

CLEARANCES	Initial	Date	Date Received in Council Office:	Agenda Date	Assigned To:
Originator-	PW	8/12/92	AUGUST 10, 1992	9/1/92	Introduction
Division Head-				9/22/92	Hearing
Department Head-				10/6/92	Council/Intro
Prosecutor Review-				10/27/92	Council/Hearing
Purchasing/Budget Dir.-					
Executive-					

SUBJECT:

Ordinance granting a 25 year extension to Guinness Communications Inc. for cable television service at Pt. Roberts.

ATTACHED OR ON FILE:

Proposed ordinance.

Public Hearing Needed? Yes/ xx / No/ /

SUMMARY STATEMENT:

Proposed ordinance in the matter of granting a non-exclusive franchise to Guinness Communications Inc., for a period of 25 years pursuant to State law and section 9.30 of the Whatcom County Home Rule Charter, to operate and maintain cable communication system within specified areas of Whatcom County.

ORIGINATOR'S RECOMMENDED ACTION:

Pass.

COMMITTEE ACTION (including dates):

COUNCIL ACTION (including dates):

9/22/92: Contiued until October 27

10/6/92: Introduced

10/27/92: Council adopted ordincance 6-1 with Brenner opposed.

Related File Numbers: _____ Ordinance or Resolution Number: 092-076

INTRODUCED BY: ConsentPROPOSED BY: Public Works Dept.DATE INTRODUCED: 10/6/92ORDINANCE NO. 92-076

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IN THE MATTER OF GRANTING A NON-EXCLUSIVE FRANCHISE TO GUINNESS COMMUNICATIONS INC., FOR A PERIOD OF 25 YEARS PURSUANT TO STATE LAW AND SECTION 9.30 OF THE WHATCOM COUNTY HOME RULE CHARTER, TO OPERATE AND MAINTAIN CABLE COMMUNICATION SYSTEM WITHIN SPECIFIED AREAS OF WHATCOM COUNTY.

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WHEREAS, the Home Rule Charter for Whatcom County, Section 9.30 authorizes the County Council to grant non-exclusive franchises for a fixed term not to exceed 25 years for the use of any street, road, or public place; and

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WHEREAS, R.C.W. Chapter 36.55 provides that the County Council may grant franchises to persons or private or municipal corporations to use that right-of-way of County roads in their respective counties for the construction and maintenance of water works, gas pipes, telephones, telegraph and electrical light lines, sewers and other such facilities and including cable television wires and other cable television facilities; and

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WHEREAS, Guinness Communications Inc., a sole proprietorship, hereinafter referred to as "the Grantee," has applied for a 25-year non-exclusive franchise to operate and maintain coaxial cable along roads at Point Roberts in unincorporated Whatcom County, Washington, and notice of this hearing having been duly published on the 10th and 17th days of October, 1992, in the official newspaper for Whatcom County, and that it appearing to the County Council that notice of said hearing having been given as required by law and that it is in the public interest to grant the franchise for a period of 25 years; and

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WHEREAS, in consideration of granting of the non-exclusive franchise, Whatcom County shall receive a sum equivalent to four (4) percent (%) of all gross subscriber revenues from the operation and installation of cable facilities and services and has agreed to the addition of certain administrative provisions to the franchise as provided herein:

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NOW, THEREFORE, BE IT ORDAINED by the Council of Whatcom County, Washington:

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Section 1. Franchise Granted.

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(a.) A non-exclusive franchise for Guinness Communications Inc, its successors and assigns, referred to as the Grantee, is hereby granted for a

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ORDINANCE - 1.

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Date drafted: 07/31/92

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1 period of 25 years commencing on the date this ordinance shall become effective,
2 the non-exclusive rights and privileges to construct, erect, operate, and main-
3 tain coaxial cable in, upon, along, across, above, over, and under public County
4 roads, highways, alleys, and other public ways and public properties of Whatcom
5 County now laid out or dedicated, and including all extensions thereof and addi-
6 tions thereto, the poles, wires, cables, underground conduit, manholes, and
7 other cable conductors and fixtures necessary for the maintenance and operation
8 of a cable communication system for the distribution of cable service, including,
9 but not limited to the carriage of television and radio signals and the cable
10 casting of programing.

