

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 3/20/04
Department Name: County Administrator
Department No.: 012
Agenda Date: 4/27/04
Placement: Administrative
Estimate Time: 30 minutes
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Michael F. Brown
County Administrator

STAFF CONTACT: Scott Ullery, Deputy County Administrator
568-2243

SUBJECT: Comcast Cable Franchise Agreement

Recommendation(s):

That the Board of Supervisors consider the following actions regarding granting a cable franchise agreement to Comcast of Santa Maria, L.L.C. for a seven year period:

- 1) Approve Introduction (First Hearing) of an ordinance (Attachment A) granting a seven year cable communications system franchise to Comcast of Santa Maria, L.L.C. and setting forth terms and conditions of the franchise, including an Institutional Network Service Agreement;
- 2) Set May 4, 2004 to consider the following actions regarding the cable franchise agreement:
 - a) Adoption (Second Hearing) of the ordinance;
 - b) Approve a budget revision recognizing as revenue a grant to the County in the amount of \$1,150,000 to be provided by Comcast within 30 days of the effective date of this franchise, for the purpose of accomplishing certain capital projects related to enhancing the connections between the County's north and south area data networks and for GATV purposes (Attachment D).

Alignment with Board Strategic Plan:

The recommendations are primarily aligned with actions required by law. This cable franchise will contribute to fostering a high quality of life for residents and efficient government.

Executive Summary and Discussion:

After prolonged negotiations, County staff has reached agreement with Comcast for a cable television franchise. The County's cable television franchises define the terms and conditions granting cable companies the non-exclusive right to use and occupy the County's public rights of way. The parameters and limits of the franchises are defined primarily by federal law, particularly the 1984 Federal Cable Act, and subsequent amendments to the Act. Pursuant to the Cable Act, the renewal of this franchise, as proposed, began with a review of (1) Comcast's past performance, and (2) the cable-related needs and interests of the community. Negotiations proceeded on the basis of shared interests in improving past performance and meeting cable needs, taking into account the cost of meeting those needs.

With regard to Comcast's past performance, top priority has been given to correcting deficiencies in the quality and reliability of the cable signal, and in certain aspects of customer service. With regard to meeting cable-related needs and interests, the top priority has been to complete the final components of the Countywide fiber wide area network (I-NET). The proposed franchise agreement achieves these priorities, and is consistent with both receiving fair value from Comcast in exchange for the use of County rights-of-way, and minimizing the franchise-related costs the cable company passes along to its subscribers. The major provisions of the proposed franchise that address these priorities are described in the subsequent sections of this Board Letter.

Service Quality, System Performance, and Customer Service

Comcast reportedly will have invested approximately \$18 million in rebuilding and upgrading its cable system serving the incorporated and unincorporated areas of northern Santa Barbara County. It has also committed to expanding its service area to include previously un-served residential areas in the Los Olivos area, where feasible. This newly rebuilt system will improve signal quality and reliability, and its increased capacity (the system is designed to 860 MHz, which is a considerable upgrade from 450MHz) will enable the company to provide advanced services such as high speed Internet service and digital cable television service with an expanded channel line-up. The agreement contains further assurances that Comcast will provide its subscribers in Santa Barbara County (which currently number approximately 11,800) with any further advancement in services that it provides in other areas of the country.

The proposed franchise provides for the cable system's design and functionality to comply with all relevant FCC regulations regarding operation and reliability, and provides for the testing, inspection, construction, and maintenance standards necessary to ensure excellent system performance and compliance with the County's regulations and policies governing rights-of-way users. In addition, interconnection among all of Comcast's local services areas is required, as is the capability of interconnecting with other cable systems that in the future might enter Cox's service area, for the purpose of providing public, education, and government access channels.

Because of Comcast's acknowledged shortcomings in certain areas of customer service, the proposed franchise requires that Comcast shall be held to the customer service standards established in the County's Enabling Ordinance, rather than the less stringent FCC standards. The proposed franchise requires Comcast's compliance with equal employment opportunity requirements and non-prejudicial provision of service to customers.

Upon request from a subscriber, Comcast will provide, at no cost to the customer, “parental control devices,” i.e., the means to fully block the audio and video signals carrying sexually oriented pay-per-view programming. Comcast will also sell or lease devices to customers to prohibit viewing of other unwanted services.

Comcast’s accountability for system performance and customer service will be enforceable by the County pursuant to extensive provisions for record keeping, reporting, monitoring, inspections, performance testing, liquidated damages, and triennial performance reviews. The franchise’s relatively short term of seven years, and revocation language, provide additional protection of the public interest.

