

NEW MEXICO BOOK# 252--

City of Grant  
I hereby certify that this instrument  
filed for record on the 3 of March A.D. 1099  
1:57 o'clock P.M. and duly  
in book 252 of the records  
mmac.

3811

ORDINANCE NO. 99-02-25

COUNTY OF GRANT, NEW MEXICO

Attest my hand and seal of office

John D. M. Jones  
COUNTY CLERK GRANT CO., N.M.  
Supt. of Schools  
Deputy

AN ORDINANCE OF GRANT COUNTY ("COUNTY")  
GRANTING A FRANCHISE TO CENTURY NEW MEXICO  
CABLE TELEVISION CORP. d/b/a CENTURY  
COMMUNICATIONS ("GRANTEE") TO OWN, OPERATE,  
CONSTRUCT AND MAINTAIN A CABLE TELEVISION SYSTEM  
IN GRANT COUNTY, NEW MEXICO, SETTING FORTH  
CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE,  
AND PROVIDING FOR REGULATIONS AND USE OF  
SAID SYSTEM BY SAID COUNTY.

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

SECTION 1. SHORT TITLE. This Ordinance shall be known as "The Grant County Cable Television Franchise Ordinance."

SECTION 2. DEFINITIONS. The following terms, phrases, words, abbreviations and their derivations shall have the meaning herein given. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined shall be given their common and ordinary meaning.

A. BASIC CABLE SERVICE or BASIC SERVICE means any service tier which includes the retransmission of local broadcast television signals.

B. CABLE ACT means the Cable Communications Policy Act of 1984, as amended.

C. CABLE CONSUMER PROTECTION ACT means the Cable Television Consumer Protection and Competition Act of 1992.

D. 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.

E. 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 one (1) or more television broadcast stations; (B) a facility that serves subscribers without using any Public Rights-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of The Communications Act of 1934, as amended, except that such facility shall be considered a cable system (other than for purposes of Section 621(c) of the Cable Communications Policy Act, as amended) 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; (D) an open video system that complies with Section 653 of the Cable Communications Policy Act of 1984 as amended; (E) any facilities of any electric utility used solely for operating its electric utility systems.

F. COUNTY means Grant County, New Mexico and all territory within its present and future boundaries and including any area over which the County exercises jurisdiction.

G. EFFECTIVE DATE shall mean the date the County's grant of authority becomes effective, as provided in accordance with Section 5.

H. FCC is the Federal Communications Commission, or any successor governmental entity thereto.

I. FRANCHISE shall mean this document, all exhibits thereto, all matters incorporated by reference and all amendments thereto, which collectively authorize construction and operation of the Cable System for the purpose of offering Cable Service to Subscribers, and not the exercise of police power to regulate such Public Rights-of-Way related to the design, construction, operation and maintenance of a plant, facility or system for the public health, safety and convenience as defined by State law and the Telecommunications Act of 1996.

J. GRANTEE means the person or entity to whom authority is granted by the County to operate a Cable System within the County.

K. GROSS REVENUES shall mean all cash, credits, property of any kind or nature, or other consideration received directly or

indirectly by the Grantee, its affiliates, subsidiaries, parent corporation and/or any person in which the Grantee has a financial interest in, for or attributable to the sale or exchange of Cable Service by Grantee within the County or in any way received by Grantee from the operation of its Cable System for providing Cable Service within the County, including, but not limited to, all basic, premium, interactive, and pay-per-view services; home shopping revenue, non-recurring services including all equipment and installation revenue; advertising sales; and leased channel revenues; without any deduction whatsoever. Gross Revenues shall not include converter deposits, refunds to subscribers by Grantee, uncollectible accounts, franchise fees or receipt from sale or use taxes or any other tax that Grantee collects on behalf of any taxing authority or any monies paid to Grantee which Grantee is required to pay to an unaffiliated third party in full for promotional activities.

L. INSTITUTIONAL NETWORK means a communication network of dedicated capacity which is constructed and/or operated by the Grantee in accordance with the terms provided herein for use by the County and Surrounding Communities and which is generally available only to subscribers who are not residential subscribers, but may be used to originate signals for transmission to a downstream subscriber distribution network and for the provision of non-entertainment and non-commercial services to schools, public agencies or other non-profit agencies for use in connection with the ongoing operations of such institutions.

M. INSTITUTIONAL NETWORK COMMUNICATIONS SIGNAL means electronic information or messages of the user's choosing, transmitted between or among points specified by the user within the capability of the Institutional Network described herein, without change in the form or content of the information as originated and intended to be received.

N. INSTITUTIONAL USER means a recipient Municipal, County or public institution or a private, non-profit institution identified by the County or Surrounding Communities in the "Master Operating Agreement" to manage PEG Access.

O. MASTER OPERATING AGREEMENT means an agreement between one (1) or more franchising authorities and public or private, non-profit institutions to manage PEG Access.

P. PEG ACCESS shall mean channel capacity on the institutional or residential networks for public, educational or

governmental use as contemplated by the Cable Communications Policy Act of 1984 as amended.

Q. PUBLIC PLACE means all sidewalks, alleys or other public ways and any and all public sources, spaces, grounds and buildings of the County within the County limits.

R. PUBLIC RIGHTS-OF-WAY means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive or other public way, now laid out or dedicated, and all extensions thereof and additions thereto, within the County. Public Rights-of-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 use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the County and the Grantee to the use thereof for the purposes of installing or transmitting Grantee's Cable Service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, compliances, and/or attachments, as may be ordinarily necessary and pertinent to the Cable System.

S. SERVICE AREA means the boundaries of the County as those boundaries may be added to or reduced by annexation or other legal means.

T. SURROUNDING COMMUNITIES means the jurisdictions of the Town of Silver City, Bayard, Santa Clara and Hurley and any other local government jurisdiction served by the Grant County Cable System.

U. SUBSCRIBER means any authorized recipient of Cable Services of the Grantee.

V. THE TELECOMMUNICATIONS ACT means the Telecommunications Act of 1996.

**SECTION 3. GRANT OF FRANCHISE.** The County hereby grants to Grantee, the authority to construct, install, operate and maintain a Cable System in, upon, along, across, above, over and under the Public Rights-of-Way within the entire territorial limits of the County subject to local regulation of such by the County as set forth in this franchise agreement.

**SECTION 4. TERM OF FRANCHISE.** The grant of authority to operate a Cable System pursuant to this Ordinance shall expire thirteen (13) years from the Effective Date of this agreement

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unless lawfully terminated in accordance with its terms or other applicable law.

SECTION 5. EFFECTIVE DATE. The Franchise shall become effective within sixty (60) days after adoption and publication of this Ordinance by the County, provided that this Franchise shall not become effective until all conditions precedent are satisfied. For all conditions precedent to be satisfied, the Grantee must, within sixty (60) days of adoption of this Ordinance by the County Commission: (a) file with the County Manager, its written, unconditional acceptance of this Franchise, and (b) provide all warranties, proofs, and other documents required by the Franchise, including bearing the entire expense of publishing this Ordinance, regardless of acceptance. If the Grantee fails to satisfy these precedent conditions, the Franchise shall be void.

SECTION 6. EFFECT OF ACCEPTANCE. By accepting the Franchise, Grantee: (a) acknowledges and accepts the County's legal right to issue and enforce the Franchise; (b) accepts and agrees to each and every provision contained herein; and (c) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and agrees it will not raise any claim or defense to the contrary.

