

SANTA FE COUNTY

Resolution No. 2012 –

A RESOLUTION GRANTING BAJA BROADBAND A CERTIFICATE AND ACCEPTANCE OF A CABLE FRANCHISE TO OPERATE A CABLE SYSTEM WITHIN THE NORTHERN PART OF SANTA FE COUNTY AND APPROVING THE TRANSFER OF A CABLE TELEVISION FRANCHISE FROM U.S. CABLE OF COSTAL-TEXAS TO BAJA BROADBAND

WHEREAS, the Board of County Commissioners of Santa Fe County (“BCC”) has jurisdiction over Cable Systems pursuant to Title 47, Chapter 5, Subchapter V-A, Part III of the U.S. Code, NMSA 1978, Sections 62-1-3 and 4-37-1 and Santa Fe County Ordinance No. 2000-6 (superseding Ordinance No. 1993-8 and 1982-5);

WHEREAS, Title 47, Chapter 5, Subchapter V-A, Part III of the U.S. Code, and Santa Fe County Ordinance No. 2000-6 allow the BCC to award a cable franchise and require payment of a franchise fee;

WHEREAS, pursuant to Ordinance No. 2000-6 and in order to provide cable television service within the County of Santa Fe, the BCC must issue a Certificate and Acceptance of Franchise to a requesting cable company after a public hearing, provided that all requirements of said Ordinance are met and the company agrees to abide by all reasonable terms and conditions that are imposed by the BCC;

WHEREAS, Baja Broadband, LLC (hereinafter “Baja”) desires to purchase and obtain a Franchise to operate a television cable system serving the Northern part of Santa Fe County, as designated more specifically on the map attached hereto as Exhibit “A”;

WHEREAS, US Cable of Coastal-Texas, L.P. (“US Cable”) currently owns and operates the cable television system serving the northern portion of Santa Fe County, New Mexico, which includes Espanola, La Pueblo, Chimayo and the Arroyo Seco, pursuant to the terms of Ordinance 1993-8 (superseding Ordinance No. 1982-5);

WHEREAS, Pursuant to Ordinance No. 1982-5 and the County Land Development Code, the BCC granted a permit to operate and maintain a cable television system to Southwest Cable Corporation, Inc. (DP- 84-1501);

WHEREAS, the permit to Southwest Cable was duly transferred by Southwest Cable Corporation, Inc. to Espanola Cablevision, Inc. on or about February 28, 1986, then transferred by the BCC to Mark Twain Cablevision, Inc on or about March, 14, 1988 in Resolution 1988-30 and then the BCC approved a transfer and granted a Certificate and Acceptance of Franchise to U. S. Cable on or about March 16, 1999 as set forth in Resolution 1999-16;

WHEREAS, U.S. Cable's franchise is in operation subject to the conditions and requirements as set forth in Resolution No. 1999-16 and until a franchise is granted to Baja by the BCC;

WHEREAS, U. S. Cable desires to transfer its cable ownership and permit interest to operate the cable system in question to Baja;

WHEREAS, in accordance with Ordinance No. 2000-6, Baja and US Cable have submitted an application with the necessary documentation requesting approval of the transfer of interests from US Cable to Baja and a Certificate and Acceptance of Franchise from the BCC to Baja;

WHEREAS, the application for transfer represents and certifies that Baja is financially and technically capable of delivering the services contemplated;

WHEREAS, Pursuant to Ordinance No. 2000-6 Baja is required to apply for and receive a separate Certificate and Acceptance of Franchise from the BCC;

WHEREAS, Santa Fe County conducted a public hearing on this request to approve the transfer of interests and to grant Baja a franchise; and

WHEREAS, the BCC has evaluated the matter and determined that all requirements of Ordinance 2000-6 have been met and Baja has the technical and financial ability to operate a cable system in parts of northern New Mexico.

NOW THEREFORE, BE IT RESOLVED, that the transfer from US Cable to Baja is approved and that Baja is granted a Certificate and Acceptance of Franchise subject to the following terms and conditions:

- 1) The franchise area is defined by the attached maps, designated as Exhibit "A" and incorporated herein by reference.
- 2) The expiration of this franchise shall be ten (10) years from the effective date, which shall be the date this Resolution is filed with the County Clerk.
- 3) Baja Broadband shall comply with the all terms and conditions set forth in Ordinance No. 2000-6, as amended or replaced, and other applicable laws and County ordinances.
- 4) Baja Broadband shall pay a franchise fee of 5% of its annual gross revenue derived from its operations within the franchise area. Payment shall be made quarterly to the County of Santa Fe and within sixty (60) days following the close of each calendar quarter in accordance with Ordinance No. 2000-6.

PASSED, APPROVED and ADOPTED this _____ DAY OF _____, 2012.

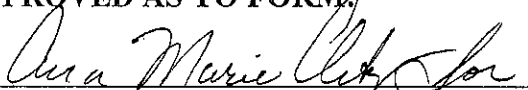
BOARD OF COUNTY COMMISSIONERS

Liz Stefanics, Chair

ATTEST:

Valerie Espinoza, Santa Fe County Clerk

APPROVED AS TO FORM:

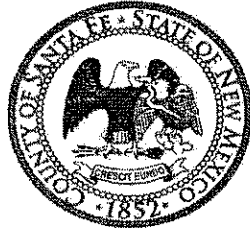


Stephen C. Ross, Santa Fe County Attorney

Daniel "Danny" Mayfield
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

Office of the County Attorney

TO: Board of County Commissioners

FROM: Ana Marie Ortiz, Legal Division 

THROUGH: Stephen C. Ross, County Attorney

RE: A Resolution Granting Baja Broadband a Certificate and Acceptance of a Cable Franchise to Operate a Cable system Within the Northern Part of Santa Fe County Property and Approve the Transfer of a Cable Television Franchise From U.S. Cable of Costal-Texas, L.P. To Baja Broadband, LLC

DATE: January 13, 2012

Introduction

This matter involves a request to the Board of County Commissioners (hereinafter "BCC") to allow the transfer of television cable interests from US Cable of Coastal-Texas, L.P. (hereinafter "US Cable") to Baja Broadband LLC, an LLC, organized under the laws of New Mexico (hereinafter "Baja"), and grant a franchise to Baja to allow the existing cable television services to continue to serve the public in the northern part of Santa Fe County (hereinafter the "County").

Background & History

An Application For Franchise Authority Consent to Assignment or Transfer of Control Of Cable Television Franchise (hereinafter the "Application") was submitted to the County of Santa Fe (hereinafter the County) from US Cable and Baja in accordance with the U.S. Cable Communications Policy Act of 1984, 47 USC Chapter 5, Subchapter V-A (hereinafter "US Act") and on the required Federal Communication Commission (FCC) application form 394. US Cable and Baja are further required to provide the County with the FCC application pursuant to County Ordinance No. 2000-6, An Ordinance Regulating Cable Television Services Within Santa Fe County, (hereinafter the "Ordinance") and prior to the BCC approving a request of a transfer of interest and a Certificate and Acceptance of Franchise pursuant to the Ordinance. ¹

¹ Ordinance No. 1993-8 was repealed and replaced with Ordinance No. 2000-6

Baja has submitted all applicable forms and its application was reviewed in accordance with the Ordinance and deemed complete on or about December 6, 2011. As such, the BCC is required to decide whether to approve, via resolution, the Certificate and Acceptance of A Cable Franchise pursuant to Ordinance No. 2000-6. Section 5 of the Ordinance provides in pertinent part:

Any company desiring to provide cable service within the county must apply for and receive a Certificate and Acceptance of Franchise, which shall be issued by the Board of County Commissioners after a public hearing, provided that all requirements this Ordinance are met, and provided that the Company agrees to abide by reasonable terms and conditions as imposed by the Board of County Commissioners.

The Ordinance specifically requires that a separate Certificate and Acceptance of Franchise be issued when a new entity is acquiring a cable interest previously held by another entity, if all necessary requirements of the Ordinance are met. As such, Baja is required to obtain a separate Certificate and Acceptance of Franchise from the BCC. As indicated above, Baja has submitted its FCC application which also serves as the County's application. In this instance the cable lines and infrastructure are in existence and Baja will agree to continue to maintain and service them. Baja has included the requested financial and technical information in its application certifying that it has those necessary qualifications to take over the existing television cable system. The transfer in question is similar to other transfers that have occurred and been approved over the years. In fact, there have been multiple transfers of the cable services in question over the years commencing in 1984 with Southwest Cable Corporation, Inc. US Cable was granted a Certificate and Acceptance of Franchise in 1999 from Mark Twain Cablevision, Inc and now desires to transfer its interest to Baja.

Franchise Fee

Pursuant to the Ordinance the BCC is also authorized to impose a franchise fee. The Ordinance provides in part that the company that desires the franchise shall pay a franchise fee within the franchise area in an amount not to exceed five percent (5%) of its annual gross revenue and pay such fee to the County quarterly. The proposed resolution attached hereto includes a 5% franchise fee as required in Section 19 of the Ordinance. The Franchise fee constitutes the monetary rental payment by the company in question to the County for the use and occupancy of the streets or public places within the boundaries of the County. Baja will be required to pay the 5% franchise fee on a quarterly bases based on its quarterly annual gross revenue. The financial information that is required to be provided will provide the necessary information to derive or verify the 5% franchise fee that Baja is required to pay.

US Cable paid the required franchise fee over the years. Its average quarterly payment to the County is approximately \$732,515.² The payment process works as follows: The Finance Division receives the quarterly payments from the cable company containing the amount of the company's gross revenue per quarter generated within the service area of the franchise. The Finance Division then reviews the quarterly payments based upon the company's reported quarterly gross revenue. If it appears to be correct, the Finance Division processes and deposits the quarterly payments into the County's general fund for franchise fees. The Finance Division maintains its spreadsheets on the accounting of the payments.

Conclusion and Recommendation

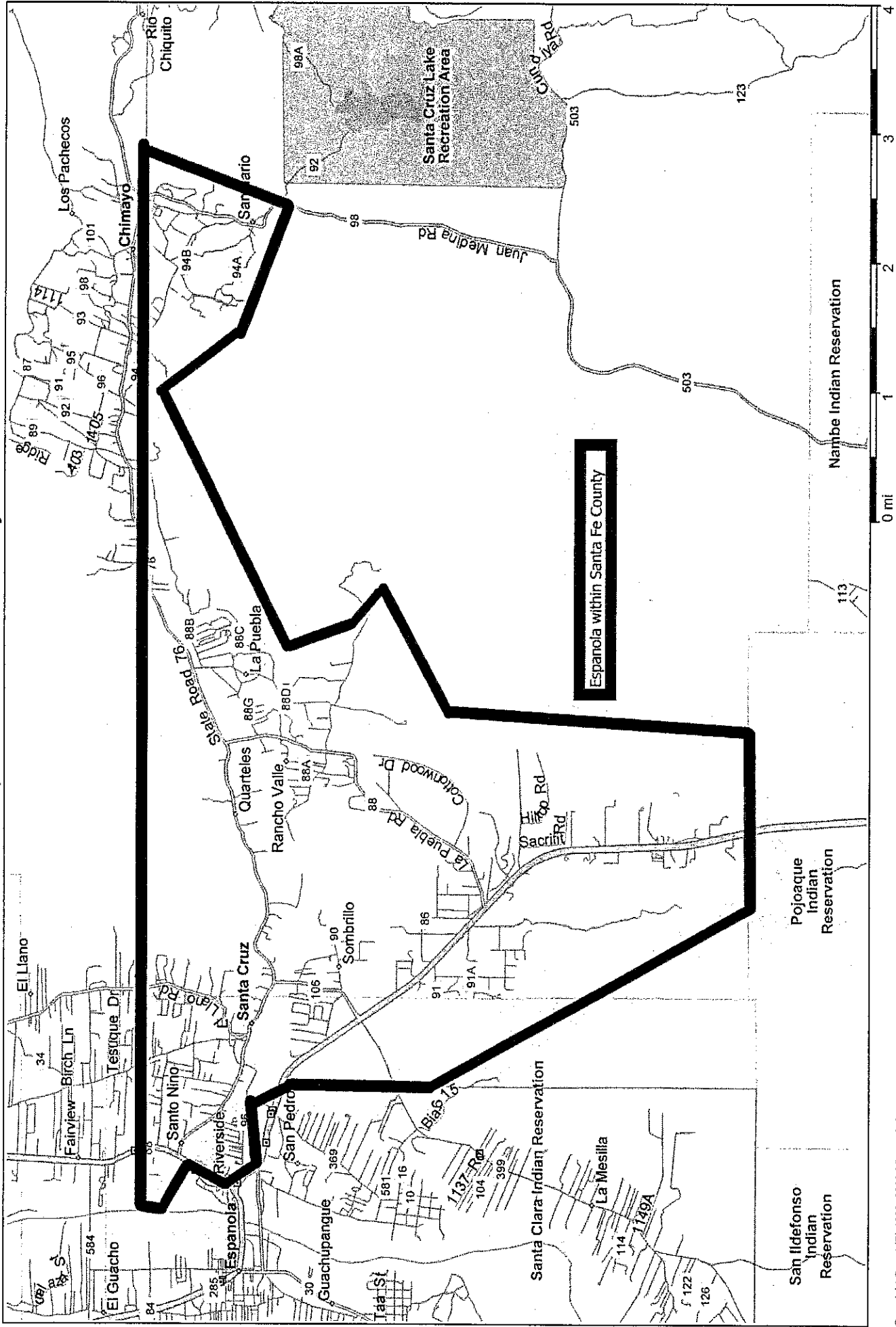
Attached is the proposed resolution for review and approval. Baja has submitted all requested and applicable information, and will agree to comply with all applicable laws and the Ordinance. There are also proposed terms and conditions set forth in the proposed resolution and the BCC can impose other reasonable conditions. A summary of the proposed conditions for Baja are as follows:

- 1) The franchise area of service is clarified by an exhibit map.
- 2) The expiration of this franchise shall be ten years as set forth in the Ordinance.
- 3) Baja Broadband will be required to comply with all provisions of the Ordinance as well as other applicable laws and County ordinances.
- 4) Baja Broadband shall pay a franchise fee of 5% of its annual gross revenue on a quarterly basis to the County of Santa Fe in accordance with the Ordinance and the US Act.