11 (b) The rights and privileges granted herein shall apply to all roads
12 and public ways identified in Exhibit A, and upon the following express terms
13 and conditions, to wit:

14 Section 2. Acceptance of Franchise.

15 (a) No franchise hereunder shall become effective for any purpose
16 unless and until written acceptance therefore shall have been filed with the
17 Whatcom County Council and County Director of Public Works and such written
18 acceptance shall be in form and substance as shall be prescribed and approved by
19 the County Prosecuting Attorney and operate as an acceptance of each and every
20 term and condition and limitation contained in this ordinance, and in such
21 franchise;

22 (b) Such written acceptance shall be filed by Grantee not later than
23 the thirtieth day following the effective date of the ordinance granting such
24 franchise; and in default of the filing of such written acceptance as herein
25 required, Grantee shall be deemed to have rejected the same.

26 Section 3. Entering Rights of Way.

27 The Grantee, its successors and assignees, shall have the right and
28 authority to enter upon the above-mentioned County roads, rights-of-way, and
other County property as designated hereinbefore, for the purpose of
constructing its transmission lines and all necessary facilities connected
therewith, and for repairing all such lines and facilities, and for operating
and maintaining said lines and facilities.

Section 4. Construction Standards.

All construction and installation work along, under, or over county
roads or rights-of-way or other County property outside the corporate limits of
any incorporated town shall be subject to the approval and pass the inspection
of the Director of Public Works or designee and shall conform to all applicable
County, State, and Federal minimum standards, codes, or regulations, and the
County expressly reserves the right to prescribe how and where mains, poles,
lines, and wires shall be installed and may from time to time upon reasonable
notice, require the removal and replacement thereof in the public interest.

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Section 5. Construction Application.

(a) Prior to commencement of construction of said transmission lines or facilities, Grantee shall first file with the Director of Public Works its application for permit to do such work, together with plans and specifications in duplicate showing the position and location of all such lines and facilities sought to be constructed, laid, installed, or erected at that time, showing their relative position to existing County roads, rights-of-way, other existing utilities or other County property upon plans drawn to scale, hereinafter collectively referred to as the "map of definite location."

(b) The lines and appurtenant facilities shall be laid in substantial compliance with said map of definite location, except in instances in which deviation may be allowed thereafter in writing by the Director of Public Works pursuant to application by Grantee. 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 obstruction, etc. No such construction shall be commenced without the Grantee first securing a written permit from the Director of Public Works, including approval endorsed on one set of plans and specifications returned to the Grantee. All such work shall be subject to the approval of and shall pass the inspection of the Director of Public Works or designee. Any and all approvals required of the Director of Public Works, pursuant to this section, shall not be unreasonably withheld. The Grantee shall, in compliance with Whatcom County Ordinance No. 88-79 (an ordinance providing for the issuance of revocable encroachment permits for work in County roads and rights-of-way) and County Development Standards, pay all permit fees as required. The Grantee shall pay all actual and necessary costs of and expenses incurred in the examination, inspection, and approval of such work on account of granting the said permits.

Section 6. Construction on Roadways/Other County Property.

(a) In any work which requires breaking of soil of the County roads, rights-of-way, or other County property subject to this Franchise for the purpose of laying, relaying, connecting, disconnecting, and repairing the said transmission lines and facilities, and making connections between the same to structures and buildings of consumers or making connections to other facilities of the Grantee now in existence or hereafter constructed, the Grantee shall be governed by and conform to the general rules adopted by the officers charged with the supervision and care of such County roads, rights-of-way, and other County property; and the Grantee at its own expense and with all convenient speed shall complete the work for which the soil has been broken and forthwith replace the work and make good the County roads, rights-of-way or other County property and leave the same in as good condition as before the work was commenced.

1 (b) Applications for permits referred to in Section 5 above shall be
2 accompanied by specifications for the restoration of the County road, rights-of-
3 way, or other County property and to the same or better condition as it was prior
4 to such breaking, and such specifications must be approved by the Director of
5 Public Works before such breaking of the soil is commenced. Provided, that the
6 Director of Public Works shall require compliance with the Whatcom County Code,
7 Chapter 12.16, "Revocable Encroachment Permits" and County Development Standards
8 to insure that such County roads, rights-of-way, or other County property shall
9 be restored to the same or better condition as it was prior to the breaking of
10 the soil. The Grantee, in addition to any other such requirements contained
11 herein, shall be subject to the conditions and penalties as provided in Whatcom
12 County Code, Chapter 12.16, "Revocable Encroachment Permits."

