

ORDINANCE NO. 158

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AMENDING TCI COMMUNICATIONS, INC.'S FRANCHISE (ORDINANCE NO. 116) TO REQUIRE A FIVE PERCENT FRANCHISE FEE AND PROVIDE FOR A MATCHING CAPITAL PASS THROUGH GRANT OF TWENTY-FIVE CENTS PER SUBSCRIBER PER MONTH FOR THE PURPOSE OF FUNDING PUBLIC, EDUCATION, AND GOVERNMENT ACCESS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AMENDMENT

WHEREAS, the City of University Place Council in September, 1996, passed Ordinance No. 116; and

WHEREAS, Section 9 of Ordinance No. 116 Granting a Franchise to TCI Communications, Inc., grants a franchise to operate and maintain a cable television system, as set forth in the franchise agreement originally granted by Pierce County to Cable TV Puget Sound, Inc., on September 23, 1983, and subsequently amended by County Ordinances Nos. 95-123, 87-17, and 87-60S; and

WHEREAS, this franchise shall expire on August 31, 2000; and

WHEREAS, the City of University Place Council in July of 1995 entered into an "Interlocal Cable Television and Communication Services Cooperative Agreement" thereby joining the Rainier Cable Commission, recently renamed the Rainier Communications Commission; and

WHEREAS, the Rainier Communications Commission ("Commission") was established to serve as an advisory body to the member jurisdictions; and

WHEREAS, stated functions of the Commission include the authority to provide advice and recommendations as to agreements between members for the production of programming for public and municipal purposes and to take specific actions on behalf of members as authorized; and

WHEREAS, on November 1, 1995, TCI Communications, Inc., presented an offer to fund public, education, and government access programming by allowing Rainier communications Commission member jurisdictions to raise the franchise fees to five percent and by allowing a franchise amendment requiring an increase in annual funding for capital equipment up to the amount of \$.25 per subscriber per month as long as the local jurisdiction matches or exceeds this amount in funding access operations; and

WHEREAS, the City Council wishes to amend the TCI Franchise; NOW THEREFORE,

**THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE,
WASHINGTON, DOES ORDAIN AS FOLLOWS:**

Section 1. Approving Amendment to TCI Franchise. The City of University Place Council hereby approves the amendments to the TCI Franchises, as shown in "Exhibit A" attached hereto and incorporated herein by reference.


Section 2. Authorizing Expenditure of Franchise Fees for Public, Education and Government Programming. Thirty-five cent (\$.35) per customer per month of the funds derived from franchise fees and the funds derived from the matching capital grants from cable providers shall be used exclusively for funding operating expenses for public, education, and government programming. Not more than twenty-five cents (\$.25) per customer per month of the funds derived from franchise fees shall be used for education and government programming with the remainder of the revenues to be used exclusively for community based programming.

Section 3. Authorizing Execution of Amendment. The City Council authorizes the City Manager to execute the amendment on behalf of the City of University Place.

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not effect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 5. Effective Date and Publication. This ordinance shall be published in the official newspaper of the City. This ordinance shall be effective five days after publication.

PASSED BY THE CITY COUNCIL ON JUNE 16, 1997.



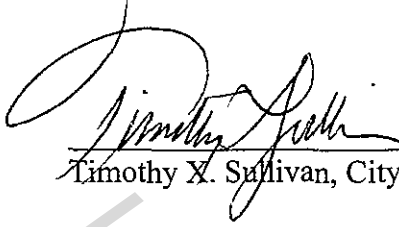
Linda Bird, Mayor

ATTEST:



Susan Matthew, City Clerk

APPROVED AS TO FORM:



Timothy X. Sullivan, City Attorney

Date of Publication: 6/18/97

Effective Date: 6/23/97

**EXHIBIT A
TO ORDINANCE NO. 158**

AGREEMENT TO AMEND TCI FRANCHISES

This agreement is entered into between the City of University Place, a municipal subdivision of the State of Washington, ("City") and TCI Communications, Inc., A Delaware Corporation.

1. In July, 1982, Pierce County granted Vallejo Enterprises a cable franchise (Pierce County Ordinance 82-17). In October, 1983, Pierce County granted Cable T.V. Puget Sound a cable franchise (Pierce County Ordinance 83-120. Said Ordinance was amended by mutual agreement in April, 1992 by Ordinance 92-23.) Both of these franchises have subsequently come under the control of Viacom, Inc., a Delaware Corporation.

2. In August, 1995, Viacom filed a Federal Communications Commission Form 394 with the County, requesting approval under the terms and conditions of the franchises for a change of control to TCI Communications, Inc.

3. On August 31, 1995, the City of University Place incorporated and assumed the current franchises.

4. In November, 1995, David M. Reynolds, President, TCI Cablevision of Washington, Inc. offered in a letter to Skip Stansbury, President, Rainier Cable Commission, to allow specific amendments to Cable Commission member franchises in member jurisdictions representing a majority of the total subscribers in the jurisdictions affirmatively approved the transfer by the end of the 120-day period specified in Section 617 of the Cable Act. The letter specified that franchise fees could be increased to a maximum of five (5) percent. In addition, franchises could be amended to allow up to a \$.25 per subscriber per month capital contribution to Public, Education, and Government Access (PEG) if member jurisdictions match the contribution for PEG operation expenses.

NOW, THEREFORE, in consideration of TCI's good faith offer of a unilateral contract to amend TCI franchises and the Rainier Cable Commission's meeting the terms of the offer, the City of University Place and TCI franchise is hereby amended as follows:

1. Franchise fees shall be five (5) percent of the gross revenues as defined within each franchise.

2. TCI shall provide a capital contribution of twenty-five cents (\$.25) per subscriber per month for Public, Education, and Government Access provided the City matches the contribution for Public, Education, and Government Access operations.

3. This Agreement shall take effect no later than June, 1997.

4. The terms of this amendatory agreement shall supersede and replace inconsistent provisions in existing franchises, and will remain in force until amended by a written agreement signed by both parties or until the term of said franchise expires.

By: TCI Communications, Inc.

By: City of University Place

Robert Jean, City Manager

Date Signed: _____

Date Signed: _____

APPROVED AS TO FORM:

Timothy X. Sullivan, City Attorney

STATE OF WASHINGTON)

ss.

COUNTY OF)

On this _____ day of _____, 1997, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ to me known to be the _____ of TCI Communications, Inc. the corporation that executed the foregoing instrument, and acknowledged said instrument to the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned and on oath stated that he/she was authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Commission Expires: _____