SECTION 7. RIGHTS RESERVED. The County reserves its rights under its lawful police powers, except insofar as this Franchise shall be read to limit those rights. The County, among other things, does not waive requirements of various codes, ordinances, and resolutions, including zoning codes, codes regarding building permits and fees, or time or manner of construction insofar as such codes, ordinances and resolutions are non-discriminatory and generally applicable. Any fees or charges paid, so long as generally applicable and not unreasonably discriminatory, shall be paid in addition to the franchise fee required under this Franchise.

SECTION 8. NON-EXCLUSIVE GRANT. The Grantee's right to use and occupy the Public Rights-of-Way for the purpose of maintaining a Cable System shall not be exclusive. Any additional grants of franchises by the County for cable television service shall be on a competitively neutral and non-discriminatory basis for any such additional franchisees, specifically, any such additional grants shall not be on terms more favorable or less burdensome to any such additional franchisees than the terms of this Franchise.

SECTION 9. REBUILD/UPGRADE.

## A. Subscriber Network

## 1. System Rebuild/Upgrade

## a. Project Description:

(1) Within 24 months of the effective date of this Franchise, Grantee will construct a minimum 60 channel capacity Cable System in the County.

(2) Grantee will upgrade the system using coaxial and fiber optic cable as needed and in a manner which will ensure that the system will be flexible and adaptable to future technological development, including but not limited to digital compression, without significant deterioration in the signal quality. Grantee will utilize designs such as, but not limited to, Cable Area Network (CAN) in which the system is constructed using basic tree and branch coaxial design with a fiber following the trunk and fiber to the Service Area (FSA).

(3) The entire system will have at minimum, a full 5-30 MHZ return capability. Return paths will be activated on an as-needed basis by the addition of return modules.

(3) The headend will use a backup generator for continuous headend operation. Grantee will use a minimum two (2) hour backup power supply on any fiber nodes and critical trunk areas.

## b. Project Schedule.

(1) The date the system upgrade project will begin will be no more than three (3) months from the Effective Date of this Franchise absent delays caused by utility make-ready work and easement accessibility which are outside the control of the Grantee. Design and mapping of the system and subscriber conversion to the system are part of the upgrade project.

(2) The date such upgrade project construction will be commenced will be not more than twelve (12) months from the Effective Date of the Franchise absent delays caused by utility make-ready work and easement accessibility which are outside the control of the Grantee.

(3) The date fifty percent (50%) of such upgrade project will be completed will be no more than eighteen (18) months from the Effective Date of the Franchise absent delays caused by utility make-ready work and easement accessibility which are outside the control of the Grantee.

(4) The date one hundred percent (100%) construction of such upgrade project will be completed will be no more than twenty-four (24) months from the Effective Date of the Franchise absent delays caused by utility make-ready work and easement accessibility which are outside the control of the Grantee.

(5) Grantee shall make arrangements and requests for utility make-ready work and easement accessibility within thirty (30) days of completion of design and mapping such that any delays caused by utility make-ready work and easement accessibility cannot be attributed to Grantee. Grantee shall also notify the County of any failure to meet project schedule deadlines as defined in this Section.

(6) Grantee shall provide the County with FCC required proof of performance test results for the upgraded system upon completion of construction.

c. Construction Plans and Drawings.

(1) Before the Grantee may conduct underground work involving excavation, new construction or major relocation work in any Rights-of-Way or Public Place, (a) the Grantee shall first notify the County and shall comply with any special conditions relating to location, scheduling, coordination and public safety and (b) the Grantee shall file maps and drawings with the County Engineer showing the location of any construction or extension of its facilities and services in any Rights-of-Way or Public Place of the County. For multi-conduit duct banks, maps and drawings shall show overall size, material and configuration of the duct bank. As further set out in Sub-Section c(3), upon request from the County the Grantee shall provide the County with updates of the maps and drawings showing the location of any new construction, public service drops, extension or relocation of its facilities. All materials provided pursuant to this section shall be kept confidential to the fullest extent possible under the law.

(2) Such proposed construction work to be done by the Grantee shall be performed in a safe manner subject to the approval of the County and in accordance with applicable federal and State laws and County ordinances, regulations and permitting

requirements now or hereinafter existing, as they may be amended from time to time of the County, and requiring a Sidewalk, Drivepad, Curb and Gutter Bond securing payment of permit fees and evidence of at least One Million Dollars (\$1,000,000.00) in the requisite insurance coverage(s).

(3) Grantee shall maintain on file maps and operational data pertaining to its operations in the County. The County may inspect the maps and data at any time during business hours. Upon request of the County, the Grantee shall furnish to the County as soon as practicable without charge, current maps either in a "hard copy" printed form or in the County's ARC/INFO Export.E00 or DXF format or compatible data base, showing the location and dimension of any facilities, but not other proprietary information, used in operating the Grantee's facilities within the Service Area.

d. Construction Tests and Acceptance. Standard admission, functional, acceptance and operational tests shall be performed at appropriate times during the construction process. Such tests may include, but not be limited to: OTDR traces of fiber-optic cables after installation with cable number and cross-reference to the reel number; TDR traces of all coaxial cable sections with distances, cable numbers and information on location, origination and destination; and setup data of fiber-optic transmitters and fiber-node receivers for every forward and return fiber link. Copies of tests for swept response pictures of all fiber and coaxial branches in the forward directions and as taken at the end-of-the line locations; swept response pictures of all coaxial and fiber branches in the return direction and as taken at the headend; and documentation of all loop and switching tests with identification of transmit, receive location and receive levels measured shall be made available to the County's Engineer or designated representative and the Surrounding Communities simultaneously upon completion of the upgrade. All tests shall be made available for inspection, along with at least one on-site inspection conducted with said Engineer or a representative designated by County, the Surrounding Communities and Grantee's technical representative, no later than forty-five (45) days after the completion of construction.

e. Emergency Alert System (EAS). Upon completion of the upgrade, the system facilities shall be capable of transmitting emergency alert signals to all subscribers, in the form of an audio override to permit the County and Surrounding Communities to interrupt and cablecast an audio message on all channels simultaneously and video message information on one channel in the

event of disaster or public emergency. Such emergency messages will be initiated from any touch tone phone with an access code. The County and Surrounding Communities shall select persons to be provided with access codes and shall notify Grantee of the names of such persons upon selection. The County and Surrounding Communities, or their designated representative, will periodically test the Emergency Alert System. Such testing shall take place between the hours of 1 a.m. and 5 a.m. The County and Surrounding Communities will give Grantee prior notice of each such test. Grantee shall comply with FCC rules regarding a national Emergency Alert System as of the implementation date of such rules. In the event the provisions of this Agreement create a conflict with FCC rules, FCC rules shall take precedence. Grantee's Emergency Alert System shall be coordinated with any applicable State and local regulations consistent with federal requirements. The County shall indemnify and hold Grantee harmless from any claim or liability from or out of the County's negligent use of the Emergency Alert System. In the case of any emergency or disaster, the Grantee shall, upon request of the County, make its facilities available to the County for emergency use.

f. Completion of Construction. Construction shall be deemed completed upon agreement, after a coordinated physical inspection of the completed plant, by the County Manager, the Surrounding Communities and Grantee's representative.