As such, the issuance of the Certificate and Acceptance of Franchise should be granted if after a public hearing to receive public comment the BCC determines that it is in the best interest of the public to allow the transfer and grant a franchise to Baja to continue to operate the existing television cable services in northern Santa Fe County.

² This average was derived from information provided by the Finance Department from 2008 to 2011. However, US Cable has consistently made all its quarterly payments from 1999 through 2011.

Espanola Santa Fe County



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SANTA FE COUNTY, NEW MEXICO
ORDINANCE NO: 2000-6

**AN ORDINANCE REGULATING CABLE TELEVISION
SERVICES WITHIN SANTA FE COUNTY**

1764703

Providing for the issuance of a Certificate and Acceptance of Franchise to Companies providing Cable Service in the County, regulating construction, installation and standards of service for Cable Facilities, providing for indemnification, providing for termination, providing for public, educational and government access, imposing a franchise fee, repealing prior ordinance, imposing a fee on open video systems.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, NEW MEXICO:

Section 1. Short Title.

This Ordinance may be cited as the "Cable Television Franchise Ordinance."

Section 2. Table of Contents.

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Section 3. Purpose

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The Board of County Commissioners finds it necessary to grant Companies providing cable service in the county a franchise to construct, purchase, acquire, locate, maintain, operate, and extend into, within and through the County of Santa Fe plants, works, systems and facilities for the cable service being provided to the residents of Santa Fe County, which may include construction on, over, under, along, and across County roads, viaducts, bridges, lanes, other public ways and public places, and to sell, furnish and distribute cable services to residents of the county; and to fix the terms and conditions thereof. The Board of County Commissioners hereby finds that the cable-related needs and interests of the citizens of Santa Fe County are expressed in the provisions of this Ordinance.

Section 4. Definitions

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given in this Section. 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 include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this Section shall be given their common and ordinary meaning.

- A. "Basic Cable" means any service tier which includes the retransmission of local television broadcast signals.
- B. "Board of County Commissioners" means the Board of County Commissioners of Santa Fe County, New Mexico.

- C. "Cable Service" means (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. "Cable Service" includes the provision of internet service, by cable modem or otherwise, through a cable system, so long as such services are deemed by law to be cable services and so long the company's cable facilities are not required to be interconnected to telephone lines to enable the provision of such service.
- D. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of U.S. Code Title 47, Chapter 5, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; or (D) any facilities of any electric utility used solely for operating its electric utility system. "Cable System" includes those portions of an open video system falling under the above definition to the extent that they are used for the provision of cable service and to the extent permitted by applicable law.
- E. "Certificate and Acceptance of Franchise" means the certificate issued by the County upon grant of a Franchise and the signed acceptance thereof by the Company.

- F. "Company" means the franchisee who is granted a Franchise to provide Cable Service in the County.
- G. "County" means all lands within the County of Santa Fe, State of New Mexico, and outside of any incorporated municipality. "County" also refers to the government of Santa Fe County, New Mexico, according to context.
- H. "Facilities" includes, but is not limited to, plants, works, systems, improvements and equipment of the Company such as pipes, conduits, transformers, wires, overhead links, cables, poles, and underground links.
- I. "Franchise" means the initial authorization, or renewal thereof, issued by the County, whether such authorization is designated as a franchise, permit, license, lease 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.
- J. "Gross Revenues" means the revenues derived from the operation of the cable system to provide cable services within the county; provided, however, that such phrase shall not include (1) revenues received from any advertising carried on the cable system, (2) any taxes on cable service which are imposed directly or indirectly on any subscriber thereof by any governmental unit or agency, and which are collected by the Company on behalf of such governmental unit or agency and (3) uncollected balances, credits or rebates.
- "Gross Revenues" includes money collected from subscribers that is ultimately allocated by the Company to pay any franchise fees.
- K. "Open Video System" refers to the provision of cable service by a local exchange carrier pursuant to 47 U.S.C. § 573, as amended.

L. "Person" means an individual, partnership, association, joint stock company, trust corporation, or government entity.

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M. "Public Place" or "Public Way" shall mean any public street, highway, or other public right-of-way, including, but not limited to, public utility easements. "Public Place" or "Public Way" shall also mean any easement now or hereafter held by the County within the service area for the purpose of public travel, or for utility or public service.

N. "Service Area" means that area within the county that the Board of County Commissioners permits a Company to offer cable service and any extensions thereto.

O. "Subscriber" means a person or user of the cable system who lawfully receives cable services or other service therefrom with Company's express permission.

Section 5. Grant of Franchise

Any Company desiring to provide cable service within the county must apply for and receive a Certificate and Acceptance of Franchise, which shall be issued by the Board of County Commissioners after a public hearing, provided that all requirements of this Ordinance are met, and provided that the Company agrees to abide by reasonable terms and conditions as imposed by the Board of County Commissioners. No Company shall connect or otherwise provide Cable Service to any person in the County without first receiving and endorsing a Certificate and Acceptance of Franchise from the County. The Board of County Commissioners may use the form contained in Appendix "A" or such other form as it deems suitable and in compliance with this Ordinance and any policies promulgated thereto.

All Franchises granted after the effective date of this Ordinance shall comply with all provisions of this Ordinance. Renewal of any Franchise in effect as of the effective date of this Ordinance shall be governed by the provisions of Section 11, Renewal of Franchise.

Section 6. Standards of Service

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A. 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 Federal Communications Commission or other federal, state and local regulation. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the county.

B. Service to Public Buildings

The Company shall, upon written request by the County, provide one cable service outlet, without charge, and furnish basic cable service, without charge, to any public building controlled by the County, provided that such buildings are passed by the plant of the Company. The Company shall also furnish, upon request and without charge, such outlet and service to public schools within the unincorporated limits of the county, provided that such schools are passed by the plant of the Company.

C. Customer Service Standards

The Company shall comply with the Customer Service Standards promulgated by the Federal Communications Commission, 47 CFR §76.309, as amended, as shown in Appendix "B," unless otherwise agreed to by the County and the Company and imposed on a competitively neutral basis, and noted in the Certificate and Acceptance of Franchise.

D. Denial of Access

The Company shall not deny access to cable service to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

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Section 7. Construction and Installation of Company Facilities; Maintenance;

Excavation; Relocation of Facilities

A. Location and maintenance

The Company shall submit written notice to the Land Use Office upon commencement of construction of structures and cable line extensions. Upon completion of a project, the Company shall submit certification that the project has met all County requirements.

Application for a development permit and final inspection shall be sufficient to comply with the above requirements. All Company facilities constructed or maintained by the Company within the county shall be located so as to cause minimum interference with County and public use of public places, and shall be maintained in good repair and condition. Facilities located on, upon, over and under public places shall be constructed, installed, maintained, and cleared of vegetation in accordance with such reasonable requests as the County may impose from time to time on the owners of such facilities, and in accordance with reasonable aesthetic and safety concerns.

B. Undergrounding

No new poles for aerial lines shall be erected. All cable lines that are not to be located on existing poles shall be placed underground. The Board of County Commissioners may grant, for good cause shown, a special exception to this requirement at a public meeting, provided that the applicant comply with the notice required by the Land Development Code (Ordinance 1996-10, as amended) for zoning variances.

C. County use of rights of way

1764710

The Company will offer to grant use of rights of way which it now, or in the future, owns or has an interest in, within the county, to the County for the purposes of parks, drainage facilities, bikeways, traffic conduits, mass transit corridors, sanitary sewer lines, pedestrian area parking or open spaces, provided that the County has first obtained the right from the dominant estate owner to use such right of way, and further provided that the Company shall not be required to make such an offer in any circumstances where such offer would interfere with the Company's use of the right of way, and it being recognized that the Company assumes no liability for any claims of loss or injury occurring in any such multiple use area.

D. Zoning Approval and Development Permits

The Company will obtain proper and necessary zoning approval and development permits for any buildings, lines, towers, other facilities or any development that require such approval or permits.

E. Excavation and specific placement

The Company shall have the right to excavate in, occupy and use any public places as described in its Certificate and Acceptance of Franchise after obtaining appropriate excavation and/or road cut permits from the County and complying with applicable County ordinances. The County may require specific placement of the Company's facilities in such a way as to accommodate reasonable safety and terrain management concerns.

F. Restoration of property

The Company shall reconstruct, replace or restore any public place, in a timely manner, without cost to the County, to a condition acceptable to the County consistent with 1764711 reasonable standards of safety and appearance, which includes restoring as practicably as possible the affected property to the condition it was prior to excavation or development. All use of the rights of way by the Company shall interfere as little as reasonably practicable with the use of the rights of way by others.

Section 8. Excavation and Road Cut Permits

- A. The Company shall obtain any necessary Excavation or Road Cut Permits from the County before excavating any area within the County.
- B. In the event of an emergency, no Excavation or Road Cut Permit is required to be obtained before the excavation of a County road or public place or way, but must be applied for within three (3) days of the emergency excavation. The Company shall notify the County Manager or his designee of the excavation within forty-eight (48) hours of the excavation. Any subsequently enacted ordinance governing emergency road cuts and/or excavations shall supercede this section to the extent that it is in conflict with these provisions.

Section 9. Requirements for Relocation of Facilities

A. Relocation at Request of County

The County expressly reserves the right to change the grade, install, relocate, or widen the public streets, sidewalks, bikeways, alleys, public thoroughfares, highways and public places and ways within the county, and the County reserves the right to require the Company to relocate, at the sole expense of the Company, its anchors, manholes,

conduits, trenches and other facilities and appurtenances in order to accommodate the paving, installation, relocation, widening, or changing of the grade of any such public street, sidewalk, bikeway, or public way if said relocation is deemed necessary by the County for traffic safety purposes or for purposes of health, safety, or welfare of the residents of the county. Whenever such a change is deemed necessary by the County, the Company shall make the alterations within thirty (30) days or as soon as practicable when requested in writing by the County, according to the reasonable construction specifications required by the County, and without claim for reimbursement or damages against the County. The County reserves the right to lay, and permit to be laid, any facilities, and to do and permit to be done any underground and overhead installation or improvement of facilities that may be deemed necessary or proper by the County in, across, along, over or under any public place or public way, and to change any curb or sidewalk or the grade of any street. If the County should encounter any facilities of the Company in a public place or public way, the County shall provide notice to the Company of the work to be done by the County and shall allow the Company to view the work being done by the County. The primary responsibility for removing or relocating facilities shall be with the Company that owns the facilities; however, if the Company fails to timely or responsibly respond to the County's request to remove or relocate the facilities, then the County may, at its sole option, remove or relocate such facilities and charge the Company for such removal cost, and the County shall not be liable to the Company or any of its customers for any damage done by the County; provided however,

nothing herein shall relieve any other person or corporation from liability for damages to facilities of the Company.

B. Relocation at Request of Third Parties

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The Company shall, upon the request of any person holding a building moving permit issued by the County, temporarily raise or lower its wires to allow the moving of such building, provided that any expense therefor shall be paid in advance by such person to the Company. The Company shall be given not less than ten (10) working days notice of the intended building move by such person.

The Company shall, upon the reasonable and necessary request of any other utility occupying County right of way, move its facilities to accommodate co-location of the facilities of such other utility provided that any expense therefor shall be paid in advance by such utility to the Company. The Company shall be given not less than ten (10) working days notice of the requested move by such utility.

