

I hereby certify that this instrument
was filed for record on the 30th
day of March, A.D., 1997
at 8:35 o'clock A.M. and is
recorded in book 234 of the recs
of 3302-4
at page 3302-4

With my hand and seal of of
John D. Thomas
COUNTY CLERK, GRANT CO., N.
John D. Thomas Dep.

ORDINANCE NO. 97-03-27-C

COUNTY OF GRANT, NEW MEXICO

AN ORDINANCE GRANTING CERTAIN RIGHTS AND PRIVILEGES
TO THE U.S. WEST COMMUNICATIONS GROUP,
ITS SUBSIDIARIES, SUCCESSORS AND ASSIGNS.

BE IT ORDAINED by the Board of County Commissioners of the
County of Grant, State of New Mexico:

SECTION 1. GRANT OF AUTHORITY. There is hereby granted by the Board of County Commissioners of the County of Grant, ("County"), to U.S. West Communications Group, its subsidiaries, successors in interest and assigns, ("USW"), a non-exclusive right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now in use or dedicated, and all extensions thereof, and additions thereto, in said County, poles, wires, cables, underground conduits, manholes and other communications fixtures necessary or proper ("Plant") for the maintenance, operations and provision of telecommunications services in said County; provided, however, that no poles or other fixtures shall be placed where the same will interfere with any electric light, water hydrant, or water main, and shall be placed in such a manner as to cause a minimum interference with the rights or reasonable convenience of property owners who adjoin any of said streets, alleys or public ways and places, and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb lines, and those placed in alleys shall be placed close to the line of the lots abutting on said alley and then in such a manner as not to interfere with the usual travel on said streets, alleys and/or public rights-of-ways, and that such Plant shall comply with the County's reasonable exercise of police powers for public health and safety and welfare in all regards.

SECTION 2. USE OF SYSTEM BY COUNTY. The County shall have the privilege, during the life of this franchise, free of charge, where aerial construction exists, of maintaining upon the poles of USW within the County cable, wire and pole fixtures necessary for a police and fire alarm, emergency communications, and/or government communication system, providing such cable, wires and fixtures be installed and maintained under the supervision of USW. The County, in its use and maintenance of such cables, wires and

fixtures, shall at all times comply with the rules and regulations of USW, and the provisions of the latest edition of the National Electrical Safety Code, so that there may be minimum danger of contact or conflict between the cables, wires and fixtures of USW and the wires and fixtures of the County. It is further agreed, in order to avoid danger to life and property, that the above privilege is granted on condition that the County shall be solely responsible for all injury to persons or damage to property arising out of the construction or maintenance of said County cables, wires and/or fixtures, or arising out of the attachment, maintenance or removal of said County cables, wires and/or fixtures to the poles of USW. In cases of rearrangement of USW's plant or removal of poles or fixtures, the County shall care for or remove its own fixtures, and shall save USW harmless from any damage or injury to persons or property, including property of the County, arising out of the removal or construction of said County cables, wires and/or other fixtures.

SECTION 3. USW LIABILITY. USW shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the County and to such reasonable regulation as the County may, by resolution or ordinance, hereafter provide. It is expressly understood and agreed by and between USW and the County that said USW shall save the County harmless from all loss sustained by the County on account of any suit, judgment, execution, claim or demand whatsoever, resulting from negligence on the part of said USW in the construction or maintenance of its telecommunications system and/or any related Open Video System or cable system within the County. The County shall notify USW's representative within 15 days after the presentation of any claim or demand either by suit or otherwise made against the County on account of any negligence as aforesaid on the part of USW.

SECTION 4. PRESERVATION OF RIGHTS-OF-WAY. In case of any disturbance of pavement, sidewalk, driveway or other surfacing in the public rights-of-way, USW shall, at its own cost and expense and in a manner entirely satisfactory to the County, and subject to the jurisdiction of the County, replace and restore all paving, sidewalk, driveway or surface of any streets or other rights-of-way spaces disturbed by USW construction, operations or maintenance, to as good a condition as before said work was commenced, including removal and clean-up of all waste-related products and limitation of any tree-cutting to only that necessary, to preserve the health and beauty of all such trees in the County.

Section 5. CULTURAL ARTIFACTS PROCEDURES. In the case of any cultural resources and/or artifacts found during excavation or alteration of County public rights-of-way, the County shall be promptly notified by USW. USW shall be responsible for the protection from damage of all identified cultural resources within the public rights-of-way area which may be affected by its actions.

In addition, USW shall be liable for all damage or injury to the identified cultural resources caused by its actions. USW shall immediately notify the County if any damage occurs to any cultural resource and immediately halt work in the area in which damage has occurred until USW has been authorized by the County to proceed.