Fiber Network (I-NET) and Government Access Channels

The proposed franchise requires Comcast to construct extensive facilities necessary to provide six strands of “dark fiber” connecting twelve County facilities in the areas of Santa Maria, Lompoc, Buellton, and Santa Ynez, and provides for sharing the costs of providing up to two additional sites per year beginning in the third year of the franchise. The County will pay Comcast a flat annual fee of \$9,000 for these facilities. For comparison purposes, the cost of obtaining similar commercially available services (dark fiber is not commercially available) would likely cost, at minimum, \$209,000 per year, plus special construction charges of unknown amount.

Once completed, this north County fiber network will constitute the third and final component of an enterprise-wide high bandwidth network, and thereby achieve a strategic goal adopted nearly seven years ago of full fiber connectivity between and among all major north and south County facilities. Additional important enhancements, such as (1) upgrading the microwave system that currently connects north and south County facilities so it can serve as a reliable backup system and (2) purchasing the electronic equipment needed to fully utilize the dark fiber, will be achievable by means of grant for capital equipment from Comcast to the County. Pursuant to the proposed agreement, Comcast will grant to the County the lump sum of \$1,150,000 for this purpose, payable within 30 days of the effective date of the franchise renewal.

Under the renewal, Comcast will continue to provide the County, at no cost to the County, with a channel exclusively for government access programming. The channel will be delivered to all Comcast subscribers in the County franchise area, as well as in the franchise areas of the various cities.

Franchise Fee

Pursuant to the renewal agreement, Comcast will continue to pay the County a franchise fee equal to 5% of gross revenues from cable services, the maximum permitted under federal law. For FY 2003-2004, Comcast’s franchise payments to the County total approximately \$337,500. Cable revenues from the Comcast franchise have been fairly flat for several years, despite regular annual rate increases to customers. Annual rate increases have become a staple of the cable industry nationwide, and are driven primarily by the ever-increasing costs of programming and the cost of extensive system reconstruction and upgrades. Both of the County’s major cable franchisees, Comcast and Cox, have raised local subscriber rates consistent with national trends.

While the County may not regulate rates and charges to customers, the franchise reserves the County’s future rights to do so should federal law allow. Comcast, however, has agreed in the proposed franchise to discontinue charging additional outlet fees, a practice it has engaged in that is largely out of step with

industry practices, and has been a source of considerable customer dissatisfaction. Comcast has also agreed, in a separate letter and not as part of the franchise agreement, to certain limitations on exercising its discretion to itemize on customers' bills the costs related to cable franchise renewal agreements (Attachment B). Finally, Comcast will be required to notify subscribers and the County of rate increases thirty days prior to any increase becoming effective.

Mandates and Service Levels: The franchise renewal process is governed by and has been carried out in accordance with the 1984 Federal Cable Act and subsequent amendments to that Act.

Fiscal and Facilities Impacts: The County will continue to receive a cable franchise fee of 5% of Comcast's annual gross revenues. The franchise agreement will also provide significant value of improvements to the County's information technology facilities, and a \$1,150,000 grant for data network and GATV capital expenses. An annual donation by Comcast of \$25,000 for GATV operating expenses will no longer be provided.

Special Instructions: The Clerk of the Board is requested to distribute executed copies to County Counsel (Kevin Ready), General Services (Dennis Kirby), Auditor-Controller (Theo Fallati), and Cable Administration (Zandra Cholmondeley).

Concurrence: County Counsel

Attachments

- (A) Ordinance for Cable Communications System Franchise, with exhibits including "I-NET Institutional Agreement."
- (B) Letter from Debi Picciolo to Scott Ullery, "Itemization of Franchise Related Costs," March 31, 2004.
- (C) Letter from Debi Picciolo to Scott Ullery, "Intention to Accept Upon Adoption by the Board," March 31, 2004.
- (D) General Services Department budget revision.

2004 ORDINANCE NO. _____

ORDINANCE OF THE COUNTY OF SANTA BARBARA GRANTING A CABLE COMMUNICATIONS SYSTEM FRANCHISE TO Comcast of Santa Maria, L.L.C.

