

1 FILE NO. _____

PROPOSAL NO. 2002-60

2 Sponsored by: Councilmember Pat O'Malley

3 Requested by: County Executive

4
5 **ORDINANCE NO. 2002-60**

6
7 **AN ORDINANCE OF THE PIERCE COUNTY COUNCIL AMENDING CHAPTER 12.34 OF THE**
8 **PIERCE COUNTY CODE, TO COMPLY WITH THE TELECOMMUNICATIONS**
9 **ACT OF 1996, AS INTERPRETED BY THE NINTH CIRCUIT U. S.**
10 **COURT OF APPEALS.**

11
12 WHEREAS, The Pierce County Council passed Ordinance No. 96-124 in
13 December 1997, effective date, December 16, 1997, adopting Chapter 12.34
14 of the Pierce County Code, which provided for franchising and regulating
15 the use of Pierce County rights-of-way by cable television and
16 telecommunications providers; and

17 WHEREAS, The Pierce County Council believed that Chapter 12.34
18 fully complied with the Federal Telecommunications Act of 1996, and the
19 Cable Act of 1992; and

20 WHEREAS, Several cities and towns in the State of Washington,
21 including the City of Tacoma, which had telecommunications regulatory
22 and franchise ordinances similar in many respects to Chapter 12.34 of
23 the Pierce County Code, were parties to a legal action against Qwest
24 Corporation; and

25 WHEREAS, In ruling on the various issues raised in the litigation,
the U.S. Court of Appeals for the Ninth Circuit found that many of the

1 provisions of these Ordinances were in violation of the
2 Telecommunications Act of 1996, the decision being reported in City of
3 Auburn, et al v. Qwest Corporation, 260 F3 1165; and

4 WHEREAS, The Council finds that the amendments to Chapter 12.34 of
5 the Pierce County Code and contained in Exhibit "A" are made necessary
6 by the Auburn v. Qwest case, and that upon adoption they will bring the
7 Chapter into compliance with the Telecommunications Act of 1996 as
8 interpreted by the Ninth Circuit; and NOW THEREFORE,

9 BE IT ORDAINED by the Council of Pierce County:

10
11 Section 1. Chapter 12.34 of the Pierce County Code is hereby
12 amended as set forth in Exhibit "A" which is attached hereto and
13 incorporated by this reference.

14 PASSED this _____ day of _____, 2002.

15
16 ATTEST:

PIERCE COUNTY COUNCIL
PIERCE COUNTY, Washington

17
18 _____
19 Gerri Rainwater
Clerk of the Council

Councilmember Harold Moss
Council Chair

20 Approved As To Form Only:

PIERCE COUNTY EXECUTIVE
John Ladenburg

21
22 _____
Deputy Prosecuting Attorney

Approved _____ Vetoed
this _____ day of _____, 2002.

23
24 Date of Publication of
Notice of Public Hearing:

25 Effective Date of Ordinance:

2 *Chapter 12.34*

3 ***CABLE OR TELECOMMUNICATIONS USERS OF PIERCE COUNTY RIGHTS-OF-WAY***

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ARTICLE I – TELECOMMUNICATIONS

12.34.010 Purpose.

The purpose of this Chapter is to:

- A. Establish a local policy concerning telecommunications providers and services;
- B. Establish clear and nondiscriminatory local guidelines, standards, and time frames for the exercise of local authority with respect to the regulation of the use of public rights-of way and/or public property by telecommunications providers and for telecommunications services;
- ~~C. Promote competition in telecommunications;~~
- ~~D. Minimize unnecessary local regulation of telecommunications providers and services;~~
- ~~E. Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions, and residents of the County;~~
- ~~F. Permit and manage reasonable access to the public rights-of-way of the County for telecommunications purposes on a competitively neutral basis;~~
- ~~G. Conserve the limited physical capacity of the public rights-of-way held in public trust by the County;~~
- ~~H. Assure that the County's current and ongoing costs of granting and regulating private access to and use of the public rights-of-way are fully paid by the persons seeking such access and causing such costs;~~
- ~~I. Secure fair and reasonable compensation to the County and the residents of the County, consistent with 47 U.S.C. sec. 253, in a non-discriminatory manner, for permitting private use of the public rights-of-way and/or public property;~~
- ~~J. Assure that all telecommunications carriers providing placing facilities or services within the~~

1 County ~~rights of way~~ comply with the ordinances, rules, and regulations of the County;
2 ~~K~~J. Assure that the County can continue to fairly and responsibly protect the public health,
3 safety, and welfare; and
4 ~~L~~K. Enable the County to discharge its public trust consistent with rapidly evolving federal and
5 state regulatory policies, industry competition, and technological development.
6 (Ord. 96-124 § 1 (part), 1997)

7 **12.34.020 Definitions.**

8 Terms used in this Chapter shall have the following meanings:

- 9 A. "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or
10 controlled by, or is under common ownership or control with another person.
11 B. "Cable Acts" means the Cable Communications Policy Act of 1984, as amended by the Cable
12 Television Consumer Protection and Competition Act of 1992, as amended by portions of The
13 Telecommunications Act of 1996, and as hereafter amended.
14 C. "Cable Operator" means a Telecommunications Carrier providing or offering to provide
15 "Cable Service" within the County as that term is defined in the Federal Cable Acts.
16 D. "Cable Service" shall have the same meaning as defined in the Federal Cable Acts.
17 E. "County" means the County of Pierce, State of Washington.
18 F. "County Property" means any real property owned by County, whether in fee or other
19 ownership estate of interest.
20 G. "Excess Capacity" means the volume or capacity in any existing or future duct, conduit,
21 manhole, handhole or other Utility Facility within the right-of-way that is or will be available
22 for use for additional Telecommunications Facilities.
23 H. "FCC" or "Federal Communications Commission" means the federal administrative agency,
24 or lawful successor, authorized to regulate and oversee Telecommunications Carriers,
25 Services and providers on a national level.
I. "Grantee" encompasses those franchisees granted certain rights and obligations as more fully
described herein.
J. "Washington Utilities and Transportation Commission" or "WUTC" means the state
administrative agency, or lawful successor, authorized to regulate and oversee
Telecommunications Carriers, Services, and Providers in the State of Washington to the extent
prescribed by law.
K. "Overhead Facilities" means Utility Facilities and Telecommunications Facilities located
above the surface of the ground, including the underground supports and foundations for such
facilities.
L. "Person" includes corporations, companies, associations, joint stock companies, firms,
partnerships, limited liability companies, other entities, and individuals.
M. "Public Ways" includes the surface of and space above and below any real property in
County in which County has an ownership interest, or interest as a trustee for the public,
including but not limited to all public streets, highways, roads, alleys, sidewalks, tunnels,
viaducts, bridges, skyways, or any other public place, area, or property under control of
County, and any public or utility easements established, dedicated, or devoted for public utility
purposes.
N. "Rights-of-Way" means all County Property and Public Ways, collectively, within the
County.
O. "State" means the State of Washington.

