

TITLE 13
FRANCHISES

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CHAPTER 1

MONTANA POWER COMPANY¹

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13-1-1: **FRANCHISE GRANTED:** There is hereby granted to the Montana Power Company, a corporation, its successors and assigns (hereinafter called the "grantee"), the right, privilege and franchise for the full period of fifty (50) years from and after September 21, 1980 and thereafter until and unless otherwise provided by ordinance to construct, equip, lay, maintain and operate in, under, upon, over and across the streets, avenues, alleys, highways, bridges, easements and other public places in the city, as now or hereafter constituted, mains, pipes, conduits, manholes, reducing and regulating stations and all other appurtenances and accessories for the purpose of transporting, conveying, distributing, supplying and selling natural gas or artificial gas, or a mixture of natural and artificial gas for light, heat, power and other purposes, at rates fixed and allowed by the public service commission of Montana, and grantee agrees to file with the city clerk, the schedule of rates thus fixed and allowed. (1983 Code § 13.02.010)

1. This franchise was transferred to Northwest Energy.

13-1-2: **EXTENSION OF MAINS AND PIPES:** The grantee shall extend its gas mains and pipes to such parties of said city as the consumption of gas shall justify. (1983 Code § 13.02.020)

13-1-3: **SUPPLY OF GAS:** The grantee, at all times during the existence of this franchise, shall use its best efforts to obtain and supply a continuous, sufficient and adequate quantity of gas for use by said city and its inhabitants, provided; however, that grantee shall in nowise be liable to said city or to its inhabitants because of the interruption or discontinuance of the supply of gas by causes beyond the reasonable control of grantee. (1983 Code § 13.02.030)

13-1-4: **DISCONTINUANCE OF GAS DISTRIBUTION:** Grantee shall not discontinue the distribution of gas through its distributing system, or any portion thereof, for an unreasonable length of time for the purpose of making repairs and extensions, but grantee shall not be liable to the city or to any consumers for damages caused by such temporary discontinuance or interruption of the delivery of gas; provided, that such repairs and extensions are made with reasonable diligence. (1983 Code § 13.02.040)

13-1-5: **WORK TO BE DONE IN WORKMANLIKE MANNER:** All work done in, under, upon, over and across the present and future streets, avenues, alleys, highways, bridges, easements and other public places in the city by grantee for the purpose of carrying out the provisions of this franchise shall be done and performed in a good and workmanlike manner. When any street, alley, or other public place in said city is excavated or damaged by grantee by reason of such work, the grantee shall restore such street, alley, or public place to its former condition as early as practicable.

If, at any time, a change in the grade or plan of any street, alley, or public place shall be made by order of the proper city officials, the grantee shall, without expense to the city, make such changes in the location of its pipes and facilities as the change of the grade or plan of the street, alley, or public place makes necessary, which said change shall be made as soon as possible after said grantee shall have received notice from the proper city official having the same in charge. (1983 Code § 13.02.050)

13-1-6: **CITY TO BE HELD HARMLESS:** Grantee shall hold the city harmless from all costs and damages which shall or may accrue to said city by reason of the neglect, default, or misconduct of the grantee in connection with the exercise of its rights hereunder. (1983 Code § 13.02.060)

13-1-7: **ASSIGNMENT OF FRANCHISE:** Grantee is hereby given the right and authority to make assignments of this right, privilege, or franchise, and its rights hereunder; all assignees to be bound to the same extent as the original grantee. (1983 Code § 13.02.070)

13-1-8: **DUTIES OF CITY:** The city shall pass all ordinances necessary or suitable to protect the property and rights of said grantee and to enable said grantee to enforce any of its reasonable rules and regulations for the management, operation and control of the service hereunder, and shall pass any reasonable ordinance or ordinances that may be necessary or suitable in order fully to confirm to said grantee the rights herein or hereby granted or intended so to be. (1983 Code § 13.02.080)