Section 10. Indemnification and Insurance

The Company, as a condition of the grant of any Franchise, and in consideration thereof, shall protect, indemnify, and hold the County harmless against all claims for damages to persons or property by reason of the construction, maintenance and operation of its facilities, and conduct of its business, or any way arising out of the granting of its franchise directly, or indirectly, when injury is caused, wholly or in part, by any act, omission, negligence, or misconduct of the Company or any of its contractors, officers, agents, or employees, or by any person for whose act, omission, negligence, or misconduct, the Company is by law responsible. This provision is not intended to create liability for the benefit of third parties but is solely for the benefit of the

County. In the event any claim is made against the County that falls under this indemnity and a court of competent jurisdiction should adjudge, by final decree, that the Company is liable therefor, the Company shall indemnify and hold the County harmless of and from any such judgment or liability, including any court costs, reasonable expenses, and reasonable attorney fees incurred by the County in defense thereof. Upon commencement of any suit or proceeding at law or in equity against the County relating to or covering any matter covered by this indemnity, wherein the Company has agreed by accepting any franchise to indemnify and hold the County harmless or to pay said final judgment and costs, as the case may be, the County shall give the Company immediate notice of such suit or proceeding; whereupon, the Company shall provide a defense to any such suit or suits, including any appellate proceedings brought in connection therewith, and pay as aforesaid, any final judgement or judgements that may be rendered against the County by reason of such damage suit. Upon failure of the Company to comply with the "defense of suit" provisions of this Ordinance, after reasonable notice to it by the County, but not less than fifteen (15) days, the County shall have the right to defend the same and be reimbursed by the Company for any such judgement that may be rendered against the County, together with all case or cases, as well as all expenses incurred by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, compromised, or fully adjudicated against the County.

1764714

The Company shall secure and maintain throughout the term of this Franchise an insurance policy naming Santa Fe County as an additional insured with limits sufficient to indemnify the provisions of this section, but in no event less than the limits set by the New

Mexico Tort Claims Act, NMSA 1978, Sections 47-4-1 through 47-4-27, and the Company shall provide the County with proof of such insurance.

Section 11. Renewal of Franchise; Modification

1764715

- A. Renewal The Company shall have the right to seek renewal of a Franchise granted under this or any prior Ordinance. Any proceedings that relate to the renewal of the Company's Franchise shall be governed by and comply with the provisions of 47 U.S.C. §546, as amended. In the case of the renewal of any Franchise in effect as of the effective date of this Ordinance, the provisions of this Ordinance shall be considered to be the Board of County Commissioners' determination of the cable-related needs and interests of Santa Fe County and shall be adhered to in the negotiation of any Franchise renewal to the extent that the cost to the Company of meeting such needs and interests is reasonable.
- B. Modification The Company shall have the right to seek modification of a Franchise granted under this Ordinance. Any proceedings undertaken by the Company that relate to the modification of the Company's Franchise shall be governed by and comply with the provisions of 47 U.S.C. §545, as amended.

Section 12. Public, Educational and Governmental Channel Capacity

- A. Provision of Channel Capacity
The County may require the Company, when not technically and economically infeasible, to designate one (1) channel each for public, educational and governmental use, for a total of up to three (3) channels so reserved or designated.
- B. Services, Facilities and Equipment

The County may require the Company to provide services, facilities or equipment for the use of the above channels. The costs of providing a delivering such programming, and the costs associated with activation and maintenance of such channels shall be negotiated at the time of grant of Franchise among the County, the Company and any potential users or providers of programming and shall be credited against the franchise fee charged in Section 19.

C. Unused Capacity

The Company shall be permitted to use the above designated channel capacity as it sees fit if such channel capacity is not being used for the purposes designated. The Company shall cease such permitted use upon sixty (60) days notification to the Company that the channel capacity is needed for the above purposes.

D. Notice of Channel Capacity

Public notice by publication shall be given at least one time in a newspaper of general circulation in the county of any channel capacity made available under this section.

Section 13. Noncompliance, Termination and Expiration

A. Termination for Noncompliance

Notwithstanding any other provisions of this Ordinance, the County shall have the option to terminate any Franchise at any time for failure of the Company to substantially comply with any material term, condition, or provision of this Ordinance, or any other applicable ordinances of the County, in accordance with the following procedures.

B. Notice of Violation

If the County believes that the Company has not complied with the material terms of this Ordinance or any other applicable ordinances, it shall notify Company in writing of the

exact nature of the alleged noncompliance and the County's intent to enforce the provisions of this Ordinance.

1764717

C. Company's Right to Cure or Respond

The County may elect to hold in abeyance its decision to treat the Company as violating this Ordinance, and the requirements and terms of this Ordinance shall remain in full force and effect, pending the Company's curative actions in conformity with this section.

Customer Service Provisions (Paragraph 6.C)

Company shall have ninety (90) days from receipt of the notice described above to either (a) respond to the County contesting the assertion of noncompliance, or (b) to cure such default, and if such default cannot be cured within the ninety (90) day period, initiate reasonable steps to remedy such default and notify the County of the steps being taken and the projected date that they will be completed.

Other Ordinance Provisions

Company shall have thirty (30) days from receipt of the notice described above to either (a) respond to the County contesting the assertion of noncompliance, or (b) cure such default, and if such default cannot be cured within such time period, initiate reasonable steps to remedy such default and notify the County of the steps being taken and the projected date that they will be completed.

D. Termination Hearing

Any remedy pursuant to this subsection shall be imposed only by a written decision of the Board of County Commissioners after conducting a public hearing to afford the Company an opportunity to be heard and to respond to any such notice of violation or failure to comply. All due process requirements shall be met by providing the Company at least

fifteen (15) days prior written notice of any public hearing concerning the termination of the franchise and, in addition, ten (10) days notice by publication shall be given of the date, time and place of any public hearing to interested members of the public.

E. Board Decision

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The Board of County Commissioners, after full public hearing, may in its discretion either terminate the franchise, or, upon finding a violation or failure to comply, impose a lesser penalty than to terminate the Franchise, including but not limited to a civil monetary penalty of \$300 per day per violation, or excuse the violation or failure to comply upon a showing by the Company of mitigating circumstances or upon a showing of good cause for said violation. Each day the violation occurs or continues to exist without remedy constitutes a separate violation.

F. Expiration

All Franchises shall continue until the expiration date set forth in those Franchises, unless terminated sooner pursuant to the terms of this Ordinance. Any Franchise granted pursuant to this ordinance shall expire on the date set forth on the Certificate and Acceptance of Franchise. Any and all expansions of the service area shall expire and/or terminate when the original Franchise terminates, unless terminated sooner pursuant to this Ordinance.

G. Abandoned facilities

If any portion of the Facilities are retired or become obsolete, abandoned or otherwise cease to be used, the Company shall remove such Facilities at Company expense within six (6) months. If the Facilities are not removed, the County shall at its option either

cause all right and title in the facilities to be forfeited to the County, or shall require that the Company remove such Facilities.

H. Enforcement

1764719

The County may enforce any provision of this Ordinance by injunction or other action in the District Court of Santa Fe County. The County shall not be required to post a bond or other security to obtain an injunction.

I. Unforeseen Events

The Company shall not be held in default or noncompliance with any provision of this Ordinance, and the Company shall not suffer any enforcement, penalty or other adverse consequence relating to this Ordinance or the Franchise granted hereunder where such noncompliance or default is caused by strikes or other labor actions, wars or other hostilities, civil disobedience, tornadoes, hurricanes, similar natural catastrophes or other "acts of God," power outages or similar events beyond the control of the Company.

Section 14. Extension of Service Area

The Company is authorized to extend its service area as it deems necessary and desirable, provided that it gives notice to the County thirty (30) days prior to the commencement of any such extension.

The County shall respond to the Company within fifteen (15) days of receipt of the above notice. The County may either grant administrative approval of such action or it may conduct a public hearing on the Company's extension. If the County elects to hold a public hearing, such hearing shall be held within forty five (45) days of receipt of the above notice. At the hearing, the Board of County Commissioners may impose conditions on or deny the extension if it would adversely affect the health, safety and welfare of the residents of Santa Fe County.

Section 15. Notice

For the purpose of this Ordinance, notice to the County will be by mail to:

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COUNTY MANAGER
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504-0276
FAX: 505-995-2740

With a copy to:

COUNTY ATTORNEY
Santa Fe County
P.O. Box 276
Santa Fe, New Mexico 87504-0276
FAX: 505-986-6362

Notice to the Company will be mailed to the address of the Company as set forth on the Certificate and Acceptance of Franchise, or at such other address as requested by the Company, in writing, to the County.

Notice will be effective upon delivery at the above addresses until the County or Company notifies the other, in writing, of a change in the address.

Section 16. Assignment

No Franchise or any part thereof including the right to serve any given area, shall be assigned by the Company, except as set forth herein. Any person desiring to acquire, purchase, lease, or otherwise use any portion of a Company's franchise or facilities must apply to the County for a separate Certificate and Acceptance of Franchise. The County will not unreasonably withhold approval of a transfer of interest by the Company to any party, provided that such party meets all requirements to provide service under the Franchise as then in effect.

Notwithstanding the foregoing, no approval by the County, and no Certificate and acceptance of

Franchise, shall be required for (i) the Company's mortgage, hypothecation, grant of security interest in or other collateral assignment of any interest in the Franchise for purposes of securing any loan or other financing or (ii) any assignment of any interest in the Company by any Person or other entity holding such interest. Nothing in this Ordinance shall prohibit Companies from leasing channel space, as required by federal law.

The application by the assignee or transferee shall not be deemed complete until all information, documents, registrations and requirements of state law have been met, and the time for approval or denial of the application shall not begin to run until the application is complete.

Section 17. Franchise not Exclusive

The right to provide cable service and to use and occupy streets, alleys, viaducts, bridges, roads, lanes, public ways, and other public places for the purposes of any franchise is not and shall not be deemed to be an exclusive franchise, and the County reserves the right to make or grant a similar franchise and use in public ways and places to any other entity, provided that no subsequent Franchise will be permitted to unreasonably interfere with the physical operation of any existing franchise.

Section 18. Execution and Effective Date of Franchise

- A This Ordinance shall apply to all Companies doing business in the County, and all such Companies must apply for and receive a Certificate and Acceptance of Franchise in order to provide cable service in the County.
- B Any Franchise, and the rights, privileges and authority granted hereunder, shall, upon receipt of all necessary approvals, take effect on the date of issuance of a Certificate and

Acceptance of Franchise and shall continue in effect for a period of ten (10) years pursuant to this Ordinance.

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- C. Any Franchise in effect as of the effective date of this Ordinance shall be subject to all terms of this Ordinance that are not in conflict with the provisions of that Certificate and Acceptance of Franchise. This Ordinance shall not alter the written provisions of any negotiated Franchise currently in effect.

Section 19. Franchise Fee and Reports, Payment in Lieu of Fees, Inspection of Records

- A. Franchise Fee The Company agrees to pay the County a franchise fee for the use of the streets and other public places within the boundaries of the County and outside the boundaries of any incorporated municipality and for the privilege of doing business in the County. The Company shall pay to the County a franchise fee in an amount not to exceed five percent (5%) of its annual gross revenue. The franchise fee provided for herein shall constitute the exclusive monetary rental payment by the Company to the County for the Company's special use and occupancy of the streets, alleys, and other public places within the boundaries of the County. Payment shall be made quarterly, within sixty (60) days following the close of each calendar quarter. No higher nor lower franchise fees may be charged to any Company operating under this Ordinance.
- B. Payment in Lieu of Fees Any operator of an open video system shall pay a fee of five percent (5%) of its annual gross revenue derived from operation of the open video system in lieu of the above franchise fees.
- C. Annual Reports All Companies shall, before July 31 of each year, submit a written report to the County for the Company's fiscal year, in a form reasonably acceptable to the County, which shall include:

1. The Company's gross revenues, number of subscribers and summary of activities;
and

2. A summary of complaints, identifying the number and nature of complaints and
their disposition.

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Upon request of the Board of County Commissioners, the Company shall present the report and make itself available to answer questions in a regular or special meeting of the Board of County Commissioners.

D. Inspection of Records In the event of a question by the County as to any amount of franchise fee due, the County shall have access to all records necessary to the calculation of the franchise fee. Such records may be reviewed by the County Manager or his designee, upon reasonable notice during normal business hours on a nondisruptive basis. The Company shall not be required to disclose information which it reasonably deems to be proprietary or confidential, however in the case of privileged information withheld under this section, the County may employ a reasonable estimate of any figures necessary to the calculation of the fee.

E. Late Payment Accounts over forty five (45) days past due shall be assessed interest at a rate of up to eight and three-quarters (8.75) percent per year on the outstanding balance.

Section 20. County Regulation

The County expressly reserves, and the Company expressly recognizes, the County's right and duty to adopt, from time to time, in addition to the provisions herein contained, such regulations and ordinances of general applicability as the County may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and

their properties, specifically including any regulations or ordinances regulating proof of financial, technical and legal qualifications to provide service, and rates for equipment, service and installation pursuant to applicable federal laws and regulations.

Section 21. No Waiver

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Neither the County nor the Company shall be excused from complying with any of the terms and conditions of any Franchise by any failure of the other, or any of its officers, employees, or agents, to insist upon or to seek compliance with any such terms and conditions.

Section 22. Severability

If any of section, subsection, sentence, clause or phrase of this Ordinance is for any reason found to be invalid or unconstitutional by a court of competent jurisdiction or by any federal or state regulatory authority having jurisdiction thereof, the validity of the remaining portions of this Ordinance shall not thereby be affected since it is the express intent of the Board of County Commissioners to pass each section, phrase, paragraph, and word separately.

Section 23. Preemption

Any provision of this Ordinance that is in conflict with applicable Federal or State law shall be void.