SECTION 6. RELOCATION OF PLANT. Any person or corporation desiring to move a building or other structure along the streets and/or public rights-of-ways of the County and which shall interfere with, or require alteration or movement of, the poles, cables, wires or fixtures of USW, shall first give notice to Grant County and to USW, and shall pay Grant County or USW a sum sufficient to cover the expense and damage incident to the cutting, altering and moving of said cables, wires or fixtures prior to receiving a County permit for such. USW or the County, upon presentation of said permit, shall within a reasonable time thereafter provide for and do such cutting, altering and moving of said cables, wires and fixtures as may be necessary to allow for moving of buildings or structures, or other unusual use of the streets and/or public rights-of-ways of the County.

SECTION 7. RIGHTS-OF-WAY MANAGEMENT FEE. As consideration for this grant of authority for the construction, placement, and operation of its telecommunications Plant in the public rights-of-way in Grant County, USW shall pay to the County an amount equal to five percent (5%) of the gross revenues, exclusive of all federal and state excise taxes, received for the sale of telecommunications services within the County of Grant in semi-annual payments within sixty (60) days after January 1 and July 1 of each year throughout the term of this franchise in exchange for the regulated use and proper management of the Grant County public rights-of-way. Such payments may be offset, however, in contracts or agreements for in-kind provision of telecommunications services; construction, installation or use of equipment or fiber plant; and/or dedicated capacity of equipment or fiber plant; to be valued at wholesale cost on the basis of the 1996 Federal Communications Commission's ("FCC") Long-Run Incremental Costs ("LRIC") rules.

SECTION 8. RULE COMPLIANCE AND INSPECTION. The County shall have the right, at all reasonable times, to inspect and/or audit the books and records of USW pertaining to USW's gross revenues received from services provided within the limits of the County of Grant, and USW shall be in compliance with all relevant rules, decisions and orders of the FCC, State Corporation Commission ("SCC") and its successor, related State agencies and the Grant County Commission.

SECTION 9. COUNTY PAYMENT FOR SERVICES. The County agrees to pay USW in accordance with standard tariff schedules the rates and charges for all telecommunications services rendered by USW to the County, except the cost, value or rental of attachments made by the

County to the poles of USW provided in Section 2 hereof and any offset of In-Kind Allowances for franchise management payments agreed to under Section 7 hereof.

SECTION 10. RESERVATION OF RIGHTS. It is understood and agreed that the adoption and acceptance of this franchise by Grant County and USW do not constitute a waiver or relinquishment of any rights or privileges Grant County or USW may have with respect of the streets and public rights-of-way within the County by virtue of the Constitution and statutes of the State of New Mexico.

SECTION 11. TERM OF FRANCHISE. The franchise and rights herein granted shall continue in force and effect through a term of ten (10) years from the effective date of this franchise.

SECTION 12. EFFECTIVE DATES. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage and approval; provided USW, within thirty (30) days, shall have filed with the County Clerk of the County of Grant an unconditional acceptance thereof. Within ten (10) days after the filing of said acceptance, the County Clerk shall acknowledge in writing the receipt of said acceptance. Upon acceptance of the franchise granted herein, the County shall then provide USW with a full accounting of the franchise Review Fees due, as required under Ordinance 97-03-27-B. Thereupon, all expenses for the review of the USW's performance and procedures related to its application for a telecommunications franchise (which application commenced with the January 12, 1996 letter of intent by USW to Grant County, New Mexico), shall cease.

Section 13. ACTION TO RECOVER DAMAGES. Actions to recover damages under this Ordinance shall be brought in the name of the County of Grant of New Mexico in the District Court of Grant County.

Section 14. SEVERABILITY CLAUSE. If any of the sections, subsections, sentences, clauses or phrases of the Ordinance are for any reason held to be unconstitutional or invalid, the validity of the remaining portions of this Ordinance shall not be thereby affected since it is the express intent of the County Commission to pass each section, phrase, paragraph and word separately.

Section 15. PUBLIC NOTIFICATION REQUIREMENTS. Notice of Intent to adopt this Ordinance was published in a newspaper of general circulation not less than two weeks prior to its adoption at a meeting, called and held in accordance with Section 3-17-3, NMSA 1978 Comp. During the period of publication, a copy of this Ordinance was available for public review at the Grant County Clerk's Office.

APPROVED AND ADOPTED at a hearing in the regular meeting of the Board of County Commissioners of the County of Grant, State of New Mexico, this 27th day of March, 1997.

Manuel T. Serna
Manuel T. Serna, Chairman

Zeke Santa Maria
Zeke Santa Maria, Member

Carl W. Scholl
Carl W. Scholl, Member

ATTEST:

Gabriel Ramos
Gabriel Ramos, County Clerk