WHEREAS **Comcast of Santa Maria, L.L.C.** has submitted an application for a franchise for a Cable Television System in the unincorporated area of the County; and,

WHEREAS, said application has been reviewed and it is in compliance with the provisions of the Santa Barbara County Code and other applicable provisions of law, and offers satisfactory quality of service, establishes adequate experience and financial responsibility of the applicant, and otherwise demonstrates compliance with applicable law; and,

WHEREAS, the Board of Supervisors deems it to be in the interest of the residents of the County to grant said franchise:

NOW THEREFORE, be it ordained by the Board of Supervisors of the County of Santa Barbara, California, as follows:

SECTION 1. GRANT OF FRANCHISE

1.1 Grant. The County of Santa Barbara, California (hereinafter called the "County") enters into this Agreement with **Comcast of Santa Maria, L.L.C.** (hereinafter "Grantee") for the provision of Cable Service within its boundaries for the benefit of the residents of the Franchise Area and to ensure that Grantee meets the cable-related needs and interests of the County. The County hereby grants to Grantee a non-exclusive Franchise to operate a Cable System to provide Cable Service in the Franchise Area, and to use the streets and public ways to install, construct, repair, reconstruct, maintain in, on, over, under, upon, across and along any street or highway, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to said Cable System for that purpose, subject to the terms and conditions of this Agreement, and applicable law.

1.2 Term. The Franchise granted hereby shall expire seven (7) years after its effective date unless lawfully terminated in accordance with its terms or other applicable law or altered in accordance with Section 18.

1.3 Effective Date. This Franchise shall become effective on the 30th day following its adoption, provided that prior to that date the Grantee: (a) accepts in writing this Franchise Agreement; and (b) provides all warranties, proofs, and other documents required by the Franchise. If Grantee has not satisfied these conditions prior to the 30th day following its adoption, then the County may, at its option, declare the Franchise forfeited, and of no force or effect.

1.4 Franchise Area. The Franchise Area for which this Franchise is granted shall be as defined below:

A. On the effective date of this Agreement the Franchise Area shall consist of the area of the County described on the map contained in Exhibit A.

B. At any time after the effective date of this Agreement, the Grantee may apply for authorization to serve any other unincorporated area of the County. Such application shall not be unreasonably denied.

1.5 Effect of Acceptance. By accepting the Franchise, the Grantee: (a) acknowledges and accepts the County's legal right to issue and enforce the Franchise; (b) agrees that it will not oppose intervention by the County in any proceeding affecting the enforcement of its rights under this Franchise; (c) accepts and agrees to each and every provision contained herein; and (d) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law, and agrees that it will not raise any claim or defense to the contrary.

1.6 Rights Reserved. The rights granted in this Franchise are subject to the County's exercise of its police and other powers, and nothing in this Franchise shall be read to limit the exercise of those powers. The County, among other things, does not waive requirements of various codes, ordinances, and resolutions, including zoning codes and codes regarding building permits and fees, or time or manner of construction, all of which shall apply. Any fees or charges paid, so long as generally applicable and not discriminatory, shall be paid in addition to the Franchise fee required under this Franchise.

1.7 Grantee Compliance. The Grantee acknowledges that this Franchise is issued pursuant to all the terms, conditions and provisions of the Ordinance of the Board of Supervisors for the County of Santa Barbara known as Chapter 43, Cable Systems and Open Video Systems. Grantee agrees to comply with all lawful existing and future ordinances and regulations of the County, including but not limited to zoning ordinances, and ordinances establishing construction standards or procedures for use of the streets. Pursuant to Chapter 43-5 of the County Code, nothing in this section shall affect Grantee's right to challenge a future County exercise of the police or legislative power as unlawful or substantially inconsistent with the rights of the Grantee under this Franchise Agreement.

1.8 Legal Qualifications. The Grantee affirms that it meets all the legal qualifications set forth in Section 43-21 of the Ordinance of the Board of Supervisors for

the County of Santa Barbara known as Chapter 43, Cable Systems and Open Video Systems and in Section 613 of the Cable Act (47 USC §533).

1.9 Fair Competition. In the event the County authorizes or permits any person or entity other than the Grantee to enter into the County's Streets for the purpose of constructing or operating a Cable System, or for the purpose of providing Cable Service or video programming service to any part of the Franchise Area, the material provisions thereof shall be reasonably comparable to those contained herein, and the obligations imposed on the grantee thereunder shall be no less burdensome nor more favorable than the obligations imposed upon the Grantee hereunder, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

SECTION 2. SHORT TITLE AND DEFINITIONS

2.1 This Franchise Agreement shall be known and be cited as the "Santa Barbara and **Comcast of Santa Maria, L.L.C.** Franchise Agreement." The definitions set forth in the Santa Barbara County Enabling Ordinance pertain to this Franchise Agreement and shall be relevant to the purposes and meaning of this Franchise Agreement. In addition, the following terms, phrases, words and their derivations have the meaning given herein.

