

ORDINANCE NO. 566

AN ORDINANCE GRANTING A FRANCHISE RENEWAL TO CABLE TV PUGET SOUND, INC. d/b/a VIACOM CABLEVISION, TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF GIG HARBOR, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE.

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. STATEMENT OF INTENT:

Statement of Intent and Purpose. The City intends, by the adoption of this Ordinance, to grant a franchise authorizing the operation of a cable television system within the City's territorial boundaries. Such franchise can contribute significantly to the communication needs of the City, its residents, associations and institutions.

SECTION 2. DEFINITIONS:

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the following meaning, unless clearly required otherwise by the context of the Ordinance:

(a) ACT: The Cable Communications Policy Act of 1984; Public Law 98-549, 98 Stat. 2779 (98th Congress, October 30, 1984).

(b) BASIC CABLE SERVICE: Basic cable service is the tier of service regularly provided to largest number of subscribers, which includes the retransmission of local broadcast television signals.

(c) CITY: The City of Gig Harbor, a municipal corporation of the State of Washington, in its present form, or in any later recognized, consolidated, enlarged, annexed or reincorporated form.

(d) CITY ADMINISTRATOR: The term refers to the administrator of the City or his or her designee.

(e) COMMISSION or FCC: Federal Communications Commission.

(f) COMMUNITY ANTENNA TELEVISION (CATV) SYSTEM (CABLE SYSTEM): A facility, consisting of a set of closed transmission paths and associated generation, reception and control equipment that is designed to provide cable telecommunications service, which includes video programming, and which is provided to multiple subscribers within a community; which facility may, in addition, cross or use the public right of way.

(g) COPYRIGHT FEE: The compulsory license fee assessed by the Copyright Royalty Tribunal and paid by the franchisee to the Copyright Office, for the privilege of the retransmission of certain primary transmission, pursuant to 17 U.S.C. 111, et seq.

(h) COUNCIL: The City Council of the City of Gig Harbor.

(i) FM: Frequency modulation radio transmission.

(j) FRANCHISE AREA: The area bounded by the corporate limits of City of Gig Harbor.

(k) FRANCHISEE: Cable TV Puget Sound, Inc., a/k/a, d/b/a/ Viacom Cablevision.

(l) GROSS ANNUAL RECEIPTS: Gross Annual Receipts shall include revenue received from the operation of the cable system through the use of the public streets and rights-of-way for which a franchise is required under this ordinance. Gross Annual Receipts shall not include: 1) revenue received from any taxes on services furnished by the franchisee imposed directly upon the franchisee or any subscriber or user by the State or other governmental entity and collected by the franchisee on behalf of the State or other governmental entity, including any franchise fee, sales tax or utility user's tax; 2) refundable deposits collected from subscribers; 3) copyright fees collected by the Copyright Royalty Tribunal; 4) reimbursements for damaged equipment or plant; 5) VCR, videotape, converter or remote control rental or leasing; 6) studio production; 7) retail sale of items commonly sold at retail by non-cable businesses; 8) advertising sales; 9) reimbursement from developers, individuals, suppliers or utilities; 10) bad debt; 11) installation; 12) and the provision of services or the sale, rental or servicing of equipment or merchandise not requiring the use of the public streets or rights-of-way in the City or with respect to which a franchise for the operation of a cable system is not required under this ordinance.

(m) PUBLIC WORKS DIRECTOR: The term refers to the Director of the City Public Works Department or his/her designee.

(n) STREET: The surface of, and the space above and below any public street, road, highway, freeway, lane, alley, court, sidewalk, utility easement, parkway or drive, or other right of way, and any property that is publicly owned or dedicated to the public's use now or hereafter existing as such within the City.

(o) SUBSCRIBER: Any person or entity receiving the cable service provided by the franchisee, for any purpose.

SECTION 3. USES PERMITTED BY FRANCHISEE:

(a) AUTHORIZATION: This Ordinance shall authorize and permit the franchisee to engage in the business of operating and providing a CATV system in the City of Gig Harbor, and, for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain the same in, on, over, under, upon, across and along any street pursuant to the terms and conditions contained in this Ordinance. Franchisee by virtue of this franchise, acquires no right to go upon any other property of the City.

(b) REQUISITE CARE: The franchisee shall ensure that the safety, functioning and appearance of the property, and that the convenience and safety of other persons shall not be adversely affected by the installation or construction of facilities necessary for the cable system; and, that the owner will be justly compensated by the franchisee for any damages caused by the installation, construction, operation or removal of such facilities by the franchisee.