#### B. Institutional Network.

As a condition for the use of the Public Rights-of-Way, upon request, and at no cost to the City, Grantee shall construct, install, and provide for use by the County in the Institutional Network of dedicated capacity, as previously defined, fiber to the locations indicated in Exhibit A with electronics for return capability from one location ("Origination Locations"). In addition, Grantee shall install fiber to any other additional locations ("Origination Locations") within the Service Area added to the Institutional Network by the County at the County's expense, to include construction, installation, equipment and maintenance. Grantee shall not charge the County or other Institutional Users which use the Institutional Network in a manner specified in the Master Operating Agreement, for non-profit producing video programming distribution or other educational or governmental uses. The Grantee shall be responsible for all costs associated with the installation and maintenance of fiber to the Origination Locations listed in Exhibit A. The Institutional Users shall be responsible for all other costs associated with the installation, maintenance and operation of the Institutional Network, including, without

limitation, the purchase, installation and maintenance of end-user electronic equipment, routers, switches, modulators, demodulators, and the like.

Upon request, the fiber to the locations indicated in Exhibit A for the Institutional Network shall be completed during the upgrade in conjunction with the adjoining portions of the system.

SECTION 10. AREA OF OPERATION.

A. Density Requirement in Franchise Territory. Subsequent to completion of the upgrade, Grantee shall offer Cable Service within the Service Area to all areas which have a density of at least twenty (20) homes per cable mile measured from Grantee's existing distribution system and to all areas with less than twenty (20) homes per cable mile, as specified in this Section.

B. Line Extensions and Annexed Areas. Subsequent to completion of the upgrade in annexed areas or in sparse areas with less than twenty (20) homes per proposed mile within the Service Area as they exist upon the date of the request for Cable Service, Grantee shall offer a cost-sharing arrangement with residents requesting service. A home will be counted for this purpose if its lot fronts a public right-of-way. The cost-sharing arrangement shall consist of the following:

1. On the request of a subscriber desiring service, Grantee shall prepare, at its cost, an engineering survey and cost analysis to determine the cost of the plant extension required to provide service to the subscriber from the closest point on the Cable System. The estimate will be provided to the subscriber and Grantee may require the subscriber to pay its share of the costs of that construction before commencing construction.

2. The cost of construction shall be allocated based on the following formula: If a request for extension of service into a residential area requires the construction of cable plant which does not pass at least twenty (20) homes per mile, Grantee and subscribers will each bear their proportionate share of construction costs. For example, if there are ten (10) dwelling units per mile, Grantee's share will equal one-half ( $\frac{1}{2}$ ) of the construction cost. The remaining cost will be shared equally by each person requesting service. This line extension formula shall also be applied to a portion of a mile meeting proportionate density requirements. For example, if there are ten (10) dwelling units per one-half mile, Grantee shall construct the plant without a capital contribution from potential subscribers.

3. Should additional dwelling units be constructed, or additional subscribers begin to take service in an area with density less than twenty (20) dwelling units per mile, subscribers utilizing the cost-sharing plan for extension shall be reimbursed pro-rata for their contribution or a proportional share thereof. In such case, the pro-rata shares shall be recalculated and all subscribers who made a capital contribution shall receive pro-rata refunds, but no subscriber is entitled to more than was actually contributed. Grantee may require any new subscriber to pay an appropriate pro-rata share of the cost of the extension where the density requirement is not satisfied, but Grantee must return an appropriate portion of any capital contribution to subscribers who make such contributions regardless of whether Grantee seeks to recover the costs from such subscriber. For example, where one person requested an extension and the extension passed ten (10) homes per mile, the subscriber could be required to pay one-half the cost of extension. If a second resident requested service, Grantee could charge that resident 25% of the cost of the extension, but in any case would remit 25% of the cost of the extension to the subscriber who made the original contribution. At such time as there are said twenty (20) potential subscribers per mile, the contributing subscribers shall have received their pro-rata share of construction costs. In any event, at the end of three (3) years from the completion of an extension project, the subscribers are no longer eligible for return of their capital contributions, and the amounts paid in construction costs will be credited to the account of Grantee.

4. The average cost of line extension shall be recalculated annually and based upon then-current costs for labor and materials.

#### SECTION 11. CONDITIONS ON USE OF STREETS, ROADS AND ALLEYS.

A. Trimming/Cutting Trees. Grantee shall have the right and responsibility to trim and keep clear of its poles, wires, cables, underground conduits, manholes, and other conductors and fixtures, the trees in and along the streets. In the exercise of such right, Grantee shall not cut or otherwise injure any tree to any greater extent than is reasonably necessary.

B. Restoring Streets. Grantee shall restore, reconstruct, or repair any street, and any sewer or gas or water main, or pipe, or fire alarm, disturbed or destroyed by the exercise of any right awarded to Grantee by this Franchise, in accordance with the County's local regulation of the Public Rights-of-Way to provide for public health, safety and convenience.

limitation, the purchase, installation and maintenance of end-user electronic equipment, routers, switches, modulators, demodulators, and the like.

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2. The cost of construction shall be allocated based on the following formula: If a request for extension of service into a residential area requires the construction of cable plant which does not pass at least twenty (20) homes per mile, Grantee and subscribers will each bear their proportionate share of construction costs. For example, if there are ten (10) dwelling units per mile, Grantee's share will equal one-half ( $\frac{1}{2}$ ) of the construction cost. The remaining cost will be shared equally by each person requesting service. This line extension formula shall also be applied to a portion of a mile meeting proportionate density requirements. For example, if there are ten (10) dwelling units per one-half mile, Grantee shall construct the plant without a capital contribution from potential subscribers.

3. Should additional dwelling units be constructed, or additional subscribers begin to take service in an area with density less than twenty (20) dwelling units per mile, subscribers utilizing the cost-sharing plan for extension shall be reimbursed pro-rata for their contribution or a proportional share thereof. In such case, the pro-rata shares shall be recalculated and all subscribers who made a capital contribution shall receive pro-rata refunds, but no subscriber is entitled to more than was actually contributed. Grantee may require any new subscriber to pay an appropriate pro-rata share of the cost of the extension where the density requirement is not satisfied, but Grantee must return an appropriate portion of any capital contribution to subscribers who make such contributions regardless of whether Grantee seeks to recover the costs from such subscriber. For example, where one person requested an extension and the extension passed ten (10) homes per mile, the subscriber could be required to pay one-half the cost of extension. If a second resident requested service, Grantee could charge that resident 25% of the cost of the extension, but in any case would remit 25% of the cost of the extension to the subscriber who made the original contribution. At such time as there are said twenty (20) potential subscribers per mile, the contributing subscribers shall have received their pro-rata share of construction costs. In any event, at the end of three (3) years from the completion of an extension project, the subscribers are no longer eligible for return of their capital contributions, and the amounts paid in construction costs will be credited to the account of Grantee.

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B. Restoring Streets. Grantee shall restore, reconstruct, or repair any street, and any sewer or gas or water main, or pipe, or fire alarm, disturbed or destroyed by the exercise of any right awarded to Grantee by this Franchise, in accordance with the County's local regulation of the Public Rights-of-Way to provide for public health, safety and convenience.

C. Safety. Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices in accordance with national standards and the County's local regulation of the Public Rights-of-Way to provide for the public health, safety and convenience. Whenever work is performed in any Rights-of-Way or Public Place, the Grantee shall take all reasonable precautions to minimize interruption to traffic flow, damage to property or creation of a hazardous condition.

D. Temporary Moving of Wires. Grantee shall, on the request of any person holding a building moving permit issued by the County, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, the Grantee shall have the authority to require such payment in advance. Grantee shall be given not less than three (3) business days advance notice to arrange for such temporary wire changes.

