



City of Seattle
Department of Information Technology

Date: January 29, 2015
To: Vinh Tang, Legislative Assistant for Councilmember Bruce Harrell
From: Tony Perez, Department of Information Technology
Subject: Cable Code Amendments

Per your request, this memo and attachments A and B provide you and other Council staff with the necessary background to better assess the changes that are being proposed to the City's Cable Code. I trust that this information is sufficiently responsive to your request. We are happy to answer any questions you may have. We look forward to discussing this matter at the Public Safety, Civil Rights and Technology Committee.

BACKGROUND

DoIT began the process of amending Chapter 21.60 of the Seattle Municipal Code, the City's Cable Communications Ordinance (often referred to as the Cable Code) over two years ago. The Cable Code sets forth the general rules for all cable franchises granted in the City of Seattle. Among other provisions it outlines procedures for the granting renewal, transfer and termination of franchises. In addition the code contains consumer protection standards relating to cable services that apply to all cable operators.

A. Cable Television Regulatory Framework

In Washington State, cable television service is regulated at the local level. As the local franchising authority under Federal law, the City of Seattle is authorized to regulate cable television service and to grant cable franchises within its jurisdiction. The City has authority to enact and enforce cable code provisions and conditions, as long as they do not conflict with federal law. The City also has authority to manage its streets and rights-of-way, where space must be utilized to maintain equipment for all utility services and other users, and to ensure the primary purpose of our rights of way: the safe and efficient movement of vehicular and pedestrian traffic. The City's Street Use Code, Title 15, contains the expression of this City authority, and all entities using the City's right of way must comply with that Code. Additionally, the City has police power to protect the public health, safety, and welfare.

Under current federal law the provisions of the City's Cable Code are limited to cable television services provided by cable operators like Comcast and Wave. They do not extend to internet service. That field is preempted by the FCC. However, the FCC is currently examining the

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regulatory classification of internet service and its decision is expected on February 26, 2015. That is why staff has allowed for flexibility in the code to reserve its regulatory authority in the likely event Federal law changes. The City also does not regulate telephone service. That is the purview of the Washington Utilities and Transportations Commission.

As noted above, we expect the current federal regulatory framework for communications services to change because it was mostly formulated before the internet, and was designed to regulate single purpose networks. For example: cable networks only provided video service and the phone company only provided voice service. Today the existing regulatory classifications no longer make sense. Cable and phone networks now both provide video, voice and data services and traditional communications service like television are transitioning to applications provided over the internet.

Currently, Comcast and Wave have cable franchises in Seattle. Comcast is the City's largest cable operator serving approximately 150,000 Seattle subscribers. Comcast service is available in most of Seattle except for the Central Area Franchise District. Comcast's current franchise agreement will expire in January 2016. The City is currently in negotiations with Comcast on a renewed franchise. Wave (formerly Broadstripe) serves approximately 10,000 Seattle cable subscribers and is the sole cable operator in the Central Area Franchise District. Wave also serves the Downtown and parts of Capitol Hill, Beacon Hill and Queen Anne. Wave's franchise expires November 2017 and we will begin renewal negotiations with Wave in 2016.

B. How is Cable Television Different from Netflix or other Video Services

Cable service is defined (federally and in the City's Code), as one-way transmission to subscribers of video programming, or other programming service or information that the cable operator makes available to all subscribers generally. Cable television service differs from video services provided by companies like Netflix, Amazon, Hulu and Yahoo. The City cannot regulate these video services, commonly referred to as over-the-top video streaming services, because they are currently classified as internet services. This is an important distinction. The City is unlikely to receive franchise fees or cable utility taxes on these services.

Cable television service refers to video programming provided by a cable operator over a cable system that occupies the City's rights of way. The cable television channels, provided over the cable system are selected by the cable operator and aggregated into service tiers (the channel selections often involves extensive negotiations with content providers such as CBS, Disney, Time Warner etc. to license their content). In addition, cable companies like Comcast own or co-own some of the cable channels available on their networks. Cable television channels are delivered from the cable headend to users over a transmission path owned and controlled by the cable operator using cable spectrum dedicated for this purpose.

In the case of Netflix, the video offerings are selected by Netflix rather than the cable operator. Netflix video is not tied to a specific transmission technology. Its content is streamed from the public internet and private content distribution networks. Netflix video can be streamed to users over the facilities of the cable operator, the phone company, wireless carriers or other companies that provide internet access with sufficient capacity. A Netflix customer must have an internet

connection. A Netflix customer does not need to subscribe to cable television services from the cable operator and pays its fees directly to Netflix. As a general rule, a simple way to distinguish the two is that if a program is viewed through a cable set-top box, it is likely a cable service; if the video is being viewed via use of a modem or router, using devices such as Roku and Apple TV, it is not cable television service but likely internet video.

C. What Changes to the City's Cable Code are Being Proposed and Why

There were several reasons why the Cable Code needed to be amended. Among them:

- 1) Correct inaccuracies: The code contained references to departments that no longer exist.
- 2) Ensure consistency with federal law: The City's ability to regulate the costs of cable service has since been mostly preempted by Federal law and delegated to the FCC. Our proposed modifications to the Code confirm that our Code and franchise retain the City's rights to regulate all of the rates and charges assessed by the cable operator to the extent not prohibited by federal law, and to require the cable operators to provide the appropriate notices of rate changes and other documentation required by federal law.
- 3) Bring it up to date: For example, the code requires cable television to be provided in color and requires providers to "have a minimum capacity of twenty (20) channels."
- 4) Modernize (and/or streamline) processes and procedures such as how the City awards a new franchise. The current Code includes complicated and unnecessary processes that have been streamlined in the proposed amendments. For example, it contains a detailed reporting and recommendation process that requires applicants to satisfy requirements of various City departments and officials, such as the Office and Cable Communications and the Hearing Examiner, in addition to the City Council.
- 5) Make it more user-friendly. The code was amended over many years to address specific circumstances as they arose. It needed to be reorganized so that it flows more logically and is easier to read and understand.

See Attachment A for a list of all the changes being proposed.

In addition to these types of edits, there were also several key substantive changes that the City decided were needed in order to:

- 1) Promote competition in cable service while at the same time ensuring equitable distribution of the benefits of competition;
- 2) Enhancing consumer protection; and,
- 3) Reserving the City's rights in a fluid regulatory environment

These proposed amendments are discussed in Attachment B

D. Our Process

As a courtesy, in February 2014 DoIT sent a draft of the initial proposed Code provisions to the City's current cable franchise holders, Comcast and Wave, as well as to Century Link. After granting the operators two extensions DOIT received industry comments in April 2014.

Completion of the Cable Code amendments was delayed due to the unexpected decision by CenturyLink to build fiber-to-the-home in some parts of Seattle and possibly provide cable services. CenturyLink expressed concern about certain Code provisions such as strict buildout requirements. Staff engaged in extensive discussions with CenturyLink during the spring and summer of 2014. The proposed amendments made to address some of their concerns reflect what we considered common sense modifications that promote competitive entry into the communications market while at the same time preserving core City values of privacy, consumer protection and social and economic equity.

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