(c) **NON-DISCRIMINATION:** The franchisee shall not deny access to cable service to any group of potential residential cable subscribers, based upon the income of the residents of the local area in which such group resides.

(d) **UNDERGROUNDING/POLE POLICY:** It is the policy of the City for both safety and aesthetic reasons, to eventually accomplish total or near total undergrounding of all of the franchisee's facilities located on public rights-of-way in the City. Whenever other existing aboveground electrical or communication facilities are undergrounded on or along any right-of-way, including shared facilities, franchisee shall likewise underground its facilities without cost to the City along said right-of-way and shall coordinate such undergrounding with the other franchisees or utilities involved to minimize costs and disruption of the right-of-way and improvements located therein.

(e) **OTHER INSTALLATION:** Construction or installation of the franchisee's lines or conduits in all other public places, owned or controlled by the City, shall be subject to reasonable approval of and regulation by the City Administrator in advance. Where such installation or construction work crosses City road or rights-of way, such crossing shall be by boring, jacking or other such methods as approved by the Public Works Director.

(f) **CONSTRUCTION:**

(1) Permit Required. No construction shall be commenced without the franchisee first securing a written permit from the City Public Works Director or his designee, including approval endorsed on one set of plans and specifications returned to the franchisee. Franchisee shall first file with the City Administrator, franchisee's application for a permit to do such work, together with plans and specifications in duplicate showing the position, depth and location of all such lines and facilities sought to be constructed, laid or installed at the time, showing their approximate relative position to existing City roads, rights-of-way or other City property upon plans drawn to scale, hereinafter collectively referred to as the "map of definite location."

(2) Construction to Conform to Map of Definite Location. The cable system transmission and distribution lines and facilities shall be laid in exact conformity with said map of definite location, except in instances in which deviation may be allowed thereafter in writing by the City Public Works Director pursuant to application by franchisee. The plans and specifications shall specify the class and type of material and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts and road obstructions, etc. Within ninety (90) days after completion of construction, franchisee shall submit to the City detailed, as-built plans, depicting those features designated by the Public Works Director.

(3) Work Requiring Breaking Surface of Road/Right-of Way. In any work which requires breaking of the surface of the City road, right-of-way or other City property subject to this franchise for the purpose of laying, relaying, connecting, disconnecting and repairing the said cable television transmission and distribution lines and facilities, and making connections between the same to structures and buildings of subscribers, or making connections to other facilities of the franchisee now in existence or hereafter constructed, the franchisee shall be governed by and conform to the

general rules adopted by the officers charged with the supervision and care of such town roads, rights-of-way, and other City property. The franchisee at its own expense and with all convenient speed shall complete the work for which the surface has been broken and forthwith replace the work and make good the City road, right-of-way or City property and leave the same in as good condition as before the work was commenced. All restoring work will be completed within 20 calendar days following the breaking of the surface of City road and/or sidewalk. No such breaking of the surface on the City roads, rights-of-way or other City property shall be done prior to the obtaining of a permit issued by the City Public Works Director. Applications for such a permit shall be accompanied by specifications for the restoration of the City road, right-of-way or other City property to the same condition as it was prior to such breaking, and such specifications must be approved by the City Public Works Director before such breaking of the surface is commenced. The City Public Works Director may require a performance bond in a sum sufficient to guarantee to the City that such City road, right-of-way or other City property shall be restored to the same condition as it was prior to such breaking of the surface; the amount of said bond to be fixed by the City Public Works Director. The franchisee shall pay all costs identified with the restoration of the right of way. The City Administrator may after reasonable notice to franchisee, do, or have done, any and all work that they consider necessary to restore to a safe condition any such City road, right-of-way or other City property left by the franchisee or its agents in a condition dangerous to life or property, and the franchisee upon demand shall pay to the City all costs of such work, in itemized amounts reported by the City Administrator to the franchisee, including overhead and legal fees, if any, within thirty (30) days of the receipt of such itemized report.

(4) Non-Interference With Existing Utilities, Etc. All construction or installation of such lines and facilities, service, repair, or relocation of the same, performed along or under the City roads, rights-of-way or other City property subject to this franchise shall be done in such a manner as not to interfere with the construction and maintenance of other existing utilities, public or private drains, drainage ditches and structures, irrigation ditches and structures, located therein, nor with the grading or improvement of such City roads, rights-of-way or other City property. Franchisee shall pay all costs associated with repairing existing utilities interrupted by franchisees work activities.

