

ORDINANCE NO: 1993-8

AN ORDINANCE REGULATING CABLE TELEVISION
SERVICES WITHIN SANTA FE COUNTY

Establishing procedures for the issuance of certificates of authority to conduct the above services as a Franchisee in Santa Fe County; providing for indemnification; providing for the payment of a franchise for the use, rental and physical occupation of County and public rights of way; providing for audits and information; prescribing the term and effective date of consent; providing for forfeiture; providing for notice; providing for binding effect; providing that the ordinance be cumulative; providing for incorporation of other laws; providing for limiting transfers; providing for consent and acceptance; and providing for limiting severability.

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 to Cable Service companies doing business in the County of Santa Fe a franchise and/or lease 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 of Santa Fe; and fixing the terms and conditions thereof.

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 the tier of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals through a Cable System.
- B. "Board of County Commissioners" means the Board of County Commissioners of Santa Fe County, New Mexico.

- C. "Cable Act" means the Cable Communications Policy Act of 1984, as amended.
- D. "Cable Service" means (i) the one-way transmission to subscribers of video programming or other programming service, and (ii) subscriber interaction, if any, which is required for the selection of such video programming or any other lawful communication service.
- E. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communications equipment that is designed to provide Cable Service and other service to subscribers, through cables, telephone lines or similar conduit.
- F. "Company" is and refers to the franchisee who is granted a franchise to conduct a Cable Service business in the County.
- G. "County" means all lands within the County of Santa Fe, State of New Mexico, and outside of any municipality.
- H. "Facilities" are and include, but are 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. "FCC" means Federal Communications Commission, or any successor governmental entity thereto.
- J. "Franchise" means the initial authorization, or renewal thereof, issued by the County, whether such authorization is designated as a franchise, permit, license, lease reso-

lution, 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.

- K. "Gross Revenues" means the monthly Cable Service revenues received by Company from Subscribers of the Cable System within the County; provided, however, that such phrase shall not include (i) revenues received from any advertising carried on the Cable system; (ii) 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.
- L. "Person" means an individual, partnership, association, joint stock company, trust corporation, or government entity.
- 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 Way or Public place 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.

P. "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 Cable Service company desiring to provide or to continue to provide Cable Service within the County of Santa Fe must apply for and receive a Certificate and Acceptance of Franchise, and/or a Lease which shall be issued by the Board of County Commissioners, after a public hearing, provided that all requirements of this Ordinance are met, and 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 and/or a Lease from the County. Cable Service Companies franchised by the County on the effective date of this Ordinance are deemed to be in substantial compliance with this Ordinance and are eligible to furnish service throughout the County, subject to the provisions of Section 14.

Section 6. Standards of Service.

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 FCC 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 provide upon written request by the County, one Cable Service outlet, without charge, and furnish basic Cable Service, without charge, to public buildings 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, private, and parochial schools within the unincorporated limits of the County, provided that such schools are passed by the plant of the Company.

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

A. Location and maintenance.

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. County use of rights of way.

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 in transmission rights of way use, 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.

C. Zoning.

The Company will obtain proper and necessary zoning for any of the buildings, other facilities or any development that requires zoning approval.

D. Excavation and specific placement.

The Company shall have the right to excavate in, occupy and use any public places as described in its Certificate of Acceptance and Franchise with the County after obtaining appropriate excavation 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.

E. Restoration of property.

The Company shall reconstruct, replace or restore any public place, facilities, or other property disturbed by the Company, in a timely manner, without cost to the County, to a condition acceptable to the County consistent with 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.

F. Abandoned facilities.

The Company shall remove any and all abandoned facilities at Company expense within a reasonable period of time, upon a reasonable request by the County.

Section 8. Road Cut Permits.

- A. The Company shall obtain a Road Cut Permit from the County before excavating any road within the County.
- B. In the event of an emergency, a Road Cut Permit is not required to be obtained before the excavation of a County road, 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.

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, for the accommodation of other necessary utilities, 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 ten (10) days or as soon as practicable when ordered 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, 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 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 and charge the Company for such removal cost, then the County may, in 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.

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.

Section 10. Indemnification.

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, or alleged to have been 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 Company and 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, 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, but not those of the County, brought in connection therewith, and pay as aforesaid, any final judgment or judg-

ments 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 in addition to being reimbursed for any such judgment 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.

Section 11. Renewal of Franchise.

The Company shall have the right to seek renewal of a Franchise granted under this Ordinance. Any proceedings undertaken by the Company that relate to the renewal of the Company's Franchise shall be governed by and comply with the provisions of Cable Act, Section 626 (as such existed as of the effective date of the Cable Act), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal law.

Section 12. Unauthorized Reception.

In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any person, firm, or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the Cable Sys-

tem without the express consent of the Company. Further, without the express consent of Company, it shall be a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part of the Cable System or any means of receiving Cable Service or other services provided thereto.

Section 13. Termination and Expiration.

A. 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 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, it shall notify Company in writing of the exact nature of the alleged noncompliance.