13-1-9: **FRANCHISE NOT EXCLUSIVE:** Nothing in this chapter contained shall be held or construed to grant any exclusive rights or privileges, but the city reserves to itself the right at any time to make such other grants or extend such other privileges to any other person or persons, company, or corporation for the use of its streets, alleys, or other public places, or any thereof for the purposes in this chapter expressed or for any other valid purpose as the city council may by ordinance from time to time determine. (1983 Code § 13.02.090)

13-1-10: **FORFEITURE OF FRANCHISE:** Failure on the part of grantee to comply in any substantial respect with any of the provisions of this franchise shall be grounds for forfeiture thereof, but no such forfeiture shall take effect if the reasonableness or the propriety thereof is protested by grantee until and unless a court of competent jurisdiction (with right of appeal in either party) shall have found that said grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and grantee shall have six (6) months after the final determination of said question to make good the default before a forfeiture shall result, with the right in the city council, at its discretion, to

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grant such additional time to the grantee for compliance, as necessities in the case may require. (1983 Code § 13.02.100)

CHAPTER 2
TCI CABLEVISION¹

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1. Franchise assigned from TCI Cablevision to Bresnan Communications, LLC, by agreement dated April 17, 2002, and agreed to by the city. On August 2, 2004, an agreement was entered into with Bresnan Communications, LLC, by the city for an initial term of 20 years.

13-2-1: **DEFINITIONS:** For the purpose of this chapter, the following terms, phrases, words, and abbreviations shall have the meaning below. 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:

AFFILIATE: An entity which owns or controls, is owned or controlled by, or is under common ownership with grantee.

BASIC CABLE: The tier of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.

CABLE ACT: The cable communications policy act of 1984, as amended.

CABLE SERVICE: A. The one-way transmission to subscribers of video programming or other programming service; and

B. Subscriber interaction, if any, which is required for the selection of such video programming or any other lawful communication service.

CABLE SYSTEM: A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communications equipment that is designed to provide cable service and other service to subscribers.

FCC: Federal communications commission, or successor governmental entity thereto.

FRANCHISE: The initial authorization, or renewal thereof, issued by the franchise authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the cable system for the purpose of offering cable service or other service to subscribers.

FRANCHISE AUTHORITY:	The city of Belgrade, Montana, or the lawful successor, transferee, or assignee thereof.
GRANTEE:	TCI Cablevision of Montana, Inc., or the lawful successor, transferee, or assignee thereof.
GROSS REVENUES:	The monthly cable service revenues received by grantee from subscribers of the cable system; provided, however, that such phrase shall not include: a) revenues received from any national advertising carried on the cable system; b) any taxes on cable service which are imposed directly or indirectly on any subscriber which are collected by the grantee on behalf of such governmental unit or agency.
PERSON:	An individual, partnership, association, joint stock company, trust corporation, or governmental entity.
PUBLIC WAY:	The surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right of way, including, but not limited to, public utility easements, dedicated utility strips, or rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the franchise authority in the service area which shall entitle the franchise authority and the grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the cable system. Public way shall also mean any easement now or hereafter held by the franchise authority within the service area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights of way as shall within their proper use and meaning entitle the franchise authority and the grantee to the use thereof for the purposes of installing or transmitting grantee's cable service or other service over poles, wires,

	cables, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the cable system.
SERVICE AREA:	The present municipal boundaries of the city, and shall include any additions thereto by annexation or other legal means.
SERVICE TIER:	A category of cable service or other services, provided by grantee and for which a separate charge is made by grantee.
SUBSCRIBER:	A person or user of the cable system who lawfully receives cable services or other service therefrom with grantee's express permission.
VIDEO PROGRAMMING:	Programming provided by, or generally considered comparable to programming provided by, a television broadcast station. (Ord. 94-4, 8-1-1994)

13-2-2: **GRANT:**

- A. The franchise authority hereby grants to grantee a nonexclusive franchise to construct and operate a cable system and offer cable service and other services in, along, among, upon, across, above, over, under, upon, across, or along any public way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the cable system.
- B. This franchise does not relieve the grantee of any requirement of the franchise authority pursuant to its lawful police power or of any applicable ordinance the provisions of which are not inconsistent herewith and that do not place an additional material burden on grantee including, but not limited to, any ordinance, rule, regulation, or specification of the franchise authority, including, but not limited to, any requirement relating to street work, street excavation permits, or the use, removal or relocation of property in streets.
- C. Any privilege claimed under this franchise by the grantee in any street shall be subordinate to any prior lawful occupancy of the

street. The franchise authority reserves the right to reasonably designate where a grantee's facilities are to be placed within the public way.