(5) Priority Among Co-Users. The owners of all utilities, public or private, installed in such City roads, rights-of-way or other City property prior in any time to the lines and facilities of the franchisee, shall have preference as to the positioning and location of such utilities so installed by the franchisee. Such preference shall continue in the event of the necessity of relocating or changing the grade of any such City road or right-of-way. All relocation of franchisee's facilities requested by the City shall be done by franchisee without expense to the City, pursuant to this franchise.

(6) Quality of Work. All work done under this franchise shall be done in a thorough and workmanlike manner. In the laying of cable television transmission and distribution lines and facilities and the construction of other facilities and the opening of trenches, the tunneling under City roads, rights-of-way or other City property, the franchisee shall leave such trenches, ditches and tunnels in such a way as to interfere as little as

possible with public travel and shall take all due and necessary precautions to guard the same, so that damage or injury shall not occur or arise by reason of such work. Where any of such trenches, ditches or tunnels are left open at night, the franchisee shall place warning lights and barricades at such a position as to give adequate warning of such work. The franchisee shall be liable for any injury to person or persons or damage to property sustained through the franchisee's carelessness or neglect, or through any failure or neglect to properly guard or give warning of any trenches, ditches or tunnels dug or maintained by the franchisee.

(7) Non-Waiver by City. The City in granting this franchise does not waive any rights which it now has or may hereafter acquire with respect to City roads, rights-of-way or other City property, and this franchise shall not be construed to deprive the City of any powers, rights or privileges which it now has or may hereafter acquire to regulate the use and control of the City roads, rights-of-way, and other City property covered by this franchise.

(8) Right-of-Way Changes. If at any time the City shall require others to, or shall itself, improve, relocate or change any City road, right-of-way or other City property subject to this franchise by grading or regrading, planking or paving the same, changing the grade, altering, changing, repairing or relocating the same or by construction of drainage facilities, or in the event that such City road, right-of-way or other City property subject to this franchise shall become a Primary State Highway as provided by law, the franchisee upon written notice not to exceed 90 calendar days from the City Administrator, or the Director of Public Works shall, at its sole expense, immediately change the location or readjust the elevation of its cable television transmission and distribution lines and facilities so that such lines and facilities shall conform to such new grades or routes as may be established, without cost to the City. The City shall in no way be held liable for any damages to said franchisee that may occur by reason of any of the City or State's improvements, changes or works above enumerated.

(9) Right of City to do Work. The laying, construction, operation and maintenance of the franchisee's cable television transmission and distribution lines and facilities authorized by this franchise shall not preclude the City, its agents or its contractors from blasting, grading, excavating, or doing other necessary road work contiguous to the said lines and facilities of the franchisee, provided that the franchisee shall be given reasonable notice of said blasting or other work in order that the franchisee may protect its lines and facilities. If any such existing wires, cables or other facilities are required to be moved by the franchisee in order for the City to move its buildings, machinery or other objects, such temporary rearrangement, removing, lowering or raising shall be done by franchisee at its own cost. The City shall not be liable to the franchisee or to any subscriber of the franchisee for any cessation of service by the franchisee to any or all of its subscribers caused by the City's street work, street excavation, pole relocation or resulting from delay in the City's repair or re-erection of poles or otherwise following damage thereto.

(10) Monuments and Markers. Before any work is performed under this franchise which may affect any existing monuments or markers of any nature relating to subdivision, plats, roads and all other surveys, the franchisee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the franchisee's

operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the City Public Works Director. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the City Public Works Director. The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement by approved monuments shall be borne by the franchisee. A complete set of reference notes for monument and other ties shall be filed with the office of the City Public Works Director.

(11) Inspection/Approval. All work of the franchisee or its designee shall be subject to the approval, and shall pass the inspection, of the City Public Works Director. The franchisee shall pay all costs of, and expenses incurred in, the examination, inspection and approval of such work on account of granting the said permits.

SECTION 4. TERMS & PROVISIONS:

(a) LENGTH: The term of the franchise granted hereunder, as modified by this franchise renewal agreement, shall be extended to a period of fifteen (15) years. The effective date of said franchise shall be fifteen (15) years after the expiration of the existing franchise.

(b) ACCESS: The Franchisee shall provide and the City shall have reasonable access to one (1) composite channel for local government, educational and public-interest programming. Programs shall deal with matters of public interest and shall be responsive to community needs. This channel may be used by other municipalities for the same or similar purposes.

(c) TERMINATION: The franchise may be terminated prior to its date of expiration by the Council in the event that said Council shall have found, after notice and hearing, that the franchisee is in violation of any material provision of this Ordinance; provided, however, that the franchisee shall be given at least ninety (90) days prior written notice of any proposed termination proceedings. Such notice shall specify the grounds for possible termination.