- 1 P. "Surplus Space" means that portion of the usable space on a utility pole which has the
2 necessary clearance from other pole users, as required by the orders and regulations of
3 regulatory agencies with applicable jurisdiction, to allow its use by a Telecommunications
4 Carrier for a pole attachment.
- 5 Q. "Telecommunications Carrier" includes every person that directly or indirectly owns,
6 controls, operates or manages plant, equipment or property within the County, used or to be
7 used for the purpose of offering Telecommunications Service.
- 8 R. "Telecommunications Facilities or Telecommunications System" means the plant, equipment
9 and property including, but not limited to, cables, wires, conduits, ducts, pedestals, antennae,
10 electronics, and other appurtenances used or to be used to transmit, receive, distribute, provide
11 or offer Telecommunications Service.
- 12 S. "Telecommunications Provider" includes every person who provides Telecommunications
13 Service over Telecommunications Facilities.
- 14 T. "Telecommunications Service" means the providing or offering for rent, sale or lease, or in
15 exchange for other value received, of the transmittal of voice, data, image, graphic, and video
16 programming information between or among points by wire, cable, fiber optics, laser,
17 microwave, radio, satellite or similar facilities, with or without benefit of any closed
18 transmission medium.
- 19 U. "Underground Facilities" means Utility and Telecommunications Facilities located under the
20 surface of the ground, excluding the underground foundations or supports for Overhead
21 Facilities.
- 22 V. "Usable Space" means the total distance between the top of a utility pole and the lowest
23 possible attachment point that provides the minimum allowable vertical clearance as specified
24 in the orders and regulations of the WUTC.
- 25 W. "Utility Facilities" mean the plant, equipment, and property including, but not limited to, the
poles, pipes, mains, conduits, ducts, cables, wires, plant and equipment located under, on or
above the surface of the ground within rights-of-way and used or to be used for the purpose of
providing utility services or Telecommunications Services including Telecommunication
Facilities.

(Ord. 96-124 § 1 (part), 1997)

12.34.040 — ~~Restricted Franchise and Fees.~~

~~Except as otherwise provided herein, any Telecommunications Carrier who desires to
construct, install, operate, maintain, or otherwise locate Telecommunications Facilities in rights of
way for the purpose of providing Telecommunications Service to persons and areas outside the
County shall first obtain a restricted franchise granting the use of such public rights of way from
the County pursuant to this Chapter and pay all the fees as provided herein.~~

~~(Ord. 96-124 § 1(part), 1997)~~

12.34.0540 Franchise and Fees.

Except as otherwise provided herein, any Telecommunications Carrier who desires to construct,
install, operate, maintain, or otherwise locate Telecommunications Facilities in rights-of-way ~~and to also
provide Telecommunications Service to persons or areas in the County,~~ shall first obtain a franchise
granting the use of such rights-of-way from the County pursuant to this Chapter and **Chapter 36.55**
RCW and pay all the fees as provided herein.

(Ord. 96-124 § 1 (part), 1997)

1 **12.34.0650 Cable Franchise and Fees.**

2 Except as otherwise provided herein, any Telecommunications Carrier who desires to construct,
3 install, operate, maintain, or locate Telecommunications Facilities in rights-of-way for the purpose of
4 providing Cable Services shall first obtain a cable franchise from the County pursuant to this Chapter
and pay all the fees as provided herein and in the cable franchise.
(Ord. 96-124 § 1 (part), 1997)

5 **12.34.0760 Application to Existing Franchise Ordinances and Agreements.**

6 This Chapter shall have no effect on any existing franchise agreement in effect on December 16,
1997, until:

7 A. The expiration of said franchise agreement; or

8 B. An amendment to an unexpired franchise agreement, unless both parties agree to defer full
compliance to a specific date not later than the present expiration date.

(Ord. 96-124 § 1 (part), 1997)

9 **12.34.0870 Penalties.**

10 Any person found violating, disobeying, omitting, neglecting, or refusing to comply with any of
the provisions of this Chapter is subject to a class 1 civil infraction pursuant to Chapter 1.16 PCC for
each act. Each day constitutes a separate act.

(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

12 **12.34.0980 Other Remedies.**

13 Nothing in this Chapter shall be construed as limiting any judicial remedies that the County may
have, at law or in equity, for enforcement of this Chapter.

(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

14 **12.34.109000 Severability.**

15 If any Section, subsection, sentence, clause, phrase, or other portion of this Chapter, or its
16 application to any person is, for any reason, declared invalid, in whole or in part by any court or agency
of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

(Ord. 96-124 § 1 (part), 1997)

17 **ARTICLE II - RESERVED FOR FUTURE USE**

18 ~~**ARTICLE III - RESERVED**~~

19 ~~**12.34.300 Restricted Franchise.**~~

20 ~~A restricted franchise shall be required of any Telecommunications Provider who desires to
make use of Telecommunication Facilities which occupy any rights-of-way for the sole purpose of
providing Telecommunications Services to persons or areas outside the County.~~

21 ~~(Ord. 96-124 § 1(part), 1997)~~

22 ~~**12.34.305 Restricted Franchise Application.**~~

23 ~~Any person who desires a restricted franchise hereunder shall file an application in accordance
with PCC 12.32.060, 12.32.070 and 12.32.080, which shall include the applicable portions of the
required restricted franchise application information.~~

1 (~~Ord. 2000-57s § 2 (part), 2001; Ord.96-124 § 1 (part), 1997)~~

2 **~~12.34.310 — Determination by the County.~~**

3 ~~As soon as is practicable after receiving a complete application in the form approved by the~~
4 ~~County Engineer and submitted to the Department of Public Works and Utilities pursuant to PCC~~
5 ~~12.32.060, the County Council, in accordance with PCC 12.32.080 B., shall set a time and place~~
6 ~~for a public hearing on whether to grant or deny the application in whole or in part. A~~
7 ~~recommendation to deny an application may be based on the criteria contained in PCC 12.32.100~~
8 ~~and any of the following:~~

9 ~~A. The financial and technical ability of the applicant.~~

10 ~~B. The legal ability of the applicant.~~

11 ~~C. The capacity of the rights-of-way to accommodate the applicant's facilities.~~

12 ~~D. The capacity of the rights-of-way to accommodate additional utility and~~
13 ~~Telecommunications Facilities if the application is granted.~~

14 ~~E. The damage or disruption, if any, of public or private facilities, improvements, service,~~
15 ~~travel or landscaping if the application is granted, giving consideration to an applicant's~~
16 ~~willingness and ability to mitigate and/or repair same.~~

17 ~~F. The public interest in minimizing the cost and disruption of construction within the rights-of-~~
18 ~~way.~~

19 ~~G. The service that applicant will provide to the region.~~

20 ~~H. The effect, if any, on general public health, safety and welfare in County's sole opinion if~~
21 ~~the application is granted.~~

22 ~~I. The availability of alternate routes or locations for the proposed facilities.~~

23 ~~J. Applicable federal, state and local laws, regulations, rules and policies.~~

24 ~~K. Such other factors as may demonstrate that the grant to use the rights-of-way will serve~~
25 ~~the community interest.~~

(~~Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)~~

26 **~~12.34.315 — Agreement.~~**

27 ~~No restricted franchise granted hereunder shall be effective until the applicant and the County~~
28 ~~have executed a written agreement setting forth the particular items and provisions under which~~
29 ~~the restricted franchise shall occupy and use rights-of-way will be granted and said agreement is~~
30 ~~properly recorded with the Pierce County Auditor in accordance with RCW 36.55.080. All~~
31 ~~restricted franchises granted pursuant to this Article shall contain substantially similar terms and~~
32 ~~conditions, which, taken as a whole and considering relevant characteristics of the applicants, do~~
33 ~~not provide more or less favorable terms and conditions than those required of other restricted~~
34 ~~franchisees.~~

35 (~~Ord. 96-124 § 1 (part), 1997)~~

36 **~~12.34.320 — Nonexclusive Grant.~~**

37 ~~No restricted franchise granted hereunder shall confer any exclusive right or authorization to~~
38 ~~occupy or use the rights-of-way for delivery of Telecommunications Services or any other~~
39 ~~purposes.~~

40 (~~Ord. 96-124 § 1 (part), 1997)~~

41 **~~12.34.325 — Rights Granted.~~**

1 A. No restricted franchise granted hereunder shall convey any right, title or interest in the
rights of way but shall be deemed an authorization only to use and occupy the rights of way
2 for the limited purposes and term stated in the grant.