Section 24. Repeal

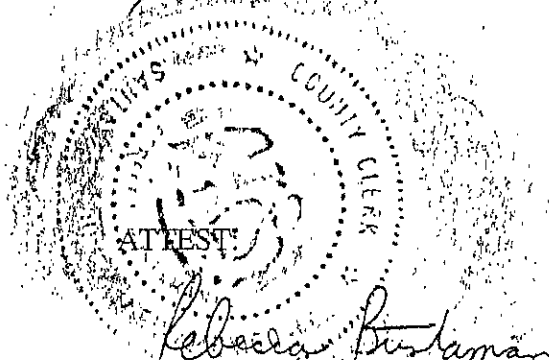
Santa Fe County Ordinance 1993-8 is hereby expressly repealed. Provisions of any existing ordinance, resolution or agreement that are contrary to this Ordinance are hereby repealed by implication, except as provided for in Section 18.

PASSED, APPROVED AND ADOPTED, THIS 9th DAY OF May, 2000.

SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS

1764725

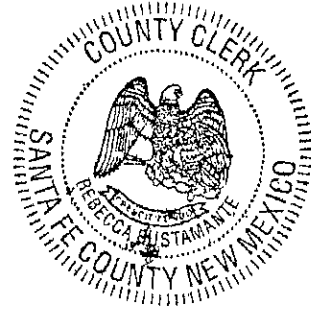
[Signature]
CHAIRMAN, JOE S. GRIÑÉ, JR.



[Signature]
REBECCA BUSTAMANTE, COUNTY CLERK

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

[Signature]
OFFICE OF THE COUNTY ATTORNEY



1115 876 } SS
COUNTY OF SANTA FE
STATE OF NEW MEXICO
I hereby certify that this instrument was filed
for record on the 10 day of May A.D.
2000, at 8:06 o'clock a.m.
and was duly recorded in book 1764
page 908-958 of the records of
Santa Fe County.

23
Witness my Hand and Seal of Office
Rebecca Bustamante
County Clerk, Santa Fe County N.M.
[Signature]
Deputy

 APPENDIX A

**SANTA FE COUNTY, NEW MEXICO
RESOLUTION _____ - ____**

**CERTIFICATE AND ACCEPTANCE OF
FRANCHISE TO [APPLICANT] TO OPERATE
A CABLE SYSTEM IN SANTA FE COUNTY**

WHEREAS,

1. The Santa Fe County Board of County Commissioners ("BCC") has jurisdiction over Cable Systems pursuant to NMSA 1978, Sections 62-1-3 and 4-37-1, Santa Fe County Ordinance No. 2000 - _____ and Title 47, Chapter 5, Subchapter V-A, Part III of the U.S. Code; and
2. In order to provide cable television service within the County of Santa Fe, a Cable Service Company must be issued a Certificate and Acceptance of Franchise by the BCC after a public hearing, and the Cable Service Company must agree to reasonable terms imposed by the BCC; and
3. [Company Name] [currently owns and operates and wishes to renew its Franchise to operate] [desires to purchase and obtain a Franchise to operate] [desires to obtain a Franchise to operate] a Cable System serving [describe area] of Santa Fe County, as designated more specifically on the map attached hereto as Exhibit A; and
4. [History, if any, of the Cable System]; and
5. [Current status, if any, of the Franchise]
6. [Any additional relevant information]

NOW, THEREFORE, BE IT RESOLVED, that after a public hearing, the subject application is hereby granted and a Certificate and Acceptance of Franchise is hereby issued, subject to the following terms and conditions:

1. The Franchise area is defined by the attached maps, designated as Exhibit "A" and incorporated herein by reference.
2. The expiration of this Franchise shall be five (5) years from the effective date, which shall be the date this Resolution is filed with the County Clerk.

- 3. [Applicant] shall comply with the terms and conditions of Ordinance No. 2000-____, as amended or replaced, subject to applicable law.
- 4. Notice under this Franchise shall be given as follows:
 To County: as per Ordinance 2000-____
 To Company: [Name of company, agent, address]
- 5. [Any other requirements as to provision of government access service, etc.]

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY,
THIS _____ DAY OF _____, _____.

CHAIRPERSON,
BOARD OF COUNTY COMMISSIONERS

ATTEST:

COUNTY CLERK

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

OFFICE OF THE COUNTY ATTORNEY

ACCEPTED BY:
[Applicant]

BY: _____

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me on the _____ day of _____, _____, by _____.

1764728

Notary Public

My commission expires: _____

Code of Federal Regulations

Title 47 - Telecommunications
Chapter I - Federal Communications Commission
Section 76.309 Customer service obligations.

47 C.F.R. §76.309

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (c) of this section against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in paragraph (c) of this section;

(2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in paragraph (c) of this section and are contained in current franchise agreements;

(3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by the standards set forth in paragraph (c) of this section.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability--

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a

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customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers--

(i) Notifications to subscribers--

(A) The cable operator shall provide written information on each of

the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

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- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Installation and service maintenance policies;
- (4) Instructions on how to use the cable service;
- (5) Channel positions programming carried on the system; and,
- (6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(B) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by paragraph (c)(3)(i)(A) of this section. Notwithstanding any other provision of Part 76, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

(ii) Billing--

(A) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(B) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

(iii) Refunds--Refund checks will be issued promptly, but no later than either--

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(iv) Credits--Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions--

(i) Normal business hours--The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must

include some evening hours at least one night per week and/or some weekend hours.

(ii) Normal operating conditions--The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) Service interruption--The term "service interruption" means the loss of picture or sound on one or more cable channels.

[58 FR 21109, Apr. 19, 1993, as amended at 61 FR 18977, Apr. 30, 1996]

APPENDIX C

United States Code

Title 47 - Telegraphs, Telephones, and Radiotelegraphs
Chapter 5 - Wire or Radio Communication
Subchapter V-A - Cable Communications
Part III - Franchising and Regulation
Section 545 Modification of franchise obligations

47 U.S.C. §545

- (a) Grounds for modification by franchising authority; public proceeding; time of decision
- (1) During the period a franchise is in effect, the cable operator may obtain from the franchising authority modifications of the requirements in such franchise -
- (A) in the case of any such requirement for facilities or equipment, including public, educational, or governmental access facilities or equipment, if the cable operator demonstrates that (i) it is commercially impracticable for the operator to comply with such requirement, and (ii) the proposal by the cable operator for modification of such requirement is appropriate because of commercial impracticability; or
- (B) in the case of any such requirement for services, if the cable operator demonstrates that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.
- (2) Any final decision by a franchising authority under this subsection shall be made in a public proceeding. Such decision shall be made within 120 days after receipt of such request by the franchising authority, unless such 120 day period is extended by mutual agreement of the cable operator and the franchising authority.
- (b) Judicial proceedings; grounds for modification by court
- (1) Any cable operator whose request for modification under subsection (a) of this section has been denied by a final decision of a franchising authority may obtain modification of such franchise requirements pursuant to the provisions of section 555 of this title.
- (2) In the case of any proposed modification of a requirement for facilities or equipment, the court shall grant such modification only if the cable operator demonstrates to the court that -

(A) it is commercially impracticable for the operator to comply with such requirement; and

(B) the terms of the modification requested are appropriate because of commercial impracticability.

(3) In the case of any proposed modification of a requirement for services, the court shall grant such modification only if the cable operator demonstrates to the court that the mix, quality, and level of services required by the franchise at the time it was granted will be maintained after such modification.

(c) Rearrangement, replacement, or removal of service

Notwithstanding subsections (a) and (b) of this section, a cable operator may, upon 30 days' advance notice to the franchising authority, rearrange, replace, or remove a particular cable service required by the franchise if -

(1) such service is no longer available to the operator; or

(2) such service is available to the operator only upon the payment of a royalty required under section 801(b)(2) of title 17, which the cable operator can document -

(A) is substantially in excess of the amount of such payment required on the date of the operator's offer to provide such service, and

(B) has not been specifically compensated for through a rate increase or other adjustment.

(d) Rearrangement of particular services from one service tier to another or other offering of service

Notwithstanding subsections (a) and (b) of this section, a cable operator may take such actions to rearrange a particular service from one service tier to another, or otherwise offer the service, if the rates for all of the service tiers involved in such actions are not subject to regulation under section 543 of this title.

(e) Requirements for services relating to public, educational, or governmental access

A cable operator may not obtain modification under this section of any requirement for services relating to public, educational, or governmental access.

(f) "Commercially impracticable" defined

For purposes of this section, the term "commercially impracticable" means, with respect to any requirement applicable to a cable operator, that it is commercially impracticable for the operator to comply with such requirement as a result of a change in conditions which is beyond the control of the operator and the nonoccurrence of which was a basic assumption on which the requirement was based.

United States Code

Title 47 - Telegraphs, Telephones, And Radiotelegraphs
Chapter 5 - Wire or Radio Communication
Subchapter V-A - Cable Communications
Part III - Franchising and Regulation
Section 546 Renewal

47 U.S.C. §546

(a) Commencement of proceedings; public notice and participation

(1) A franchising authority may, on its own initiative during the 6-month period which begins with the 36th month before the franchise expiration, commence a proceeding which affords the public in the franchise area appropriate notice and participation for the purpose of (A) identifying the future cable-related community needs and interests, and (B) reviewing the performance of the cable operator under the franchise during the then current franchise term. If the cable operator submits, during such 6-month period, a written renewal notice requesting the commencement of such a proceeding, the franchising authority shall commence such a proceeding not later than 6 months after the date such notice is submitted.

(2) The cable operator may not invoke the renewal procedures set forth in subsections (b) through (g) of this section unless -

(A) such a proceeding is requested by the cable operator by timely submission of such notice; or

(B) such a proceeding is commenced by the franchising authority on its own initiative.

(b) Submission of renewal proposals; contents; time

(1) Upon completion of a proceeding under subsection (a) of this section, a cable operator seeking renewal of a franchise may, on its own initiative or at the request of a franchising authority, submit a proposal for renewal.

(2) Subject to section 544 of this title, any such proposal shall contain such material as the franchising authority may require, including proposals for an upgrade of the cable system.

(3) The franchising authority may establish a date by which such proposal shall be submitted.

(c) Notice of proposal; renewal; preliminary assessment of nonrenewal; administrative review; issues; notice and opportunity for hearing; transcript; written decision

(1) Upon submittal by a cable operator of a proposal to the franchising authority for the renewal of a franchise pursuant to subsection (b) of this section, the franchising authority shall provide prompt public notice of such proposal and, during the 4-month period which begins on the date of the submission of the cable operator's proposal pursuant to subsection (b) of this section, renew the franchise or, issue a preliminary assessment that the franchise should not be renewed and, at the request of the operator or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with paragraph (2) to consider whether -

(A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

(B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;

(C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and

(D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

(2) In any proceeding under paragraph (1), the cable operator shall be afforded adequate notice and the cable operator and the franchise authority, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection (a) of this section), to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

(3) At the completion of a proceeding under this subsection, the franchising authority shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the cable operator. Such decision shall state the reasons therefor.

(d) Basis for denial

Any denial of a proposal for renewal that has been submitted in compliance with subsection (b) of this section shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of subsection (c)(1) of this section, pursuant to the record of the proceeding under

subsection (c) of this section. A franchising authority may not base a denial of renewal on a failure to substantially comply with the material terms of the franchise under subsection (c)(1)(A) of this section or on events considered under subsection (c)(1)(B) of this section in any case in which a violation of the franchise or the events considered under subsection (c)(1)(B) of this section occur after the effective date of this subchapter unless the franchising authority has provided the operator with notice and the opportunity to cure, or in any case in which it is documented that the franchising authority has waived its right to object, or the cable operator gives written notice of a failure or inability to cure and the franchising authority fails to object within a reasonable time after receipt of such notice.

(e) Judicial review; grounds for relief

(1) Any cable operator whose proposal for renewal has been denied by a final decision of a franchising authority made pursuant to this section, or has been adversely affected by a failure of the franchising authority to act in accordance with the procedural requirements of this section, may appeal such final decision or failure pursuant to the provisions of section 555 of this title.

(2) The court shall grant appropriate relief if the court finds that -

(A) any action of the franchising authority, other than harmless error, is not in compliance with the procedural requirements of this section; or

(B) in the event of a final decision of the franchising authority denying the renewal proposal, the operator has demonstrated that the adverse finding of the franchising authority with respect to each of the factors described in subparagraphs (A) through (D) of subsection (c)(1) of this section on which the denial is based is not supported by a preponderance of the evidence, based on the record of the proceeding conducted under subsection (c) of this section.

(f) Finality of administrative decision

Any decision of a franchising authority on a proposal for renewal shall not be considered final unless all administrative review by the State has occurred or the opportunity therefor has lapsed.

(g) "Franchise expiration" defined

For purposes of this section, the term "franchise expiration" means the date of the expiration of the term of the franchise, as provided under the franchise, as it was in effect on October 30, 1984.

(h) Alternative renewal procedures

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Notwithstanding the provisions of subsections (a) through (g) of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced). The provisions of subsections (a) through (g) of this section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsections (a) through (g) of this section.

(i) Effect of renewal procedures upon action to revoke franchise for cause

Notwithstanding the provisions of subsections (a) through (h) of this section, any lawful action to revoke a cable operator's franchise for cause shall not be negated by the subsequent initiation of renewal proceedings by the cable operator under this section.



