

## Chapter 13.12

### CABLE TELEVISION FRANCHISE

#### Sections:

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13.12.010 Purpose. The purpose of this ordinance shall be to establish a policy for granting a Cable Television Franchise.

#### 13.12.020 Definitions.

- A. Grantor - means the City of Kettle Falls, a municipal corporation of the State of Washington.
- B. Grantee - means the person, partnership, domestic or foreign corporation, association, joint venture or organization of any kind, including the City of Kettle Falls, granted a franchise by the City Council under this Ordinance or its lawful and approved successor, transferee or assignee.

#### 13.030 Grant of authority.

##### A. Requirement of a Franchise.

1. A cable television system may not be operated in the City unless a franchise has first been obtained pursuant to the provisions of this ordinance and unless such franchise is in full force and effect. No provision of this ordinance shall be deemed or construed to require the City to grant additional franchises if, after considering any applicant for such additional franchise(s), it is determined by the City that it is in the public interest to restrict the number of Grantees.
2. A franchise, easement, license or other permit granted to anyone other than the Grantee to traverse any portion of the City in order to provide service outside the City shall not authorize nor permit said person to solicit, sell, distribute or make any charge to subscribers within the City, nor to render any service or connect any subscriber within the City to the cable television system of Grantee.

##### B. Competing or Overlapping Franchises.

1. Any franchise granted by the City is non-exclusive in nature. However, since competing or overlapping franchises may have an adverse impact on the public rights-of-way and on the overall quality, cost and availability of communications services to the public, the City may issue additional competing or overlapping franchises only after a public hearing (s) at which the following factors are considered:

- a. The ability of the applicant to provide service to the entire franchise area which is served by the existing cable operator.
- b. The amount of time it will take the applicant to complete construction of the proposed system and activate service in the entire franchise area.
- c. The financial capabilities of the applicant and its assured commitment to make the necessary investment to erect, maintain and operate the proposed CATV system for the duration of the franchise.
- d. The quality and technical reliability of the proposed system, based upon the applicant's plan of construction and method of distribution of signals, and the applicant's technical qualifications to construct and operate such system.
- e. The experience of the applicant in the erection, maintenance and operation of a cable television system.
- f. The capacity of the public rights-of-way to accomodate one or more additional cable systems and the potential disruption of those public rights-of-way that may occur if one or more additional franchises is granted.
- g. The potential disruption of existing cable television service and the potential for destructive competition which would adversely impact the residents of the City, based upon the number of potential subscribers in the proposed service area.
- h. The likelihood and ability of an applicant to continue to provide competing cable television service to subscribers within the entire franchise area for the duration of the franchise.
- i. Such other information that should be considered by the City prior to granting competing or overlapping franchises.

13.12.040 Franchise Conditions.

A. Franchise Term and Renewal.

1. The term of this franchise shall be twenty (20) years. The Grantee shall have the option to renew this franchise, subject to renegotiation of the agreement, for additional five (5) year periods.

B. Notice to the Grantee.

1. The City Council shall not meet to take any final action involving the Grantee's franchise unless the City has (a) advised the Grantee in writing, at least thirty (30) days prior to such meeting, as to its time, place and purpose and (b) published a notice at least once, seven (7) days before the meeting in a newspaper of general circulation within the City. The notice provided for in this Section shall be in addition to, and not in lieu of , the notice to Grantee and opportunity to cure any default provided in this ordinance.

2. The City Council reserves the right to suspend this requirement in the event of an emergency.

C. Franchise Fee.

1. The Grantee, in consideration of the privilege granted under the franchise for the operation of a cable television system within the public ways of the City and the expense of regulation of the franchise incurred by the City, shall pay to the City a franchise fee. That fee shall be set at three percent (3%) of the Grantee's annual gross basic revenues during the period of its operation under the franchise. The City shall not require a franchise fee greater than three percent (3%) of gross revenues if such fee would detrimentally impact the economic viability of Grantee's cable communications system. Provided, further, Grantee shall be entitled to adjust its rates to recover from subscribers and users any increase in the franchise fee adopted by the City pursuant to this section.
2. Grantee shall pay its franchise fee on an annual basis. The Grantee shall file with the City, within one hundred twenty (120) days following the conclusion of the calendar year, an annual report showing its total gross revenues for the calendar year and the amount of franchise fees due to the City.
3. The City shall have the right to inspect the Grantee's income records, the right of audit and the recomputation of any amounts determined to be payable under this ordinance. Any additional amount due the City as a result of the audit shall be paid within sixty (60) days following written notice to the Grantee by the City which notice shall include a copy of the audit report. The cost of said audit shall be borne by the Grantee only if it is properly determined that the Grantee's annual payment due to the City for the preceding year was at least twenty percent (20%) less than it properly should have been. Otherwise the City shall bear the cost of any audit.
4. In the event that any franchise payment or recomputed amount is not paid on or before the applicable dates heretofore specified, interest shall be charged from such due date at the non-compounded interest rate of one percent (1%) per month.