3 B. No restricted franchise granted hereunder shall authorize or excuse a restricted franchisee
from securing such further easements, leases, permits or other approvals as may be
4 required to lawfully occupy and use Rights of Way Excess Capacity in an Underground
Facility or Surplus Space in an Overhead Facility. At such time as a restricted franchisee
5 also provides Telecommunications Service within the County to County residents, it shall
be required to obtain a franchise in addition to the restricted franchise.

6 C. No restricted franchise granted hereunder shall be construed as any warranty of title.
(Ord. 96-124 § 1 (part), 1997)

7 **12.34.330 — Term of Grant.**

8 Unless otherwise specified in the restricted franchise, or unless otherwise renewed, a restricted
franchise granted hereunder shall be in effect for a term of not more than five years.
(Ord. 96-124 § 1 (part), 1997)

9 **12.34.335 — Restricted Franchise Route.**

10 A restricted franchise granted hereunder shall be limited to a grant of use of specific rights of way
and defined portions thereof.
11 (Ord. 96-124 § 1 (part), 1997)

12 **12.34.340 — Utility Right of Way Permits.**

13 All restricted franchisees are required to obtain utility right of way permits as required in PCC
12.32.110 and pay all fees as required in PCC 12.32.130.
(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

14 **12.34.345 — Compensation to County.**

15 Each restricted franchise granted hereunder is subject to the County's right, which is expressly
reserved, to annually fix by ordinance a fair and reasonable compensation for use of property
16 pursuant to a restricted franchise, provided nothing in this Chapter shall prohibit the County and a
restricted franchisee from agreeing to the compensation to be paid.
17 (Ord. 96-124 § 1 (part), 1997)

18 **12.34.350 — Service to County Users.**

19 A restricted franchisee may be permitted to offer or provide Telecommunications Services to
persons or areas within the County upon submitting an application for franchise approval and after
20 being granted a franchise pursuant to this Chapter.
(Ord. 96-124 § 1 (part), 1997)

21 **12.34.355 — Amendment of Grant.**

22 A. A new restricted franchise application and grant shall be required of any
Telecommunications Carrier that desires to extend or locate its Telecommunications
23 Facilities in rights of way of the County which are not included in a restricted franchise
previously granted hereunder.

24 B. A new franchise application and grant shall be required of any Telecommunications

1 Provider that desires to add to or modify the services provided beyond the scope of a
franchise previously granted.

2 C. If a Grantee is ordered by the County to locate or relocate its Telecommunications
3 Facilities in rights-of-way not included in a previously granted restricted franchise, the
County shall grant a restricted franchise amendment without further application.
(Ord. 96-124 § 1 (part), 1997)

4 **12.34.360 — Renewal Applications.**

5 A restricted franchisee that desires to renew its restricted franchise hereunder shall, not more
6 than 180 days nor less than 90 days before expiration of the current restricted franchise, file an
application with the County for renewal of its restricted franchise which shall include the
following information:

7 A. The applicable information required pursuant to the restricted franchise.

8 B. Any other information required by the County.

(Ord. 96-124 § 1 (part), 1997)

9 **12.34.365 — Renewal Determinations.**

10 As soon as is practicable after receiving a complete application in the form approved by the
County Engineer and submitted to the Pierce County Department of Public Works and Utilities
11 pursuant to PCC 12.32.060, the County Council, in accordance with PCC 12.32.080 B., and
RCW Chapter 36.55, shall set a time and place for a public hearing on whether to grant or deny
12 the renewal application in whole or in part. If the renewal recommendation is to deny, the
recommendation shall include the reasons for non-renewal. When determining whether to
recommend granting or denying the application, the following criteria shall be considered:

13 A. The standards enumerated in PCC 12.34.310,

14 B. The criteria set forth in PCC 12.32.100, and

15 C. The applicants compliance with the requirements of this Chapter and the franchise.

(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

16 **12.34.370 — Obligation to Cure As a Condition of Renewal.**

17 No restricted franchise shall be renewed until any ongoing violations or defaults in the
restricted franchisee's performance of the restricted franchise, of the requirements of this Chapter,
18 and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a
plan detailing the corrective action to be taken by the restricted franchisee has been approved by
the County Executive or designee.

(Ord. 96-124 § 1 (part), 1997)

19 **ARTICLE IV - FRANCHISE**

20 **12.34.400 Franchise.**

21 A franchise shall be required of any Telecommunications Provider who desires to make use of
place Telecommunications Facilities which occupy in the rights-of-way and to provide
22 Telecommunications Services to any person or area in the County.

(Ord. 96-124 § 1 (part), 1997)

23 **12.34.405 Franchise Application.**

24 Any person who desires a franchise hereunder shall file an application in accordance with PCC

1 12.32.060, 12.32.070 and 12.32.080, which shall include the applicable portions of the required
2 franchise application information.
(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

3 **12.34.410 Determination by the County.**

4 As soon as is practicable after receiving a complete application in the form approved by the
5 County Engineer and submitted to the Pierce County Department of Public Works and Utilities pursuant
6 to PCC 12.32.060 hereunder, the County Executive or designee shall make a recommendation to the
7 County Council which, in accordance with PCC 12.32.080 B., shall set a time and place for a public
8 hearing on whether to grant or deny the application in whole or in part. If the recommendation decision
9 is to deny, the recommendation record shall include the reasons for denial. The standards enumerated
10 herein in PCC 12.34.310 and criteria in PCC 12.32.100 shall apply when determining whether to
11 recommend granting or denying the application. The criteria which shall be considered are:

- 12 A. The capacity of the rights-of-way to accommodate the applicant's facilities.
- 13 B. The capacity of the rights-of-way to accommodate additional utility and
14 Telecommunications Facilities if the application is granted.
- 15 C. The damage or disruption, if any, of public or private facilities, improvements, service,
16 travel or landscaping if the application is granted, giving consideration to an applicants
17 willingness and ability to mitigate and/or repair same.
- 18 D. The public interest in minimizing the cost and disruption of construction within the
19 rights-of-way.
- 20 E. The availability of alternate routes or locations for the proposed facilities.
- 21 F. Applicable federal, state, and local laws, regulations, rules, and policies.

