

# DIT

## DIT Director's Rule 01-2015

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Subject:  Procedures for determining cable operator compliance with service to low-income households requirement.	Code and Section Reference:  SMC 21.60.170.A	
	Type of Rule:  Procedural	
	Ordinance Authority:  SMC 21.60.170.A.4	
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	Michael Mattmiller, Director Department of Information Technology	

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## **Introduction:**

The purpose of this Rule is to document the procedures to be followed in determining whether franchised cable operators are satisfying the *Service to low-income households* requirement of SMC 21.60.170. The Rule provides the procedures that the Department of Information Technology's Office of Cable Communications ("OCC") will follow when reviewing cable operators' semiannual service reports, and the basis on which OCC will determine whether the cable operator is in compliance with the code requirement. This Rule applies to both incumbent and new cable operators, although we note that new cable operators shall have up to two years to ensure that at all times their service area satisfies the low-income provisions established under SMC 21.60.170. Incumbent operators will be subject to the requirement upon renewal of their existing cable franchise.

## **Background:**

Effective April 26, 2015, Seattle Municipal Code Chapter 21.60, Cable Communications Ordinance ("Cable Code"), was amended to eliminate the concept of *cable districts*. These districts provided boundaries and designations that defined the areas in which a cable operator could obtain a franchise to operate, along with a requirement to build out its cable system throughout the district within seven (7) years.

The elimination of cable districts was approved to encourage cable competition in the City by allowing new and existing cable operators the flexibility to choose where and how to provide cable service within their franchise areas, rather than being restricted to the old district boundary structure. The new Cable Code provisions prevent cable operators from selectively serving more affluent areas by requiring that at all times a "*significant portion of the total households to which grantee offers cable service shall be households that fall below the median income level as measured by census block group data.*" A new cable operator is given up to two years to comply with this requirement but is encouraged to meet the standard as soon as is feasible.

The Cable Code requires all cable operators to provide reports to verify they comply with this low-income service requirement. The Cable Code also tasks the OCC with meeting with a cable operator at least semiannually to review its report and determine its compliance with the low-income service requirement. Finally, the Cable Code requires the OCC to submit its analysis of the cable operator reports to the Council on a quarterly basis. The Cable Code also outlines enforcement action that the OCC can undertake in the event of a finding of noncompliance with the low-income service obligation.

## **Definitions:**

*American Community Survey (ACS):* The American Community Survey is a nationwide survey conducted by the U.S. Census Bureau and designed to provide communities a look at how they are changing. The ACS replaced the decennial census long form in 2010 and thereafter by collecting long form type information throughout the decade rather than only once every 10 years. The American Community Survey produces demographic, social, housing and economic estimates in the form of 1-year, 3-year and 5-year estimates based on population thresholds. It produces estimates for small areas, including census tracts and population subgroups.

*Census Block Group:* A statistical subdivision of a census tract, generally defined to contain between 600 and 3,000 people and 240 and 1,200 housing units, and the smallest geographic unit for which the Census

Bureau tabulates sample data. A sub-division of a census tract (or, prior to 2000, a block numbering area), a block group is a cluster of blocks having the same first digit of their four-digit identifying number within a census tract.

*Franchise map:* Accurate map of a cable operator's service area that illustrates the cable service deployment locations.

*Median Income Level:* The City of Seattle's median income level as determined by U.S. Census Bureau.

*Service Area:* The area in which the cable operator can provide cable service within seven (7) business days of an order being placed by a subscriber, assuming the request is a standard installation as defined by SMC 21.60.030 or the franchise.

*Significant Portion:* No less than 30% of the total households in cable operator's service area at any given time.

**Review Process:**

1. OCC will use the *American Community Survey (ACS)* as the data source for determining block groups that fall below the median income level.
  - a. The ACS's 5-year estimate will be used to create a detailed map of the City showing census block groups that fall below the City's median income level.
  - b. The initial map will be created in 2015 using the most current ACS 5-year estimate data.
  - c. As of 2015, the current<sup>1</sup> ACS 5-year estimate indicates Seattle's median income level is \$65,277.
  - d. The median income level map will be updated every five (5) years, in conjunction with release of a new ACS 5-year estimate, to capture changes indicated in the updated ACS population data.
2. Cable operator will meet with the OCC at least semiannually to review its service area information and discuss any service area expansion plans.
  - a. Meetings will be held during the months of March, June, September, or December of each year.
  - b. 30 days prior to a meeting, the OCC will notify the cable operator of the meeting date and provide the cable operator with the City map showing block groups below median income level. The map will be provided by the City in electronic format as a GIS shape file/feature class and include coordinating map symbology, or in such other format that is agreed upon by OCC and the cable operator.
  - c. Cable operator will create the following for submission at the semiannual meeting:
    - i. A franchise map layer illustrating its cable service areas in relation to the City's map showing block groups below median income level. The franchise map will have

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<sup>1</sup> The current ACS 5-year estimate includes years 2009-2013. See <http://quickfacts.census.gov/qfd/states/53/5363000.html>

coordinated symbology to allow for a direct comparison of its service area(s) with the City's map showing block groups below median income level;

- ii. Specify the number of households in the service area;
- iii. Specify how many of the households in the service area are in block groups below median income level;
- iv. Specify how many households have been *added* to its service area since the last meeting, if applicable;
- v. Specify how many of these *new* households are in block groups below the City's median income level; and
- vi. Written certification, signed by a cable operator representative with the requisite authority, that the information provided by the cable operator to the OCC is true and accurate.
- vii. City recognizes that some Grantees would consider the information being requested under this section to be "Financial, commercial, and proprietary information" under RCW 42.56.270. Therefore, if the City receives a public disclosure request for any Documents or parts of Documents that Grantee has marked as "Confidential," the City shall provide the Grantee with written notice of the request, including a copy of the request. The City, as a courtesy, will allow Grantee up to ten (10) business days to obtain and serve the City with a court injunction to prevent the City from releasing the Documents. If Grantee fails to obtain a Court order and serve the City within the ten (10) business days, the City may release the Documents. The City will not assert an exemption from disclosure on Grantee's behalf.