- D. The grantee shall operate and maintain its cable system in full compliance with the standards set forth by the FCC.
- E. This franchise shall not relieve the grantee of any obligations involved in obtaining pole or conduit space from any department of the city, utility company, or from others maintaining utilities in public ways.
- F. Any privilege claimed under this franchise in any public right of way or other public property shall be subordinate to the public use.
- G. The franchise authority reserves the right to join with one or more of the other local area city and/or county governments in the formation and operations of an intergovernmental administrative franchising authority for the purpose of joint administration of this franchise. The grantor reserves the right to assign the administration of the provisions of any franchise granted pursuant to this chapter to such a duly established joint authority, and to join with other members of the authority in developing such intergovernmental agreement bylaws, rules, and regulations as necessary for the proper administration of the joint authority.
- H. This franchise shall not become effective for any purpose unless and until written acceptance thereof shall have been filed with the Belgrade city clerk. Written acceptance which shall be in the form and substance approved by the Belgrade city attorney, shall also be and operate as an acceptance of each and every term and condition and limitation contained in this franchise or otherwise specified as herein and therein provided.
- I. The written acceptance shall be filed by grantee within forty five (45) days after notifying the franchise authority verbally of acceptance. In the event this day falls on a nonworking day, then the next working day will suffice.
- J. In default of the filing of such written acceptance as herein required, the grantee shall be deemed to have rejected and reputed the franchise. Thereafter, the acceptance of the grantee shall not be received or filed by the city of Belgrade clerk. The grantee shall have no rights, remedies, or redress in the premises unless and until the franchise authority, by resolution, shall determine that such

acceptance be received or filed, and then upon such terms and conditions as the franchise authority may impose.

- K. In the event the franchise authority enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than grantee to enter into the service area streets and public ways for the purpose of constructing or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. (Ord. 94-4, 8-1-1994)

13-2-3: **TERM:** The franchise granted pursuant to this chapter shall be for an initial term of ten (10) years from its passage and final adoption.

Pursuant to the terms of subsections 13-2-16A and 13-2-18A, B and C of this chapter, the franchise authority may terminate this franchise in the event of the wilful failure, refusal or neglect by the grantee to do or comply with any material requirement or limitation contained in this franchise, or other applicable rule or regulation of the franchise authority insofar as such rule or regulation does not conflict with the provisions of the franchise, subject to the provisions hereof. In any event the franchise authority shall not take any punitive action or commence any action at law without first conducting a public hearing. Grantee shall be notified of the time and place of such hearing and have an opportunity to be heard. (Ord. 94-4, 8-1-1994)

13-2-4: **CONDITIONS OF STREET OCCUPANCY:** All transmissions and distribution structures, poles, other lines and equipment installed or erected by the grantee pursuant to the terms hereof shall be so located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said public ways. (Ord. 94-4, 8-1-1994)

13-2-5: **REQUIRED SHARED USE WITH UTILITIES:** Whenever, in the judgment of the franchise authority, it is deemed impracticable to permit erection of poles or construction of underground conduit system by any utility which may at the time have authority to construct or maintain a conduit or poles in street areas, the franchise

authority may require the grantee to afford to such utility the right to use such poles or facilities of the grantee as the franchise authority finds practicable in common with the grantee, so long as the use of such poles or facilities does not interfere with the grantee's present and future use of such poles or facilities. (Ord. 94-4, 8-1-1994)

13-2-6: **RESERVATION TO REGULATE:** The franchise authority reserves the right to enact reasonable regulations pertaining to the use of the franchise authority's streets and poles within the service area; providing, however, that such additional regulation shall not conflict with or, alter in any manner the rights granted herein, and shall not conflict with laws of state of Montana, the laws of United States of America, or rules, regulations, and policies of FCC, which may include, but is not limited to:

- A. Construction and use of poles;
- B. Use of poles and conduits by city;
- C. Common user;
- D. Reservation of street rights;
- E. Restoration of streets; and
- F. Movement of facilities. (Ord. 94-4, 8-1-1994)

13-2-7: **USE OF PUBLIC WAYS:**

- A. Restoration Of Public Ways: If during the course of grantee's construction, operation or maintenance of the cable system there occurs a disturbance of any public way by grantee, it shall, at its expense, replace and restore such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to such disturbance.
- B. Traffic Conditions; Public Safety; Street Construction: Upon its receipt of reasonable advance notice, not to be less than five (5) business days, the grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the public way, or remove from the public way, any property of the grantee when lawfully required by the franchise authority by reason of traffic conditions, public safety, street abandonment, freeway and street

construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the franchise authority; but, the grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the grantee.

- C. **Relocation At Request Of Third Party:** The grantee shall, on the request of any person holding a building moving permit issued by the franchise authority, temporarily raise or lower its wires to permit the moving of such building, provided: 1) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the grantee, making such payment in advance; and 2) the grantee is given not less than ten (10) business days' advance written notice to arrange for such temporary wire changes.
- D. **Trimming Of Trees And Shrubbery:** Grantee shall have authority to trim trees or other natural growth overhanging any of its cable system in the service area which exists on public property or public rights of way so as to prevent said growth from coming into contact with grantee's wires, cables, or other equipment. If neither the franchise authority or the private property owner does not alleviate the obstacle within fifteen (15) days, grantee shall have the authority to remove said obstacles. Grantee shall be permitted to charge the property owner for the cost of removal of the trees and natural growth if similar charges are assessed and paid to utilities or the franchise authority for such work. The grantee shall reasonably compensate the franchise authority or the property owner for any damages done pursuant to said tree or bush removal or, in its discretion, replace trees or shrubs damaged as a result of any removal or construction undertaken by the grantee.
- E. **Use Of Grantee's Equipment By Franchise Authority:** Subject to any applicable state or federal regulations or tariffs, the franchise authority shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the grantee in any public way; provided that:
1. Such use by the franchise authority does not interfere with a current or future use by the grantee;
 2. The franchise authority holds the grantee harmless against and from all claims, demands, costs, or liabilities of every kind and

nature whatsoever arising out of such use of said poles or conduits, including, but not limited to, reasonable attorney fees and costs; and

3. At grantee's sole discretion, the franchise authority may be required either to pay a reasonable rental fee or otherwise reasonably compensate grantee for the use of such poles, conduits, or equipment; provided, however, that grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the service area.

- F. Safety Requirements: Construction, installation, and maintenance of the cable system shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the service area.
- G. Aerial And Underground Construction: In those areas of the service area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided, that such facilities are actually capable of receiving grantee's cable and other equipment without technical degradation of the cable system's signal quality. In those areas of the service area where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in subsection F of this section shall require grantee to construct, operate, and maintain underground any ground mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in subsection F of this section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date hereof, grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground. (Ord. 94-4, 8-1-1994)

13-2-8: FRANCHISE FEE:

- A. Payment: Grantee shall pay to the franchise authority a franchise fee equal to five percent (5%) of the quarterly gross revenue received by grantee from operating the cable system on a quarterly basis. The franchise fee shall be due and payable forty five (45) days after close of quarter. Each payment shall be accompanied by a report from a representative of grantee showing the basis for the computation.
- B. Limitation On Franchise Fee Actions: The period of limitation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment by the company is due. Unless, within five (5) years from and after said payment due date, the franchise authority initiates a lawsuit for recovery of such franchise fees in the court of competent jurisdiction, such recovery shall be barred and the franchise authority shall be estopped from asserting any claims whatsoever against the company relating to any such alleged deficiencies. No acceptance of any payment or partial payment by the franchise authority shall be construed as a release or as an accord and satisfaction of any claim the franchising authority may have for further or additional sums payable under this franchise agreement for the performance of any obligation hereunder, within the said five (5) year limitation. (Ord. 94-4, 8-1-1994)