August 19, 2011

Santa Fe County
Attn: Ms. Katherine Miller, County Manager
102 Grant Avenue
Santa Fe, New Mexico 87504

Re: Request to Transfer Cable Franchise

Dear Ms. Miller:

US Cable of Coastal-Texas, L.P. ("US Cable") and Baja Broadband LLC ("Baja") are pleased to announce Baja's pending acquisition of the cable system and franchise serving your community.

Your consent to this transaction may be required, therefore, we have enclosed materials intended to present you with information regarding the transaction and a draft consent resolution for your approval. We appreciate your prompt consideration of these materials in light of the closing scheduled for December 2011. We respectfully request that you consider the enclosed resolution at the earliest available meeting. Baja and US Cable are confident that this transaction represents a substantial benefit to customers and your community. Additional information regarding Baja Broadband LLC is attached and can be viewed on its website at www.bajabroadband.com.

The parties hereby submit an original and two (2) copies of the Federal Communications Commission's ("FCC") Form 394, and a draft consent resolution. All required information necessary for your review is contained in the FCC Form 394. We would ask that you adopt the attached consent resolution at your earliest possible convenience and return a copy to:

Mr. G. Joseph Appio, Vice President
US Cable of Coastal-Texas, L.P.
28 West Grand Avenue, Suite #10
Montvale, NJ 07645
(201) 930-9000 ext. 400

Thank you for your consideration. We greatly appreciate your assistance in this matter, and we look forward to working with you.

Sincerely,

G. Joseph Appio
Vice President, Operations & Programming
US Cable of Coastal-Texas, L.P.

Randy Santiago
Vice President of Administration and
Business Operations
Baja Broadband LLC

Cc: Santa Fe County
Attn: Mr. Stephen C. Ross, County Attorney
102 Grant Avenue
Santa Fe, New Mexico 87504-0276

FCC 394

APPLICATION FOR FRANCHISE AUTHORITY
CONSENT TO ASSIGNMENT OR TRANSFER OF CONTROL
OF CABLE TELEVISION FRANCHISE

SECTION I. GENERAL INFORMATION

FOR FRANCHISE AUTHORITY USE ONLY

DATE August 19, 2011	1. Community Unit Identification Number: NM0181
----------------------	---

2. Application for: Assignment of Franchise Transfer of Control

3. Franchising Authority: Santa Fe County	
4. Identify community where the system/franchise that is the subject of the assignment or transfer of control is located: Unincorporated areas of Santa Fe County, NM	
5. Date system was acquired or (for system's constructed by the transferor/assignor) the date on which service was provided to the first subscriber in the franchise area:	April 20, 1999
6. Proposed effective date of closing of the transaction assigning or transferring ownership of the system to transferee/assignee:	December 31, 2011

7. Attach as an Exhibit a schedule of any and all additional information or material filed with this application that is identified in the franchise as required to be provided to the franchising authority when requesting its approval of the type of transaction that is the subject of this application.

Exhibit No.
N/A

PART I – TRANSFEROR/ASSIGNOR

1. Indicate the name, mailing address, and telephone number of the transferor/assignor.

Legal name of Transferor/Assignor (if individual, list last name first)			
US Cable of Coastal – Texas, L.P.			
Assumed name used for doing business (if any)			
US Cable			
Mailing street address or P.O. Box			
28 West Grand Avenue, Suite 10			
City	State	ZIP Code	Telephone No. (include area code)
Montvale	NJ	07645	201-930-9000 X400

2.(a) Attach as an Exhibit a copy of the contract or agreement that provides for the assignment or transfer of control (including any exhibits or schedules thereto necessary in order to understand the terms thereof). If there is only an oral agreement, reduce the terms to writing and attach. (Confidential trade, business, pricing or marketing information, or other information not otherwise publicly available, may be redacted).

Exhibit No.
1

(b) Does the contract submitted in response to (a) above embody the full and complete agreement between the transferor/assignor and the transferee/assignee?

Yes No

If No, explain in an Exhibit.

Exhibit No.
N/A

PART II – TRANSFEREE/ASSIGNEE

1.(a) Indicate the name, mailing address, and telephone number of the transferee/assignee.

Legal name of Transferee/Assignee (if individual, list last name first)			
Baja Broadband, LLC			
Assumed name used for doing business (if any)			
Baja Broadband			
Mailing street address or P.O. Box			
1061 521 Corporate Center Drive (Suite 100)			
City	State	ZIP Code	Telephone No. (include area code)
Fort Mill	SC	29707	(980) 235-7600

(b) Indicate the name, mailing address, and telephone number of person to contact, if other than transferee/assignee.

Name of contact person (list last name first)			
Peter Kahelin			
Firm or company name (if any)			
Baja Broadband			
Mailing street address or P.O. Box			
1061 521 Corporate Center Drive (Suite 100)			
City	State	ZIP Code	Telephone No. (include area code)
Fort Mill	SC	29707	(980) 235-7622

(c) Attach as an Exhibit the name, mailing address, and telephone number of each additional person who should be contacted, if any.

Exhibit No. N/A

(d) Indicate the address where the system's records will be maintained.

Street address		
Transferee/Assignee is not proposing to change the location of the system's records.		
City	State	ZIP Code

2. Indicate on an attached exhibit any plans to change the current terms and conditions of service and operations of the system as a consequence of the transaction for which approval is sought.

Exhibit No. 2

SECTION II. TRANSFEREE'S/ASSIGNEE'S LEGAL QUALIFICATIONS

1. Transferee/Assignee is:

LLC

a. Jurisdiction of incorporation: Delaware	d. Name and address of registered agent in jurisdiction: Corporation Services Company 2711 Centerville Road Wilmington, Delaware 19808
b. Date of formation: 5/26/2006	
c. For profit or not-for-profit: For profit	

Limited Partnership

a. Jurisdiction in which formed:	c. Name and address of registered agent in jurisdiction:
b. Date of formation:	

General Partnership

a. Jurisdiction whose laws govern formation:	d. Date of formation:
--	-----------------------

Individual

Other. Describe in an Exhibit. Limited liability company. See formation information above.

Exhibit No. N/A

2. List the transferee/assignee, and, if the transferee/assignee is not a natural person, each of its officers, directors, stockholders beneficially holding more than 5% of the outstanding voting shares, general partners, and limited partners holding an equity interest of more than 5%. Use only one column for each individual or entity. Attach additional pages if necessary. (Read carefully – the lettered items below refer to corresponding lines in the following table.)

- (a) Name, residence, occupation or principal business, and principal place of business. (If other than an individual, also show name, address and citizenship of natural person authorized to vote the voting securities of the applicant that it holds.) List the applicant first, officers, next, then directors and, thereafter, remaining stockholders and/or partners.
- (b) Citizenship.
- (c) Relationship to the transferee/assignee (e.g., officer, director, etc.)
- (d) Number of shares or nature of partnership interest.
- (e) Number of votes.
- (f) Percentage of votes.

(a) Baja Broadband, LLC 1061 521 Corporate Center Drive (Suite 100) Fort Mill, SC 29707	(a) Baja Broadband Holding Company, LLC ("BBHC") 1061 521 Corporate Center Drive, (Suite 100) Fort Mill, SC 29707	
(b) Delaware LLC	(b) Delaware LLC	
(c) Transferee/Assignee	(c) 100% Parent of Baja Broadband, LLC	
(d) N/A	(d)	
(e) N/A	(e)	
(f) N/A	(f)	

BAJA BROADBAND, LLC

Corporate Officers:

Peter Kahelin	Chief Executive Officer
Carl Shapiro	Vice President of Finance and Chief Financial Officer

Directors:

Gillis Cashman	Chairman
James Fleming	Director
Jeff Patterson	Director
John Watkins	Director

BAJA BROADBAND HOLDING COMPANY, LLC

Corporate Officers:

Peter Kahelin	Chief Executive Officer
Carl Shapiro	Vice President of Finance and Chief Financial Officer

Directors:

Gillis Cashman	Chairman
James Fleming	Director
Jeff Patterson	Director
John Watkins	Director

Entities holding an equity interest of more than 5% in Baja Broadband Holding Company, LLC:

(a) Columbia Capital Equity Partners IV (ECI), Ltd. 201 N. Union Street (Suite 300) Alexandria, VA 22314	(a) M/C Venture Partners V, L.P. 75 State Street (Suite 2500) Boston, MA 02109	(a) MC Venture Partners VI, L.P. 75 State Street (Suite 2500) Boston, MA 02109
(b) U.S.	(b) U.S.	(b) U.S.
(c) Indirect Interest Holder through BBHC	(c) Indirect Interest Holder through BBHC	(c) Indirect Interest Holder through BBHC
(d) Class A Preferred: 28,547,788 Common A Units: 4,900,803 Class A-1 Preferred: 5,758,476	(d) Class A Preferred: 23,079,217 Common A Units: 3,961,835 Class A-1 Preferred: 4,654,137	(d) Class A Preferred: 7,667,836 Common A Units: 1,316,279 Class A-1 Preferred: 1,546,290
(e) N/A (Voting authority vested in Managers)	(e) N/A (Voting authority vested in Managers)	(e) N/A (Voting authority vested in Managers)
(f) N/A	(f) N/A	(f) N/A

(a) GE Capital Equity Investments, Inc. c/o GE Capital Corporation Equity Investments, Inc. 201 Merritt 7 Norwalk, CT 06856	(a) Columbia Orange Partners IV, Inc. 201 N. Union Street (Suite 300) Alexandria, VA 22314	
(b) U.S.	(b) U.S.	
(c) Indirect Interest Holder through BBHC	(c) Indirect Interest Holder through BBHC	
(d) Class A Preferred: 4,665,244 Common A Units: 654,738 Class A-1 Preferred: 926,431	(d) Class A Preferred: 3,512,445 Common A Units: 602,982 Class A-1 Preferred: 708,508	
(e) N/A (Voting authority vested in Managers)	(e) N/A (Voting authority vested in Managers)	
(f) N/A	(f) N/A	

3. If the applicant is a corporation or a limited partnership, is the transferee/assignee formed under the laws of, or duly qualified to transact business in, the State or other jurisdiction in which the system operates?

Yes No

If the answer is No, explain in an Exhibit.

Exhibit No.
N/A

4. Has the transferee/assignee had any interest in or in connection with an applicant which has been dismissed or denied by any franchise authority?

Yes No

If the answer is Yes, describe circumstances in an Exhibit.

Exhibit No.
N/A

5. Has an adverse finding been made or an adverse final action been taken by any court or administrative body with respect to the transferee/assignee in a civil, criminal or administrative proceeding, brought under the provisions of any law or regulation related to the following: any felony; revocation, suspension or involuntary transfer of any authorization (including cable franchises) to provide video programming services; mass media related antitrust or unfair competition; fraudulent statements to another government unit; or employment discrimination?

Yes No

If the answer is Yes, attach as an Exhibit a full description of the persons and matter(s) involved, including an identification of any court or administrative body and any proceeding (by dates and file numbers, if applicable), and the disposition of such proceeding.

Exhibit No.
N/A

6. Are there any documents, instruments, contracts or understandings relating to ownership or future ownership rights with respect to any attributable interest as described in Question 2 (including, but not limited to, non-voting stock interests, beneficial stock ownership interests, options, warrants, debentures)?

Yes No

If Yes, provide particulars in an Exhibit.

Exhibit No.
3

7. Do documents, instruments, agreements or understandings for the pledge of stock of the transferee/assignee, as security for loans or contractual performance, provide that: (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of any ownership rights by a purchaser at a sale described in (b), any prior consent of the FCC and/or of the franchising authority, if required pursuant to federal, state or local law or pursuant to the terms of the franchise agreement will be obtained?

Yes No

If No, attach as an Exhibit a full explanation.

Exhibit No.
4

SECTION III. TRANSFEREE'S/ASSIGNEE'S FINANCIAL QUALIFICATIONS

1. The transferee/assignee certifies that it has sufficient net liquid assets on hand or available from committed resources to consummate the transaction and operate the facilities for three months.
2. Attached as an Exhibit are the most recent financial statements, prepared in accordance with generally accepted accounting principals, including a balance sheet and income statement for at least one full year, for the transferee/assignee or parent entity that has been prepared in the ordinary course of business, if any such financial statements are routinely prepared. Such statements, if not otherwise publicly available, may be marked CONFIDENTIAL and will be maintained as confidential by the franchise authority and its agents to the extent permissible under local law.

Yes No

Exhibit No.
5

SECTION IV. TRANSFEREE'S/ASSIGNEE'S TECHNICAL QUALIFICATIONS

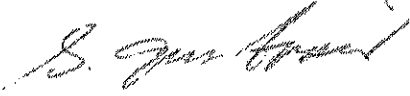
Set forth in an Exhibit a narrative account of the transferee's/assignee's technical qualifications, experience and expertise regarding cable television systems, including, but not limited to, summary information about appropriate management personnel that will be involved in the system's management and operations. The transferee/ assignee may, but need not, list a representative sample of cable systems currently or formerly owned or operated.

