any terms or conditions which are in conflict with the ordinance or implementing regulations shall be resolved in favor of the ordinance or regulations unless specifically exempted by agreement authorized by the executive or authorized designee.

THIS AGREEMENT entered into this ____ day of _____, 1990.

SUMMIT COMMUNICATIONS, INC.

KING COUNTY, WASHINGTON

BY James A. Hirshfield, Jr.

BY Tim Hill

TITLE President

TITLE County Executive

DATE _____

DATE _____