13-2-9: LATE PAYMENT FEE: Should the grantee ever fail to pay any sums of money to the franchise authority owing to the grantor, under provisions of this agreement when such sum becomes due and payable, grantee shall pay interest to the franchise authority on the delinquent sum until it is fully paid, at two (2) interest points above the prime rate of interest charged in Belgrade city area as calculated by the franchise authority. (Ord. 94-4, 8-1-1994)

13-2-10: GRANTOR INSPECTION RIGHT: The grantee agrees that the franchise authority may review such of its books and records, during normal business hours and as is reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the grantee pursuant to the rules and regulations of the FCC. The franchise authority or its representative shall have the right to inspect the grantee's records to determine if proper payments have been made to the franchise authority.

The costs of such audits shall be borne by grantee if same results in increasing, by more than two percent (2%), the grantee's annual payment to the franchise authority. The franchise authority agrees to treat any information disclosed by the grantee to it as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. (Ord. 94-4, 8-1-1994)

13-2-11: **RENEWAL OF FRANCHISE:** The franchise authority and the grantee agree that any proceedings undertaken by the franchise authority that relate to the renewal of the grantee's franchise shall be governed by and comply with the provisions of section 626 of the cable act (as such existed as of the effective date of the cable act), unless the procedures and substantive protection set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provisions of federal or state law.

In addition to the procedures set forth in said section 626(a), the franchise authority agrees to notify grantee of its preliminary assessments regarding the identity of future cable related community needs and interests, as well as, the past performance of grantee under the then current franchise term. The franchise authority further agrees that such a preliminary assessment shall be provided to the grantee prior to the time that the four (4) month period referred to in subsection (c) of section 626 is considered to begin. Notwithstanding anything to the contrary set forth in this section 13-2-11, the grantee and franchise authority agree that at any time during the term of the then current franchise, while affording the public appropriate notice and opportunity to comment, the franchise authority and grantee may agree to undertake and finalize negotiations regarding renewal of the then current franchise and the franchise authority may grant a renewal thereof. The grantee and the franchise authority consider the terms set forth in this section to be consistent with the express provisions of section 626 of the cable act. A reproduction of section 626 of the cable act as such existed as of the effective date of the cable act is attached hereto as schedule 1 and incorporated herein by this reference. (Ord. 94-4, 8-1-1994)

13-2-12: **TRANSFER OF FRANCHISE:** Grantee's right, title, or interest to the franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an affiliate of the grantee, without the prior consent of the franchise authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of

any right, title, or interest in grantee in the franchise or cable system in order to secure indebtedness. (Ord. 94-4, 8-1-1994)

13-2-13: **INSURANCE REQUIREMENTS:** Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the franchise, comprehensive general liability insurance in the amount of one million dollars (\$1,000,000.00) combined single limit for bodily injury, and property damage. Said insurance shall designate the franchise authority as an additional insured. Such insurance shall be noncancelable except upon thirty (30) days' prior written notice to the franchise authority. (Ord. 94-4, 8-1-1994)

13-2-14: **INDEMNIFICATION:** The grantee agrees to indemnify, save and hold harmless, and defend the franchise authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the grantee's construction, operation, or maintenance of its cable system, including, but not limited to, reasonable attorney fees and costs. (Ord. 94-4, 8-1-1994)

13-2-15: **BONDS AND OTHER SURETY:** Except as expressly provided herein, grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the franchise or continuing its existence. The franchise authority acknowledges that the legal, financial, and technical qualifications of grantee are sufficient to afford compliance with the terms of the franchise and the enforcement thereof. Grantee and franchise authority recognize that the costs associated with bonds and other surety may ultimately be borne by the subscribers in the form of increased rates for cable services. In order to minimize such costs, the franchise authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefor. The franchise authority agrees that in no event, however, shall it require a bond or other related surety in an aggregated amount greater than ten thousand dollars (\$10,000.00), conditioned upon the substantial performance of the material terms, covenants, and conditions of the franchise. Initially, no bond or other surety will be required. In the event that one is required in the future, the franchise authority agrees to give grantee at least sixty (60) days' prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in the grantee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply

with the terms of the franchise or afford compliance therewith. (Ord. 94-4, 8-1-1994)

