

ORDINANCE NO. **9705**

AN ORDINANCE authorizing the King County executive to enter an agreement transferring the control and operation of King County cable communications franchises numbers 565 and 979 from Cooke CableVision Inc. to TCI Cablevision of Southwest Washington, Inc., and acknowledging a change of name to TCI Cablevision of Southwest Washington, Inc.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The King County executive is hereby authorized to execute the franchise transfer agreement and performance guaranty transferring King County cable communication franchise numbers 565 and 979 from Cooke CableVision Inc. to TCI Cablevision of Southwest Washington, Inc., provided that TCI Cablevision of Southwest Washington, Inc. and TCI Cablevision of Washington, Inc. fully accept and agree to be bound by the lawful provisions of the franchises and of federal, state and local law and provided TCI Cablevision of Southwest Washington, Inc. and TCI Cablevision of Washington, Inc. accept and agree that the provisions of the franchises and of the existing provisions of the King County Code and regulations are lawful; except that nothing in this ordinance or required by it shall be deemed to be a waiver of TCI Cablevision of Southwest Washington, Inc.'s or TCI Cablevision of Washington, Inc.'s right to challenge any future modification of the franchises or of local law made pursuant to paragraph 15 of the franchises or Section 6.27A.030 of the King County Code. King County franchise numbers 565 and 979, K.C.C. 14.44 and 6.27A, and the King County cable television franchise regulations are fully incorporated herein by this reference.

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4 the attached transfer agreement, which is fully incorporated herein by this  
5 reference, approval of the transfer request shall be deemed to be denied and this  
6 approval shall be null and void.  
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8 INTRODUCED AND READ for the first time this 1st day of October, 19 90.

9 PASSED this 13<sup>th</sup> day of November, 19 90.

10 KING COUNTY COUNCIL  
11 KING COUNTY, WASHINGTON

12  
13 Lois North  
14 Chair

15 ATTEST:

16 Gerald A. Peterson  
17 Clerk of the Council

18 APPROVED this 26<sup>th</sup> day of November, 19 90.

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20 Jim Hill  
21 King County Executive  
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## FRANCHISE TRANSFER AGREEMENT AND PERFORMANCE GUARANTY

1. Cooke CableVision Inc. is the successor in interest to King County, Washington franchise numbers 565 and 979 ("the franchises").
2. On January 10, 1990, Cooke CableVision Inc. sold all of the stock in Cooke Cablevision of Southwest Washington, Inc. to TCI Cablevision of Washington, Inc. Effective on that date, the corporate name of Cooke Cablevision of Southwest Washington, Inc. was changed to TCI Cablevision of Southwest Washington, Inc. The parties contemplate obtaining King County's approval to transfer the franchises from Cooke CableVision Inc. to TCI Cablevision of Southwest Washington, Inc. as required by Section 16 of the franchises and County law.
3. The King County Office of Cable Communications and Franchise Review Committee have reviewed the qualifications of TCI Cablevision of Southwest Washington, Inc. and TCI Cablevision of Washington, Inc. to assume ownership and control of the Cooke system and have recommended that the franchises be transferred to TCI Cablevision of Southwest Washington, Inc. subject to the conditions contained in this agreement.
4. The County considers the following conditions to be substantial and material to its approval of the transfer of the franchises from Cooke CableVision Inc. to TCI Cablevision of Southwest Washington, Inc.

## NOW, THEREFORE, THE UNDERSIGNED PARTIES AGREE AS FOLLOWS:

- A. King County, Washington, hereby approves the transfer of King County franchise numbers 565 and 979 from Cooke CableVision Inc. to TCI Cablevision of Southwest Washington, Inc.
- B. TCI Cablevision of Southwest Washington, Inc. and TCI Cablevision of Washington, Inc. fully accept and agree to be bound by the lawful provisions of the Cooke franchises and federal, state and local law. TCI Cablevision of Southwest Washington, Inc. and TCI Cablevision of Washington, Inc. accept and agree that the provisions of the Cooke franchises and of the existing provisions of the King County Code and regulations are lawful; provided, however, that nothing in this agreement shall be deemed to be a waiver of TCI Cablevision of Southwest Washington, Inc.'s and TCI Cablevision of Washington, Inc.'s right to challenge any future modification of the franchises or of local law made pursuant to paragraph 15 of the franchises or Section 6.27A.030 of the King County Code.
- C. For the purpose of this agreement, TCI Cablevision of Washington, Inc. shall be a guarantor of TCI Cablevision of Southwest Washington, Inc.'s obligations and duties. If TCI Cablevision of Southwest Washington, Inc. violates any provision of the franchises or local law, then the County shall give TCI Cablevision of Southwest Washington, Inc. notice and other procedural rights as prescribed by law. Notice and other procedural rights granted to TCI Cablevision of Southwest Washington, Inc. shall be deemed to be given to TCI Cablevision of Washington, Inc. The County shall have the same rights and remedies against TCI Cablevision of Washington, Inc. as it has against TCI Cablevision of Southwest Washington, Inc. and may require TCI Cablevision of Washington, Inc. to perform TCI Cablevision of Southwest Washington, Inc.'s duties and obligations and pay TCI Cablevision of Washington, Inc.'s costs or penalties.