"Cable Act" shall refer to the Cable Communications Policy Act of 1984, 47 USC §521 *et seq.*, as amended by the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, and as it may be further amended during the term of the Franchise.

"Cable Service" shall refer to (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.

"County" or "Santa Barbara" when used to refer to a geographic area, means the County of Santa Barbara, a political subdivision of the State of California, in its present incorporated form or in any later recognized, consolidated, enlarged, or reincorporated form; when used to refer to an action taken by an entity, the term refers to the governing body of the County of Santa Barbara, or any entity authorized to act on its behalf.

"Educational Institution" means a public elementary and/or secondary school or a public charter school.

"Enabling Ordinance" means the Ordinance of the Board of Supervisors of the County of Santa Barbara known as Chapter 43, Cable Systems and Open Video Systems.

"Franchise", Franchise Agreement" or "Agreement" shall refer to this contract between the County and the Grantee, entered into in accordance with the terms of the Enabling Ordinance.

"Grantee" means **Comcast of Santa Maria, L.L.C.** Inc., the person to whom this Cable Franchise is granted by the County Board of Supervisors, and its lawful and permitted successors, assigns, and transferees.

"Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, Normal Business Hours shall include some evening hours or some weekend hours.

"Normal Operating Conditions" means those service conditions that are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, a governmental agency's construction permitting process, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System. For purposes of determining "Normal Operating Conditions" as those conditions relate to compliance with the customer service standards during the six (6) month period after the launch of a new service, the County Administrator will characterize such launch periods as outside the control of the Grantee.

2.2 All words appearing in this Agreement which are identical to the words defined in Section 2.1 shall have the meanings set forth in Section 2.1. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein shall be given the meanings set forth in the Enabling Ordinance, or if not defined therein, the meaning set forth in the Cable Act, and, if not defined therein, shall be given their common and ordinary meaning.

SECTION 3. FRANCHISE -- LIMITATIONS

3.1 The Franchise does not confer rights other than as provided by this Franchise Agreement, or as mandated by federal or state law.

3.2 No privilege or exemption is granted or conferred except those specifically prescribed herein.

3.3 The County may delegate its authority except as prohibited by federal or state law.

3.4. In the event that Grantee files a claim against the County or its officials, members, employees, or agents arising from the regulation of cable service or from a

decision of approval or disapproval with request to a grant, renewal, transfer or amendment of a franchise, Grantee's requested relief, assuming that relief is required by a provision of Federal, State or local law, shall be limited to injunctive relief and declarative relief unless otherwise permitted by 47 U.S.C. § 555A.

3.5 The Grantee shall at all times be subject to the exercise of the police power of the County, and its other lawful authority.

3.6 Nothing in this Franchise Agreement shall be read to create an expectancy of renewal or to in any respect entitle the Grantee to renewal or extension of this Franchise, except as may be expressly required by applicable law.

3.7 Any privilege claimed under any Franchise by the Grantee in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property, subject to Section 43-7 of the Enabling Ordinance.

SECTION 4. NON-EXCLUSIVE FRANCHISE AND COMPETITION ENCOURAGED

4.1 This Franchise Agreement and the right it grants to use and occupy the public right of way is not exclusive and does not explicitly or implicitly preclude the issuance of other franchises to operate Cable Systems within the County, affect the County's right to authorize use of the public right of way by other persons or the County's right to operate a Cable System to the extent permitted by applicable law.

SECTION 5. NO WAIVER

5.1 The failure of the County, upon one or more occasions, to exercise a right or to require compliance or performance under this Franchise Agreement or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.

5.2 Waiver of a breach of this Franchise Agreement or the Enabling Ordinance is not a waiver of any similar or different breach. Neither the granting of this Franchise nor any provision herein shall constitute a waiver or bar to the exercise of any governmental right or power of the County, including without limitation the right of eminent domain.