(d) INJUNCTIVE RELIEF: The City may elect, without prejudice to any of its own legal rights or remedies, to obtain an order from the Superior Court compelling franchisee to comply with the provisions of this Ordinance, and may recover damages, costs and attorneys' fees incurred by the City by reason of the franchisee's failure to comply.

(e) CURE: A decision by the Council to terminate the franchise shall be rescinded, and the franchise shall be reinstated, if within ninety (90) days after receiving written notice of the Council's decision to terminate, the franchisee cures the alleged violation on which the Council based its decision to terminate or undertakes diligent steps to cure such alleged violation as quickly as practicable, or demonstrates that it is not in violation of the franchise or that any failure to meet a requirement of the franchise is due to circumstances beyond the franchisee's reasonable control, including, but not limited to, the following circumstances; labor strike, lockout, war or act of war, insurrection, riot, act of a public enemy, accident, fire, flood or other act of God.

SECTION 5: FRANCHISE FEE:

(a) AMOUNT: Franchisee shall pay to the City, for the term of this franchise, and at the times hereinafter specified, a sum equal to three percent (3%) of the quarterly total gross receipts of the franchisee; or such other percentage of such receipts as the council may determine; the City reserving herein the right to revise such fee or percentage not to exceed 5%, from time to time in its sole discretion; PROVIDED, that such percentage shall not exceed that franchise fee or percentage allowed by law applicable at the time of any such revision. Such fee shall be paid quarterly to the Finance Officer of the City within 45 days of the end of each quarter.

(b) ANNUAL ACCOUNTING: The franchisee shall file with the City, within ninety (90) days after the expiration of any calendar year during which such franchise is in force, a statement prepared by a certified public accountant showing the total annual gross receipts, as defined herein, of franchisee, its successors or assigns, during the preceding calendar year. It shall be the duty of franchisee to pay to the City, within fifteen (15) days after demand by the City, any unpaid balance for the calendar year covered by such statement. Upon reasonable notice, the City shall have the right to audit the franchisee's records showing its gross receipts for the previous calendar year.

SECTION 6. LIMITATIONS OF FRANCHISE:

(a) Any privilege claimed under said franchise by the franchisee in any street shall be subordinate to any prior lawful occupancy of the streets, or other public property if such occupancy would be frustrated by the franchisee's exercise of its rights granted to it by the franchise.

(b) Such franchise is a privilege held in personal trust by the franchisee. It cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, without prior consent of the City expressed by resolution; Provided, however, that no such consent shall be required for any transfer in trust, mortgage or other hypothecation, as a whole, to secure an indebtedness or for any transfer by the franchisee to an affiliate or parent company. Such consent of the City may not be arbitrarily withheld; Provided, however, the proposed assignee must show financial responsibility and must agree to comply with the provisions hereof. Change of control shall be deemed to occur if there is an actual change in control or where ownership of more than fifty percent (50%) or more of beneficial interests, singly or collectively occurs.

(c) Time shall be of the essence hereof. The franchisee shall not be relieved of its obligation to comply promptly with any of the provisions of this Ordinance by any failure of the City to enforce prompt compliance.

(d) Any right, or power in, or duty impressed upon, any officer, employee, department or board of the City, is subject to transfer by the City to any other officer, employee, department or board of the City.

(e) The franchisee shall have no recourse whatsoever against the City for any loss, cost, expense or damage, arising out of any provision or requirement of this Ordinance or its enforcement, except as otherwise provided for within this Ordinance except with respect to any loss, cost, expense or

damage arising out of or due to the negligence or willful misconduct of the City, its agents, employees or representatives..

(f) The franchisee is subject to all requirements of the City Ordinance, rules, regulations and specifications of the City heretofore, or hereafter enacted or established, including but not limited to, those concerning street work, street excavations, use, removal and relocation of property within a street, and other street work.

(g) The franchise granted by this Ordinance shall not relieve the franchisee of any obligation involved in obtaining conduit or other underground facility space from any department of the City, utility companies, or from others maintaining such in the streets.

SECTION 7. RIGHTS RESERVED TO THE CITY:

There is hereby reserved to the City every right and power to protect the public health, safety and welfare which is required to be herein reserved or provided by any ordinance of the City. The franchisee, by its acceptance of the terms of this Ordinance, agrees to be bound thereby, and to comply with any reasonable action or requirement of the City in its exercise of any such right or power for the protection of the public health, safety and welfare.