D. The County has not waived any right or power under this agreement, the franchises, or relevant law by virtue of any act, omission, or delay. Unless specifically waived or released in writing by the County, every right and power of the County continues and shall continue in full force and effect even if the County obtains additional guaranties, security, and agreements securing TCI Cablevision of Southwest Washington, Inc.'s and TCI Cablevision of Washington, Inc.'s performance.

E. TCI Cablevision of Southwest Washington, Inc. and TCI Cablevision of Washington, Inc. warrant and represent to the County as follows:

1. They are lawfully incorporated and are in good standing in the states in which they are incorporated;
2. They are licensed to do business in the state of Washington;
3. They have full corporate authority to enter into this agreement and, in the event of any violation or default by TCI Cablevision of Southwest Washington, Inc. of any of its lawful obligations to the County, TCI Cablevision of Washington, Inc. has full corporate authority to perform TCI Cablevision of Southwest Washington, Inc.'s duties and obligations.

F. King County warrants and represents to TCI Cablevision of Southwest Washington, Inc. and to TCI Cablevision of Washington, Inc. as follows:

1. It is a duly organized and validly existing political subdivision of the State of Washington;
2. It has full authority to enter into this agreement.
3. It has taken all action required to authorize the execution and delivery of this Agreement;
4. It lacks knowledge of any violations or potential violations of any provisions of the franchise agreement by Cooke CableVision Inc. and Cooke Cablevision of Southwest Washington, Inc.

G. TCI Cablevision of Southwest Washington, Inc. and TCI Cablevision of Washington, Inc. agree to indemnify and hold harmless King County, its appointed and elected officials, employees and agents from (a) any liability or responsibility with respect to TCI Cablevision of Washington, Inc.'s acquisition of Cooke CableVision of Southwest Washington Inc., (b) any liability or responsibility with respect to the transfer of King County franchise numbers 565 and 979, and (c) all reasonable costs, expenses and professional fees of any nature that arise from third-party claims resulting from the County's consent to and approval of the fundamental corporate changes in the company operating King County franchises 565 and 979. TCI Cablevision of Southwest Washington, Inc. and TCI Cablevision of Washington, Inc. shall have no duty to indemnify or hold harmless King County from any claims based on the sole negligence, misconduct or improper exercise of authority of the County or its representatives.

H. This agreement shall be governed, interpreted and enforced according to the King County Code, King County Cable Television Franchise Regulations, laws of the State of Washington and relevant federal law. In all disputes arising out of this agreement or the transfer, interpretation, implementation, and operation of the franchises, TCI Cablevision of Southwest Washington, Inc. and TCI Cablevision of Washington, Inc. shall submit to the jurisdiction of the state and federal courts of Washington exclusively.

I. The County is prepared to release and discharge Cooke CableVision Inc. as a guarantor of Cooke Cablevision of Southwest Washington Inc.'s future franchise

obligations upon the execution of this agreement by all parties hereto and upon receipt by the County of satisfactory evidence of any performance bond, security fund, and other financial and insurance requirements of the franchises, the King County Code chapters 14.44 and 6.27A and the County's regulations.

J. This agreement shall remain in effect for the terms of the franchises and any extension or renewal of them.

K. TCI Cablevision of Southwest Washington, Inc. and TCI Cablevision of Washington, Inc. guarantee to King County the full, prompt and complete performance of all obligations, duties and agreements of the cable company from and after the date of this Agreement regardless of whether those obligations, duties, and agreements arose or were executed prior to the date of this agreement.

L. TCI Cablevision of Southwest Washington, Inc. and TCI Cablevision of Washington, Inc. accept these guaranty obligations and recognizes that they are bound to perform regardless of whether assumptions contained in any materials submitted to the County in connections with the transfer, including, but not limited to, subscriber penetration and revenue projections prove to be correct.

M. The guaranty of TCI Cablevision of Southwest Washington, Inc. and TCI Cablevision of Washington, Inc. shall be absolute, continuing and irrevocable, and TCI Cablevision of Southwest Washington, Inc. and TCI Cablevision of Washington, Inc. shall not be released from their respective obligations hereunder while any claim of the County against TCI Cablevision of Southwest Washington, Inc. or TCI Cablevision of Washington, Inc. arising out of the Franchise Agreement or otherwise is not settled or discharged in full.

N. If any right or remedy granted under this Agreement that shall be found unenforceable for any reason, it shall be severable and all remaining rights and remedies shall continue to be valid and enforceable. All rights and remedies of any party hereto shall be separate and cumulative, and the exercise of one shall not limit or prejudice the exercise of any other remedy at the same or a later time.

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1990.

TCI Cablevision of  
Southwest Washington, Inc.

King County, Washington

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

County Executive

Date \_\_\_\_\_

Date \_\_\_\_\_

TCI Cablevision of  
Washington, Inc.

Cooke CableVision Inc.

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Approved as to Form:

Mary J Berry  
Deputy Prosecuting Attorney

11/9/90  
Date

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11-9-90