

**SANTA FE COUNTY**  
**RESOLUTION NO. <sup>1999-</sup>~~99-~~16**

**1620899**

**RESOLUTION GRANTING A CERTIFICATE AND ACCEPTANCE OF FRANCHISE  
TO U.S. CABLE TO OPERATE A CABLE TELEVISION SYSTEM  
WITHIN THE NORTHERN PART OF SANTA FE COUNTY  
AND APPROVING THE TRANSFER OF A CABLE TELEVISION FRANCHISE  
FROM MARK TWAIN CABLEVISION TO U.S. CABLE**

The following recitals are material to the adoption of this Resolution and grant of Certificate and Acceptance of Franchise:

1. The Santa Fe County Board of County Commissioners ("BCC") has jurisdiction over cable television systems pursuant to NMSA 1978, Section 62-1-3 and Ordinance No. 1993-8 (superseding Ordinance No. 1982-5).
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; the cable service company must agree to the reasonable terms imposed by the BCC. Ordinance No. 1993-8, Section 5.
3. Mark Twain Cablevision Limited Partnership (hereinafter, "Mark Twain"), currently owns and operates the cable television system serving the northern portion of Santa Fe County, New Mexico, which area includes Espanola, La Puebla, Chimayo and the Arroyo Seco, pursuant to the terms of Ordinance No. 1982-5.
4. 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)
5. The permit was duly transferred by Southwest Cable Corporation, Inc. to Espanola Cablevision, Inc. on or about February 28, 1986 and then transferred to Mark Twain on or about March 14, 1988 (Resolution 1988-30).
6. Mark Twain now desires to transfer its ownership interest under the Permit to U.S. Cable.

7. Pursuant to the Ordinance, Mark Twain has submitted an application to transfer its permit to U.S. Cable and U.S. Cable has submitted an application, and required documentation, to receive a Certificate and Acceptance Franchise.
8. Based on U.S. Cable's certified financial statement, U.S. Cable is a financially sound organization capable of delivering the services contemplated by the permit to construct and operate a cable system.
9. U.S. Cable must apply for a new franchise, under which the Permit is issued, prior to the existing franchise expiring in February 2000.

NOW THEREFORE, BE IT RESOLVED that after a public hearing, the subject application for change of ownership and transfer of the permit be and is granted and that U.S. Cable is further granted a Certificate and Acceptance Franchise subject to the following terms and conditions:

- A. That all transmission cable within the franchise area be underground unless existing pole structures are used.
- B. That all necessary easements and permits be obtained for extension along any public rights-of-way and any other area where they may be required.
- C. That any sites for associated equipment buildings be properly zoned pursuant to Code requirements.
- D. That the applicant submit written notice to the Land Use Office upon commencement of construction of structures and cable extensions. Upon completion of project, the applicant shall submit certification that project has meet all the County requirements.
- E. The service area is defined by the attached map, designated as Exhibit "A" and incorporated herein by reference.
- F. That the terms, including the expiration, of this Franchise shall be and remains the same as the Franchise permit granted to Southwest Cable Corporation, Inc., unless specifically modified by Ordinance No. 1993-8.
- G. That U.S. Cable is bound by and shall adhere to all the terms and conditions set forth in Ordinance No. 1993-8.



ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY THIS 9<sup>th</sup> DAY OF \_\_\_\_\_ FEBRUARY, 1999.

SANTA FE COUNTY  
BOARD OF COUNTY COMMISSIONERS

  
\_\_\_\_\_  
PAUL DURAN, CHAIR



  
\_\_\_\_\_  
Rebecca Bustamante  
County Clerk

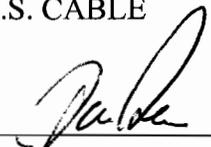
Approved as to legal form and sufficiency:

  
\_\_\_\_\_  
Denice Brown, County Attorney

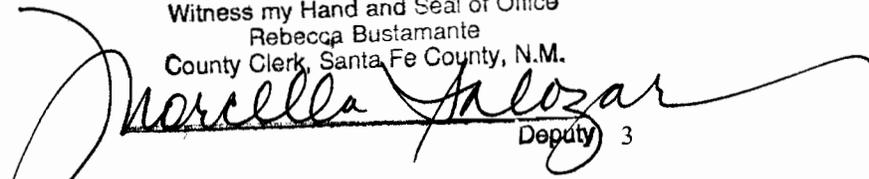


ACCEPTED BY:

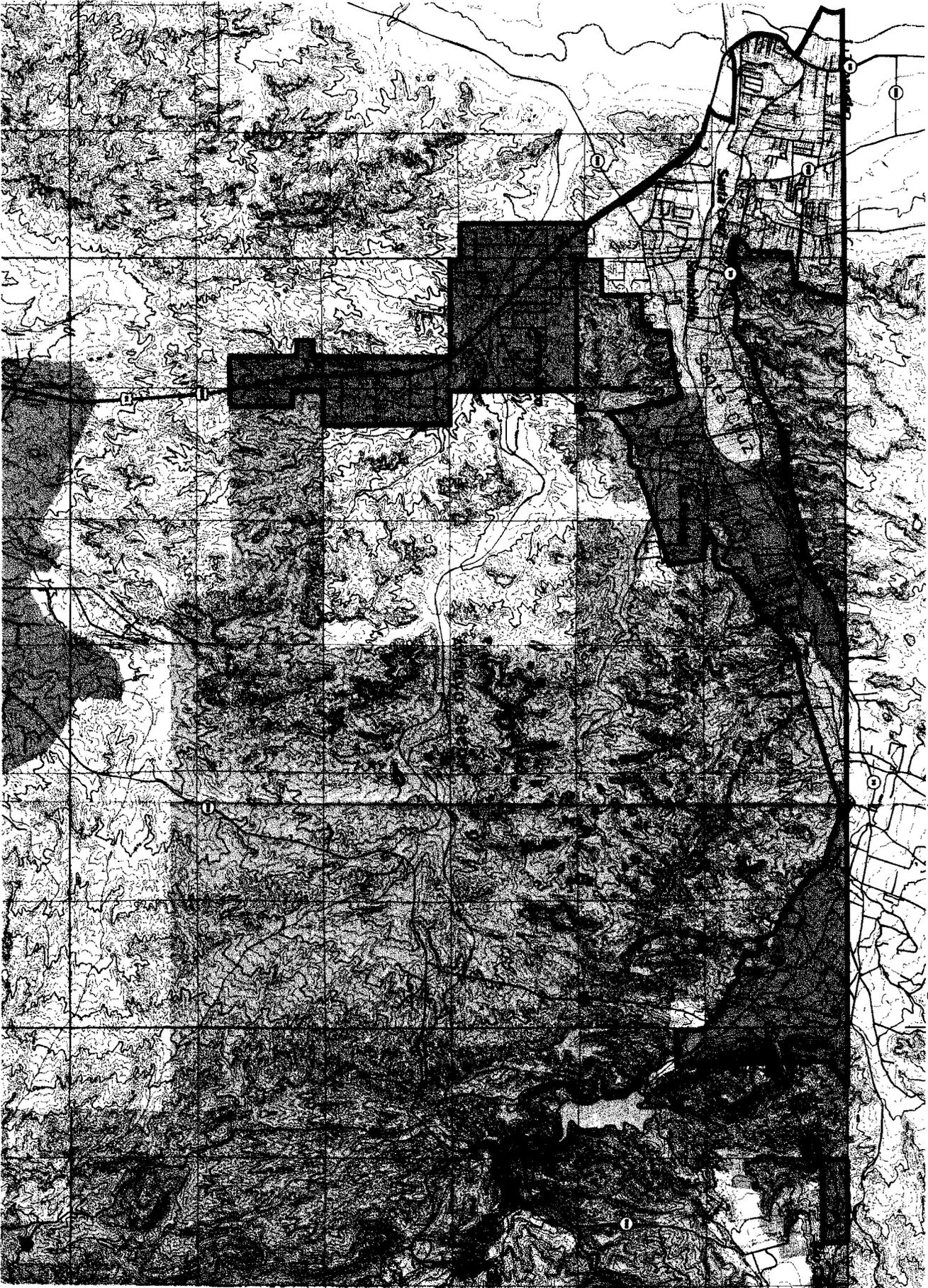
U.S. CABLE

  
\_\_\_\_\_  
By: *U.S. Cable of Coastal - Theresa et  
general partner  
U.S. Cable of Lake Park*