22 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

23 **12.34.415 Agreement.**

24 No franchise shall be granted take effect hereunder unless the applicant and the County have
25 executed a written agreement setting forth the particular terms and provisions under which the franchise
to occupy and use rights-of-way will be granted and said agreement has been recorded in accordance
with RCW 36.55.080. All franchises granted pursuant to this Article shall contain substantially similar
terms and conditions, which, taken as a whole and considering relevant characteristics of the applicants,
do not provide more or less favorable terms and conditions than those required of similarly situated
franchisees. (Ord. 96-124 § 1 (part), 1997)

12.34.420 Nonexclusive Grant.

No franchise granted hereunder shall confer any exclusive right, privilege or franchise to occupy
or use the rights-of-way for delivery of Telecommunications Services or any other purposes.
(Ord. 96-124 § 1 (part), 1997)

12.34.425 Rights Granted.

- A. No franchise granted hereunder shall convey any right, title or interest in the rights-of-way
but shall be deemed a franchise only to use and occupy the rights-of-way for the limited
purposes and term stated in the grant.
- B. No franchise granted hereunder shall authorize or excuse a franchisee from securing such
further easements, leases, permits or other approvals as may be required to lawfully occupy
and use Rights-of-Way Excess Capacity in an Underground Facility or Surplus Space in an

1 Overhead Facility.

2 C. No franchise granted hereunder shall be construed as any warranty of title.
(Ord. 96-124 § 1 (part), 1997)

3 **12.34.430 Term of Grant.**

4 Unless otherwise specified in a franchise or unless otherwise renewed, a franchise granted
5 hereunder shall be valid for a term of not more than five years.
(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

6 **12.34.435 Utility Right-of-Way Permits.**

7 All franchisees are required to obtain utility right-of-way permits as required in PCC 12.32.110
8 and pay all fees for Telecommunications Facilities as required in PCC 12.32.130.
(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

9 **12.34.440 Compensation to County.**

10 Each franchise granted hereunder is subject to the County's right, which is expressly reserved, to
11 annually fix by ordinance a fair and reasonable compensation for use of property pursuant to a franchise,
12 provided nothing in this Chapter shall prohibit the County and a franchisee from agreeing to the
13 compensation to be paid.
(Ord. 96-124 § 1 (part), 1997)

14 ~~**12.34.445 Nondiscrimination.**~~

15 ~~A franchisee shall make its Telecommunications Services available to any customer within its
16 franchise area who shall request such service, without discrimination as to the terms, conditions,
17 rates or charges for franchisee's services, provided, however, that nothing in this Chapter shall
18 prohibit a franchisee from making any reasonable classifications among differently situated
19 customers. This Section does not require a grantee with a County-wide franchise to provide
20 service to the entire County.
(Ord. 96-124 § 1 (part), 1997)~~

21 **12.34.4554 Amendment of Grant.**

22 ~~A. A new franchise application and grant shall be required of any Telecommunications Provider
23 that desires to add to or modify the services provided beyond the scope of a franchise
24 previously granted.~~
25 ~~BA. If a Grantee is ordered by the County to locate or relocate its Telecommunications Facilities
in rights-of-way not included in a previously granted franchise, the County shall grant a
franchise amendment, if necessary, without further application.
(Ord. 96-124 § 1 (part), 1997)~~

12.34.460 Renewal Applications.

A franchisee that desires to renew its franchise hereunder shall, not more than 180 days nor less
than 90 days before expiration of the current franchise, file an application with the County for renewal
of its franchise which shall include the following information:

A. The applicable information required pursuant to the franchise.

B. Any other information required by the County consistent with federal law.
(Ord. 96-124 § 1 (part), 1997)

1 **12.34.465 Renewal Determinations.**

2 As soon as is practicable after receiving a complete application in the form approved by the
3 County Engineer and submitted to the Pierce County Department of Public Works and Utilities pursuant
4 to PCC 12.32.060, the County Council, in accordance with PCC 12.32.080 B., and RCW Chapter 36.55,
5 shall set a time and place for a public hearing on whether to grant or deny the renewal application in
6 whole or in part. If the ~~renewal recommendation~~ decision is to deny, the ~~recommendation~~ record shall
7 include the reasons for non-renewal. When determining whether to recommend granting or denying the
8 application, the following criteria shall be considered:

- 9 A. The standards enumerated in PCC 12.34.3410. ~~C, D, E, F, I, and J.~~
 - 10 B. The criteria set forth in PCC 12.32.100, and
 - 11 C. The applicant's compliance with the requirements of this Chapter and the franchise.
- 12 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

13 **12.34.470 Obligation to Cure As a Condition of Renewal.**

14 No franchise shall be renewed until any ongoing violations or defaults in the franchisee's
15 obligations under the franchise, or the requirements of this Chapter, and all applicable laws, statutes,
16 codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be
17 taken by the franchisee has been approved by the County.
18 (Ord. 96-124 § 1 (part), 1997)

19 **ARTICLE V - CABLE FRANCHISE**

20 **12.34.500 Grant of Cable Franchise.**

21 The County may grant one or more cable franchises containing such provisions as are reasonably
22 necessary to protect the public interest, and each such cable franchise shall be awarded in accordance
23 with and subject to the provisions of this Chapter. This Chapter may be amended from time to time, and
24 in no event shall this Chapter be considered a contract between the County and a cable franchisee such
25 that the County would be prohibited from amending any provision hereof, provided no such amendment
shall in any way impair any contract right or increase obligations of a cable franchisee under an
outstanding and effective cable franchise except in the lawful exercise of the County's police power.
(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

12.34.505 Cable Franchise Required.

No person may construct, operate or maintain a cable system or provide Cable Service over a
cable system within the County without a cable franchise granted by the County authorizing such
activity. No person may be granted a cable franchise without having entered into a cable franchise
agreement with the County pursuant to this Chapter. For the purpose of this provision, the operation of
part or all of a cable system within the County means the use or occupancy of rights-of-way by facilities
used to provide Cable Service. Telecommunications Facilities used to provide telephone service which
are also used to provide Cable Service shall be subject to this Chapter and shall also require a cable
franchise. Use of such facilities to provide services similar to Cable Service, such as Open Video
Service, shall be subject to this Chapter to the extent provided by law. A system shall not be deemed as
operating within the County even though service is offered or rendered to one or more subscribers
within the County, if no rights-of-way by facilities used to provide Cable Service are used or occupied.
All cable franchises granted pursuant to this Article shall contain substantially similar terms and
conditions, which, taken as a whole and considering relevant characteristics of the applicants, do not

1 provide more or less favorable terms and conditions than those required of other cable franchisees.
2 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

3 **12.34.510 Length of Cable Franchise.**

4 Unless otherwise specified in a cable franchise, or unless otherwise renewed, no cable franchise
5 shall be granted for a period of more than five years.
6 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