SECTION 8. LOCATION OF FRANCHISEE'S PROPERTY:

The franchisee may not install or erect any poles, but may install or erect wires, cable lines, conduits or other facilities or apparatus under the streets within the City, but only at such locations and in such manner as shall first meet the approval of the City exercising reasonable discretion. Such approval shall be in writing and issued within thirty (30) calendar days after submission of complete construction documents to the City Public Works Director by the franchisee or franchisee's authorized agents, of location plans.

SECTION 9. VACATION:

If at any time the City shall vacate any City road, right-of-way or other City property which is subject to rights granted by this franchise, and said vacation shall be for the purpose of acquiring the fee or other property interest in said road, right-of-way or other City property for the use of the City, in either its proprietary or governmental capacity, then the City Council may, at its option and by giving one hundred twenty (120) days written notice to the franchisee, terminate the franchise with respect to such City road, right-of-way, or other City property so vacated, and the City shall not be liable for any damages or loss to the franchisee by reason of such termination.

SECTION 10. EXTENSION OF SERVICE:

(a) NEW RESIDENTIAL CONSTRUCTION: Extension of underground distribution lines to residential units within a new single family or multi-family residential subdivision of five (5) or more lots or in a new residential development consisting of five (5) more dwelling units in two (2) or more

buildings located on a single parcel of land will be performed by the subdivider or developer as follows:

The subdivider or developer of the subdivision or development will, at no cost to the franchisee, perform all necessary trenching and back filling for underground distribution and service laterals and install conduit, vaults and pedestals for said distribution and transmission lines in accordance with the following procedures. At least twenty (20) working days prior to the intended date for trenching, the subdivider or developer will provide written notice to the franchisee of the subdivider's intent to trench. Upon receipt of said written notice from the subdivider or developer, the franchisee, at its own expense, will install or arrange for subdividers or developers to install the conduit, pedestals and vaults necessary to extend the underground distribution lines to the residential units within the subdivision or development. In the event that the subdivider or developer fails to provide the franchisee written notice of the subdivider's intent to trench at least twenty (20) working days prior to the intended date for trenching, then the full cost of providing and installing the necessary conduit, pedestals, and vaults will be assumed by the subdivider or developer.

(b) EXISTING RESIDENTIAL AREAS: The franchisee shall provide service to all residential areas of the City of Gig Harbor by installing appropriate cable lines to each block contiguous to the existing service area wherein 60 or more dwelling units are located per street mile at no cost to the residents of the area to which service is extended. For those residential areas with fewer than 50 homes per street mile, the franchisee shall extend cable lines at a rate not to exceed the franchisee's cost of time and materials plus 25%. For those residential areas with greater than 50 but fewer than 60 homes per street mile, the franchisee shall extend cable lines at a rate not to exceed the franchisee's cost of time and materials plus 15%. Said costs shall be borne by the residents of such areas to which service is extended. In no event shall the City bear the cost of such extension of service. Franchisee shall service the entire area of the City as it now exists or may be altered by annexation during the term of this franchise, and shall extend service to users within ninety (90) days of receipt of a request for services. Residential, as herein used, shall include single family dwelling units, apartments, duplexes, triplexes and quadruplexes, where billing is made to individual occupants.

(c) OTHER AREAS: The franchisee shall, in addition, install cable service to commercial or other establishments upon request at cost to be borne by the requesting party.

(d) SCHOOLS/PUBLIC BUILDINGS: The franchisee shall provide basic CATV services without charge to such schools and municipal buildings within, or serving the residents of the City, as shall be designated by the City, provided the building is located within 150 feet of the existing distribution line. Any installation beyond 150 feet shall be on a time and materials basis.

SECTION 11. REMOVAL OR ABANDONMENT OF PROPERTY OF FRANCHISEE

(a) In the event that the use of any part of the CATV system is discontinued for any reason, other than in connection with the causes referred to in Section 22 or causes beyond the franchisee's reasonable control, for a continuous period of twelve (12) months, or in the event such system or

property has been installed in any street without substantially complying with the material requirements of the franchise, the franchisee shall promptly remove from the streets or public places all such property of such system that lie in the surface of or are suspended above the streets, except for property which the City Public Works Director may permit to be abandoned in place. In the event of any such removal, the franchisee shall promptly restore the street from which such property has been removed, to a condition satisfactory to the City Public Works Director.