13 (c) The Director of Public Works may at any time, do order, or have
14 done any and all work that is considered necessary to restore to a safe condi-
15 tion any such County road, rights-of-way, or other County property left by the
16 Grantee or its agents in a condition dangerous to life or property, and the
17 Grantee upon demand shall pay to the County all actual costs of such work.

18 Section 7. Construction - Other Lines and Facilities.

19 (a) All construction or installation of such lines and facilities,
20 service repair or relocation of same, performed over, above, along, or under the
21 County roads, rights-of-way, or other County property subject to this Franchise
22 shall be done in such a manner as not to interfere with the construction and
23 maintenance of other utilities lines, public or private, drains, drainage
24 ditches and structures, irrigation ditches and structures located therein, nor
25 with the grading or improvement of such County roads, rights-of-way or other
26 County property.

27 (b) The owners of all utilities, public or private, installed prior in
28 time to the line and facilities of the Grantee shall have preference as to the
positioning and location of such utilities so installed with respect to the
Grantee. Such preference shall continue in the event of the necessity of relo-
cating or changing the grade of any such County road or right-of-way.

Section 8. Construction - Public Safety and Inconvenience.

All work done under this Franchise shall be done in a thorough and
workmanlike manner. In the laying of transmission lines and the construction of
other facilities and the opening of trenches, the tunneling under County roads,
rights-of-way or other County property, the Grantee 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;
and where any of such trenches, ditches, or tunnels are left open at night, the
Grantee shall place warning lights and barricades at such a position as to give
adequate warning of such work. The Grantee shall be liable for any injury to
person or persons or damage to property sustained through its 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 Grantee.

1 Section 9. County Rights Reserved.

2 The County of Whatcom in granting this Franchise, does not waive any
3 rights which it has now or may hereafter acquire with respect to County roads,
4 rights-of-way, or other County property, and this Franchise shall not be construed
5 to deprive the County of any powers, rights, or privileges which it now has or
6 may hereafter acquire to regulate the use of and to control the County roads,
7 rights-of-way, or other County property covered by this Franchise. This
8 Franchise shall be subject to the power of eminent domain, and in any proceeding
9 under eminent domain, the Franchise itself shall have no value.

10 Section 10. Relocation of Lines and Facilities.

11 (a) If at any time, the County of Whatcom shall improve or change any
12 County road, right-of-way or other County property subject to this Franchise by
13 grading or regrading, planking, or paving the same, changing the grade, altering,
14 changing, repairing, or relocating the same or by constructing drainage facilities,
15 or in the event that such County road, right-of-way, or other County property
16 subject to this Franchise shall become a Primary State Highway as provided
17 by law, the Grantee upon written notice from the Director of Public Works or the
18 Director of Highways, shall at its sole expense, within thirty (30) working days
19 change the location or readjust the elevation of its transmission lines and
20 other facilities so that the same shall not interfere with such County work and
21 so that such lines and facilities shall conform to such new grades or routes as
22 may be established. The County of Whatcom shall in no wise be held liable for
23 any damages to said Grantee that may occur by reason of any of the County's
24 improvements, changes, or works above enumerated.

25 (b) All work to be performed by the Grantee under this section shall
26 be under the direction and approval, and shall pass the inspection of the
27 Director of Public Works or designee. The Grantee shall pay all actual and
28 necessary costs and expenses incurred in the examination, inspection, and approval
of such work.

1 Section 11. County Road Work Permitted.

2 The laying, construction, operation, and maintenance of the Grantee's
3 transmission lines and facilities authorized by this Franchise shall not
4 preclude the County of Whatcom, its agents, or its contractors from blasting,
5 grading, excavating, or doing other necessary road work contiguous to the said
6 lines and facilities of the Grantee provided that the Grantee shall be given
7 forty-eight (48) hours notice of said blasting or other work in order that the
8 Grantee may protect its lines and facilities.

9 Section 12. Monuments and Survey Markers.

10 (a) Before any work is performed under this Franchise which may affect
11 any existing monuments or markers of any nature relating to subdivisions, plats,
12 roads, and all other surveys, the Grantee shall reference all such monuments and
13 markers. The reference points shall be so located that they will not be
14 disturbed during the Grantee's operations under this Franchise. The method of

1 referencing these monuments or other points to be referenced shall be approved
2 by the Director of Public Works. The replacement of all such monuments or other
3 points to be referenced shall be approved by the Director of Public Works. The
4 replacement of all such monuments or markers disturbed during construction shall
5 be made as expeditiously as conditions permit and as directed by the Director
6 of Public Works. The cost of monuments or other markers lost, destroyed, or
7 disturbed, and the expense of replacement by approved monuments shall be borne
8 by the Grantee.

