

**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."

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Section 3. Purpose

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

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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.

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B. Relocation at Request of Third Parties

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.

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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

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- 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.

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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

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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 if 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

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



[Signature]
REBECCA BUSTAMANTE, COUNTY CLERK

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

[Signature]
OFFICE OF THE COUNTY ATTORNEY



1115 816
COUNTY OF SANTA FE)
STATE OF NEW MEXICO) SS
I hereby certify that this instrument was filed
for record on the 10 day of May A.D.
20 00 at 8:00 o'clock a.m.
and was duly recorded in book 1764
page 705-738 of the records of
Santa Fe County.

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

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:

- (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.

APPENDIX D

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

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.