(b) Any property of the franchisee to be abandoned in place, shall be abandoned in such manner as the City Public Works Director shall reasonably prescribe. Such direction shall be given by the City within thirty (30) calendar days from date of receipt of notice from franchisee of intention to abandon. Upon permanent abandonment of the property of the franchisee in place, the franchisee shall submit to the City an instrument to be approved by the City Attorney and City Council, transferring to the City the ownership of such property, at no cost to the City.

SECTION 12. INDEMNIFICATION OF THE CITY

(a) INDEMNIFICATION: The franchisee shall indemnify, defend and hold harmless the City from all claims, actions or damages of every kind and description, including all costs and attorneys' fees, which may occur to or be suffered by any person(s) (including, specifically, claims brought by the franchisee's own employees), corporation or property by reason of the construction, operation and maintenance of the franchisee's said cable television transmission and distribution lines and facilities except claims, actions or damages arising out of the negligence or willful misconduct of the City, its agents, employees and representatives. Such indemnification shall be independent and irrespective of whether, in connection with any such suit, it is alleged that the City contributed thereto.

(b) DUTY TO DEFEND: In case that suit or action is brought against the City for damages arising out of or by reason of the above-mentioned causes, the franchisee will upon notice to it of the commencement of said action defend the same at its sole cost and expense.

(c) ACCEPTANCE NOT WAIVER: Acceptance by the City of any work performed by the franchisee at the time of completion shall not be grounds for avoidance of the above enumerated duties.

(d) INVERSE CONDEMNATION CLAIMS INCLUDED: The foregoing requirement to indemnify, defend and hold the City harmless from any such claims for bodily injury or property damage shall also include any claims alleging inverse condemnation arising out of the installation, maintenance, operation, construction or existence of franchisee's facilities on the public rights-of-way including streets, avenues, alleys and public ways within the City of Gig Harbor.

SECTION 13. INSURANCE

(a) The franchisee shall at all times during the existence of said franchise maintain in force, furnish and file with the City, at its own expense, a general comprehensive liability insurance policy, in protection of the City, its boards, commissions, officers, agents and employees, with a

company authorized to do business in the State of Washington, and in form to be approved by the City Administrator, protecting the City and such persons against liability for loss or damages for personal injury, death and property damage occasioned by the construction, operation, and/or maintenance of the franchisee under said franchise, with minimum liability limits of ONE MILLION (\$1,000,000.00) DOLLARS for personal injury or death of any one person, and ONE MILLION (\$1,000,000.00) DOLLARS for personal injury or death of two or more persons in any one occurrence. The City may at its sole discretion reasonably decrease or increase the franchisee's insurance limits up to a maximum coverage of TWO MILLION (\$2,000,000.00) DOLLARS by providing 12 months written notice to the franchisee.

(b) The policies mentioned in the foregoing paragraph shall name the City as an additional insured, shall indicate that said insurance shall be primary for its purposes as to any other insurance available to the City, and shall contain a provision that a written notice of any cancellation or reduction in coverage of said policy shall be delivered to the City not less than thirty (30) days in advance of the effective date thereof. If such insurance is provided in either case by a policy which also covers the franchisee or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement.

(c) The franchise extension granted under this Ordinance shall be ineffective unless and until each of the foregoing policies of insurance as required in this section have been delivered to the City, and approved as to form by the City Administrator.

SECTION 14. TECHNICAL STANDARDS

(a) The CATV system shall be maintained in accordance with the highest and best accepted technical standards of the industry, to the effect that subscribers shall receive service which fully complies with all Federal Communications Commission Rules and technical standards. In determining the satisfactory compliance with such standards the following shall apply.

(1) The new and rebuilt system shall be installed using all-band equipment capable of passing thirty-five (35) television channels, the FM radio spectrum, and spectrum space capable of accommodating data transmission.

(2) The system, as installed, shall be capable of passing standard color TV signals without the introduction of noticeable effects on color fidelity and integrity.

(3) The system shall be capable of providing a signal level of 1000 microvolts at an impedance of 75 ohms, at the input terminations of each of the TV receivers.

(4) The system and all equipment shall be designed and rated for 24 hour-per-day continuous operation.

(5) The system signal-to-noise ratio shall be not less than 40 decibels.

(6) Hum modulation of picture signal shall be less than 5 percent.

(7) The system shall use components having Voltage Standing Wave Ratio (VSWR) of 1.421 or better.

(8) Methods of measuring above standards, where necessary, will be according to generally accepted principles of engineering.