Exhibit No.
6

SECTION V – CERTIFICATIONS

Part 1 – Transferor/Assignor

All the statements made in the application and attached exhibits are considered material representations, and all the Exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

<p>I CERTIFY that the statements in this application are true, complete and correct to the best of my knowledge and belief and are made in good faith.</p>	<p>Signature</p> 
<p>WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.</p>	<p>Date</p> <p style="text-align: center;">August 19, 2011</p>
	<p>Print full name</p> <p style="text-align: center;">G. Joseph Appio</p>
<p>Check appropriate classification:</p> <p> <input type="checkbox"/> Individual <input type="checkbox"/> General Partner <input checked="" type="checkbox"/> Corporate Officer (Indicate Title) <input type="checkbox"/> Other. Explain: </p>	

Part II - Transferee/Assignee

All the statements made in the application and attached Exhibits are considered material representations, and all the Exhibits are a material part hereof and are incorporated herein as if set out in full in the application.

The transferee/assignee certifies that he/she:

- (a) Has a current copy of the FCC's Rules governing cable television systems.
- (b) Has a current copy of the franchise that is the subject of this application, and of any applicable state laws or local ordinances and related regulations.
- (c) Will use its best efforts to comply with the terms of the franchise and applicable state laws or local ordinances and related regulations, and to effect changes, as promptly as practicable, in the operation system, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing.


<p>I CERTIFY that the statements in this application are true, complete and correct to the best of my knowledge and belief and are made in good faith.</p>	<p>Signature</p> 
<p>WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.</p>	<p>Date</p> <p style="text-align: center;">August 19, 2011</p>
	<p>Print full name</p> <p style="text-align: center;">Peter Kahelin</p>
<p>Check appropriate classification:</p> <p> <input type="checkbox"/> Individual <input type="checkbox"/> General Partner <input checked="" type="checkbox"/> Corporate Officer (Indicate Title) Chief Executive Officer <input type="checkbox"/> Other. Explain: </p>	

EXHIBIT 1

Attached is a copy of the Asset Purchase Agreement between US Cable of Coastal-Texas, L.P. ("US Cable") and Baja Broadband, LLC, ("Baja") dated as of August 8, 2011 ("Purchase Agreement"). In the Purchase Agreement, Baja has agreed to acquire US Cable's cable systems in Colorado, New Mexico and Texas for approximately \$42,500,000. The systems provide video, high speed data and voice service, primarily over fiber networks, to approximately 38,200 customers.

Certain sections of the Purchase Agreement, including portions of the Exhibits and Schedules, have been omitted as permitted by FCC Form 394, as the information contained in these sections, Exhibits or Schedules is not necessary in order to understand the terms of the Purchase Agreement and the underlying transaction or contains confidential trade, business, pricing or marketing information, or other information not otherwise publicly available.

EXHIBIT 2

The transaction will not result in changes to the current terms and conditions of service and operation of the system. The Transferee/Assignee will comply with the terms and conditions of the franchise and applicable law.

EXHIBIT 3

M/C Venture Partners V, L.P.; M/C Venture Partners VI, L.P.; Columbia Capital Equity Partners IV (ECI), Ltd.; Columbia Orange Partners IV, Inc.; and GE Capital Equity Investments, Inc. own (i) Class A-1 Preferred Units representing 97% of the Class A-1 Preferred Units of the Company, (ii) Class A Preferred Units representing 96% of the Class A Preferred Units of the Company and (iii) Class A Common Units representing 96% of the Class A Common Units of the Company. The rights, preferences and privileges of the Class A-1 Preferred Units, Class A Preferred Units and Class A Common Units are set forth in the operating agreement of Baja Broadband Holding Company, LLC.

EXHIBIT 4

The equity interests of Baja Broadband, LLC are pledged to General Electric Capital Corporation ("GECC"), which is a lender to Baja Broadband, LLC and the agent for certain other lenders. Pursuant to the applicable pledge agreement (the "Pledge Agreement"), upon the occurrence of an event of default and during the continuation of such event of default, among other remedies, GECC has the power to (i) transfer and register in its name the whole or any part of the equity interests of Baja Broadband, LLC, (ii) to exercise the voting and all other rights as a holder with respect thereto and (iii) to sell in one or more public or private sales the whole or any part of the equity interests of Baja Broadband, LLC as though GECC was the outright owner thereof; provided, however, that the Pledge Agreement explicitly states (a) that GECC's remedies thereunder are subject to compliance with the Cable Communications Act of 1984, with all applicable fees and regulations of the FCC, and with state or local law and regulations, to the extent applicable thereto; and (b) that GECC is not authorized to take any action pursuant to the Pledge Agreement that would constitute an assignment of any of the FCC licenses held by Baja Broadband, LLC or any cable franchise agreement to which Baja Broadband, LLC is a party, or a change of control of any of the FCC licenses held by Baja Broadband, LLC or of any cable franchise agreement to which Baja Broadband, LLC is a party, if such assignment or change of control would require, under then-existing law (including the rules and regulations promulgated by the FCC), the prior approval of the FCC or any other governmental authority, without first obtaining approval of the FCC or such other governmental authority.

EXHIBIT 5

Attached is the Consolidated Financial Report for Baja Broadband Holding Company, LLC for the year ended December 31, 2010. The information contained therein is not otherwise publicly available, and as permitted by the FCC Form 394 this information has been marked CONFIDENTIAL in order to be treated as such by the franchising authority and its agents to the extent permissible under local law.

EXHIBIT 6

Baja Broadband, LLC is a wholly owned subsidiary of Baja Broadband Holding Company LLC ("Baja Broadband"). Baja Broadband through its wholly owned subsidiaries, Baja Broadband Operating Company, LLC and Carolina Broadband, LLC ("the Subsidiaries") delivers an array of advanced entertainment, voice, and high-speed data products to residential and commercial customers in the southwestern United States. At the current time Baja Broadband through its Subsidiaries owns and manages cable systems passing approximately 145,000 homes in Utah, Colorado, Nevada, and New Mexico. Baja Broadband will bring the experience and technical expertise of its management team to the cable system serving this community. Baja Broadband's goal is to become the leading provider of entertainment, information and communications services in the communities it serves and to offer the highest level of customer care. By focusing on regional markets with technical, customer support and sales and marketing resources, Baja Broadband has built a reputation for service level, quality and reliability.

Baja Broadband is a company based on leadership in innovation, teamwork and quality customer care. The Baja Broadband team has hundreds of years of combined experience designing, constructing, operating and maintaining triple play, voice, video and data fiber optic access networks throughout the country. All members of the senior management team have 20+ years of experience in all aspects of the cable television industry, from financing and franchising to management, operations, turnarounds and rebuilds.

Through its advanced infrastructure of coaxial and fiber optic cable, Baja Broadband typically makes available more than 250 channels of programming, including local broadcast television signals, basic and premium programming services, HDTV channels and Pay Per View programming.

Since acquiring its first systems in 2006, Baja Broadband has focused its efforts on upgrading and improving system infrastructure, adding services and improving customer care. Baja Broadband's technical team has focused on hardening and rebuilding systems and has successfully planned and executed extensive upgrades which include investments to improve the company's fiber optic infrastructure and investments in improved customer service for video and High Speed Data technical support.

Baja Broadband's residential and business customers are served by a network of local field offices, employing customer service associates, technicians and office staff members. The company's locally-based organizational structure provides for efficiency and consistency in its operations, while centralized customer support centers ensure quality service for all customers.

Baja Broadband and its employees are involved in and committed to the success of the communities they serve. Baja Broadband and its employees regularly contribute to local organizations and charitable causes in the form of sponsorships, financial support and employee volunteerism, which is encouraged by management. Baja Broadband's local team members regularly participate in and contribute to food drives, fundraisers, sports, school activities, and other community charities and events.

ASSET PURCHASE AGREEMENT

between

US CABLE OF COASTAL-TEXAS, L.P.

and

BAJA BROADBAND, LLC

Dated as of August 9, 2011

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This ASSET PURCHASE AGREEMENT, dated as of August 9, 2011, is by and between US Cable of Coastal-Texas, L.P., a New Jersey limited partnership ("Seller"), and Baja Broadband, LLC, a Delaware limited liability company ("Buyer").

WITNESSETH:

WHEREAS, Seller is engaged in the business of operating cable television systems (as listed in **Schedule A**, each a "System" and collectively, the "Systems") that provide customers with multichannel video programming services, high-speed data services and/or telephone services in and around the communities (each a "Community" and collectively, the "Communities") listed in **Schedule A** hereto; and

WHEREAS, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase from Seller the Transferred Assets (as defined below), on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the representations, warranties, covenants and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I
DEFINITIONS AND TERMS

Section 1.1 Certain Definitions. As used in this Agreement, the following terms have the meanings set forth below:

"Accounts Receivable" means all subscriber, advertising and miscellaneous accounts receivable of the Business outstanding as of the Closing arising out of the sale or other disposition of goods or services of the Business, except to the extent included in the Excluded Assets.

"Action" means an order, litigation, proceeding, investigation, review, claim, complaint, petition or demand.

"Active Customer" means a subscriber of the applicable service provided by the Business, but excluding, with respect to each service, any subscriber (i) receiving service without any charge or bill whatsoever (provided that, for the avoidance of doubt, such subscriber shall only be excluded with respect to the particular service for which there is no charge or bill), (ii) that Seller obtains after the date of this Agreement in violation of Section 5.2(f), (iii) that Seller fails to disconnect in violation of Section 5.2(i) or (iv) that is a new subscriber who has not made the required initial payment in advance or at the time of install in violation of Seller's subscriber procedures described in Section 5.2(f) of the Seller Disclosure Schedule.

"Actual Response Cost" has the meaning set forth in Section 5.14(b)(iii)(A).

“Affiliate” means, with respect to any Person, any Person directly or indirectly controlling, controlled by, or under common control with such other Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“Agreement” means this Asset Purchase Agreement, as it may be amended, modified or supplemented from time to time in accordance with the terms hereof.

“Allocation Schedule” has the meaning set forth in Section 2.8.

[Redacted]

“Ancillary Agreement” means each of the Escrow Agreement, the Bill of Sale and Assignment and Assumption Agreement, RTC/Programming Assumption Agreements (if any) and each of the deeds executed by Buyer and/or Seller (as applicable) and delivered to the other party in accordance with Section 2.7.

“Assigned Contracts” means all agreements, contracts, leases, subleases, purchase orders, arrangements, commitments and licenses (other than this Agreement, the Ancillary Agreements, the Assigned Leases, Governmental Authorizations and Telecommunications Authorizations) that are used or held for use by Seller primarily in connection with the Business or any System, whether written or oral (including each Bifurcated Contract insofar as it relates to the Systems), other than any of the foregoing that are Excluded Assets.

“Assigned Leases” means those leases and subleases to which Seller is a party governing the use of Leased Real Property and listed in **Section 3.11(b)** of the Seller Disclosure Schedule.

“Assigned RTC Agreements” means those retransmission consent agreements set forth on **Schedule 2.2(m)** (if any).

“Assigned Programming Agreements” means those programming agreements set forth on **Schedule 2.2(m)** (if any).

“Assumed Liabilities” means all of the following Liabilities and no others: (i) all Liabilities accruing, relating to or otherwise arising out of Buyer’s (or its Affiliates’) operation of the Business or Buyer’s (or its Affiliates’) ownership, leasing or use of the Transferred Assets from and after the Closing Time, including all Liabilities asserted by the owner of any property on, under, in or above which any of the Transferred Assets are located or attached, to the extent such Liabilities relate to the period from and after the Closing Time, (ii) subject to Section 5.3(h), all Liabilities arising under or related to any Assigned Contract, Assigned Lease or Governmental Authorization to the extent such Liabilities relate to the period from and after

the Closing Time, (iii) any Taxes to be paid by Buyer pursuant to this Agreement, (iv) all Liabilities expressly assumed by Buyer pursuant to Section 5.5, (v) all Liabilities of the Business set forth in **Schedule 1.1(a)**, if any, (vi) all Liabilities of the Business not otherwise specified herein to the extent (and only to the extent) reflected in a reduction of the Purchase Price pursuant to Section 2.5(a) and (vii) all other Liabilities that Buyer has expressly assumed or expressly agreed to assume under this Agreement or any of the Ancillary Agreements.

“Audited Financial Statements” has the meaning set forth in Section 3.6.

“Available Employees” has the meaning set forth in Section 5.5(a).

“Basic Services” means the lowest tier of cable television programming offered by the Systems to subscribers as a package, including broadcast and satellite service programming for which a subscriber pays a fixed monthly fee to Seller, but not including Pay TV.

“Basic Subscriber” means, as of a given date and for each System, an Active Customer of Basic Services of such System who is individually billed for Basic Services.

“Benefit Plans” means all “employee benefit plans” within the meaning of Section 3(3) of ERISA, and all compensation and benefit plans, programs and arrangements of Seller (other than routine administrative procedures) maintained in connection with the Business in effect as of the date of this Agreement, including pension, profit sharing, savings and thrift, welfare, bonus, stock bonus, stock option, incentive, or deferred compensation and severance pay plans.

“Bifurcated Contracts” has the meaning set forth in Section 5.3(b)(ii).

“Bill of Sale and Assignment and Assumption Agreement” means the Bill of Sale and Assignment and Assumption Agreement to be executed and delivered by Seller and Buyer at the Closing, in the form attached hereto as **Exhibit A**.