9 (b) A complete set of reference notes for monuments and other ties
10 shall be filed with the Whatcom County Director of Public Works.

11 Section 13. Vacations.

12 If at any time the County of Whatcom shall vacate any County road,
13 right-of-way, or other County property which is subject to the rights granted by
14 this Franchise and said vacation shall be for the purpose of acquiring the fee
15 or other property interest in said road, rights-of-way, or other County property
16 for the use of Whatcom County, in either its proprietary or governmental capa-
17 city, then the Council of Whatcom County may at its option and by giving sixty
18 (60) days written notice to the Grantee, terminate this Franchise with reference
19 to such County road, rights-of-way, or other County property so vacated, and the
20 County of Whatcom shall not be liable for any damages or loss to the Grantee by
21 reason of such termination.

22 Section 14. Indemnification.

23 (a) The Grantee by acceptance of the privileges granted hereunder,
24 does hereby agree and covenant to indemnify, defend, and save harmless Whatcom
25 County and those persons who were, are now, or shall be duly elected or
26 appointed officials or members or employees thereof, against and from any loss,
27 damage, costs, charges, expenses, liability, claims, demands, or judgments what-
28 soever kind or nature whether to persons or property, arising wholly or par-
tially out of any act, action, neglect, omissions, or default on the part of the
Grantee, his sub-contractors, and/or employees which may occur by reason of
construction, operation, and maintenance of the Grantee's said transmission lines
and facilities. In case that suit or action is brought against the County of
Whatcom for damages arising out of or by reason of the above-mentioned causes,
the Grantee will upon notice to him of the filing of a claim or the commencement
of said action, appear and defend the same at its sole cost and expense, and in
case judgment shall be rendered against the County of Whatcom in suit or action,
the Grantee will fully satisfy said judgment within ninety (90) days after said
suit or action shall have finally been determined, if determined adversely to
Whatcom County. Upon the Grantee's failure to satisfy said judgment within a
ninety (90) day period, this Franchise shall at once cease and terminate and the
County of Whatcom shall have a lien upon the transmission lines and all other
facilities used in its construction, operation and maintenance of the Grantee's
transmission system which may be enforced against the property for the full
amount of any such judgment so taken against Whatcom County.

1 (b) Acceptance by the County of any work performed by the Grantee at
the time of completion shall not be grounds for avoidance of this covenant.

2 Section 15. Non-Exclusive Franchise.

3 This Franchise shall not be deemed to be an exclusive franchise. It
4 shall in no manner prohibit the County of Whatcom from granting other franchises
5 of a like nature or franchises for other public or private utilities, under,
6 along, across, over, and upon any of the County roads, rights-of-way, or other
7 County property subject to franchise and shall in no wise prevent or prohibit
8 the County of Whatcom from construction, altering, maintaining, using, or
vacating any of said roads, rights-of-way, drainage structures or facilities,
irrigation structures or facilities, or any other County property or affect its
jurisdiction over them with full power to make all necessary changes, reloca-
tions, repairs, maintenance, as the County may deem fit.

9 Section 16. Successors and Assignees.

10 All the provisions, conditions, regulations, and requirements herein
11 contained shall be binding upon the successors and assignees of the Grantee, and
12 all privileges as well as all obligations and liabilities of the Grantee shall
inure to its successors and assignees equally as if they were specifically men-
tioned wherever the Grantee is mentioned herein.

13 Section 17. Transferability.

14 Neither this Franchise nor any interest therein shall be sold, trans-
15 ferred, or assigned without the previous consent in writing of the Council of
Whatcom County, such consent not to be unreasonably withheld.

16 Section 18. Incorporation.

17 Whenever any of the County roads, rights-of-way, or other County prop-
erty as designated in this Franchise, by reason of the subsequent incorporation
18 of any town or city, or extension of the limits of any town or city, shall fall
within the city or town limits this Franchise shall continue in force and effect
19 as to all County roads, rights-of-way, or other County property not so included
in city or town limits.