SECTION 6. CUSTOMER PROTECTION

6.1 Customer Protection. The Grantee shall meet or exceed the customer service standards established in the Enabling Ordinance. Nothing in this Franchise shall impair the County's authority to lawfully impose additional or more stringent customer service standards, if adopted in a manner consistent with federal or state law. The County shall provide notification and confer with Grantee before imposing additional or more stringent customer service standards, and Grantee reserves any rights it may have to object to the action, including a claim that an amendment would unlawfully

impair this contract. In the event that Grantee files a petition with the Federal Communications Commission requesting a finding that effective competition exists pursuant to 47 C.F.R. §76.905, thereafter Grantee shall be subject only to customer service standards provided in 47 C.F.R. §76.309 *et. seq.* ("FCC Standards"). If the FCC later finds that effective competition does exist, the FCC Standards will continue to apply to Grantee; if, however, the FCC finds that effective competition does not exist, Grantee will again be subject to those customer service standards established in the Enabling Ordinance.

6.2 Additional Customer Service. Grantee may as an alternative to customer service standards provided in the Enabling Ordinance, maintain a customer service presence in the county to include at least the following:

A. Locations in the county convenient to county residents where subscribers may pay their bills.

B. Provisions for bill payments via credit card payments and automatic bank debit.

C. Maintain 24 hour per day, 7 days per week, a customer call center for resolving billing, equipment, and other issues, staffed at a minimum with trained company representatives fourteen hours per day, and live operators to receive messages for the remainder of the day.

D. Operate a drop-off and pick-up service for customer equipment from (1) the homes of current subscribers where the equipment is believed to be defective or where necessary relative to new or changed services purchased by the new customer, (2) subscribers requesting to discontinue service, (3) the homes of newly acquired customers. Grantee shall complete the drop-off or pick-up of equipment within the same deadline established by the FCC for the installation of new service.

6.3 Privacy. The County and the Grantee shall maintain constant vigilance with regard to possible abuses of the right of privacy as required by law.

6.4 Sale of Subscriber Lists and Personalized Data.

A. The Grantee shall be subject to the provisions of federal law regarding limitations on the Grantee's collection and use of personally identifiable information, and the protection of subscriber privacy.

B. The County reserves its right to adopt other consumer/customer protection laws, and to apply those laws to Grantee, if adopted in a manner consistent with federal and state law.

6.4 Maintenance and Complaints.

A. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

B. Written complaints concerning billing, employee courtesy, programming, safety, or the Grantee's operational policies, as well as all other complaints, including complaints about outages, signal quality, and service disruptions, shall be recorded. The Grantee will maintain records of written complaints for three (3) years. Copies of the complaint records shall be provided to the County on request, if permitted by 47 U.S.C. §551

C. The Grantee shall maintain repair technicians sufficient to comply with the FCC customer service standards under Normal Operating Conditions and to respond to subscriber complaints, loss of service, or requests for service. The Grantee shall have in place at all times the equipment necessary to locate and correct Cable System malfunctions.

D. All subscribers and members of the general public in the County may direct complaints and inquiries regarding the Grantee's service or performance to the County. In addition to such other actions it may take to enforce this Franchise, upon the request of a complaining party or the Grantee, the County may review complaints or disputes, and recommend action for resolution. The Grantee's good faith or lack thereof in attempting to resolve complaints in a fair and equitable manner will be considered in connection with any renewal application filed by the Grantee.

6.5 Non-discrimination and Equal Employment Opportunity.

A. Throughout the term of this Franchise, the Grantee shall fully comply with the equal employment opportunity requirements of federal, state, and local law and, in particular, FCC rules and regulations relating thereto. Upon request by the County, the Grantee shall furnish the County a copy of the Grantee's annual statistical report filed with the FCC, if any, along with proof of the Grantee's annual certification of compliance. In the event the Grantee is at any time determined by the FCC not to be in compliance with said FCC rules or regulations, the Grantee shall notify the County within fifteen (15) days of its notice of such noncompliance from the FCC

B. The Grantee shall not, in its rates or charges, or in the availability of the services or facilities of its Cable System, make or grant undue preferences or advantages to any subscriber, potential subscriber, or group of subscribers or potential subscribers, nor shall the Grantee subject any such persons or group of persons to any undue prejudice or any disadvantage. However, the Grantee may offer temporary, promotional discounts in order to attract or maintain subscribers provided that such discounts are offered on a non-discriminatory basis to similar classes or types of subscribers throughout the Franchise Area. Subject to FCC

rules and regulations, this section shall not prohibit the Grantee from publishing different rates for different classes of subscribers. The Grantee shall not deny, delay, or otherwise burden service or discriminate against subscribers within its Franchise Area on the basis of age, race, creed, religion, color, sex, national origin, marital status, sexual preference, physical or mental disability, or political affiliation. Non-uniform rates may be offered to commercial or bulk rate subscribers, and provided further that reduced rates shall be offered to economically disadvantaged disabled persons and economically disadvantaged senior citizens. The County and the Grantee shall develop criteria and procedures to allow residents to qualify as “economically disadvantaged”. The County’s criteria shall be no less stringent than those established by the County for Cox Com, Inc.