1067.713  
COUNTY OF SANTA FE )  
STATE OF NEW MEXICO ) SS  
I hereby certify that this instrument was filed  
for record on the 31 day of Mar A.D.  
19 99, at 8:23 o'clock A.m  
and was duly recorded in book 1020  
page 899-9024 of the records of  
Santa Fe County.

Witness my Hand and Seal of Office  
Rebecca Bustamante  
County Clerk, Santa Fe County, N.M.  
  
\_\_\_\_\_  
Norcella Alvarado  
Deputy 3

# U.S. Cable Franchise Area within Santa Fe County



REDUCE



U.S. GEOLOGICAL SURVEY

## PROMISSORY NOTE

\$10,000.00

March 9, 1999  
Santa Fe, New Mexico

The recitals are material to and made part of this document.

WHEREAS, in accordance with Ordinance No. 1982-5 and pursuant to Resolution No. 1989-46, Santa Fe County (hereinafter, "County") granted to Multimedia Development Corporation (hereinafter, "Multimedia") a permit to operate and maintain a cable television system in the County;

WHEREAS, Ordinance No. 1982-5 was superseded by Ordinance No. 1993-8;

WHEREAS, Section 21 of Ordinance No. 1982-5 and Section 19.A of Ordinance 1993-8 provides for the payment of three percent (3%) franchise fee/lease charge based on franchisee's (i.e., Multimedia's) annual gross revenues;

WHEREAS, Multimedia now desires to transfer its permit to operate and maintain a cable television system to Jones Communications of New Mexico (hereinafter, "Jones");

WHEREAS, Multimedia failed to collect the three percent franchise fee/lease charge from its customers and has failed to pay to the County the required three percent franchise fee/lease charge;

WHEREAS, the total franchise fees/lease charges due and owing the County by Multimedia is Thirty-nine Thousand Four Hundred Ten Dollars and Eleven Cents (\$39,410.11);

WHEREAS, Multimedia is operating at a loss with its liabilities exceeding its assets, as evidenced by documents provided by Multimedia to County;

WHEREAS, Multimedia is selling assets to pay debts but which debts it cannot pay in full, even with the liquidation of its assets, nor can it pay the full amount of franchise fees/lease charges it owes to the County and that it may be forced to file for bankruptcy to get relief from its debts;

WHEREAS, the County has determined that it is to its advantage and it is willing to accept a reduced payment of Ten Thousand Dollars (\$10,000.00) in lieu of and in total accord and satisfaction of the \$39,410.11 owed it by Multimedia.

NOW THEREFORE, the Parties agree as follows:

**SECTION 1  
TERMS OF THE NOTE**

MULTIMEDIA, 9500 Montgomery N.E., Suite 121, Albuquerque, New Mexico 87111, for value received, promises to pay to the order of the COUNTY OF SANTA FE, at 102 Grant Street, Santa Fe, New Mexico 87501, the sum of TEN THOUSAND DOLLARS (\$10,000.00) upon the sale of certain assets of Sierra Cablevision to Jones Intercable Inc., or on June 7, 1999, whichever is first occurring. If full payment of the principal is not made when due, interest shall begin accruing at the rate of ten percent (10%) annually.

**SECTION 2  
WAIVER OF PRESENTMENT, PROTEST and NOTICE OF DISHONOR**

Every maker, endorser, and guarantor hereof waives presentment, protest, demand, notice of nonpayment, notice of dishonor, notice of protest, and all other demands and notices with respect to this Note that might otherwise be required by law and any guaranty of this Note in the event this Note is not paid at maturity of this obligation, any extension or postponement of the time of payment or any other indulgence by the holder of this Note, any substitution, exchange or release of any collateral for this Note and/or the addition or release of any party primarily or secondarily liable hereunder may be made without notice to or the consent of any maker, endorser, or guarantor hereof.