7 **12.34.515 Cable Franchise Characteristics.**

- 8 A. A cable franchise authorizes use of rights-of-way for installing, operating and maintaining
9 cables, wires, lines, optical fiber, underground conduit and other devices necessary and
10 appurtenant to the operation of a cable system to provide Cable Services within the County,
11 but does not expressly or implicitly authorize a cable franchisee to provide service to, or
12 install a cable system on private property without owner consent, or to use publicly or
13 privately owned poles, ducts or conduits without a separate agreement with the owners.
- 14 B. A cable franchise shall not mean or include any exclusive right or authorization for the
15 privilege of transacting and carrying on a business within the County as generally required by
16 the ordinances and laws of the County. A cable franchise shall not confer any authority to
17 provide Telecommunications Services or any other communications services besides Cable
18 Services. A cable franchise shall not confer any implicit rights other than those mandated by
19 federal, state or local law.
- 20 C. A cable franchise is nonexclusive and will not explicitly or implicitly: preclude the issuance
21 of other cable franchises to operate cable systems within the County; affect the County's right
22 to authorize use of rights-of-way by other persons to operate cable systems or for other
23 purposes as it determines appropriate; or affect the County's right to itself construct, operate
24 or maintain a cable system, with or without a cable franchise.
- 25 D. Once a cable franchise has been accepted and executed by the County and a cable franchisee,
such cable franchise shall constitute a valid and enforceable agreement between the cable
franchisee and the County, and the terms, conditions and provisions of such franchise, subject
to this Chapter and all other duly enacted and applicable laws and regulations shall define the
rights and obligations of the cable franchisee and the County relating to the cable franchise.
- E. All privileges prescribed by a cable franchise shall be subordinate to any prior lawful
occupancy of the rights-of-way and the County reserves the right to reasonably designate
where a cable franchisee's facilities are to be placed within the rights-of-way through its
generally applicable permit procedures.
- F. A cable franchise shall be a privilege that is in the public trust and personal to the original
cable franchisee. No cable franchise transfer shall occur without the prior written consent of
the County upon application made by the cable franchisee pursuant to this Chapter and the
cable franchise, which consent shall not be unreasonably withheld, and any purported cable
franchise transfer made without application and prior written consent shall be void and shall
be cause for the County to revoke the cable franchise.

(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

12.34.520 Cable Franchisee Subject to Other Laws, Police Powers.

- A. A cable franchisee shall at all times be subject to and shall comply with all applicable federal,
state and local laws and regulations, including this Chapter. A cable franchisee shall at all

1 times be subject to all lawful exercise of the police power of the County including, but not
2 limited to, all rights the County may have under the Cable Acts, all powers regarding zoning,
3 supervision of construction, control of rights-of-way and consumer protection.

4 B. The County shall have full authority to regulate cable systems, cable franchisees and cable
5 franchises as may now or hereafter be lawfully permissible.

6 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

7
8 **12.34.525 Interpretation of Cable Franchise Terms.**

9 A. In the event of a conflict between this Chapter and a cable franchise, the provisions of this
10 Chapter control except where the conflict arises from the lawful exercise of the County's
11 police power.

12 B. The provisions of this Chapter and a cable franchise will be liberally construed in accordance
13 with generally accepted rules of construction to promote the public interest.

14 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

15
16 **12.34.530 Operation of a Cable System Without a Cable Franchise.**

17 Any person who occupies rights-of-way for the purpose of operating or constructing a cable
18 system or provides Cable Service over a cable system and who does not hold a valid cable franchise
19 from the County shall be subject to all requirements of this Chapter. At its discretion, the County at any
20 time may by ordinance: require such person to enter into a cable franchise within 30 days of receipt of a
21 written notice to such person from the County that a cable franchise is required; require such person to
22 remove its property and restore the affected area to a condition satisfactory to the County; direct County
23 personnel to remove the property and restore the affected area to a condition satisfactory to the County
24 and charge the person the costs therefor, including by placing a lien on the person's property; or take any
25 other action it is entitled to take under applicable law. In no event shall a cable franchise be created
unless it is issued by the County pursuant to this Chapter and subject to a written cable franchise.

(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

15
16 **12.34.535 Acts at Cable Franchisee's Expense.**

17 Any act that a cable franchisee is or may be required to perform under this Chapter, a cable
18 franchise or applicable law shall be performed at the cable franchisee's expense.

19 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

20
21 **12.34.540 Eminent Domain.**

22 Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the
23 County's power of eminent domain.

24 (Ord. 96-124 § 1 (part), 1997)

25
12.34.545 Exclusive Contracts and Anti-Competitive Acts Prohibited.

A. No cable franchisee or other multichannel video programming distributor shall enter into or
enforce an exclusive contract for the provision of Cable Service or other multichannel video
programming with any person, or demand the exclusive right to serve a person or location, as
a condition of extending service to that or any other person or location.

B. No cable franchisee or other multichannel video programming distributor shall engage in acts
that have the purpose or effect of limiting competition for the provision of Cable Services or
services similar to Cable Service in the County.

1 (Ord. 96-124 § 1 (part), 1997)

2 **12.34.550 Cable Franchise Fees.**

3 Cable franchisees shall be subject to the cable franchise fees, payments and costs provided in
4 their cable franchise and herein. For purpose of cable franchise fees, "Gross revenues" shall mean all
5 revenue derived directly or indirectly by the grantee, its affiliates, subsidiaries, parent and/or any person
6 in which the grantee has a financial interest, from providing cable television services within the County,
7 including, but not limited to, basic subscriber service monthly fees, pay cable fees, installation and
8 reconnection fees, leased channel fees, converter rentals, studio rental, production equipment and
9 personnel fees, and advertising revenues; provided, however, that this shall not include any taxes on
10 services furnished by the grantee which are imposed directly upon any subscriber or user by the State of
11 Washington, local or other governmental unit and collected by the grantee on behalf of said
12 governmental unit.

13 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

14 **ARTICLE VI - CONDITIONS OF GRANT OF RESTRICTED
15 FRANCHISE, FRANCHISE OR CABLE FRANCHISE**

16 **12.34.600 General Duties.**

17 A. All Grantees, before commencing any construction in the rights-of-way shall comply with all
18 requirements of PCC 17B.10.060 B. and Chapter 12.32 PCC.

19 B. All Grantees shall provide, upon request, written confirmation sufficient for customary
20 land survey and land title insurance purposes concerning the location of its facilities in rights-
21 of-way and disclaiming any interest in rights-of-way where it has no franchise to construct or
22 operate its facilities.

23 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

24 **12.34.602 Interference with the Rights-of-Way.**

25 No Grantee may locate or maintain its Cable or Telecommunications Facilities so as to
unreasonably interfere with the use of the rights-of-way by the County, by the general public or other
persons authorized to use or be present in or upon the rights-of-way. All such facilities shall be moved
by and at the expense of the Grantee, temporarily or permanently, as determined by the County.

(Ord. 96-124 § 1 (part), 1997)

12.34.604 Damage to Property.

No Grantee or any person acting on a Grantee's behalf shall take any action or permit any action
to be done which may impair or damage any rights-of-way, including specifically County Property, real
or personal, or Public Ways or other property located in, on or adjacent thereto except in accordance
with PCC 12.34.622.

(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

12.34.606 Notice of Work.

Unless otherwise provided in a ~~restricted franchise agreement~~ or franchise agreement, no
Grantee, or any person acting on the Grantee's behalf, shall commence any non-emergency work in or
about rights-of-way unless work is conducted in accordance with PCC 12.32.110. Any private property
owner whose property will be affected by a Grantee's work shall be afforded ten days advance written
notice of such work.

1 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

2 **12.34.608 Repair and Emergency Work.**

3 In the event of an emergency or an emergency repair necessary to protect the public, restore
4 service or mitigate further damage to the system, a Grantee may commence such repair and emergency
5 response work as required under the circumstances, provided the Grantee shall notify the County
6 Engineer or designee as promptly as possible, before such repair or emergency work or as soon
7 thereafter as possible if advance notice is not practicable, in accordance with PCC 17B.10.060 B.
8 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

6 **12.34.610 Maintenance of Facilities.**

7 Each Grantee shall maintain its facilities in a good and safe condition and in a manner that
8 complies with all applicable federal, state and local requirements.
9 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

8 **12.34.612 Relocation or Removal of Facilities.**

9 Within 30 days, or such longer period as may be specified by the County Engineer, following
10 written notice from the County, a Grantee shall, at its own expense, temporarily or permanently remove,
11 relocate, change or alter the position of any Telecommunications Facilities within the rights-of-way
12 whenever the County Engineer or designee shall have determined that such removal, relocation, change
13 or alteration is reasonably necessary for:

14 A. The construction, repair, maintenance or installation of any County or other public
15 improvement in or upon the rights-of-way.