C. The Grantee shall not deny Cable Service to any group of potential subscribers because of the income of the residents of the area in which the group resides.

D. The Grantee shall ensure that its services are accessible, as far as reasonably practical, to people with disabilities. All programming received by the Grantee with closed-captioning shall be retransmitted by the Cable System including the closed-caption signal.

6.6 Parental Control Device. Upon request from a subscriber, Grantee shall provide, at no cost to the customer, a filter or other device that fully blocks the audio and video signal of a channel carrying sexually oriented pay-per-view programming. In addition, upon request from a subscriber, Grantee shall provide, by sale or lease, a device by which the subscriber can prohibit viewing of a particular Cable Service during periods selected by the subscriber.

6.7 The parties dispute whether Grantee may charge for additional outlet fees within the confines of applicable rate regulations. Notwithstanding the foregoing, Grantee agrees to discontinue charging such fees on the third monthly billing cycle following the effective date of this Agreement and thereafter, but Grantee reserves its right to charge such fees in the future if there is a change in rate regulations applicable within the County and such fees would be permitted as a result of that change in regulation; provided, however, that Grantee shall not charge any such rate without first providing County with sixty (60) days prior written notice and appearing before the County Board on the matter if so requested.

SECTION 7. SYSTEM FACILITIES, EQUIPMENT, AND SERVICES

7.1. Cable System Design and Functionality

A. System Design. Grantee shall upgrade or rebuild its Cable System in the County in a manner, which will include the following requirements:

1. The System will use a fiber to the neighborhood node architecture or an equivalent technology and architecture.

2. The System will serve no more than an average of 1000 subscribers per node.

3. The System shall be capable to divide or segment nodes as needed to provide quality services to customer.

4. The cable system shall be designed to 860 MHz. All passive components replaced or added after the effective date of this Franchise will be 1 GHz capable equipment.

5. The Cable System shall support two-way activated capacity.

6. The headend shall have 24-hour backup power supplies. Each node shall have a minimum two-hour backup and hub sites and optical transfer nodes shall have six-hour backup power supplies. Such equipment shall be constructed and maintained so as to cut in automatically upon failure of the commercial utility power, to revert automatically to a standby mode when alternating current power returns, and to comply with all utility and other safety regulations to prevent the alternate power supply from powering a "dead" utility line in order to prevent injury to any person.

B. System Functionality.

1. As rebuilt or upgraded and maintained, the Cable System shall comply with all relevant FCC regulations regarding its operation and reliability.

2. As designed, upgraded and/or rebuilt and maintained, the facilities and equipment on the Cable System must be able to deliver high quality signals that meet FCC technical quality standards regardless of the particular manner in which the signal is transmitted. Grantee shall comply with its internal digital video standards until such time that the FCC adopts digital video standards. When the FCC adopts digital video standards, all digital programming must comply with the FCC standards. If the digital video on the Cable System does not comply with FCC digital video standards in two sets of FCC proof-of-performance tests, the County may pursue all legal remedies available.

3. Equipment shall be installed at the headend to allow the Grantee to cablecast signals in substantially the form received, without substantial alteration or deterioration (for example, the headend should include equipment that will transmit color video signals received at the headend in color). Equipment must be installed so that all closed captioning programming received by the Cable System shall include the

closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and PEG access) are retransmitted in those same formats. In the case of FM radio transmission, the above specifications, where applicable, shall apply.

4. Upon completion of the upgrade, Grantee will deliver at least ninety (90) analog or digital channels of video programming services to subscribers. Until such time that the Grantee determines that it is technologically and economically feasible to offer the basic tier in digitally compressed form, the Grantee shall provide at least the basic tier of the channels on the Cable System in analog form. All additional channels may be digital. The compression ratio of the digital channels shall meet the FCC's standard.

5. Upon completion of the upgrade, the system shall be capable of providing cable modem service.

C. Completion of System Construction

1. The upgrade of the system, including expansion of the system to those areas designated in Exhibit A, shall be completed no later than 12 months from the effective date of this franchise.