(b) In the event that the Federal Communications Commission deletes its cable television technical standards from its Rules (47 C.F.R. Part 76, Subpart K); or any other of the Commission's technical rules applicable to cable television service, the City reserves the right to promulgate, by ordinance or otherwise, its own technical standards for cable television service, which are hereby specifically contemplated by the parties, shall become a part of this franchise renewal Agreement. Such technical standards shall be based upon, and shall not exceed, the existing FCC standards in use at the time of the effective date of this Agreement. Furthermore, any change made in its technical rules by the Commission shall be deemed incorporated in this franchise Ordinance to take effect immediately upon the effective date of such rule changes.

SECTION 15. USE OF UTILITY FACILITIES:

When any portion of the CATV system is to be installed using public utility facilities, certified copies of the agreements for such joint use of such facilities shall be filed with the City Administrator prior to commencement of work.

SECTION 16. NOTICES:

(a) All notices herein provided to be given shall be given by prepaid registered mail addressed to the parties as follows:

City:

Administrator, Gig Harbor
City Hall
3105 Judson Street
P.O. Box 145
Gig Harbor, WA 98335

Franchisee: Cable T.V Puget Sound, Inc.
2316 S. State
Tacoma, WA 98405

(b) All matters herein required to be filed with the City shall be filed with the City Clerk.

SECTION 17. SUBSCRIBER PHONE NUMBER:

The franchise shall maintain a telephone number for citizens of the City which is toll free to such persons when calling from within the City. Such number shall be provided so that CATV maintenance service shall be promptly available to subscribers upon telephone request, at all times during regular business hours. After hours customer service calls will be routed through a telephone answering service.

SECTION 18. SUBSCRIBER AGREEMENT:

The franchisee shall submit to the City the form of its subscriber service agreement.

SECTION 19. FRANCHISEE AVAILABILITY:

The franchisee specifically agrees to meet with the City Administrator or Public Works Director, upon reasonable notice, to discuss questions and problems which may arise under the franchise, or pursuant to the construction, operation and/or maintenance of franchisee's CATV system.

SECTION 20. FEDERAL LAW:

The franchisee shall comply with the following provisions of the Act:

- (a) Section 624(d)(2), regarding lock boxes;
- (b) Section 631, regarding subscriber privacy;
- (c) Section 634, regarding equal employment

SECTION 21. RENEWAL:

(a) The provisions of Section 626 of the Act will effectively govern the actions of the City and the franchisee in proceedings relating to franchise renewal. In complying with the provisions of this section of the Act, the City expressly reserves the right to establish guidelines to measure the effectiveness of the franchisee's performance that may be required under appropriate sections of the Act. However, nothing shall preclude the City and franchisee from negotiating a renewal of this Agreement prior to the implementation of the provisions of Section 626 of the Act should the City and the franchisee determine that such action is mutually beneficial.

(b) If a renewal of the franchise is denied or said franchise revoked for cause, and the City acquires ownership of the cable system or effects a transfer of ownership of the system to another person, any such acquisition or transfer shall be at fair market value, determined on the basis of the cable system valued as a going concern, but with no value allocated to the franchise itself.

(c) None of the foregoing affects or limits the franchisee's rights to compensation for its property under state or federal statutes or constitutions.

SECTION 22. SUCCESSORS AND ASSIGNS:

All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assigns of the franchisee and all privileges, as well as all obligations and liabilities of the franchisee, shall inure to its successors and assigns equally as if they were specifically mentioned wherever the franchisee is mentioned.

SECTION 23. INCONSISTENT FEDERAL PROVISIONS:

If any portion of this franchise should be inconsistent with any rule or regulation now or hereafter adopted by the Commission or federal statute, then to the extent of the inconsistency, the rule or regulation of the FCC or

federal statute shall control for so long, but only for so long, as the same shall remain in effect, but the remaining provisions of this franchise shall not thereby be affected.

SECTION 24. SEVERABILITY:

If any law, ordinance, regulation or court decision shall render any provision of the franchise invalid, the remaining provisions of the franchise shall remain in full force and effect.

SECTION 25. NON-EXCLUSIVE FRANCHISE:

This franchise shall not be deemed to be an exclusive franchise. It shall in no manner prohibit the City from granting other franchises of a like nature or franchises for other public or private utilities under, along, across, over and upon any of the City roads, rights-of-way, or other City property subject to this franchise. If a cable television franchise is granted to any other person or entity for CATV service within the City, and such franchise contains terms more favorable to the cable operator than those contained herein, such more favorable terms shall be incorporated herein.