13-2-16: **NOTICE OF VIOLATION:** In the event that the franchise authority believes that the grantee has not complied with the terms of the franchise, it shall notify grantee, in writing, of the exact nature of the alleged noncompliance. (Ord. 94-4, 8-1-1994)

13-2-17: **GRANTEE'S RIGHT TO CURE OR RESPOND:** Grantee shall have thirty (30) days from receipt of the notice described in section 13-2-16 of this chapter to: a) respond to the franchise authority contesting the assertion of noncompliance, or b) to cure such default or, in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the franchise authority of the steps being taken and the projected date that they will be completed. (Ord. 94-4, 8-1-1994)

13-2-18: **PUBLIC HEARINGS:**

- A. Failure To Comply; Hearing Scheduled: In the event that grantee fails to respond to the notice described in section 13-2-16 of this chapter pursuant to the procedures set forth in section 13-2-17 of this chapter, or in the event that the alleged default is not remedied within sixty (60) days after the grantee is notified of the alleged default pursuant to section 13-2-16 of this chapter, the franchise authority shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of the franchise authority which is scheduled at a time which is no less than five (5) business days therefrom. The franchise authority shall notify the grantee with an opportunity to be heard.
- B. Enforcement: Subject to applicable federal and state law, in the event the franchise authority, after such meeting, determines that grantee is in default of any provision of the franchise, the franchise authority may:
1. Foreclose on all or any part of any security provided under this franchise, if any, including, without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the franchise authority reasonably determines is necessary to remedy the default;

2. Commence an action at law for monetary damages or seek other equitable relief;
3. In the case of a substantial default of a material provision of the franchise, declare the franchise agreement to be revoked; or
4. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

The grantee shall not be relieved of any of its obligations to comply promptly with any provision of the franchise by reason or any failure of the franchise authority to enforce prompt compliance.

- C. Acts Of God: The grantee shall not be held in default or noncompliance with the provisions of the franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control. (Ord. 94-4, 8-1-1994)

13-2-19: **NOTICE:** Unless expressly otherwise agreed between the parties, every notice or response to be served upon the franchise authority or grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a post office or branch thereof regularly maintained by the U.S. postal service. The notices or responses to the franchise authority shall be addressed as follows:

City of Belgrade
88 N. Broadway
Belgrade, Montana 59714

The notices or responses to the grantee shall be addressed as follows:

TCI Cablevision of Montana, Inc.
P.O. Box 1925
Bozeman, MT 59771-1925

with a copy to:

TCI Cablevision of Montana, Inc.
P.O. Box 91220
Bellevue, WA 98009-9220

The franchising authority and the grantee may designate such other address or addresses from time to time by giving notice to the other. (Ord. 94-4, 8-1-1994)

13-2-20: EXTENSIONS OF SERVICE:

- A. **Required Extensions Of Service:** The cable system as constructed as of the date of the passage and final adoption of this chapter substantially complies with the material provisions hereof. Grantee is hereby authorized to extend the cable system as necessary, as desirable, or as required pursuant to the terms hereof within the service area. Whenever grantee shall receive a request for service from at least fifteen (15) subscribers within two thousand six hundred forty (2,640) cable bearing strand feet ($\frac{1}{2}$ cable mile) of its trunk or distribution cable, it shall extend its cable system to such subscribers at no cost to said subscribers for system extension, other than the usual connection fees for all subscribers; provided, that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the cable system, or as provided for in this subsection.
- B. **Subscriber Charges For Extensions Of Service:** No subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a subscriber's request to locate his cable drop underground, existence of more than one hundred fifty feet (150') of distance from distribution cable to connection of service to subscribers, or a density of less than fifteen (15) subscribers per two thousand six hundred forty (2,640) cable bearing strand feet of trunk or distribution cable, cable service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by grantee and subscribers in the area in which cable service may be expanded, grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential subscribers per two thousand six hundred forty (2,640) cable bearing strand feet of its trunks or distribution cable, and whose denominator equals fifteen (15) subscribers. Potential subscribers will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital contribution in said construction borne by such potential subscribers be paid in advance. (Ord. 94-4, 8-1-1994)