2. Completion of the system shall be certified by a qualified independent party selected by the County. All reasonable costs incurred by the County in the certification of completion up to five thousand (\$5,000) Dollars shall be reimbursed by the Grantee within 30 days of the County's request for reimbursement.

7.2. Interconnection.

A. Interconnection with Comcast of Santa Maria, L.L.C. Systems. On the effective date of this Agreement, the Grantee has taken all necessary technical and construction steps to ensure that its Cable System serving any Grantee owned Cable System in Santa Barbara County, contiguous to the franchise areas that are served from a common headend, are 100% physically interconnected. The Grantee agrees that it shall at minimum maintain the level of interconnectivity described herein throughout the life of this Franchise. The interconnection shall be capable of receiving and delivering PEG access programming to and from the interconnected systems. There shall be no charge for the interconnection for PEG access programming.

B. Interconnection with Cable Systems (Not Owned by the Grantee) Serving the County. Upon written request of the County, Grantee shall take all necessary technical and construction steps to ensure that its Cable System is capable of interconnecting with: (1) all Cable Systems (not owned by the

Grantee) serving the same unincorporated areas of the County (except Cable Systems serving 1,000 or fewer subscribers) served by Grantee, and (2) any Open Video System (established pursuant to Section 653 of the Cable Act (47 USC §573), unless federal law is amended to no longer require such interconnection) serving the Franchise Area described herein.

C. Interconnection Functionality, Timing, and Costs. The Grantee and the County agree that on the effective date of this Agreement there are no Cable Systems or Open Video Systems, not owned by the Grantee, operating within the County which would be addressed by Section 7.2(B). However, if in the future a Cable System or Open Video System is constructed in the County that falls within the description set forth in Subsection B above, the County may request the Grantee to interconnect its Cable System with such other Cable System or Open Video System solely for the exchange of access programming. If the County requests such interconnection, the Grantee shall promptly enter into negotiations with the other system to determine where the interconnection point shall be located and a schedule for the construction of and to the interconnection point. The costs for the interconnection shall be borne by the Cable System or Open Video System not owned by the Grantee. The parties shall have one hundred twenty (120) days to reach agreement. The interconnection described in this Subsection C shall be constructed using optical fiber or other technology providing equivalent capacity and functionality. The interconnection shall be capable of receiving and delivering PEG access programming to and from the interconnected systems. In addition, the Grantee may also use the Cable System functionality and capacity provided by the interconnection for its business purposes. There shall also be a monthly maintenance fee paid to the Grantee for use of such interconnection.

D. Cooperation. The County understands that interconnection with a Cable System or Open Video System not owned by Grantee requires cooperation from the other cable system operator. The County shall make every reasonable effort to assist Grantee in achieving the cooperation necessary to realize interconnection.

E. Microwave Transmission of Governmental Access Programming.

The Grantee shall continue to provide on a temporary basis the current microwave transmission services to the County to allow governmental access programming signals originating from the County Administration Building in downtown Santa Barbara to be transmitted to the northern portion of the county for distribution to Comcast subscribers. The Grantee shall provide these services for a period to assure successful transition to the Grantee's provision to the County of the Santa Maria to Lompoc Inter-city link as described in Exhibit A of the I-NET Agreement attached as Exhibit B hereto. During such temporary period, Grantee shall be responsible for maintaining reception equipment capable of receiving the governmental access signal from La Cumbre Peak at Grantee's facilities on Broadcast Peak and for transmission equipment that will allow the signal to be transmitted to the Grantee's headend directly or via any intermediate sites as required, for ultimate distribution to subscribers. Grantee

shall be responsible for the signal quality from Broadcast Peak to the distribution system to its subscribers. The County shall be responsible for all audio/video equipment located in the County Administration Building, and for the audio and video signal originated therein.

7.3 Institutional Network.

A. Grantee shall construct facilities, as necessary, in order to provide transmission capacity for institutional network services ("I-NET Services") to the County. Such I-NET Services shall be provided to the County by Grantee, either directly or through an affiliate, subject to the terms of a separate I-NET Institutional Services Agreement ("ISA") executed by both parties. The ISA shall reflect the draft ISA, attached as Exhibit B hereto.

B. The I-Net Services, and any equipment or facilities constructed by Grantee to provide those services, shall be for the sole, non-commercial use of the County and may not be resold, leased, or otherwise provided to third parties, either for a fee or at no cost, by the County.