“Books and Records” means all books, files, reports, plans, records, manuals, customer lists, supplier lists, maps and engineering data and test results held by Seller and exclusively related to the Business, other than any such items to the extent (i) they are Excluded Assets or are primarily related to any Excluded Asset or (ii) any Law prohibits their transfer.

“Business” means Seller’s operation of the Systems in the Communities.

“Business Day” means any day other than a Saturday, a Sunday or a day on which banks in New York City are authorized or obligated by Law or executive order to close.

“Business Names” has the meaning set forth in Section 5.6.

“Buyer” has the meaning set forth in the Preamble.

“Buyer Consents” means consents, approvals, waivers, authorizations notices and filings required to be obtained by Buyer from, or required to be given by Buyer to, or required to be

made by Buyer with, any Person in connection with the execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreements.

“Buyer Disclosure Schedule” means the Buyer Disclosure Schedule attached hereto as Annex B.

“Buyer Imposition” has the meaning set forth in Section 5.3(h).

“Buyer Indemnified Parties” has the meaning set forth in Section 7.2.

“Buyer Telecom Authorizations” has the meaning set forth in Section 5.8.

“Buyer Plans” has the meaning set forth in Section 5.5(b).

“Capex Budget” has the meaning set forth in Section 2.5(a)(ii)(C).

“Chosen Courts” has the meaning set forth in Section 9.9.

“Claimant” has the meaning set forth in Section 7.4(a).

“Closing” means the closing of the Transaction in accordance with the provisions of Section 2.6.

“Closing Date” means the date on which the Closing actually occurs.

“Closing Time” has the meaning set forth in Section 2.5(a).

“COBRA” has the meaning set forth in Section 5.5(i).

“Code” means the Internal Revenue Code of 1986, as amended.

“Commercial Subscriber” means, as of a given date and with respect to the Systems, any subscriber which is a Government Entity, bulk commercial account, such as a hotel, motel, hospital, apartment house, dormitory, jail and similar multiple dwelling unit, or other commercial account, bulk billed account or other account not billed by individual units or that otherwise receive service other than at a rate provided to single family households that receives (either alone or in combination with any other service) at least (i) Basic Services, (ii) high-speed data service or (iii) telephone service and which is billed on a bulk basis (or otherwise not billed by individual units) as determined based upon subscriber reports internally generated by Seller’s billing system.

“Communications Act” means the Communications Act of 1934, including the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, each as amended, and the FCC’s rules, regulations and published policies and decisions thereunder, each as in effect from time to time.

“Community” or “Communities” has the meaning set forth in the Recitals.

“Confidential Information” has the meaning set forth in Section 5.1(a).

“Confidentiality Agreement” means the Confidentiality Agreement between Seller and Buyer, dated October 28, 2010.

“Consents” means the Buyer Consents and the Seller Consents.

“Copyright Act” has the meaning set forth in Section 3.15(b).

“CPA Firm” means Deloitte & Touche or such other firm of independent certified public accountants on which Seller and Buyer shall agree.

“Cure Period” has the meaning set forth in Section 8.2(b).

“Current Accounts Receivable” means the sum of (i) [Redacted] of all customer accounts receivable of the Business that are outstanding on the Closing Date, no part of which in excess of \$10 is more than sixty (60) days past due (with an account being “past due,” for purposes hereof, one day after the first day of the period to which the applicable billing relates), plus (ii) [Redacted] of all customer accounts receivable of the Business that are outstanding on the Closing Date any part of which in excess of \$10 is more than sixty (60) days past due but no part of which in excess of \$10 is more than ninety (90) days past due, plus, (iii) [Redacted] of all customer accounts receivable of the Business that are outstanding on the Closing Date any part of which in excess of \$10 is more than ninety (90) days past due but no part of which in excess of \$10 is more than one hundred twenty (120) days past due, plus (iv) [Redacted] of all advertising accounts receivable of the Business that are outstanding on the Closing Date (excluding any part of which in excess of \$10 that is more than one hundred twenty (120) days past due), plus (v) [Redacted] of all miscellaneous accounts receivable (including receivables for tower rentals and commercial data and fiber accounts) of the Business that are outstanding on the Closing Date and that relate to an Assigned Contract.

“Deductible” has the meaning set forth in Section 7.5(a).

“Deferred Parcel” has the meaning set forth in Section 5.14(c).

“Direct Claim” has the meaning set forth in Section 7.4(a).

[Redacted]

[Redacted]

[Redacted]

“Employee List” has the meaning set forth in Section 3.13(c).

"Employee Termination Period" has the meaning set forth in Section 5.5(c).

"Employees" means all persons who are active employees of Seller whose duties relate primarily to the operations of the Business and who are listed on the Employee List including the following Employees:

(i) Employees who on the Closing Date are on vacation or a regularly scheduled day off from work; provided, that Employees of the Business who on the Closing Date are on temporary leave for purposes of jury or annual two-week national service/military duty shall be deemed to be active Employees;

(ii) Employees who on the Closing Date are on nonmedical leaves of absence; provided, that no such Employee shall be guaranteed reinstatement to active service if his return to employment is contrary to the terms of his leave, unless otherwise required by applicable Law (for purposes of the foregoing, nonmedical leave of absence shall include maternity or paternity leave, leave under the Family and Medical Leave Act of 1993 or any comparable state Law, educational leave, military leave with veteran's reemployment rights under federal or state Law, or personal leave, unless any of the foregoing is determined to be a medical leave); and

(iii) Employees who on the Closing Date are on disability or medical leave and for whom one hundred eighty (180) calendar days or less has elapsed since their last day of active employment; provided, that, unless otherwise required by applicable Law, no such Employee shall be guaranteed reinstatement to active service if he is incapable of working in accordance with the lawful policies, practices and procedures of Buyer.

"Encumbrance" means any lien, claim, charge, security interest, mortgage, pledge, right-of-way, encroachment, preemptive right, right of first refusal or similar restriction or right, option, title defect, or material encumbrance of any other kind and nature.

"Environmental Firm" has the meaning set forth in Section 5.14(a).

"Environmental Law" means any Law in effect as of the date of this Agreement relating to (i) the protection of the environment (including air, surface water, groundwater, drinking water supply, and surface or subsurface land or structures) or (ii) the handling, treatment, transportation or disposal of any Hazardous Substance.

"Equivalent Basic Unit" or "EBU" means, as of a given date and for a particular System, the number of Commercial Subscribers for cable television service determined by dividing (i) the total monthly billings during the most recent month ended prior to the date of calculation for Basic Services or Expanded Basic Services attributable to such Commercial Subscribers, whether on a discounted or undiscounted basis (but excluding billings in excess of a single month's charges for any account), by (ii) the applicable standard monthly rate (without discount of any kind) for individual households within a System for the relevant level of Basic Services and/or Expanded Basic Services. For purposes of the foregoing, (a) excluded is that portion of

the billings representing an installation or other non-recurring charge, a charge for equipment or any additional outlet, a charge for any tiered service (whether or not included within Pay TV), or a pass-through charge for sales taxes, line-itemized franchise fees and charges (collectively, the "Excluded Charges") and (b) the Excluded Charges shall not be included in determining the applicable standard monthly rate referred to in clause (ii) above.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended through the date of this Agreement.

"Escrow Agent" means Wells Fargo Bank, National Association or another financial institution reasonably acceptable to Buyer and Seller.

"Escrow Agreement" means the Escrow Agreement by and among Seller, Buyer and the Escrow Agent being entered into on the Closing Date, substantially in the form attached hereto as **Exhibit B**.

"Estimated Response Cost" has the meaning set forth in Section 5.14(b)(ii).

"Excluded Assets" has the meaning set forth in Section 2.2.

"Excluded Charges" has the meaning set forth in the "Equivalent Basic Unit" definition.

"Excluded Liabilities" has the meaning set forth in Section 2.3.

"Expanded Basic Services" means an optional tier of video services offered by a System to its customers other than Basic Services, a la carte tiers, premium services, digital services, any new product tier, Pay TV, and HSD Services.

"FASB" means the Financial Accounting Standards Board.

"FCC" means the Federal Communications Commission.

"Final Determination" has the meaning set forth in Section 7.6(d).

"Final Escrow Release Date" has the meaning set forth in Section 7.6(b).

"Financing Commitment" has the meaning set forth in Section 4.6.

"Fixtures and Equipment" means all furniture, furnishings, vehicles, equipment, computers (including, to the extent transferable to Buyer, any Software that has been installed on any such computer), ad insertion equipment (to the extent owned by Seller), tools, electronic devices, towers, trunk and distribution cable, decoders and spare decoders for scrambled satellite signals, amplifiers, power supplies, conduits, vaults and pedestals, grounding and pole hardware, installed subscriber devices (including, drop lines, converters, encoders, transformers behind television sets and fittings), headends and hubs (origination, transmission and distribution systems) hardware and closed circuit devices and other tangible personal property (other than

Inventory) owned by Seller and (i) used or held for use primarily in connection with the Business or (ii) physically located within any of the Communities, other than any of the foregoing that are Excluded Assets.

“Franchise” means to the extent exclusively related to the Systems, each franchise (as such term is defined in the Communications Act) granted by a Government Entity authorizing the construction, upgrade, maintenance and operation by Seller of the Systems.

“GAAP” means United States generally accepted accounting principles in effect as of the date of this Agreement.

“Governmental Authorizations” means all licenses, permits, certificates, Franchises and other authorizations and approvals that are exclusively used or held for exclusive use by Seller in the operation of the Business and issued by or obtained from a Government Entity (other than Telecommunications Authorizations).

“Government Entity” means the United States or any federal, state or local court, administrative or regulatory body or other governmental or quasi-governmental entity with competent jurisdiction.

“Hazardous Substance” means any substance that is listed, defined, designated or classified as hazardous, toxic or otherwise harmful under applicable Laws and is otherwise regulated by a Government Entity, including petroleum products and byproducts, asbestos-containing material, polychlorinated biphenyls, lead-containing products and mold.

“HSD Services” means Internet service provider and backbone connectivity services offered by the Systems to Seller’s customers through a cable modem and cable modem termination system.

“HSD Subscriber” means, as of a given date and for each System, an Active Customer of HSD Services of such System.

“Indebtedness” means, without duplication, (i) any indebtedness for borrowed money, together with all accrued interest and fees associated therewith, (ii) any indebtedness evidenced by any note, bond, debenture or other debt security, together with all accrued interest and fees associated therewith, (iii) any commitment by which a Person assures a creditor against loss (including contingent reimbursement obligations with respect to letters of credit), (iv) any interest rate derivative securities, (v) any capital leases, (vi) guarantees with respect to any indebtedness of the types specified in clauses (i) through (v) and (vii) applicable prepayment premiums and any other fees, costs or expenses (including breakage costs) payable in connection any indebtedness of the types specified in clauses (i) through (v).

“Indemnification Deadline” has the meaning set forth in Section 7.1.

“Indemnifying Party” has the meaning set forth in Section 7.4(a).

“Indemnity Escrow Amount” means an amount equal to [Redacted].

“Indemnity Escrow Fund” means the Indemnity Escrow Amount together with all interest and other earnings thereon as of the applicable date.

“Intellectual Property” means all right, title and interest in or relating to intellectual property, whether protected, created or arising under the laws of the United States or any other jurisdiction, including: (i) trademarks, service marks, service names, brand names, certification marks, collective marks, corporate names, fictitious names, domain names, logos, symbols, trade dress, assumed names, fictitious names, trade names, and other indicia of origin, all applications and registrations for the foregoing, and all goodwill associated therewith and symbolized thereby, including all renewals of same (collectively, “Trademarks”); (ii) inventions and discoveries, whether patentable or not, and all patents, registrations, invention disclosures and applications therefor, including divisions, continuations, continuations-in-part and renewal applications, and including renewals, extensions and reissues; (iii) trade secrets, confidential information and know-how, including processes, schematics, business methods, formulae, drawings, prototypes, models, designs, customer lists and supplier lists; (iv) published and unpublished works of authorship, regardless of whether eligible for copyright protection (including databases and other compilations of information), including mask rights and computer software, copyrights therein and thereto, registrations and applications therefor, and all renewals, extensions, restorations and reversions thereof; and (v) any other intellectual property or proprietary rights to the extent entitled to legal protection as such.

“Inventory” means all parts, equipment and materials inventories that are owned by Seller and held for use primarily in connection with the Business and physically located in the Communities.

“Knowledge” or any similar phrase means the actual (but not constructive or imputed) knowledge of the individual(s) listed in **Schedule 1.1(b)** with respect to Seller or Buyer, as applicable, as of the relevant date, without any implication of verification or investigation concerning such knowledge.

“Law” means any law, statute, ordinance, rule, regulation, code, order, judgment, injunction or decree enacted, issued, promulgated or entered by a Government Entity.

“Leased Real Property” means leasehold interests held by Seller in real estate (i) physically located within the Communities or (ii) that is used or held for use primarily in connection with the operation of the Business and listed in **Section 3.11(b)** of the Seller Disclosure Schedule.

“LFA Approvals” means all consents, approvals or waivers required to be obtained from Government Entities with respect to the transfer of the Franchises to Buyer in connection with the Transaction.