3. OCC will calculate the percentage of households in the service area that are in block groups below median income level.

**Quarterly Reports to Council:**

1. Within 15 days of the close of each quarter, the OCC will submit to the Council a copy of the cable operators' reports along with the OCC's analysis of the cable operators' reports.
  - a. For an incumbent cable operator, quarterly reporting will begin in the first calendar quarter following the renewal of the cable operator's franchise.
  - b. For a new cable operator, quarterly reporting will begin in the first calendar quarter following two years from the initial grant of the cable operator's franchise.
2. The quarterly reports will be submitted no later than January 15, April 15, July 15 and October 15 of each year.
3. If a cable operator has indicated that any portion of its report be treated as confidential, the OCC will alert the Council that, prior to the public release of the information, the City is contractually

bound to allow the cable operator up to ten (10) business days to obtain and serve the City with a court injunction to prevent the City from publically releasing the documents.

4. Upon request, the OCC will meet with Council to review the data provided and the extent of cable operator compliance with the Cable Code's low-income service provision requirement.
5. Per SMC 21.60.0170, quarterly reports will be provided for the first five years of a new franchise, and for the first two years of a renewed franchise. The reporting shall continue thereafter if so requested by the chair of the Council committee with oversight responsibility for cable issues.

**Attachment A:** Seattle Municipal Code Section 21.60.170.A

## Attachment A

### **21.60.170 Service to low-income households, and other service, build and construction requirements**

#### **A. Service to low-income households**

##### **1. New franchise**

a. Each new franchise shall allow grantee flexibility as to where and how to provide cable service within its franchise area. As provided in subsection 21.60.170.A.1.b, grantee's actual service area must satisfy a low-income service provision requirement within two years of the effective date of the franchise. Grantee is encouraged to satisfy that requirement as soon within that period as is feasible.

b. At all times after the date that is two years after the effective date of any new franchise, a significant portion of the total households to which grantee offers cable service shall be households that fall below the median income level as measured by census block group data.

2. Renewed franchise. At all times, a significant portion of the total households to which grantee offers cable service shall be households that fall below the median income level as measured by census block group data.

3. All grantees to verify low-income requirement. Grantee shall meet with and provide documentation to the Office of Cable Communications not less frequently than semiannually to demonstrate that it has met the low-income service provision requirement in subsection 21.60.170.A.1.b (for a new franchise, if applicable at the time of a particular meeting) or in subsection 21.60.170.A.2 (for a renewed franchise). Quarterly, the Office of Cable Communications shall provide to Council a copy of grantee's documentation

demonstrating that grantee has met its low-income service provision requirement along with the Office of Cable Communications' analysis of grantee's documentation. If grantee does not demonstrate compliance, the Office of Cable Communications shall report the noncompliance to Council in its quarterly report. The Office of Cable Communications shall provide these quarterly reports for the first five years of a new franchise, and for the first two years of a renewed franchise, and shall continue to provide these quarterly reports thereafter if so requested by the chair of the Council committee with oversight responsibility for cable issues.

a. If the Office of Cable Communications determines that the requirement is not being met, it may impose other requirements, including but not limited to (i) imposing penalties; (ii) requiring grantee to expand the provision of cable service to other areas of the city, to ensure that the low-income service provision requirement will be met; and (iii) mandating any other action intended to incent compliance with the low-income service provision requirement.

b. The Office of Cable Communications may also impose penalties for grantee's failure to comply with such additional requirements within a specified time.

4. The Office of Cable Communications shall develop procedures and metrics to implement this subsection 21.60.170.A to describe how compliance with the low-income service provision requirement will be measured and what threshold of service will be deemed to constitute compliance.

B. Other service requirements

1. Each franchise shall document, to the satisfaction of the Office of Cable Communications, the service area where grantee intends to initially offer cable service and, if applicable, where grantee currently offers cable service.

2. Grantee shall not deny cable service to any customer based upon race, nor shall grantee base decisions about construction or maintenance of the cable system or facilities upon race.

C. Build out requirements. The build out requirements, if any, for a franchise shall be set forth in grantee's franchise.

D. Construction requirements. The construction of new cable facilities or the extension of existing cable facilities by grantee shall be accomplished in accordance with a plan, design, and construction schedule first submitted to and approved by the Office of Cable Communications with respect to the requirements of this Chapter 21.60, and then submitted to and approved by the Director of Transportation with respect to the requirements of Title 15. In either case, grantee shall at all times comply with this Chapter 21.60 and with Title 15 as the same now reads or is later amended, except that if this Chapter 21.60 and Title 15 are in any respect inconsistent the provisions of Title 15 control.