E. Location, Interconnection and Relocation of Facilities. Grantee shall install and maintain its cables, wires, fixtures, and all other equipment in such manner that they do not interfere with any installations or use of Rights-of-Way and Public Places by the County and shall only be placed after approval of the location by the County Engineer and in accordance with any specifications adopted by the County governing the location of facilities. The County reserves the right to construct, install, maintain and operate any public improvement, work or facility, do any work that the County may find desirable on, over or under any Rights-of-Way and Public Places, and vacate, alter or close any Rights-of-Way and Public Places. All such work shall be done, if possible, in such manner as not to obstruct, injure, or prevent free use and operation of the Grantee's facilities.

In the case of any disturbance of any Public Rights-of-Way or paved area as a result of the operations of the Grantee, the Grantee shall, at its own cost and expense and in a manner approved by the County, replace and restore such Public Rights-of-Way or paved area in as nearly as possible as good a condition as before the work involving such disturbance was done.

F. Location and Distribution Lines--Poles/Underground Cable. The poles used for the distribution system will be, to the extent possible, those erected and maintained by either the power company or the telephone company or both, whenever agreement can be reached with the owners of such poles. Grantee will have the right to erect and maintain poles where none exist. No poles or other wireholding structure shall be erected by Grantee without prior

approval of the County, through established public Rights-of-Way procedures. The County agrees that such prior approval will be given on a timely basis and will not be unreasonably withheld. Location of any pole or structure shall be removed or modified by Grantee at Grantee's expense whenever the County determines that the public health, safety and convenience would be enhanced thereby. All transmission, and distribution structures, lines and equipment erected by the Grantee within the Service Area shall be so located as to cause minimum interference with the prescribed usage of Public Rights-of-Ways and Public Places and to cause minimum interference with the rights of property owners who join any said Public Rights-of-Way or Public Places.

For all new residential structures in which undergrounding is required by the County, the builder, subdivider or developer of such structure at his sole cost and expense, shall provide, in accordance with Grantee's current specifications, all conduits, trenches to buildings' point of entry, from the boundary of the development, back fill and restoration of trench area.

G. Moving of Grantee Property. Grantee will, upon reasonable Notice from the County, protect, support, temporarily disconnect or relocate its property in the same Public Rights-of-Way or other Public Place, or remove from such Public Rights-of-Way or other Public Place, any property of the Grantee when so required by the County in accordance with local regulation of the Public Rights-of-Way for public health, safety and convenience.

SECTION 12. SIGNAL QUALITY. Grantee's operation of the Cable System shall:

A. Produce a picture that is undistorted and accompanied with proper sound on typical standard production television sets in good repair and in compliance with FCC technical standards.

B. Grantee shall maintain the fiber to the Origination Locations listed in Exhibit A and the return capability from one location using acceptable industry standards and good engineering practices. Deficiencies will be corrected at the Grantee's expense as a function of maintaining said fiber and return capability.

SECTION 13. TECHNICAL PERFORMANCE STANDARDS. The Grantee shall comply fully with the technical rules and standards for cable television operations as adopted by the Federal Communications Commission, 47 CFR Part 76, Subpart K, and/or any additional technical regulations implemented by Federal Communication Commission.

SECTION 14. FRANCHISE FEE AND PAYMENT. In consideration of this Franchise, the Grantee shall pay annually to the County a sum equal to five percent (5%) of Grantee's total annual Gross Revenues as defined in this Franchise.

The Grantee shall pay the County, on or before the last day of each month next following the end of each calendar quarter, such five percent (5%) franchise fee based on Gross Revenues received for cable television operation in the County for preceding calendar quarter. At the time of each quarterly payment due hereunder, the Grantee shall submit to the County a Quarterly System Report providing the information as required in Section 24.

SECTION 15. SUBSCRIBER SERVICES.

B. Programming. Within thirty (30) days of execution of this Franchise, Grantee will provide 33 channels of programming. Upon completion of the upgrade, Grantee's Cable System shall be capable of carrying at least 60 television channels.

Grantee agrees to provide the following broad categories of programming in service on the Cable System throughout the term of this Franchise:

Broadcast Stations;  
Access Channels (PEG and Leased/Commercial);  
Family Programming (including health and religious programming);  
News and Weather Programming;  
Variety Programming;  
Cultural/Arts Programming (including historical programming);  
Music Programming;  
Educational/Children's Programming;  
Government/Public Affairs Programming;  
Financial/Business Programming.

C. Regulation of Services/Rates.

1. Regulation of Rates. The County may regulate Grantee's rates and charges to the maximum extent permitted consistent with State and federal law and regulations. Grantee shall file a schedule of its rates and charges with the County on the Effective Date of this Franchise and thereafter as required by FCC regulations and local ordinances.

2. Prior Approval. Grantee shall be required to submit any change in rates or charges to the County for approval consistent with federal laws and local rate regulation. Nothing in this section shall be deemed to waive any rights Grantee may have under 47 U.S.C. Section 543(e)(1).

D. Dedicated Capacity for PEG Access.

1. The Grantee shall allocate one (1) channel in the downstream subscriber distribution network as dedicated capacity to the County for Public, Educational or Governmental (PEG) programming, consistent with provisions in the Cable Communications Policy Act of 1984 amended. The PEG channels from the County and Surrounding Communities shall be available to all Subscribers in the Surrounding Communities in the basic level of service.

2. Within ninety (90) days of completion of the upgrade, Grantee shall provide return feed capability from one location listed in Exhibit A designated by the County.

3. Access Management. The County may designate one (1) or more entities, including a County agency, other agency or a non-profit access management corporation, to manage the use of all or part of the Institutional Network and/or the public, educational, and governmental access channels as defined in a Master Operating Agreement.

E. Leased Access. Grantee shall provide Leased Access channels in accordance with Section 612 of the 1984 Cable Act.

**SECTION 16. PEG ACCESS EQUIPMENT AND OPERATING FUNDS.**

Grantee agrees to provide equipment funds, or in-kind equipment of equal value, for public, educational or governmental uses of dedicated channel capacity on the subscriber distribution network and/or for governmental or educational uses of the Institutional Network, in the following amounts made payable to the Grant County Treasurer: upon the Effective Date of the Franchise Nineteen Thousand Seven Hundred Fifty Thousand Dollars (\$19,750.00) and Seven Thousand Six Hundred Fifty-Three Dollars (\$7,653.00) in the third and sixth year of the Franchise, on the anniversary date of the execution of the Franchise in that year provided that the County provides Grantee with an outline of the operating plan describing the use of such funds by the County for each of the three years before any funds are paid. The value of in-kind equipment shall be deducted from the Fund as agreed upon by the County, or its designated entity. In addition to the above, by the Effective Date of this Agreement the Grantee shall provide a grant

of Five Thousand Dollars (\$5,000) to be used at the discretion of the County. Any increases in basic service charges to subscribers for such funds shall be amortized in accordance with federal rate regulations and unused funds together with accrued interest will be returned to Grantee at the end of the Franchise term.

**SECTION 17. PUBLIC SERVICES.** The Grantee shall, upon request, provide a "service drop" at no cost to the following locations in the County: all municipally-owned governmental buildings and buildings housing a County-operated department or division, all Origination Locations on the Institutional Network, and all public schools which are passed by the Cable System. A "service drop" shall constitute one service connection of 150 ft. made available to each site herein specified with no internal wiring to be required on behalf of the Grantee, such internal wiring to be and remain the responsibility of the individual site concerned. Grantee shall provide free non-premium monthly service to all such locations. In addition, the County encourages the Grantee to continue to provide free service to private, non-profit schools.