16 B. The operations of the County or other governmental entity in or upon the rights-of-way.

17 C. The vacation of a street or the release of a utility easement.

18 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

14 **12.34.614 Removal of Unauthorized Facilities.**

15 Within 30 days following written notice from the County Engineer or designee, any Grantee,
16 Telecommunications Carrier, or other person that owns, controls or maintains any unauthorized
17 Telecommunications System, Facility or related appurtenances within the rights-of-way shall, at its own
18 expense, remove such facilities or appurtenances from the rights-of-way. If such Grantee fails to remove
19 such facilities or appurtenances, the County may cause the removal and charge the Grantee for the costs
20 incurred. A Cable System, Telecommunications System, or Facility is unauthorized and subject to
21 removal in the following circumstances:

22 A. Upon expiration or termination of the Grantee's franchise.

23 B. Upon abandonment of a facility within the rights-of-way.

24 C. If the system or facility was constructed or installed without the prior grant of a franchise.

25 D. If the system or facility was constructed or installed without the prior issuance of a required
utility right-of-way permit.

E. If the system or facility was constructed or installed at a location not permitted by the
Grantee's franchise.

F. Any such other reasonable circumstances deemed necessary by the County Engineer or
designee.

(Ord. 2000-57s § 1 (part), 2001; Ord. 96-124 § 1 (part), 1997)

1 **12.34.616 Failure to Relocate.**

2 If a Grantee is required to relocate, change or alter the Cable or Telecommunications Facilities
3 constructed, operated and/or maintained hereunder and fails to do so, the County may cause such to
4 occur and charge the Grantee for the costs incurred.
(Ord. 96-124 § 1 (part), 1997)

4 **12.34.618 Emergency Removal or Relocation of Facilities.**

5 The County retains the right and privilege to cut or move any Cable or Telecommunications
6 Facilities located within the rights-of-way as the County may determine to be necessary, appropriate or
7 useful in response to any public health or safety emergency.
(Ord. 96-124 § 1 (part), 1997)

7 **12.34.620 Damage to Grantee's Facilities.**

8 Unless directly and proximately caused by the willful, intentional or malicious acts of the
9 County, the County shall not be liable for any damage to or loss of any Cable or Telecommunications
10 Facility within rights-of-way as a result of or in connection with any public works, public
11 improvements, construction, excavation, grading, filling, or work of any kind in the rights-of-way by or
12 on behalf of the County.
(Ord. 96-124 § 1 (part), 1997)

11 **12.34.622 Restoration of Rights-of-Way or Other Property.**

12 Restoration shall comply with the requirements outlined in PCC 12.32.240.
(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

13 **12.34.624 Facilities Maps.**

14 Upon written request from the County Engineer, each Grantee shall provide the County with an
15 accurate as-built map or maps certifying the location of all Cable or Telecommunications Facilities
16 within the County rights-of-way.
(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

16 **12.34.626 Duty to Provide Information.**

17 Within ten days of a written request from the County Engineer or designee, each Grantee shall
18 furnish the County Engineer or designee with information sufficient to demonstrate:

19 A. That Grantee has complied with all requirements of this Chapter.

20 B. That all fees due the County in connection with the Telecommunications Cable Services and
21 Cable or Telecommunications Facilities provided by the Grantee have been properly collected
22 and paid by the Grantee.

23 C. That all books, records, maps and other documents maintained by the Grantee with respect to
24 its facilities within rights-of-way shall be made available for inspection by the County
25 Engineer or designee at reasonable times and intervals.

26 D. That "as built" drawings have been completed of the work and are on file with the Grantee.
(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

27 **12.34.628 Leased Capacity.**

28 Subject to the provisions of PCC 12.34.642, a Grantee shall have the right to offer or provide
29 capacity or bandwidth to another Telecommunications Provider, provided that the proposed lessee or

1 person complies with all of the requirements of this Chapter and furnishes reasonable information upon
2 request to ensure compliance with this Chapter.

(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

3 **12.34.630 Grantee Insurance.**

4 Unless otherwise provided, each Grantee shall, as a condition of the grant, secure and maintain
5 the following liability insurance policies insuring both the Grantee and the County, and its elected and
6 appointed officers, officials, agents, representatives and employees as additional insureds:

7 A. Comprehensive general liability insurance with limits not less than:

- 8 1. \$2,000,000.00 for bodily injury or death to each person;
- 9 2. \$2,000,000.00 for property damage resulting from any one accident; and
- 10 3. \$2,000,000.00 for all other types of liability.

11 B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000.00
12 for each person and \$3,000,000.00 for each accident.

13 C. Workers' compensation within statutory limits and employer's liability insurance with limits
14 of not less than \$1,000,000.00.

15 D. Comprehensive form premises-operations, explosions and collapse hazard, underground
16 hazard and products completed operation hazard policies with limits of not less than
17 \$2,000,000.00.

18 E. The liability insurance policies required by this Section shall be maintained at all times by the
19 Grantee. Each such insurance policy shall contain the following endorsement: "It is hereby
20 understood and agreed that this policy may not be canceled nor the intention not to renew be
21 stated until 90 days after receipt by the County, by registered mail, of a written notice
22 addressed to the County Risk Manager of such intent to cancel or not to renew."

23 F. Within 60 days after receipt by the County of said notice, and in no event later than 30 days
24 prior to said cancellation, the Grantee shall obtain and furnish to the County replacement
25 insurance policies meeting the requirements of this Chapter.

G. If Grantee can show to the County Risk Manager's satisfaction that an entity is financially
able to self insure the exposures, a substitution for insurance will be considered.

(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

16 **12.34.632 General Indemnification.**

17 In addition to and distinct from the insurance requirements of this Chapter, each Grantee hereby
18 agrees to defend, indemnify and hold the County and its officers, officials, employees, agents and
19 representatives harmless from and against any and all damages, losses and expenses, including
20 reasonable attorneys' fees and costs of suit or defense, arising out of, resulting from or alleged to arise
21 out of or result from the acts, omissions, failure to act or misconduct of the Grantee or its affiliates,
22 officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance,
23 repair or removal of its Cable or Telecommunications Facilities, and in providing or offering
24 Telecommunications Cable Services over the facilities or network, whether such acts or omissions are
25 authorized, allowed or prohibited by this Chapter or by a grant agreement made or entered into pursuant
to this Chapter.