“Liabilities” means any and all debts, liabilities, commitments and obligations of any kind, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, accrued or not accrued, asserted or not asserted, known or unknown, determined, determinable or otherwise, however arising (including, whether arising out of any contract or tort based on negligence or strict liability) and regardless of whether the same would be required by GAAP to be reflected in financial statements or disclosed in the notes thereto.

“Losses” has the meaning set forth in Section 7.2.

“Lower RGU Limit” means [Redacted].

“Material Adverse Effect” means a change, circumstance, occurrence, event, series of events or effect that individually or in the aggregate with other changes, circumstances, occurrences, events or effects, has had or would reasonably be expected to have a material adverse effect on the operations, results of operation, or financial condition of the Business, taken as a whole; provided, that none of the following (or the results thereof) (a) shall be taken into account, either alone or in combination in determining whether a “Material Adverse Effect” has occurred or would reasonably be expected to occur, or (b) shall otherwise constitute a “Material Adverse Effect”: (i) any actual or proposed change in Law, regulations, accounting rules or standards or interpretations thereof applicable to the Business, including changes in GAAP (or interpretations thereof) that does not affect the Business disproportionately as compared to other similar situated participants in the cable industry; (ii) any change, occurrence, event or effect applicable to international, national, regional or industry-wide political, economic or business conditions (including financial, banking, securities and capital market conditions) that does not affect the Business disproportionately as compared to other similar situated participants in the cable industry; (iii) any change, occurrence, event or effect applicable to the multichannel video programming, high-speed data or telephony industries or markets generally (including (x) any federal or state governmental actions or (y) litigation matters) that does not affect the Business disproportionately as compared to other similar situated participants in the cable industry; (iv) any changes in technology; (v) any change, occurrence, event or effect as a result of acts of war (whether or not declared), sabotage or terrorism, military actions or the escalation thereof or other force majeure events occurring after the date of this Agreement; (vi) any loss of subscribers; (vii) any failure by Seller to meet any forecasts or projections provided by Seller (in whatever form, whether oral or written), provided that the exception in this clause (vii) shall not prevent or affect a determination that any fact, event or action underlying such a failure has resulted in, or contributed to, a Material Adverse Effect; (viii) any change, occurrence, event or effect generally affecting or related to attributes of Buyer or its Affiliates or otherwise attributable to actions taken by Buyer or its Affiliates, including any violation of the terms of this Agreement by Buyer; (ix) any change, occurrence, event or effect as a result of the execution of this Agreement or any Ancillary Agreement or the announcement of the Sale Process, this Agreement or the transactions contemplated hereby, to the extent such announcement was not made by Seller in violation of the terms of this Agreement; (x) any change, occurrence, event or effect as a result of the taking of any action contemplated or required by this Agreement or any Ancillary Agreement or approved by Buyer in writing; (xi)

competition in the multichannel video programming, high-speed data or telephony industries or markets or (xii) any Excluded Assets.

“Material Contracts” has the meaning set forth in Section 3.10(a).

“Ordinary Course” means the conduct of the Business in accordance with Seller’s normal day-to-day customs, practices and procedures prior to the date of this Agreement.

“Owned Real Property” means the real property owned by Seller that is used or held for use primarily in connection with the Business and physically located within the Communities and listed in **Section 3.11(a)** of the Seller Disclosure Schedule.

“Pay TV” means for a System, premium programming services selected by and sold to subscribers on an a la carte basis for monthly fees in addition to the fee for Basic Services.

“Pending Claimed Funds” has the meaning set forth in Section 7.6(b).

“Permitted Encumbrances” means (i) mechanics’, materialmen’s, warehousemen’s, carriers’, workers’, or repairmen’s liens or other similar common law or statutory Encumbrances arising or incurred in the Ordinary Course; (ii) liens for Taxes, assessments and other governmental charges not yet delinquent or that are being contested in good faith; provided that any liens for Taxes that are being contested as of the date hereof are reflected on **Schedule 1.1(c)**; (iii) with respect to real property, (A) easements, licenses, covenants, rights-of-way, encroachments, rights of re-entry and other similar restrictions or defects of title that, in each case, individually or in the aggregate would not reasonably be expected to materially affect the operation of the Systems as they have been operated by Seller since January 1, 2010, (B) any conditions that may be shown by a current survey that, in each case, individually or in the aggregate would not reasonably be expected to materially affect the operation of the Systems as they have been operated by Seller since January 1, 2010, (C) zoning, building, subdivision and other similar requirements and restrictions provided that said zoning, building, subdivision and other requirements are regulations that do not materially infringe upon the Seller’s use of the real property in the Ordinary Course, (D) leases, subleases and other occupancy agreements which are Assigned Contracts that are disclosed in the Seller Disclosure Schedule and (E) landlords’ liens for amount not yet due and payable or that are being contested in good faith; (iv) rights reserved to any Government Entity to regulate the affected property; (v) Encumbrances that are Assumed Liabilities; (vi) Encumbrances incurred in the Ordinary Course in connection with workers’ compensation and unemployment insurance or similar Laws; and (vii) Encumbrances that will be released at or prior to Closing (including those liens granted to existing lenders identified on **Schedule 1.2**).

“Person” means an individual, corporation, partnership, association, limited liability company, Government Entity, trust or other entity or organization.

“Petty Cash” means petty cash at locations in the Systems.

“Phase II Investigation” has the meaning set forth in Section 5.14(b)(i).

“Post-Closing Adjustment Notice” has the meaning set forth in Section 2.5(c).

“Post-Closing Tax Period” means any Tax period (or portion thereof) ending after the Closing Date.

“Pre-Closing Tax Period” means any Tax period (or portion thereof) ending on or before the Closing Date.

“Price Per RGU” means [Redacted].

“Programmer” has the meaning set forth in Section 5.7(c).

“Programming Change Notice” has the meaning set forth in Section 5.7(g).

“Programming Services” has the meaning set forth in Section 5.7(a).

“Projections” has the meaning set forth in Section 5.9(a).

“Proximate Cause Party” has the meaning set forth in Section 8.2(a).

“Purchase Price” has the meaning set forth in Section 2.4.

“Regional Income Statements” has the meaning set forth in Section 3.6.

“Reimbursable Employees” has the meaning set forth in Section 5.5(c).

“Required Action” has the meaning set forth in Section 5.14(b)(ii).

“Restricted Business” has the meaning set forth in Section 5.11(a).

“Retained Employees” has the meaning set forth in Section 5.5(a).

“RGU Adjustment” has the meaning set forth in Section 2.5(a)(iv).

“RGUs” means the sum of Basic Subscribers, EBUs, VEDUs, HSD Subscribers and VOIP Subscribers. For the avoidance of doubt, a single subscriber may be counted as a Basic Subscriber, HSD Subscriber and VoIP Subscriber.

“Rights-of-Way” means the easements and rights-of-way held by Seller and used or held for use primarily in connection with the Business with respect to real property physically located within the Communities.

“RTC/Programming Assumption Agreement” has the meaning set forth in Section 5.10.

“Sale Process” means the sale process by which Seller is offering the Transferred Assets for sale.

“Seller” has the meaning set forth in the Preamble.

“Seller Consents” means consents, approvals and authorizations required to be obtained by Seller from any Person to transfer and assign the Transferred Assets to Buyer, other than the LFA Approvals.

“Seller Disclosure Schedule” means the Seller Disclosure Schedule attached hereto as Annex A.

“Seller Indemnified Parties” has the meaning set forth in Section 7.3.

“Seller’s Adjustment Statement” has the meaning set forth in Section 2.5(b).

“Severance Reimbursement Amount” has the meaning set forth in Section 5.5(c).

“Software” means any and all (i) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code; (ii) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise; (iii) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons; and (iv) all documentation, including user manuals and other training documentation related to any of the foregoing, in each case used in connection with the Business or operations of the Systems.

“Subscriber Accounting Policy” means Seller’s policy with respect to calculating basic subscribers, equivalent basic subscribers, high-speed data subscribers and telephone subscribers for the Systems.

“System” or “Systems” has the meaning set forth in the Recitals.

“System Reports” has the meaning set forth in Section 3.6.

“Tax Returns” means all returns, declarations, reports, claims for refund, or information returns or statements relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Taxes” means any and all federal, state or local and all foreign taxes, including alternative or add-on minimum, estimated, gross income, gross receipts, capital, paid-up capital, profits, windfall profits, value added, ad valorem, transfer, severance, stamp, occupation, premium, property, environmental, production, sales, use, lease, service, duty, greenmail, license, excise, franchise, payroll, employment, withholding or other tax (including any Tax liability incurred or borne as a transferee or successor or by contract, or otherwise), together with

any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“Telecommunications Authorizations” has the meaning set forth in Section 5.8.

“Texas State Franchise” has the meaning set forth in Section 5.19.

“Third Party Claim” has the meaning set forth in Section 7.4(a).

“Title Commitment” has the meaning set forth in Section 5.15.

“Trademarks” has the meaning set forth in the “Intellectual Property” definition.

“Transaction” means, collectively, the transactions contemplated by this Agreement and the Ancillary Agreements.

“Transfer Taxes” has the meaning set forth in Section 5.4(c).

“Transferred Assets” has the meaning set forth in Section 2.1.

“Transferred Employees” has the meaning set forth in Section 5.5(a).

“Transition Services Agreement” has the meaning set forth in Section 5.20.

“Verizon Equivalent Data Unit” or “VEDU” means, as of a given date, the number of subscribers determined by dividing (i) the monthly recurring charges to be paid to Seller under the agreement described in **Schedule 2.5(a)(i)(I)**, by (ii) the undiscounted monthly retail rate for Seller’s residential data services known as the “Sonic Service”. For purposes of the foregoing (a) excluded is that portion of the charges representing Excluded Charges and (b) the Excluded Charges shall not be included in determining the monthly rate for the residential data service referred to in clause (ii) above.

“VoIP Services” means local and long distance voice over Internet Protocol telephone and related voice services offered by the Systems.

“VoIP Subscriber” means, as of any date and for each System, an Active Customer of VoIP Services.

“WARN Act” means the Worker Adjustment and Retraining Notification Act of 1988, as amended.

[Redacted]

“1060 Documents” has the meaning set forth in Section 2.9.

Section 1.2 Other Terms. Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement.

Section 1.3 Other Definitional Provisions. Unless the express context otherwise requires:

(a) the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(b) the terms defined in the singular have a comparable meaning when used in the plural, and vice versa;

(c) the terms "Dollars" and "\$" mean United States Dollars;

(d) references herein to a specific Article, Section, Subsection (or clause), Exhibit, Schedule or Annex shall refer, respectively, to the applicable Article, Section, Subsection (or clause), Exhibit, Schedule or Annex of or to this Agreement, unless otherwise indicated;

(e) any capitalized terms used in the Schedules, Annexes (including the Seller Disclosure Schedule and Buyer Disclosure Schedule) or any Exhibit but not otherwise defined therein shall have the meaning as defined in this Agreement.

(f) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; and

(g) references herein to any gender includes each other gender.

ARTICLE II PURCHASE AND SALE OF THE BUSINESS

Section 2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth herein, at the Closing, Seller shall sell, convey, transfer, assign and deliver to Buyer, and Buyer shall purchase and acquire from Seller all of Seller's right, title and interest, as of the Closing, in and to all of Seller's assets that are used or held for use primarily in connection with the Business, whether, real, personal or mixed, tangible (and any such tangible assets of Seller that are physically located within the Communities) or intangible including all of such right, title and interest in and to the following assets, except for the Excluded Assets (collectively, the "Transferred Assets"), free and clear of all Encumbrances other than Permitted Encumbrances:

(a) Accounts Receivable;

(b) Assigned Contracts;

- (c) Books and Records;
- (d) Fixtures and Equipment, including the vehicles listed **Schedule 2.1(d)**;
- (e) Inventory;
- (f) Owned Real Property;
- (g) Assigned Leases;
- (h) Rights-of-Way;
- (i) Petty Cash;
- (j) to the extent their transfer is permitted by Law, all Governmental Authorizations;
- (k) all credits in favor of Seller and prepaid expenses and deposits made or paid by Seller, in each case, to the extent related to a Transferred Asset and only to the extent they are reflected in an upward adjustment to the Purchase Price pursuant to Section 2.5(a)(i);
- (l) to the extent transferable to Buyer, all third party guarantees, warranties and indemnities in favor of Seller to the extent relating primarily to any of the Transferred Assets;
- (m) Seller's FCC Domestic Section 214 Authorization insofar as it relates to the Systems; and
- (n) all goodwill to the extent relating to the Business.

Section 2.2 Excluded Assets. Notwithstanding anything herein to the contrary, from and after the Closing, Seller shall retain all of its existing right, title and interest in and to, and the Transferred Assets shall not include, the following (collectively, the "Excluded Assets"):

- (a) any asset or category of assets excluded from the defined terms set forth in Section 2.1(a) through (m) by virtue of the limitations expressed or implied therein;
- (b) all Tax assets (including duty and Tax refunds and prepayments) and net operating losses of Seller and any of its Affiliates;
- (c) all claims, rights and interest in and to any refunds of fees of any nature whatsoever, including, fees paid to the United States Copyright Office or any choses in action owned by Seller or its Affiliates relating to such refunds;
- (d) all Tax Returns and Tax reports of Seller and its Affiliates and all books and records (including working papers) related thereto;