**SECTION 18. INDEMNIFICATION - INSURANCE.**

A. Indemnification. The Grantee, as a condition of the grant of this 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 business, or any way arising out of performance under this Franchise, directly, or indirectly, when or to the extent injury is caused, or alleged to have been caused, wholly or in part, by any act, omission, negligence, or misconduct of Grantee or any of its contractors, subcontractors, officers, agents, or employees, or by any person for whose act, omission, negligence, or misconduct, the Grantee 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 Grantee and the County.

B. The County, to the extent provided by the Cable Television Consumer Protection and Competition Act of 1992, Section 635(a), and the statutory and common law of the State of New Mexico and by the Constitution of the State of New Mexico, where not in contradiction with the 1992 Cable Consumer Protection Act or the Telecommunications Act, will protect, indemnify, and hold Grantee harmless against all claims for damages to persons or property as a result of acts of negligence or breach of obligation committed by the County for which the County is legally

responsible, including any acts in connection with the County's use of the PEG access channels, equipment or facilities or the Institutional Network, subject to any and all defenses and limitations of liability provided by law. This provision does not and shall not be construed as a waiver, relinquishment or abrogation of the statutory limitation of liability available to the County. This paragraph in no way waives the County's limited right of sovereign immunity or protection under the applicable statutory limitation of liability available to cities generally in this State.

C. Insurance.

1. General Liability. The Grantee shall obtain and maintain for the Term of the Franchise, at Grantee's expense, a comprehensive general liability insurance policy or policies with the County named as an additional insured, written by a company authorized to do business with the State of New Mexico, in amounts not less than those required under Section 41-4-19 of the New Mexico Tort Claims Act, such insurance to provide that the County will be notified no less than forty-five (45) days prior to expiration date. The Grantee shall furnish the County with a copy of certificates of insurance coverage or other evidence of the Grantee obtaining and maintaining such insurance coverages as are required hereunder as a continuing obligation under this Franchise.

2. Workers' Compensation. The Grantee shall secure and maintain all necessary Workers' Compensation insurance as may be required by law to cover the Grantee's employees hereunder.

3. Vehicle Coverage. The Grantee shall secure and maintain vehicle liability, property damage and medical coverage insurance in the amounts of maximum liability under Section 41-4-19 of the New Mexico Tort Claims Act and shall furnish the County with a copy of evidence of the Grantee obtaining and maintaining such insurance coverage as are required hereunder.

D. The Grantee shall maintain statutory workmen's compensation insurance in compliance with State law.

SECTION 19. TRANSFER AND ASSIGNMENT.

A. The Grantee shall not be permitted to sell or transfer the Franchise herein granted without prior written consent of the County, which consent will not be unreasonably withheld.

B. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the County may inquire into the prospective controlling party, and the Grantee shall assist the County in any such inquiry in accordance with the Cable Act and any subsequent related statutes, and FCC rules and regulations. The Grantee shall provide all information requested in writing by the County which the County requires in order to determine whether it will consent to the proposed transfer except any confidential information as allowed by federal law. The County may condition its consent upon such terms and conditions as it deems appropriate, related to the qualifications of the prospective transferee to perform the obligations under this Franchise. Any transfer of ownership effected without the written consent of the County shall render this Franchise subject to revocation. The County shall have 120 days to act upon any request for approval of a transfer, as is required in accordance with FCC regulations and by the County. If the County fails to render a final decision on the request within said 120 days, the request shall be deemed granted unless the Grantee and the County agree to an extension of time.

The Grantee, upon any transfer as heretofore described, shall within sixty (60) days thereafter file with the County a copy of the deed, agreement, mortgage, lease or other written instrument evidencing such sale, lease, mortgage, assignment or transfer, certified and sworn to as correct by the Grantee. Every such transfer as heretofore described shall be deemed void and of no effect unless Grantee shall within sixty (60) days after the same shall have been made, file such certified copy as is required.

#### SECTION 20. CUSTOMER SERVICE AND SIGNAL QUALITY.

A. Standards. Grantee agrees to comply with the FCC requirements for Customer Service Standards and Complaint Resolution Policy as required by FCC regulations and as herein modified below.

B. Complaints. All complaints by subscribers regarding equipment malfunctions, signal quality and similar matters shall be acted upon by the Grantee as soon as possible in accordance with FCC regulations, and Grantee shall provide an aggregate summary of such complaints on a quarterly basis, if requested by the County. The Grantee shall also provide each subscriber written notice of its Customer Service and Complaint Resolution Policies on initial subscription to the cable system, and on an annual basis thereafter, as required by FCC rules.

As of the Effective Date of this Franchise, Grantee shall keep a daily record of and investigate all complaints from subscribers. Such record shall identify the subscriber and his/her address and phone number, the nature, location and date of the complaint, the name of the receiving representative, the staff assigned to resolve the complaint and date and nature of actions taken to resolve the complaint. These records shall be maintained at a local office for the term of the Franchise and shall be available for County inspection upon request during regular business hours.

When there have been similar complaints made or where there exists other reliable evidence, which, in the judgment of the County casts doubt on the performance of the Cable System in relation to the technical standards set by federal law and required by this Franchise, the County shall have the right and authority, upon providing the Grantee with Notice of such evidence, to require the Grantee to test, analyze, and report on the performance of the system. Such report shall include the following information: the nature of the complaints or evidence which precipitated the system tests, a detailed description of all repairs made to the system following the Notice, what system component was tested in response to the Notice and procedures employed in such testing, the results of such tests, and the method in which such complaints or performance deficiency were resolved. Such tests and analyses shall be observed by a representative of the County upon request and supervised by a qualified person, on the regional or corporate staff of the Grantee, who shall forward to the County, or its designated representative, the aforementioned report, within sixty (60) days of receipt of the Notice.

**SECTION 21. SUBSCRIBER PRIVACY.** Grantee shall comply with the Subscriber Privacy Provisions of the Cable Act.

**SECTION 22. CONTINUOUS SERVICE-ALTERNATIVE OPERATOR.** The Grantee is required to provide continuous service to all Subscribers in return for payment of the established fee or inclusion under Section 18. If the County revokes or fails to renew this Franchise, the Grantee is required as part of this Franchise to continue to operate the system until the earlier of an orderly change of operation is effectuated or the expiration of 180 days in accordance with Section 627 of the Cable Act. In the event the Grantee fails to operate the system for thirty (30) consecutive days, without prior approval of the County, the County may elect to terminate the Franchise pursuant to Section 26.

**SECTION 23. REPORTING REQUIREMENTS.** The County shall have the right and authority under this Franchise to require that

Grantee maintain records and provide reports, requested documents and information necessary to assure compliance with this Franchise.

A. Annual Reports. No later than one year subsequent to the Effective Date of this agreement, and each year thereafter, the Grantee shall submit a written report to the County for the Grantee's fiscal year ending May 31, which shall include:

1. An annual report, if any, of Grantee, parent corporation, and each Affiliate of Grantee which controls Grantee and issues an annual report;

2. FCC Forms 325 and 395 for the County system, or their successor forms;

3. A summary of the previous year activities and development of the Cable System, including, but not limited to, services begun or dropped, subscriber gain or loss and, upon request, copies of all Subscriber complaint logs, as recorded for each business day of the previous year according to Section 20;

4. Copies of statements of Gross Revenues for the preceding fiscal year within the County certified by a senior financial officer of Grantee;

5. A current statement of costs of construction by component categories as defined in Section 10;

6. Industry standard signal quality testing;

7. A list of officers and members of the board of the Grantee and the parent corporation, if any; and,

8. A list of all stockholders holding three percent or more of the voting stock of the Grantee and the parent corporation, if any.

Items 7. and 8. will be required in years subsequent to the second anniversary of the effective date of this Franchise only in the event of any change in such lists.