**SECTION 3  
EFFECT OF WAIVER**

No delay or omission in the enforcement of this Note or of any guaranty hereof, shall operate as a waiver of the power or right, nor shall any single or partial exercise of any power or right preclude farther exercise of that power or right or affect the liability of any maker, endorser, or guarantor of this Note.

**SECTION 4  
RIGHTS TO BE CUMULATIVE**

The rights and remedies specified in this Note are cumulative and not exclusive of any rights and remedies that the County or Holder of this Note may otherwise possess.

**SECTION 5  
MODIFICATION OF NOTE**

No provision of this Note shall be modified except by a written instrument expressly referring to this Note and to the provision modified.

**SECTION 6**  
**NOTE BINDING ON ASSIGNNESS OF MAKER**

This Note and the provisions hereof are to be binding on the heirs, executors, administrators, assigns, or successors of Multimedia. The provisions of this Note shall continue in full force notwithstanding any change of a party to this Note, whether such change occurs through death, retirement, or otherwise.

**SECTION 7**  
**CHOICE OF LAW**

The provisions of this instrument are to be construed according to, and are to be governed by, the law of the State of New Mexico.

**SECTION 8**  
**ENFORCEMENT**

Multimedia agrees to pay, in addition to all other sums due hereunder, all costs and expenses of collection of this Note and/or enforcing the same, including reasonable attorney's fee, which shall not be less than ten percent (10%) of the total amount unpaid hereon at the time of collection and/or enforcement, should this Note be placed in the hands of an attorney for collection and/or enforcement, or is collected or enforced through bankruptcy, probate, or other judicial proceedings.

**SECTION 9**  
**ACCORD AND SATISFACTION**

Upon payment of the Ten Thousand Dollars by Multimedia to the County, this Note constitutes an accord and satisfaction of all claims of the County for franchise fees/lease charges under the permit issued to Multimedia pursuant to Resolution No. 1989-46 through March 31, 1999.

MULTIMEDIA DEVELOPMENT  
CORPORATION

By: Thor Mickelson  
Thor Mickelson, Secretary



## RELEASE

This Release is made effective this 30<sup>th</sup> day of March, 1999, by and between Multimedia Development Corporation ("MMDC") and the County of Sante Fe, New Mexico (the "County").

### Recitals

A. MMDC is the permittee under a permit granted by the County by way of Ordinance No. 1982-5, and superseded by Ordinance No. 1993-8, for the construction, operation and maintenance of a cable television system within the County (the "Permit"). The County asserts that, pursuant to Section 21 of the Permit, MMDC is required to pay a franchise fee to the County in an amount equal to three percent (3%) of MMDC's gross annual receipts.

B. In connection with MMDC's request of the County to consent to the transfer of the Permit to Jones Communications of New Mexico, Inc., the County further asserts that MMDC has underpaid the franchise fee in the amount of \$39,410.11.

C. MMDC and the County have subsequently reached an agreement in connection with the alleged underpayment of franchise fees during the term of the Permit.

### Agreement

NOW, THEREFORE, in consideration of the premises, mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Settlement Amount. Pursuant to the terms of a Promissory Note dated March 9, 1999, executed by MMDC and attached hereto as Exhibit A, MMDC shall pay to the County the total sum of ten thousand dollars (\$10,000) for the underpayment of franchise fees under the Permit. It is expressly understood and agreed that MMDC's payment to the County in the total amount of ten thousand dollars (\$10,000) represents full and complete satisfaction and compromise of any and all claims, actions, causes of action, controversies, demands, damages, debts, agreements, covenants, obligations, liabilities, expenses, costs, attorney's fees, offsets and sums of money that the County and its successors, assigns and agents had, have or may have of any kind whatsoever, whether arising out of law or equity, whether known or unknown, whether liquidated or unliquidated, whether absolute or contingent, whether presently accrued or to accrue hereafter whether direct or indirect, whether foreseen or unforeseen, arising out of or in any way related to the requirement of MMDC to pay franchise fees under the Permit.