(Ord. 96-124 § 1 (part), 1997)

23 **12.34.634 Performance and Restoration Surety.**

24 Before a franchise granted pursuant to this Chapter is effective, and as necessary thereafter, the

1 Grantee shall provide and deposit such monies, bonds, letters of credit or other instruments in form and
2 substance acceptable to the County as may be required by this Chapter, or by an applicable franchise or
3 other applicable code, ordinance, or rules and regulations of the County.
(Ord. 2000-37s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

4 **12.34.638 Restoration Bond.**

5 Unless otherwise provided in a franchise, a restoration bond written by a surety acceptable to the
6 County equal to at least 100 percent of the estimated cost of restoration as required as a result of
7 constructing the Grantee's Cable or Telecommunications facilities within rights-of-way shall be
8 deposited before construction is commenced. An applicant's status as a "Utility in Good Standing"
9 pursuant to PCC 12.32.140 may be considered in setting, or reducing below 100 percent of the estimated
10 cost of restoration, the appropriate restoration bond amount.

11 A. The restoration bond shall remain in force until 60 days after substantial completion of the
12 work, as determined by the County Engineer or designee, including restoration of all rights-
13 of-way and other property affected by the construction.

14 B. The restoration bond shall guarantee, to the satisfaction of the County:

15 1. timely completion of restoration;

16 2. restoration in compliance with applicable plans, permits, technical codes and
17 standards;

18 3. proper restoration of the facilities as specified by the County; and

19 4. restoration of the rights-of-way and any other property affected by the construction.

20 (Ord. 2000-37s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

21 **12.34.640 Coordination of Construction Activities.**

22 All Grantees are required to cooperate with the County and with each other. Therefore,
23 coordination of all work shall be in accordance with Chapter 12.32 PCC and the project coordination
24 provisions contained in the "Manual on Accommodating Utilities in Pierce County Right-of-Way".
(Ord. 96-124 § 1 (part), 1997)

25 **12.34.642 Assignments or Transfers of Grant of Cable Franchise.**

Ownership or control of a TelecommunicationsCable Television System or franchise or any part
of transmission capacity may not directly or indirectly, be transferred, assigned or disposed of by sale,
lease, merger, consolidation, or other act of the Grantee, by operation of law or otherwise, nor may there
be a transfer of working control (which includes not only actual control, but also the ability to affect or
influence decisions) without the prior written consent of the County, which consent shall not be
unreasonably withheld or delayed, as expressed by ordinance and then on such conditions as may be
prescribed therein and:

A. No grant shall be assigned or transferred in any manner within 12 months after the initial
grant of the franchise, unless otherwise provided by law.

B. Absent extraordinary and unforeseeable circumstances, no grant, system or integral part of a
system shall be assigned or transferred before construction of the TelecommunicationsCable
Television System has been completed, unless otherwise provided by law.

C. The Grantee and the proposed assignee or transferee of the grant or system shall provide and
certify the following information to the County Executive or designee.

1. Information setting forth the nature, terms and conditions of the proposed transfer or
assignment;

2. All information required of a franchise applicant pursuant to this Chapter with respect to the proposed transferee or assignee;
3. All information required by federal, state and local law or regulation. [For Example, Federal Communication Commission Form 394];
4. Any other information reasonably required by the County Executive or designee. If the County requests a copy of the deed, agreement, or other written instrument from the Grantee evidencing such sale, merger, consolidation, or other instrument evidencing transfer of actual or working control, such document may be redacted to delete monetary compensation terms. However, this provision does not limit or waive the County's authority to require disclosure of monetary compensation terms or other financial information from the transferee or assignee prior to County consent in order to evaluate its financial condition and ability to meet its compliance obligations under this Chapter and any franchise agreement.

- D. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial, and other qualifications in County's reasonable discretion to own, hold and operate the ~~Telecommunications~~Cable Television System pursuant to this Chapter.
- E. The Grantee shall reimburse the County for all direct and indirect fees, costs and expenses incurred by the County in considering a request to transfer ownership in or assign a franchise.
- F. Any transfer of ownership in or assignment of a franchise, system or integral part of a system without prior approval of the County under this Chapter shall be void and is cause for revocation of the grant.
- G. Upon receipt of all information required herein, and any other information required by the County, the County shall have 120 days to review and approve or deny the requested assignment or transfer, unless such period is extended by agreement of the County and Grantee.

(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

12.34.644 Transactions Affecting Control of Grant of Cable Franchise.

Unless otherwise provided in the franchise, any transaction which results in any change of the ownership or in any manner the working control of the Grantee, of the ownership or working control of a franchise, of the ownership or working control of affiliated entities having ownership or working control of the Grantee or of a ~~Telecommunications~~Cable Television System, or of control of the capacity or bandwidth or any part of the transmission capacity of the Grantee's ~~Telecommunications~~Cable Television System, Facilities or any parts thereof, all defined as 5 percent or more ownership or control, shall be considered an assignment or transfer requiring County approval hereunder. Transactions between wholly owned subsidiaries or affiliated entities are exempt from County approval.

(Ord. 96-124 § 1 (part), 1997)

12.34.646 Revocation or Termination of Grant.

A franchise granted by the County to use or occupy rights-of-way may be revoked for any one or more of the following reasons:

- A. Construction or operation at an unauthorized location.
- B. Unauthorized transfer of control of the Grantee of a cable franchise.
- C. Unauthorized assignment of a cable franchise.
- D. Unauthorized sale, assignment or transfer of the Grantee's cable franchise assets or an interest therein.

- E. Misrepresentation ~~or lack of candor~~ by or on behalf of a Grantee in any application to the County.
- F. Abandonment of Telecommunications Facilities in the rights-of-way.
- G. Failure to relocate or remove facilities as required in this Chapter.
- H. Failure to pay taxes, compensation, fees or costs when and as due the County.
- I. Insolvency or bankruptcy of the Grantee.
- J. Violation of a material provision of this Chapter.
- K. Violation of a material term of a franchise.

(Ord. 96-124 § 1 (part), 1997)

12.34.648 Notice and Duty to Cure.

In the event that the County Executive or designee believes that grounds exist for revocation of a franchise, the Grantee shall be given written notice of the apparent violation or noncompliance, be provided a short and concise statement of the nature and general facts of the violation or noncompliance, and be given a reasonable period of time not exceeding 30 days to furnish evidence:

- A. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
- B. That rebuts the alleged violation or noncompliance.
- C. That it would be in the public interest to impose some monetary damages, penalty or sanction less than revocation.

(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

12.34.650 Hearing.

In the event that a Grantee fails to provide evidence reasonably satisfactory to the County Executive or designee as provided hereunder, the County Executive or designee shall refer the apparent violation or noncompliance to the Pierce County Hearing Examiner. The Pierce County Hearing Examiner shall provide the Grantee with notice and a reasonable opportunity to be heard concerning the matter.

(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

12.34.652 Standards for Revocation or Lesser Sanctions.

If persuaded that the Grantee has violated or failed to comply with a material provision of this Chapter or of a franchise or applicable codes, ordinances, statutes, rules, or regulations, the Pierce County Hearing Examiner shall determine whether to revoke the franchise, and issue a written decision relating thereto, or to establish some monetary damages, penalty, lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- A. Whether the misconduct was egregious.
- B. Whether substantial harm resulted.
- C. Whether the violation was intentional.
- D. Whether there is a history of prior violations of the same or other requirements.
- E. Whether there is a history of overall compliance.
- F. Whether the violation was voluntarily disclosed, admitted or cured.