B. Quarterly Reports. The Grantee shall provide a written Quarterly System Report to accompany the franchise fee payment showing the following:

1. Monthly subscriber totals for each category of service;
2. The number of system extensions, and the amount of contribution and number of contributing subscribers and costs associated with any extension made under Section 11;
3. Upon request a monthly summary showing the number of service calls received by type in a form that can be reasonably interpreted by the County;
4. A summary of number of outages, number of planned outages, number of outages during prime viewing hours, and number of outages by approximate duration in a form that can be reasonably interpreted by the County; and,
5. Revenues received, by distinct category of service, in a form that can be reasonably interpreted by the County, for the preceding quarter period.

C. Books of Account and Reports.

1. The County shall have the right to review or audit the Grantee's books and records in accordance with generally accepted accounting and audit standards regarding any amounts which may be owed or rates charged under this Franchise. This right includes the right to review and audit all books and records of revenue not included in the calculation of the fee paid, but which may be reasonably considered by the County to be included in Gross Revenues and thereby subject to a franchise fee. The County shall give written Notice to the Grantee of any additional amount claimed to be due to the County as a result of the County's review. The additional amount due the County, if any, shall be paid within thirty (30) days following Notice by the County that such amount is due and payable.

2. The Grantee shall keep complete and accurate books and records of its business and operations pursuant to this Franchise in accordance with generally accepted accounting principles and in accordance with the rules and regulations of any State regulatory authority. Grantee shall keep its books of account and records in such a way that breakdowns of revenues are available by journal code within the County.

3. In the event of an audit, the Grantee shall provide County-specific books, records, contracts, accounts, documents and papers for its operations within the County.

4. All such books, records, and accounts of the Grantee shall be retained by the Grantee for a period of six (6) years, in accordance with NMSA 1978, Section 37-1-3. The Grantee shall make such records, as are necessary for the County to complete its audit, available for inspection by the County, in the County, upon thirty (30) days from receipt of Notice by the County.

5. All audits will take place on Grantee's premises within the County. The County's auditors may review all directly relevant materials and may take copies of any materials with the approval of the Grantee. Such approval shall not be unreasonably withheld.

6. Within thirty (30) days of request by the County, the Grantee shall provide to the County by U.S. mail, postage prepaid, a copy of all papers filed by the Grantee with any federal or State regulatory agency that pertain to the Grantee's facilities located in the Silver City/Grant County system in New Mexico.

D. Requests for Information. The Grantee or any Affiliate in control or possession of information respecting the Grantee's Cable System in the County shall respond to all reasonable inquiries from the County, or its designated operating representatives, concerning the construction, operation, installation or maintenance of that Cable System, plans for its expansion, or the Grantee or Affiliate's financial or legal status. The Grantee or Affiliate shall provide the information requested within thirty (30) days of request. Requests for extensions of time to respond shall not be unreasonably denied.

In addition, the Grantee shall, within sixty (60) days of the completion of construction, and thereafter provide training and information to the staff of the County in coordination with Surrounding Communities, representatives of the County, and representatives of the entities receiving subscriber drops as designated in Section 17, to answer any requests for information and to discuss the safety, operation and maintenance of cable equipment installed and/or operated by the Grantee, including but not limited to: EAS equipment, interfaces, drops, switches and modulation/units, to the extent required in this Agreement. Training and related manufacturer's equipment documentation manuals on all equipment related to the County's operation of the PEG channels shall be provided at the time of installation or at such meetings.

E. Records Maintained. In addition to public file records and maps, the Grantee shall maintain records of the following:

1. Records of cutages, indication date, duration, area and the estimated number of subscribers affected, type of outage and cause in a form that can be reasonably interpreted by the County;

2. Records of service calls for repair and maintenance, indicating date and time service was requested, date of acknowledgment and date and time service was scheduled (if it was scheduled), the date and time service was provided and (if different) the date and time the problem was solved. Grantee's Service Call log shall contain this information as required by FCC rules; and,

3. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and date and time service was extended. Grantee's Work Order shall contain this information in a form that can be reasonably interpreted by the County.

Cumulative records of complaints, as defined in Section 20.B., and the records required in 2 and 3 above, shall contain this information in a form that can be reasonably interpreted by the County.

These records shall be kept at the Grantee's local office and shall be available for County review and copying upon reasonable notice during normal business hours. The parties shall cooperate to revise requirements by amendment to this section so that the County has access to information to evaluate Grantee's compliance with the Franchise and so that Grantee may amend its forms as its services evolve.

F. Documents to be Provided. Grantee shall provide the following documents to the County in a timely manner or as requested by the County for review, so as to permit the County to protect any interests it may have in any proceedings, and in no event later than thirty (30) days from the date the documents are requested, without regard to whether the documents are received or filed by Grantee or an Affiliate:

1. Any filing made at the FCC or any State or federal agency regarding the County system, its proof-of-performance tests, its RF signal leakage tests;

2. Any notice of deficiency, forfeiture, or other document issued by any state or federal agency instituting any investigation or civil or criminal proceeding, regarding the County

system, Grantee, or any Affiliate of Grantee, to the extent the same may directly affect or bear upon operations in the County; and,

3. Any request for protection under Bankruptcy laws, or any judgment related to a declaration of bankruptcy.

G. Subscriber Surveys. On the fifth anniversary and the tenth anniversary of this agreement the Grantee shall conduct a Subscriber Satisfaction Survey pertaining to the quality of Grantee's service. Grantee shall consult with the County about the form and content of the survey. Results of the surveys shall be provided to the County. Grantee shall bear all costs of the survey.

**SECTION 24. FRANCHISE RENEWAL.** This Franchise may be renewed in accordance with the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996.

**SECTION 25. PERFORMANCE GUARANTEES AND REMEDIES.**

A. Performance Bond. Prior to any upgrade of the Cable System, the Grantee shall establish in the County's favor a Fifty Thousand Dollar (\$50,000.00) performance bond. Such bond may be released upon completion of the upgrade.

B. Security Fund.

1. Prior to the Franchise becoming effective, the Grantee shall post with the County a cash security deposit to be used as a security fund to ensure the Grantee's faithful performance of and compliance with all material provisions of the Franchise and compliance with all material orders, permits, and directions of the County, pursuant to this Franchise. The amount of the security fund shall be Ten Thousand Dollars (\$10,000.00)

2. In lieu of a cash security fund, the Grantee may agree to file and maintain with the County an irrevocable letter of credit in the amount specified in the preceding paragraphs to serve the same purposes as set forth therein. Said letter of credit shall remain in effect for the full term of the Franchise plus an additional six (6) months thereafter. The Grantee and its surety shall be jointly and severally liable under the terms of the letter of credit for the Grantee's failure to ensure its faithful

performance of and compliance with all material orders, permits, and directions of the County pursuant to this Franchise.

3. Whenever the County shall receive payment of any amount against the letter of credit, the Grantee shall pay to or deposit with the financial institution with whom it maintains said letter of credit to its full value of Ten Thousand Dollars (\$10,000.00) within fifteen (15) days after the Grantee has been tendered delivery by registered mail, return receipt requested, of the Notice from the County Manager, or designee, of the reason for the withdrawal, the date of withdrawal and the amount thereof. The Grantee shall verify that the County Manager has been sent a statement from the financial institution holding the letter of credit showing restoration of the letter of credit to its full value of Ten Thousand Dollars (\$10,000.00) within forty-eight (48) hours after receipt by said financial institution of sufficient funds from the Grantee to restore said letter of credit to its full amount. This letter of credit shall not be subject to cancellation while the Grantee is in default.