D. Insurance Bonds.

1. Upon the granting of a franchise and within sixty (60) days following the filing of the acceptance required and at all times during the term of the franchise the Grantee shall obtain, pay all premiums for and file with the City executed duplicate copies of the following:

- a. A general comprehensive liability policy indemnifying, defending and saving harmless the City, its officers, boards, commissions, agents or employees from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the ownership/operations of the Grantee under the franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of Five Hundred Thousand Dollars (\$500,000) per personal injury or death of any one person and One Million Dollars (\$1,000,000) for personal injury or death of any two or more persons in any one occurrence.
- b. Property damage insurance indemnifying, defending and saving harmless the City, its officers, boards, commissions, agents or employees from and against all claims by any person whatsoever for property damage occasioned by the ownership/operation of Grantee under the franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of Five Hundred Thousand Dollars (\$500,000) for property damage to the property of any one person and One Million Dollars (\$1,000,000) for the property of two or more persons in any one occurrence.
- c. The City reserves the right to renegotiate insurance requirements at any time during the contract period a franchise is in force.

E. Transfer of Franchise.

1. A franchise granted under this ordinance may be assigned or transferred, in whole or in part, by voluntary sale, sale and leaseback, merger, consolidation or otherwise or by forced or involuntary sale, with the prior consent of the City Council expressed by resolution.
2. The City Council shall not withhold its consent to any transfer of a franchise unreasonably; provided that the proposed assignee agrees to comply with the material provisions of this ordinance and the franchise and shall provide proof of its legal, technical, financial and character qualifications to operate the cable system.
3. No such consent shall be required for a transfer in trust, mortgage, or other instrument of hypothecation, in whole or in part, to secure an indebtedness.

F. Service Repair and Complaint Procedures.

1. Except for circumstances beyond the Grantee's control such as acts of God, weather, wars, riots and civil disturbances, the Grantee shall be responsible for locating and correcting system malfunctions promptly.
2. A listed local telephone number or toll free (800) number shall be made available to subscribers for service calls. Investigative action shall be initiated in response to all service calls, other than major outages, not later than the next business day after the call is received. Corrective action shall be completed as promptly as practical.

3. A service technician shall be available to respond to service calls from subscribers Monday through Friday during normal working hours. Calls requesting repair service shall be responded to the same day they are received whenever possible. If a service call is received after 3 p.m. on Friday, every attempt shall be made to respond within 72 hours.
4. In establishing response time, the Grantee may differentiate between service problems unique to a single household and problems caused by a service outage which affects a large number of subscribers ("area outage").
5. A "area outage" is defined as an outage of all cable channels in three (3) or more residences in the same neighborhood or area which is caused by a problem with the cable system, rather than being caused by the subscriber. All area outages shall be responded to as soon as possible after notification on a 24 hours a day, 7 days a week basis. Designated technicians shall be on calls 24 hours a day to respond when notified by phone or paged by Grantee or an answering service employee. Technicians are expected to repair the problem found and have the system operational as soon as possible.

G. Street Occupancy

1. Grantee shall utilize existing poles, conduits and other facilities whenever possible, but may construct or install new, different, or additional poles, conduits, or other facilities whether on the public way or on privately-owned property with the written approval of the appropriate governmental authority, and, if necessary, of the property owner. Such approval shall not be unreasonably withheld by the governmental agency.
2. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and appearance and reasonable convenience of property owners who adjoin on any public way and at all times shall be kept and maintained in a safe condition and in good order and repair. The Grantee shall at all times employ reasonable care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.
3. Grantee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, subject to the direction of the City or other appropriate governmental authority.

13.12.050 General Provisions.

A. Compliance with State and Federal Law

1. The Grantee shall, at all times, comply with all laws of the State and Federal government and the rules and regulations of any Federal or State administrative agency.

B. Severity

1. If any section of this ordinance or the franchise, or any portion thereof, is held invalid or unconstitutional by any court or competent jurisdiction or administrative agency, such decision shall not affect the validity of the remaining portions hereof, except as otherwise provided for herein.

C. Nondiscrimination in Employment

1. The Grantee shall neither refuse to hire nor discharge from employment nor discriminate against any person in compensation, terms, conditions, or privileges of employment because of age, sex, race, color, creed or national origin. The Grantee shall take affirmative action to insure that employees are treated without regard to their age, sex, race, color, creed or national origin. This condition includes, but is not limited to, the following: recruitment, advertising, employment interviews, employment, rates of pay, upgrading, transfer, demotion, lay-off, and termination.

D. Grantee May Issue Rules

1. Grantee shall have the authority to issue such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable it to exercise its rights and perform its services under this ordinance and the Rules of the FCC, and to assure uninterrupted service to each and all of its subscribers. Such rules and regulations shall not be deemed to have the force of law. (Ord. 1456, 1989).

13.12.100 Falcon Telecable Franchise. Falcon Telecable is granted a franchise to operate and maintain cable television throughout the incorporated City of Kettle Falls, Washington.

- A. The right and privileges hereunder granted shall not be deemed exclusive, and the right is hereby reserved to the City to grant to any other person, company, corporation or association or by itself to exercise rights and privileges similar to those herein granted.
- B. Falcon Telecable shall operate this franchise in conformance with Ordinance 1456, A Cable Television Franchise Policy for the City of Kettle Falls.
- C. The franchise herein granted shall cease and terminate at 12:00 midnight, November 20, 2009 and within ninety (90) days thereafter the Grantee shall, at its own cost and expense, remove all construction and installations hereby authorized from the city streets and the City of Kettle Falls unless the City Council deems it advisable to renew or extend this franchise. (Ord. 1457, 1989).