2. Release. For and in consideration of the payment by MMDC in the amount of ten thousand dollars (\$10,000), the County, on behalf of itself and its respective successors, assigns, predecessors, shareholders, employees, officers, directors, parents, subsidiaries, affiliates and agents, forever releases and discharges MMDC, its parents, subsidiaries, affiliates, successors, predecessors, successors in interest, assigns, and its directors, officers, partners, employees and agents, from and against any and all claims, actions, causes of action, controversies, demands, damages, debts, agreements, covenants, obligations, liabilities, expenses, costs, attorney fees, offsets and sums of money demands, obligations, liabilities and causes of action arising out of, based upon, or in any way related to the requirement to pay past due franchise fees under the

Permit, including, without limitation, any claims of default or noncompliance relating to the payment, nonpayment or underpayment of franchise fees under the Permit for all periods of time prior to and including the date of this Release. The County hereby acknowledges and agrees that the payment of ten thousand dollars (\$10,000) is the only consideration for this Release, and that no other promises, guarantees, understandings, representations, warranties, covenants, undertakings, inducements or agreements not herein expressed, oral or written, was or has been made to the County.

3. No Admission. Payment by MMDC is made in compromise of a disputed claim and is not to be construed as an admission of liability on the part of MMDC, liability being expressly denied.

4. Entire Agreement. This Release contains the entire agreement between the parties in connection with the subject matter hereof and its terms are contractual, not a mere recital. The terms of this Release shall be binding upon MMDC and the County and each of their respective successors and assigns. This Release may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements among the parties.

5. Confidentiality. The terms and existence of this Release are confidential and are not to be disclosed by either party to any third party unless the information is required to be disclosed by either party hereto, or their respective affiliates, pursuant to a judicial or governmental requirement, instruction or order (provided that the party being required to divulge the information uses best efforts to provide the other party with sufficient notice so as to permit that party to contest such order), or to either party's respective attorneys and/or accountants who have an actual need to know the information contained in this Release.

6. Signatory Authority. The individual executing this Release on behalf of a party personally represents and warrants that s/he is authorized to execute this Release.

7. Choice of Law. This Release shall be governed by and construed in accordance with the laws of the State of New Mexico.

8. Amendments and Modifications. No amendment or modification of any provision of this Release shall be effective without the written agreement of each party hereto.

9. Counterparts. This Release may be executed in counterparts, and all such counterparts so executed shall together be deemed to constitute one final agreement if signed by all parties hereto, and each such counterpart shall be deemed to be an original.

10. Construction. The parties to this Release acknowledge that all of them have had the opportunity to contribute to its drafting and that, as a consequence, this Release should not be construed for or against them.

11. Severability. In the event that any provision of this Release conflicts with any applicable law, such conflict shall not affect the other provisions hereof that can be given effect without the conflicting provision, and to this end, the provisions hereof are declared to be severable.

12. Voluntary Action. By voluntarily executing this Release, the parties confirm their competence to understand this Release, and that they have relied on their own judgment in executing it.

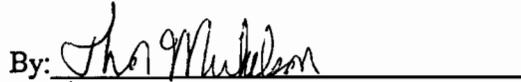
13. Headings. The headings of paragraphs in this Release are for convenience only. They form no part of this Release and are in no way to affect the interpretation of this Release.

IN WITNESS WHEREOF, the parties have executed this Release as their free and voluntary acts and deeds, effective as of the date first written above.

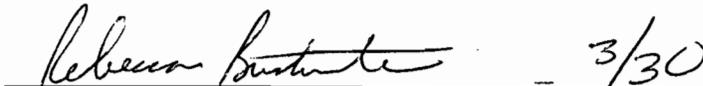
County of Sante Fe, New Mexico,

Multimedia Development Corporation,  
a New Mexico corporation

By:   
Paul Duran, Chairman

By: 

ATTEST:

 3/30  
Rebecca Bustamante, Santa Fe County Clerk



Approved as to form and legal sufficiency

  
Denice Brown, County Attorney