20 Section 19. Construction/Extension Plan.

21 Five (5) years from the date of this Franchise, the rights conferred
22 hereby to the Grantee may, at the election of the Council of Whatcom County and
pursuant to notice, be terminated with respect to those County roads, rights-of-
23 way, and other County property or portions thereof upon which the Grantee has not
laid, constructed, and placed in operation its lines and facilities. The Grantee
24 shall extend its facilities and offer its services to all areas within the
franchise area which are contiguous to existing service areas, but which are not
25 currently served, provided there are 30 assured subscribers per mile of aerial
distribution cable (60 potential subscribers per mile of underground distribu-

1 tion cable) of new construction required. Such construction and services ren-
2 dered in new building areas will be subject to and governed by the provisions of
3 this franchise ordinance. If Grantee does not so extend its facilities and ser-
4 vices within a reasonable time, upon request made by subscribers, the County's
5 sole remedy shall be to terminate Grantee's rights as to such area not served as
6 set forth in the first sentence of this section.

7 Section 20. Installation Specifications.

8 In preparing plans and specifications for the installation of trans-
9 mission lines along or across County roads and rights-of-way, the Grantee shall
10 use as a guide the standards and specifications contained in the National
11 Electrical Safety Code (National Bureau of Standards); National Electrical Code
12 (National Bureau of Fire Underwriters); Bell System Code of Pole Line Construc-
13 tion; applicable FCC or other Federal, State or local codes and regulations;
14 State and municipal construction standards.

15 Section 21. Enforcement/Remedies.

16 (a) If the Grantee shall willfully violate, or fail to comply with
17 any of the provisions of this franchise through willful or unreasonable neglect,
18 or fail to heed or comply with any notice given the Grantee under the provisions
19 of this franchise, then the said Grantee shall forfeit all rights conferred
20 hereunder, and this Franchise may be revoked or annulled by the Council of
21 Whatcom County. In addition to any rights implied or set out elsewhere in this
22 ordinance, the Council reserves the right to apply, at its sole option, any one
23 or combination of the following in the event the company violates any provisions
24 of the franchise:

25 (1) Levy an assessment of actual damages.

26 (2) Reduce the duration of the franchise on such basis as the
27 arbitrator may deem reasonable and justified.

28 (3) Require a reduction in the company's rates by such amount or
amounts as may be necessary to remedy the violation.

(4) Require the company to make payments or refunds to its custo-
mers or classes of customers in such amount as may be necessary to remedy the
violation.

(5) Require the company to correct or otherwise remedy the viola-
tion prior to any consideration of implementation of rate increase if the viola-
tion relates to rates.

(6) Require the company to specifically comply with the terms and
conditions of the franchise ordinance.

1 (b) In the event of a dispute over a violation of the provisions of
2 this franchise, either party may submit resolution of the violation to arbitra-
3 tion. The matter shall be determined by a board of three (3) arbitrators, all
4 of whom shall be citizens and taxpayers of the State of Washington and shall be
5 selected as follows: one by the County Council, one by the Grantee, and one by
6 the two so appointed. Should the two arbitrators be unable to name a third,
7 such third arbitrator shall be named by a judge of the Superior Court for
8 Whatcom County. Said board shall make its decision in writing and file its
9 decision with the parties within sixty (60) days from the date of the appoint-
10 ment of the final arbitrator. The decision of the board shall be by a majority
11 vote and signed by at least two arbitrators. The written decision shall be
12 final and binding upon the parties.

13 Section 22. Eminent Domain/Reservation of Home Rule Charter Rights.

14 This franchise shall be subject to the power of eminent domain and the
15 right of the Council or the people acting for themselves through the initiative
16 or referendum to repeal, amend, or modify the franchise in the interest of the
17 public. In any proceeding under eminent domain, the franchise itself shall have
18 no value. This section sets forth the requirements of Section 9.30 of the
19 Whatcom County Home Rule Charter and shall remain in affect so long as the
20 charter provision is valid.

21 Section 23. Compliance with Laws and Regulations.

22 This franchise is subject to, and the Grantee shall comply with, all
23 applicable Federal, State, County or municipal laws, regulations and policies
24 affecting performance under this franchise.