C. Company's Right to Cure or Respond.

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

D. Termination Notice.

If the Company fails to respond to the notice or to take curative steps as described above for a period of thirty (30) days after the Company has received the notice described above, then the County shall hold a public hearing as set forth in subsection E; provided, however, that if the Company a) within five (5) working days of receipt of the written notice submits to the County a Schedule of Compliance outlining the steps to remedy or correct the problem within thirty (30) days of receipt of the notice, and b) commences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then 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.

E. Public Hearing.

The termination set forth in this subsection, shall be declared 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, which notice shall be paid for by the Company.

F. Board Decision.

The Board of County Commissioners, after full public hearing, may in its discretion 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 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.

G. 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.

H. Unforeseen Events.

The Company shall not be held in default or noncompliance with any provision of this Ordinance, nor suffer any en-

forcement or penalty relating thereto, where such noncompliance or default is caused by strikes, 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 and further provided that the Company is authorized to make occasional emergency extensions so long as the County is given notice thereof as soon as practicable.

The County may, for good cause, conduct a public hearing on the Company's extension and may impose conditions on the extension or may for good cause established, deny the extension when the extension would adversely affect the health, safety and welfare of the residents of Santa Fe County, or where there are other circumstances to justify denial of the extension.

Section 15. Notice.

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

COUNTY MANAGER
P.O. Box 276
Santa Fe, New Mexico 87504

With a copy to:

COUNTY ATTORNEY
P.O. Box 276
Santa Fe, New Mexico 87504

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. 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 Franchise and/or Lease. The County will not unreasonably withhold approval of a transfer of interest by the Company to a successor. Nothing in this Ordinance shall prohibit Companies from leasing channel space, as required by federal law.

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.

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 conduct a Cable Service in Santa Fe County.

- B. Any Franchise, and the rights, privileges and authority granted hereunder, upon receipt of all necessary approvals, shall take effect on and be in force from the effective date of this Ordinance and upon the issuance of a Certificate and Acceptance of Franchise and shall continue in effect, for a period of twenty (20) years pursuant to this Ordinance.
- C. Any Company providing Cable Services in the County at the date of adoption of this Ordinance will be granted a Certificate of Acceptance and Franchise for its existing service area upon application therefor.

Section 19. Franchise Fee and Reports.

A. Franchise Fee.

The Company agrees to pay the County a franchise fee/lease charge for the use by of the streets and other public places within the boundaries of the County. All Companies doing business in the County shall pay to the County a franchise fee/lease charge in the amount of three percent (3%) of their annual gross revenue. The franchise fee/lease charge 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. 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.

C. 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 from the Finance Department, 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.

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 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.

Section 21. No Waiver.

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.

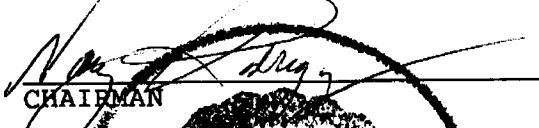
If any of these sections, subsections, sentences, clauses or phrases of this Ordinance are for any reason found to be invalid or unconstitutional by a Court of competent jurisdiction or by any federal or state regulatory authority having jurisdiction thereof, the validity of the remaining portions of 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. Repeal.

The following Santa Fe County Ordinance is hereby repealed:
1982-5.

PASSED, APPROVED AND ADOPTED, THIS 12th DAY OF October, 1993.

SANTA FE COUNTY BOARD OF COUNTY COMMISSIONERS


CHAIRMAN

ATTEST:


JONA G. AR... COUNTY CLERK

978298

APPROVED AS TO FORM AND LEGAL SUFFICIENCY
TERRENCE P. BRENNAN,

Terrence P. Brennan
SANTA FE COUNTY ATTORNEY

833785

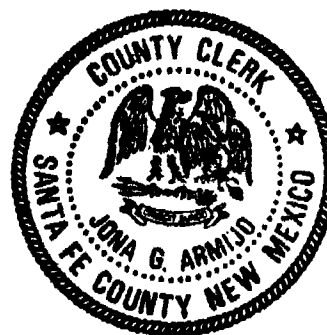
COUNTY OF SANTA FE)
STATE OF NEW MEXICO)
I hereby certify that this instrument was filed
for record on the 13 day of Oct A.D.
19 93, at 4:15 o'clock P m.
and was duly recorded in book 978,
page 278-298 of the records of
Santa Fe County.

Witness my Hand and Seal of Office

Jona G. Armijo

County Clerk, Santa Fe County, N.M.

Esther L. Antonio
Deputy



REFER TO RESOLUTION #1999-28

**RESOLUTION GRANTING A CERTIFICATE AND
ACCEPTANCE OF FRANCHISE TO JONES
COMMUNICATIONS OF NEW MEXICO, INC. TO
OPERATE A CABLE TELEVISION SYSTEM WITHIN THE
EDGEWOOD, CEDAR GROVE AND STANLEY AREAS OF
SANTA FE COUNTY AND APPROVING THE TRANSFER
OF A CABLE TELEVISION FRANCHISE FROM
MULTIMEDIA DEVELOPMENT CORPORATION TO
JONES COMMUNICATIONS OF NEW MEXICO, INC.**

ALSO REFER TO ORDINANCE #1982-5