SECTION 26. CITY'S RIGHT TO AMEND:

The City reserves the right at any time upon thirty (30) days written notice to the franchisee, to so change, amend, modify, terminate or amplify any of the provisions or conditions herein enumerated to conform to any federal or state statute, federal or state administrative rule, order of the Washington Public Utilities Commission or City regulation, relating to the public welfare, health, safety or highway regulation, as may hereafter be enacted, adopted or promulgated, and this franchise may be terminated at any time if the franchisee's facilities are not operated or maintained in accordance with such statute or regulation or material breach of this Agreement.

SECTION 27. PLAN FILING:

Franchisee shall file by the end of 1990 with the City a copy of its existing plan as it relates to the franchisee's facilities located within the City of Gig Harbor, and any amendments thereto as soon as practicable after said amendments are adopted. In addition thereto, franchisee shall compile and file with the City in an understandable format the projected life expectancy of its existing above-ground facilities, if any, located within the City limits, including any amendments to such schedules. The purpose of these filings is to promote better coordination between the City and franchisee. The City shall in turn periodically forward copies of its improvement plans to the franchisee, including its comprehensive street improvement program, required to be prepared pursuant to state law and any amendments thereto, in order to afford franchisee the opportunity to coordinate replacement of its facilities with planned improvements of the City.

SECTION 28. EXPIRATION CARRY-OVER:

In the event that the time period granted in this franchise expires without being renewed by the City, the terms and conditions of this franchise shall continue in full force and effect until amended, revised, renewed, replaced or otherwise affirmatively acted upon by the City Council.

SECTION 29. COST OF PUBLICATION:

The cost of publication of this franchise Ordinance shall be borne by the franchisee.

SECTION 30. ACCEPTANCE BY FRANCHISEE:

Franchisee's continued use of the public rights-of-way of the City and/or the exercise of any rights, privileges or authority granted by virtue of any section of this Ordinance shall be deemed to constitute acceptance of the terms and conditions placed upon franchisee by this Ordinance and franchisee shall fully comply with the terms contained herein as a condition of the continued use by franchisee of the public rights-of-way of the City.

SECTION 31. PROGRAM CONTENT CONTROL:

(a) BY FRANCHISEE: The franchisee may exercise editorial control over programming offered by the cable system only to the extent permitted by the Act and the applicable rules of the Commission, and the right to do so is expressly reserved herein.

(b) BY CITY: The CITY may impose programming requirements upon the franchisee only to the extent permitted by the Act and the applicable rules of the Commission, and the right to do so is expressly reserved.

SECTION 32. RECORDS TO BE KEPT:

(a) The franchisee shall keep for a period of one year, the following records and documents, which shall be available for public inspection and copying (at the copier's sole cost and expense) during regular business hours.

(1) Current information on ownership and management of the franchisee;

(2) Current information on complaint procedures followed by the franchisee; the nonbasic services offered by the franchisee;

(3) Records of all written requests for use of public access channels and leased channel time and the disposition of such requests;

(b) The franchisee shall keep for a period of 3 years:

(1) Records of all written complaints filed with the franchisee and the disposition thereof;

(2) Policy statements and administrative and staff operating procedures of the franchisee.

SECTION 33. This Ordinance, pursuant to _____ having been introduced on October 23, 1989, and having been passed by a majority of the entire legislative body at a regular meeting on November 13, 1990, which is more than five (5) days after its date of introduction, shall be published in the Peninsula Gateway, a newspaper of general circulation in the City, and

shall be in full force and effect five (5) days after the date of publication as provided by law.

APPROVED:

Donald J. Murphy
MAYOR

ATTEST/AUTHENTICATED:

[Signature]
CITY CLERK

FILED WITH THE CITY CLERK:

INTRODUCED: 10/23/89

PASSED BY THE CITY COUNCIL: 11/13/89

PUBLISHED: 12/6/89

EFFECTIVE DATE: 12/11/89

ORDINANCE NO.

ACCEPT:

CABLE TV. PUGET SOUND, INC.

d/b/a VIACOM CABLEVISION

BY: *[Signature]*

OFFICIAL TITLE

SUMMARY OF ORDINANCE #566
OF THE CITY OF GIG HARBOR, WASHINGTON

On the 13th day of November, 1989, the City Council of the City of Gig Harbor passed Ordinance #566. A summary of the content of this ordinance, consisting of the title, provides as follows:

An ordinance granting a franchise renewal to Cable TV Puget Sound, Inc., d/b/a Viacom Cablevision, to operate and maintain a cable system in the City of Gig Harbor, and setting forth conditions accompanying the grant of franchise.

The full text of the Ordinance will be mailed to any party upon request.

Dated this 29th day of November, 1989.

Michael R. Wilson
City Administrator/Clerk