25 Section 24. Franchise Payments to County.

26 (a) In consideration of the granting of this Franchise and to compen-
27 sate Whatcom County for the Grantee's occupancy of County roads, rights-of-way,
28 and other County property, as well as the expenses incurred in processing this
grant and to be incurred in connection with periodic inspections and control as
provided herein, the Grantee shall pay to Whatcom County, quarterly a sum
equivalent to four (4) percent (%) of the gross subscriber revenues received
from the installation and operation of its facilities and/or services to patrons
served from lines, wires, cables, or other devices installed along, under, or
over public rights-of-way or across County property as herein granted. Said sum
shall be due and payable in United States dollars. The term "gross subscriber
revenues" is meant to include only those revenues derived from the supplying of
basic subscriber service; that is, the installation fees, disconnect and recon-
nect fees, and fees for regular cable benefits including the transmission of
broadcast signals and access and origination channels if any. It does not
include revenues derived from per-program or per-channel charges, leased channel
revenues, advertising revenues, or any other income derived from the system nor
shall such term include any taxes on services furnished by the Grantee which are
imposed directly on any subscriber or user by the State, County or any other
governmental unit and collected by the Grantee on behalf of such governmental
unit.

1 (b) The Grantee's quarterly payments shall be remitted no later than the
2 30th day following the end of the quarterly period covered by the payment. The
3 Grantee shall be subject to a penalty of ten percent (10%) per annum of the sum
4 delinquent, during the term delinquent; and further provided that this franchise
5 and all rights and privileges granted hereunder shall terminate and be forfeited
6 if Grantee should exceed three months delinquent in the submission of the quart-
7 erly payments hereunder required, after receiving written notice from Whatcom
8 County of the delinquency to the local systems office by certified mail.

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10 Section 25. Franchise Payments to County Not In Lieu of Other Taxes.

11 Any franchise payments to the County by Grantee shall not be in lieu
12 of any occupation, income, license, or property tax or similar levy, assess-
13 ment, fee, or charge which would otherwise apply to and be payable by Grantee.
14 No privileges or rights granted hereunder shall exempt Grantee from any future
15 uniform rent, license, tax charge, or impost which may hereafter be required
16 by the Grantor, for revenue or as reimbursement for use and occupancy of
17 public ways, and failure to timely remit any sums properly due thereby, shall
18 be cause for forfeiture of rights hereunder.

19 Section 26. Inspection and Information.

20 (a) Grantee shall at all reasonable times, and to the extent neces-
21 sary to carry out the provisions of this ordinance, permit any duly-
22 authorized agent or representative of the County to examine all franchise
23 property of Grantee, together with any appurtenant property of Grantee
24 situated within or without the County, and to examine and transcribe all maps
25 and other records kept or maintained by Grantee, or under the control or
26 direction, or at the request of Grantee, which treat of the franchise opera-
27 tions, affairs, transactions, or property of the Grantee.

28 (b) Any of such maps or such other records which are not situated
within the County and which are not made available in the County within a reason-
able time after written request therefor by the Council or the Prosecuting
Attorney, shall be produced for examination wherever the same shall be situated
and Grantee shall pay all travel and other expenses necessary or reasonably
incurred by the County, its agents, and representatives in making such examina-
tion.

(c) Grantee shall prepare and furnish to the Director of Public Works,
at such times and in such form as prescribed by the Director, references and
materials with respect to the operations, affairs, transactions or property of
Grantee, as may be reasonably necessary or appropriate to the performance of any
of the duties of the County of Whatcom.

Section 27. Services to Consumers/Public.

(a) The Grantee shall:

1 (1) Correct malfunctions promptly, but in no event later than
2 twenty-four (24) hours after occurrence except for Acts of God and other con-
3 ditions beyond the control of the Grantee, in which cases the Grantee shall
4 correct the malfunctions with all deliberate speed.

5 (2) Promptly answer complaints by users.

6 (3) Give 24-hour notice to users of planned interruptions of
7 service, insofar as is possible, and attempt to have such interruptions occur
8 during periods of minimum use of the system.

9 (4) Maintain an office within Whatcom County, which office shall
10 be open during all usual business hours, with its telephone listed in direc-
11 tories of the telephone company serving the County, which office shall be so
12 operated that complaints and requests for repairs or adjustments may be received
13 at any time, day or night, seven days a week; and provide notice of such office
14 and the Grantee's complaint procedure to each user at the time of initial
15 subscription to the system.