13-2-21: **CUSTOMER SERVICE:** The grantee shall maintain a business office and service center with toll free telephone numbers so that subscribers may report service outages or deficiencies at any time. The office shall maintain an adequate staff such that subscribers may transact all necessary business during regular business hours. Grantee's employees shall maintain a high standard of courtesy in customer relations at all times. (Ord. 94-4, 8-1-1994)

13-2-22: **STREET WORK:** The grantee at his expense shall protect, support, temporarily disconnect, relocate, or remove any property of grantee when required by the grantor or other relevant governmental unit by reason of traffic conditions, public safety, street vacation, freeway or street construction; change or establishment of street grade, installation of sewers, drains, water pipes, power lines, structure or improvements by governmental agencies whether acting in a governmental or proprietary capacity, or any other structure of public improvement, including, but not limited to, movement of buildings, urban renewal and redevelopment, and any general program under which the grantor or other relevant governmental unit shall undertake to cause all such properties to be located beneath the surface of the ground; provided, that grantee shall in all cases have the privileges and be under the obligations as to the abandonment of franchise property in places which are provided in the appropriate sections hereof. (Ord. 94-4, 8-1-1994)

13-2-23: **REMOVAL OR ABANDONMENT:**

- A. In the event the use of any grantee property is permanently discontinued, or upon expiration of or within twelve (12) months after any termination of a franchise, and subject to applicable federal or state law, the grantee shall promptly remove from the streets all property involved, other than that which the franchise authority may, at its sole option, permit to be abandoned in place.
- B. A permit to abandon in place must be obtained from franchise authority. Nothing hereunder shall be deemed as taking of the property of grantee, and grantee shall be entitled to no surcharge by reason of anything hereunder. (Ord. 94-4, 8-1-1994)

13-2-24: **REPORTS, RECORDS AND PLANS:** The grantee shall at all times make and keep at its Bozeman office full and complete plans and records showing the exact location of all cable communications

system equipment installed or in use in the streets and other public places in Belgrade city. The grantee shall also keep at its Bozeman office, a current map or set of maps drawn to scale showing all cable communications system equipment installed and in place in streets and other public places in the service area. (Ord. 94-4, 8-1-1994)

13-2-25: **MISDEMEANOR:**

- A. In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any person, firm, or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the cable system without the express consent of the grantee. Further, without the express consent of grantee, it shall be a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part of the cable system or any means of receiving cable services or other services provided thereto.
- B. Subject to applicable federal and state law, the franchise authority shall incorporate into its criminal code, if not presently a part thereof, criminal misdemeanor law which will enforce the intent of this section. (Ord. 94-4, 8-1-1994)

13-2-26: **SEVERABILITY:** If any section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the franchise or any renewal or renewals thereof. (Ord. 94-4, 8-1-1994)

13-2-27: **USE OF PROCEEDS:** Grantor shall place all revenue received pursuant to this chapter in the Belgrade city general fund. (Ord. 94-4, 8-1-1994)

13-2-28: **DOCUMENTS INCORPORATED AND MADE A PART HEREOF:** The following documents shall be incorporated

herein by this reference, and in the case of a conflict or ambiguity between or among them, the document of latest date shall govern:

- A. Any enabling ordinance in existence as of the date hereof; and
- B. Any proposal submitted by grantee pursuant to a franchise renewal procedure, as amended and supplemented during the franchise renewal negotiation process;
- C. Any franchise agreement between grantee and franchise authority reflecting the renewal of the franchise, if any. (Ord. 94-4, 8-1-1994)

13-2-29: **PREEMPTION:** If the FCC or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the franchise authority, the jurisdiction of the franchise authority shall cease and no longer exist. (Ord. 94-4, 8-1-1994)

13-2-30: **ACTIONS OF FRANCHISE AUTHORITY:** In any action by the franchise authority or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld. (Ord. 94-4, 8-1-1994)