4. Neither the filing of a letter of credit with the County, nor the receipt of any damages recovered by the County thereunder, shall be construed to excuse faithful performance by the Grantee or limit the liability of the Grantee, either to the full amount of the letter of credit or otherwise.

5. The rights reserved to the County with respect to the security fund shall be in addition to all other rights of the County, whether reserved by the Franchise or authorized by other law, and no action, proceeding, or exercise of a right with respect to such security fund or letter of credit will affect any other right the County may have. Nor will withdrawal of funds or Notice thereof, be construed as a limitation of the Grantee's right to contest penalties under Sections 27. A, B, C and D.

C. Liquidated Damages. Because Grantee's failure to comply with the material provisions of this Franchise will result in injury to the County, and because it will be difficult to estimate the extent of such injury, the County and Grantee hereby agree to the following liquidated damages, which represent both parties' best estimate of the damages resulting from the specified injury.

6. For failure to complete construction or extend service in accordance with the Franchise: \$250.00/day for each day the violation continues;

7. For failure to comply with material requirements for public, educational and government use of system: \$100.00/day for each day the violation continues;

8. For repeated, willful or continuing failure to submit reports, maintain records, or provide requested documents or information: \$100.00/day for each day the violation continues;

9. For violation of Customer Service Standards: \$150.00 per violation per day for each day the violation continues;

10. For failure to comply with transfer provisions: \$500.00/day from the date of an unlawful transfer; and,

11. For all other material violations: \$250.00 for each day.

**SECTION 26.** TERMINATION. The Franchise shall terminate on the expiration date hereof, and at the County's option may be terminated, subject to the provisions of Section 28 for the following reasons:

A. If Grantee's charter or other authorization to conduct business in New Mexico is revoked, or any other license which Grantee requires to conduct business in the County is revoked;

B. If Grantee is adjudged bankrupt;

C. For a substantial violation of any material provision of the Franchise, or any material rule, order or regulation or other determination of the County made pursuant to the Franchise;

D. For any attempt to evade any material provision of the Franchise or to practice any fraud or deceit upon cable system subscribers or the County;

E. For failure to complete construction on schedule; or for failure to obtain necessary licenses or authorizations for construction or operation prior to the scheduled dates respectively for commencing construction or commencing service to subscribers;

F. If the system is abandoned for at least thirty (30) days; or,

G. For fraudulent or negligent misrepresentation of fact in obtaining the Franchise.

SECTION 27. PROCEDURES FOR PENALTIES, TERMINATION AND  
FORFEITURE.

A. Prior to the assessment of any penalty hereunder the County shall notify Grantee of the alleged violation which may warrant penalty or termination, which Notice shall:

1. Describe the specific alleged violation;

2. Direct Grantee to correct or to show cause why alleged violation should not be corrected; and,

3. State the time for response which shall be no less than thirty (30) days from the date Grantee is sent Notice.

B. Within the time designated, Grantee must:

4. Cure the violation or (in the event the violation cannot be cured with the time period specified) take reasonable steps to begin to cure, and submit a written response acceptable to the County within the time designated, identifying the specific steps taken; or,

5. Contest the assertion of non-compliance, describing all facts relevant to claim, supported by affidavits and documents. No further opportunity to cure is required before the County exercises its rights under the Franchise. Grantee's duty to cure includes a duty to pay any liquidated damages owed to the County from the date of the initial violation.

C. If Grantee contests the County's assertion of non-compliance, or fails to completely cure the default, the County shall schedule a hearing to review the default. The County shall cause to be served upon such Grantee at least seven (7) days prior to the date of such hearing, a written Notice of the County's intent to review, the potential remedies sought, and the time and place of the meeting, notice of which shall be published at least once, no later than thirty (30) days before such meeting in a newspaper of general circulation within the County. The County shall hear any person interested therein, and shall specifically provide Grantee an opportunity to be heard, and shall determine whether or not any failure, refusal or neglect by the Grantee was with just cause.

D. If the County shall determine such failure, refusal, or neglect by the Grantee was without just cause, then the County may take any actions it is permitted to take under this Franchise or

applicable law. Such actions may be taken immediately upon completion of the hearing contemplated by this Section or at such time or after such additional proceedings as the County may specify.

E. Except where precluded by court order, pending litigation or any appeal to any regulatory body or court having jurisdiction over the Grantee shall not excuse the Grantee from the performance of its obligations under this Franchise.

F. For purposes of this Section, and subject to force majeure, the system shall be deemed abandoned if, during any period this Franchise is in effect, Grantee fails to provide services over the system for ninety-six (96) consecutive hours without the prior consent of the County.

G. Remedies Cumulative. Remedies provided herein are cumulative and in addition to other rights the County may have at law or equity or under the Franchise, which it may exercise at any time.

H. Sale of System on Termination. Without limiting any rights of the County under other provisions of federal, State, or local law:

1. If renewal of the Franchise is denied, the County shall have an option to acquire ownership of the system or require Grantee to transfer ownership to another person. Any such acquisition or transfer shall be at fair market value, determined on the basis of the Cable System valued as a going concern but with no value allocated to the Franchise itself;

2. If the Franchise is revoked for cause, the County shall have the option to acquire ownership of the Cable System or require Grantee to transfer ownership to another person. Any such acquisition or transfer shall be at an equitable price, as that term is used in 47 U.S.C. §547(b).

I. Notification of Option. The County shall notify the Grantee of its intent to exercise its option to buy upon termination for cause within thirty (30) days of the final determination of the validity of the County's decision to terminate. The County and Grantee shall enter into good faith negotiations promptly to establish price in accordance with Section 28.H. terms and conditions which reflect usual industry practices.

J. Vacating Public Rights-of-Way. Upon expiration or termination of the Franchise, if the Grantee shall not have acquired an extension or renewal thereof and accepted the same, or if the County has not exercised its option to buy the system, or if the Grantee has not accepted such sale, upon reasonable notice from the County, Grantee may be required to enter upon the Public Rights-of-Way and Public Places of the County, for the purposes of removing therefrom any or all of its property and otherwise. In so removing said property the Grantee shall refill, at its own expense, any excavation that shall be made by it, and shall leave said Public Rights-of-Way and Places in as nearly as possible as good condition as that prevailing prior to the Grantee's removal of its property.

K. Grantee shall be entitled to initiate an action in the Sixth Judicial District Court in the County, New Mexico, to challenge any action by the County pursuant to Sections 25, 26 and 27 wherein all claims and defense shall be heard *de novo*. Once such an action is initiated, any monetary assessment by the County Commission shall be deposited into an escrow account by Grantee. In the event that the County's decision with regard to the assessment is upheld, the assessments for the entire period shall be paid from the escrow account to the County.

Grantee and the County agree to submit to arbitration any controversy arising between the parties other than those arising pursuant to Sections 25, 26 and 27 as set forth above, and agree that the Uniform Arbitration Act, Sections 44-7-1 through 44-7-22 NMSA 1978 will apply.

SECTION 28. VIOLATIONS AND PENALTY FOR CABLE PIRACY.

A. From and after the effective date of this ordinance, it shall be unlawful for any person:

1. To construct, install or maintain within any public street in the County, or within any other public property of the County, or within any privately-owned area within the County which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the County, any equipment or facilities for distributing any television signals or radio signals through CATV system, unless a franchise authorizing such use of such street or property or area has first been obtained, and unless such franchise is in full force and effect;

2. To make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise,

with any part of cable system within the County for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program or sound, without payment to the owner of the system; or,

3. To willfully interfere, tamper with, remove, obstruct or injure any cable, wires or equipment used by the Grantee within the County for distribution of television signals, radio signals, picture, programs or sound, without the consent of the owner of the system.