16 (5) Maintain a written record, or log, listing date of customer
17 complaints identifying the user and describing the nature of the complaint, and
18 when and what action was taken by Grantee in response thereto. Said record
19 shall be kept at Grantee's local office for a period of five (5) years and shall
20 be available for inspection during regular business hours, without further
21 notice or demand, by the manager.

22 (6) Provide services to consumers as delineated in the rate
23 schedule as provided herein.

24 (b) County Complaint Procedures. The Director of Public Works shall
25 have the primary responsibility for the administration of complaints regarding
26 franchises and the County Executive shall approve procedures to be followed by
27 the Director in resolving and processing such complaints. In the event that
28 the parties cannot resolve the subscriber complaint to their mutual satisfaction,
the subscriber is free to pursue all remedies available to him.

(c) To promote the health, safety and welfare of the citizens of
Whatcom County, the County Council may request, and the Company shall provide,
the following:

(1) At least one special designated non-commercial local origi-
nation channel available on a first come, non-discriminatory basis for the
purpose of public service programming and for use by local educational,
governmental, and emergency authorities.

(2) The company shall provide, without charge, one service drop
(line) at each public facility designated by the County, that is passed by
existing cable up to a maximum of five (5) drops.

1 Section 28. Insurance.

2 (a) Upon acceptance of such franchise, the Grantee shall file with
3 the Whatcom County Council, and shall thereafter, during the entire term of
4 such franchise, maintain in full force and effect, a corporate insurance
5 policy or other adequate surety agreement in the amount of FIVE HUNDRED
6 THOUSAND DOLLARS (\$500,000.00) for property damage coverage, and THREE HUNDRED
7 THOUSAND DOLLARS (\$300,000.00) for public liability coverage, so as to protect
8 the County against damages or costs as set forth in Section 14 above, and
9 there shall be recoverable, jointly and severally from the principal and
10 surety, any such damages or costs suffered or incurred by the County, includ-
11 ing attorneys' fees and costs of any action or proceedings, and including the
12 full amount of any compensation, indemnification, cost of removal of any pro-
13 perty, or other costs which may be incurred up to the full principal amount of
14 such insurance policy; and said condition shall be a continuing obligation
15 during the entire term of such franchise and thereafter until Grantee shall
16 have satisfied in full any and all obligations to the County and any user
17 which arise out of or pertain to said franchise. Neither the provisions of
18 this section, nor any insurance policy accepted by the County pursuant hereto,
19 nor any damages recovered by the County thereunder, shall be construed to
20 excuse faithful performance by the Grantee or limit the liability of the
21 Grantee under any franchise issued pursuant to this ordinance.

22 (b) The Prosecuting Attorney, at the request of the County Council,
23 may review the dollar amount of said insurance policy and adjust the amount of
24 coverage as deemed appropriate within each five years of the length of the
25 franchise.

26 Section 29. Repealers.

27 All other prior existing franchises granted to Guinness Communications Inc.
28 shall be repealed, and the terms of the franchise granted hereunder shall become
effective at such time as an acceptance of franchise is filed by the Grantee
with the County in accordance with Section 2 herein.

Section 30. Severability.

If any portion of the ordinance is deemed invalid, the remainder will
remain in effect.

Section 31. Titles.

The section titles used herein are for reference only and should not
be used for the purpose of interpreting this ordinance.

Section 32. Force Majeure Clause.

The Grantee shall not be deemed in default of any provisions of this
franchise or subjected to any penalties hereunder where performance or

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compliance is prevented by Acts of God, civil emergencies, national disasters or acts of third parties that are neither agents, employees, nor affiliates of the Grantee which are beyond the Grantee's reasonable abilities to control.

APPROVED this 27th day of October, 1992

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Ramona Reeves
Ramona Reeves
Clerk of the Council

Daniel M. Warner
Daniel M. Warner
Chairperson

() APPROVED () VETOED

APPROVED AS TO FORM:

Shirley Van Zanten
SHIRLEY VAN ZANTEN
County Executive

Randall J. Watts
Randall J. Watts, Chief Civil
Deputy Prosecuting Attorney

Date: 10-28-92

ORDINANCE - 13.
Date drafted: 07/23/192

EXHIBIT A

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All County roads in Point Roberts, Washington,
being in Sections 1, 2, 3, 4, 9, 10, 11, and 12
in Township 40, Range 3W., and Section 33, 34,
and 35, Township 41, Range 3W., W.M.

ORDINANCE - 14.
Date drafted: 07/31/92