(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

ARTICLE VII - CONSTRUCTION

1 **12.34.700 Construction Standards.**

2 No person shall commence or continue with the construction, installation or operation of Cable
3 or Telecommunications Facilities within the County except as provided in Chapter 12.32 PCC.
(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

4 **12.34.705 Construction Codes.**

5 Cable or Telecommunications Facilities shall be constructed, installed, operated and maintained
6 in accordance with all applicable federal, state and local codes, rules and regulations including, but not
7 limited to, the National Electrical Safety Code.
(Ord. 96-124 § 1 (part), 1997)

8 **12.34.710 Utility Right-of-Way Permits.**

9 No person shall construct or install any Cable or Telecommunications Facilities within the
10 County without first obtaining a utility right-of-way permit therefore, provided, however:

- 11 A. No permit shall be issued for the construction or installation of Cable or Telecommunications
12 Facilities within the County unless the Telecommunications Carrier Grantee has filed a
13 registration statement with the County pursuant to this Chapter.
14 B. No permit shall be issued for the construction or installation of Cable or Telecommunications
15 Facilities in rights-of-way unless the Telecommunications Carrier Grantee has applied for and
16 received a franchise pursuant to this Chapter.
17 C. No permit shall be issued for the construction or installation of Cable or Telecommunications
18 Facilities without payment of all fees pursuant to this Chapter.

19 (Ord. 96-124 § 1 (part), 1997)

20 **12.34.715 Applications.**

21 Applications for permits to construct Cable or Telecommunications Facilities shall be submitted
22 in accordance with Chapter 12.32 PCC. The applicant shall pay all associated fees and shall include any
23 additional information necessary to process the permit as requested by the County Executive or
24 designee. The application shall be accompanied by drawings, plans, and specifications in sufficient
25 detail to demonstrate:

- 26 A. That the facilities will be constructed in accordance with all applicable codes, rules and
27 regulations.
28 B. The location and route of all facilities to be installed on existing utility poles.
29 C. The location and route of all facilities to be located under the surface of the ground, including
30 the line and grade proposed for the burial at all points along the route which are within the
31 rights-of-way.
32 D. The location of all other facilities to be constructed within the County, but not within rights-
33 of-way.
34 E. The construction methods to be employed for protection of existing structures, fixtures and
35 facilities within or adjacent to rights-of-way.

(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

12.34.720 Construction Surety.

Prior to issuance of a utility right-of-way permit, the permittee shall provide a restoration bond,
as provided in PCC 12.34.638.

(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

1 **12.34.725 Location of Facilities.**

2 Unless otherwise specified in a franchise, ~~restricted franchise~~, or cable franchise, all facilities shall be constructed, installed and located in accordance with the following terms and conditions:

- 3 A. **Cable or** Telecommunications Facilities shall be installed within an existing County owned
4 underground duct or conduit whenever Excess Capacity exists. Otherwise, installation of
5 ~~Telecommunications~~ such ~~F~~ facilities shall be done using methods consistent with the
6 standards, codes, and regulations applicable to the type of ~~Telecommunications F~~ facilities
7 being installed and Pierce County's "Manual on Accommodating Utilities in Pierce County
8 Right-of-Way".
- 9 B. A franchisee with written authorization to install Overhead Facilities shall install its
10 ~~Telecommunications F~~ facilities on pole attachments to existing utility poles only, and then
11 only if Surplus Space is available. Installation of new poles may be approved by the County
12 Engineer on a case-by-case basis.
- 13 C. Whenever all existing telephone, electric utilities, cable facilities and **Cable or**
14 Telecommunications Facilities are located underground within rights-of-way a restricted
15 franchisee with written authorization to occupy the same rights-of-way must also locate its
16 Telecommunications Facilities underground.
- 17 D. Whenever all new or existing telephone, electric utilities, cable facilities and
18 Telecommunications Facilities are located or relocated underground within rights-of-way, a
19 franchisee that currently occupies the same rights-of-way shall concurrently relocate its
20 facilities underground at its expense.

(Ord. 96-124 § 1 (part), 1997)

21 **12.34.730 Conduit Occupancy.**

22 In furtherance of the public purpose of reduction of right-of-way excavation, it is the goal of the
23 County to encourage both the shared occupancy of underground conduit as well as the construction,
24 whenever possible, of excess conduit capacity for occupancy of future right-of-way occupants.
25 ~~Therefore, if a franchisee is constructing underground conduit for its own Telecommunications Facility,
and the County reasonably determines such construction is in an area in which another
Telecommunications Provider(s) may also construct Telecommunications Facilities in the future, the
County may require the franchisee to construct excess conduit capacity in the right of way, provided the
expense of such excess capacity shall be borne by the County (calculated as the difference between what
franchisee would have paid for the construction of its conduit and the additional cost only of the excess
conduit).~~

~~(Ord. 96-124 § 1 (part), 1997)~~

26 **12.34.735 Franchisee Occupancy of County Owned Conduit.**

27 If the County owns conduit in the path of Franchisee's proposed **Cable or** Telecommunications
28 Facilities, and provided it is technologically feasible for Franchisee to occupy the conduit owned by
29 County, Franchisee shall be required to occupy the conduit owned by the County in order to reduce the
30 necessity to excavate the right-of-way. Franchisee shall pay to the County a fee for such occupancy
31 which shall be the cost Franchisee would have expended to construct its own conduit from the outset, as
32 certified by the Franchisee's engineer and approved by the County Engineer. The County and the
33 Franchisee may agree to amortize the fee through annual payments to the County over the term of the
34 Franchise, including the time value of money.

1 (Ord. 96-124 §1 (part), 1997)

2 **ARTICLE VIII - FEES**

3 **12.34.810 Application and Review Fee.**

4 Any applicant for a franchise pursuant to this Chapter shall pay an application review and
5 processing fee pursuant to PCC 12.32.070. This fee covers the costs incurred by the Pierce County
6 Department of Public Works and Utilities in reviewing and processing a franchise application.
7 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

8 **12.34.850 Reserved Compensation for Use of Rights-of-Way.**

9 The County reserves its right to fix a fair and reasonable compensation to be paid for the
10 authorization granted to a Grantee. Nothing in this Chapter shall prohibit the County and a Grantee from
11 agreeing to said compensation.
12 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1(part), 1997)

13 **12.34.860 Compensation for County Property.**

14 If the right is granted by lease, franchise or other manner, to use and occupy County Property for
15 the installation or use of Cable or Telecommunications Facilities, the compensation to be paid shall be
16 fixed solely by the County.
17 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

18 **12.34.870 Utility Right-of-Way Permit Fee.**

19 Prior to issuance of a utility right-of-way permit, the permittee shall pay a permit fee in
20 accordance with PCC 12.32.130.
21 (Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)

22 **12.34.880 Regulatory Fees and Compensation Not a Tax.**

23 The regulatory fees and costs provided for in this Chapter, and any compensation charged and
24 paid for use of rights-of-way provided for herein, are to the extent provided by law, separate from, and
25 additional to, any and all federal, state, local and County taxes as may be levied, imposed or due from a
Cable or Telecommunications Carrier or Provider, its customers or subscribers, or on account of the
lease, sale, delivery or transmission of TelecommunicationsCable Services.
(Ord. 96-124 § 1 (part), 1997)

ARTICLE IX - MISCELLANEOUS

12.34.900 Context.

When not inconsistent with the context, words used in the present tense include the future tense,
words in the plural number include the singular number, and words in the singular number include the
plural number. This Chapter shall be in full force and effect from and after its passage, approval and
publication in form as provided by law.
(Ord. 2000-57s § 2 (part), 2001; Ord. 96-124 § 1 (part), 1997)