B. Any person violating or failing to comply with any of the provisions of this Section shall be guilty of a misdemeanor and for each day of violation or failure to comply may be punished by a fine not to exceed \$500.00 or by imprisonment for a term not to exceed ninety (90) days or by both such fine and imprisonment.

SECTION 29. NONDISCRIMINATION. Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, potential subscribers, channel users or general citizens on the basis of race, color, religion, ancestry, national origin, age, sex, marital status or physical or mental handicap; or deny service to any group of potential subscribers because of the income of the residents of the area in which a group of potential subscribers reside; providing that, nothing shall prohibit Grantee from providing a "lifeline" type of service to the poor, elderly, the developmentally disabled or physically disabled.

Grantee shall strictly adhere to the equal employment opportunity requirements of the FCC, as expressed in Section 76.13(h) and 76.311 of Chapter I of Title 47 of the Code of Federal Regulations, as in effect. The Grantee shall comply at all times with all other applicable federal, State and Town laws, and all executive and administrative orders relating to nondiscrimination.

SECTION 30. NOTIFICATION PROCEDURES.

A. Any public inquiry, proceedings, investigation or other action to be taken or proposed to be taken by the County in regard to the operation of the Grantee's Cable System, including action in regard to a change in subscription rates shall be taken only after:

1. The minimum legally required public notice of such action or proposed action is published in a local newspaper having general circulation in the County, (and in the absence of any such

legal requirement, the notice shall be published at least seven (7) days prior to the date of the proposed action;

2. A copy of such action or proposed action is served directly on the Grantee at least seven (7) days prior to the proposed action; and,

3. The Grantee has been given an opportunity to respond in writing in the event no hearing is held or in the event of a hearing the opportunity to appear at said hearing and there respond.

B. The public notice required by this action shall state clearly the action or proposed action to be taken, the time provided for response and the person or persons in authority to whom such responses should be addressed, and such other procedures as may be specified by the County. If a hearing is to be held, the public notice shall give the date and time of such hearing, whether public participation will be allowed and the procedures by which such participation may be obtained. The Grantee shall be an indispensable party to any hearing conducted in regard to its operations. When not otherwise prescribed herein, all matters herein required to be filed with the County shall be filed with the County Manager.

#### SECTION 31. MISCELLANEOUS.

A. Compliance with Local Ordinances. In accepting this Franchise, the Grantee acknowledges that it shall at all times during the term of this Franchise be subject to all lawful exercise of the police power by the County to adopt laws of general applicability. The County reserves the right to adopt from time to time, in addition to the provisions herein contained, such generally applicable ordinances as may be deemed necessary to the exercise of police power. Such regulation shall be reasonable and not impair Grantee's rights herein granted or impose or cause a substantial burden, economic or otherwise to be placed on Grantee and not in conflict with the laws of the State or other local laws or regulations.

B. Compliance with State and Federal Laws. Notwithstanding any other provisions of this agreement to the contrary, the County and Grantee shall at all times comply with all laws and regulations of the State of New Mexico and federal government or any administrative agency thereof.

C. State and Federal Regulations. The Grantee shall at all times, during the life of this Franchise, be in full compliance with the FCC and New Mexico State Corporation Commission, or their successors, if applicable, rules and regulations regarding cable services.

D. No Limitation. Grantee's duty to prepare reports, submit documents and conduct tests under Sections 5, 9, 13, 20, 23, 24 and 25 shall not limit Grantee's duty to permit the County to inspect documents, or Grantee's duty to respond to requests for other information under other provisions of the Franchise or generally applicable law.

E. Confidentiality of Information. The Grantee shall mark any information which it produces to the County which constitutes a business or trade secret "Confidential", and produce it to the County's designated representative, if necessary for purposes of holding such information confidential. To the extent permitted under applicable law, and except where to do so could be inconsistent with its obligations under this Franchise and applicable law, information produced by Grantee which contains business or trade secrets shall be kept confidential. The County shall promptly notify Grantee if any person requests access to the information under the New Mexico Open Records Act, or if the County determines that it will be necessary to reveal the information in the discharge of its obligations under the Franchise and applicable law, so that Grantee may take appropriate steps as may be available to protect any rights it may claim to have to prevent disclosure.

F. Non-enforcement. Grantee shall not be relieved of its obligation to comply with any of the provisions of this ordinance by reason of any failure of the County to enforce prompt compliance.

G. No Recourse By Grantee. Pursuant to Cable Act Section 635A, Grantee shall have no recourse whatsoever against the County or its officials, boards, commissions, agents, or employees for any losses, costs, expenses, or damages arising out of any provision or requirement of the Franchise or because of the enforcement of the Franchise.

H. Captions. The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference. Such captions shall not affect the meaning or interpretation of this agreement.

I. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason illegal, invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The County Commission hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this Ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Grantee. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

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

Grant County Manager  
P.O. Box 898  
Silver City, NM  
88962

With a copy to:

Grant County Attorney  
P.O. Box 898  
Silver City, NM  
88062

Notice to the Grantee will be to:

General Manager  
Century New Mexico Cable Television Corp.  
1014 Pope Street  
Silver City, NM 88061

With a copy to:

Legal Affairs  
Cable Division  
Century Communications  
50 Locust Ave.  
New Canaan, CT 06840

Notice shall be by overnight mail or verified hand-delivery. Notice will be effective upon delivery to the County Manager or the

Grantee, until the County or Grantee notifies the other, in writing, of a change in the address.

K. Reservation of Rights. Acceptance of the terms and conditions of this Franchise will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly of any constitutional or legal right which Grantee or the County may have or may be subsequently determined to have either by subsequent legislation or court decisions. Each reserves all rights under applicable federal and state Constitution and laws.

L. Force Majeure. With respect to any provision of this Franchise, the violation or noncompliance which could result in the imposition of a financial penalty, forfeiture or other sanction upon Grantee, such violation or noncompliance shall be excused where such violation or noncompliance is the result of Acts of God, war, civil disturbance, strike or other labor unrest, or similar events, the occurrence of which was not reasonably foreseeable by Grantee or is beyond Grantee's reasonable control.

M. Amendment Notice. At any time during the term of this Franchise that significant changes occur in technology or legislation governing cable services, the County or Grantee shall notify the other and discuss possible amendments to this Franchise that would be of benefit to cable subscribers in the County.

PASSED THIS 25TH DAY OF February,  
1999.

GRANT COUNTY:

Manuel T. Serna  
MANUEL T. SERNA, CHAIRMAN  
GRANT COUNTY COMMISSION

APTEST:

John D. Lamar

County Clerk

Reviewed and approved as to form:

County Attorney

3845

Century New Mexico Cable Television Corp. hereby accepts the terms and conditions of this Ordinance.

CENTURY NEW MEXICO CABLE  
TELEVISION CORP.

By: \_\_\_\_\_

Subscribed and sworn to  
before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 1999.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## Institutional Network Origination Locations

- 1) Grant County Courthouse, 201 N. Cooper, Silver City, NM
- 2) Silver Road Office Complex, 2610 N. Silver St., Silver City, NM
- 3) Gila Regional Hospital, 1313 32nd St., Silver City, NM
- 4) County Magistrate Office, 1620 E. Pine, Silver City, NM
- 5) General Administration Complex, 2610 N. Silver St., Silver City, NM