C. At all times during the term of this Franchise and the ISA, and upon expiration thereof, Grantee shall retain ownership of all fiber optics, electronics, modulators, signal processors and other facilities, equipment and materials on Grantee's side of the demarcation point used to provide I-Net Services to the County. The demarcation point shall be an industry standard-based interface, mutually agreed upon by the parties. The demarcation point delineates Grantee's facilities and other facilities. The Service Recipients shall be responsible, at the Service Recipients' expense, for selecting, purchasing, installing and maintaining any equipment on the Service Recipient's side of the demarcation point necessary to use the I-Net Services. The County also agrees to cooperate with Grantee in providing such I-Net Services, including without limitation, providing at each of the County-designated locations set forth on Exhibit B the following: (i) adequate space in the computer room reasonably proximate to the internal router; (ii) adequate footprint space; (iii) an outside demarcation point and internal building conduit to allow Grantee the ability to rod or rope its cable to the computer room; (iv) adequate wall space for Grantee's patch panel and splice model; (v) UPS A/C power equipment, if applicable; (vi) emergency local generator back-up service, if applicable; (vii) access to the buildings and computer rooms to allow Grantee to rooms for service initiation; and (viii) access to each location for regular and emergency service and maintenance of Grantee's equipment run cable into buildings and computer.

D. Within 30 days of the effective date of this franchise, Grantee agrees to provide the County a grant of \$1,150,000 for capital projects related to providing and enhancing the connections between the County's north and south countywide area networks, for utilizing the INET and for GATV purposes. The grant shall be used primarily for upgrading and utilizing the interconnects, both primary and backup, serving the north and South County. Upon request of

the Grantee, the County shall provide Grantee with documentation inclusive of designs to demonstrate the expenditures requested have been utilized for the purposes herein provided.

7.4 Cable System Testing.

A. The Grantee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise and other performance standards established by law or regulation. All tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of NCTA "Recommended Practices for Measurements on Cable Television Systems."

B. The Grantee shall conduct FCC Proof of Performance Tests in conformance with testing required by 47 CFR §76, subpart K through the life of the Franchise, and other-tests mutually agreed upon where Cable System user complaints indicate tests are warranted or as required to test all major trunk lines. The County will be permitted to witness the tests. A written report of the test results shall be filed with the County within (30) days of the test. If a location fails to meet performance specifications as outlined in 47 CFR §76, subpart K, without requirement of additional notice or request from the County, shall take corrective action, retest the locations, and advise the County of the action taken and results achieved.

7.5 System Inspections.

A. The County may inspect the Grantee's Cable System during and after construction. The County shall have the right to inspect the Cable System, subscriber installations, and the Grantee's equipment used in the maintenance of that Cable System at any time to determine compliance with the Franchise Agreement, Enabling Ordinance, and applicable federal, state and local laws. The County shall provide five (5) business days written notice to the Grantee of such inspection, which need not include the specific locations to be inspected. Any testing of the System necessary to accomplish such inspections shall only be performed in the presence of an authorized employee of the Grantee and only after reasonable advance notice to the Grantee. The Grantee shall be notified in writing of any violations found during the course of inspections. Costs required to test for compliance with this Franchise Agreement or governing law shall be borne by County. If, based on material subscriber complaints (which have been reviewed by the County) and its own investigation, the County believes that the Cable System may not be operating in compliance with FCC regulations, it may require the Grantee to perform tests and to prepare a report to the County on the results of those tests, including a report identifying any problem found and steps taken to correct the problem. The Grantee must bring violations into compliance within thirty (30) days of the date it receives notice. Grantee shall bear the costs of tests necessary to determine compliance with FCC standards; Grantee shall also reimburse all reasonable costs incurred by the County for such tests if, following Grantee's test demonstrating compliance with the FCC standards

County then performs the same test which concludes that Grantee is not, in fact, in compliance. Inspection does not relieve the Grantee of its obligation to build in compliance with all provisions of the Franchise. This provision is subject to any federal law limitations on the County's authority.

7.6 Other Construction Procedures. The Grantee shall:

A. Follow a Cable System design and construction plan consistent with its obligations under this Franchise, and use the equipment specified (or substitute equipment of equivalent or better quality) in such distribution system design plan and construction plan (except insofar as those plans, if carried out, would result in construction of a System which would not meet requirements of federal, state, or local law; and except for such minor modifications as are typical in the industry);

B. Use equipment of good and durable quality;

C. Provide the County with the name and telephone number of the individual responsible for supervising the cable system upgrade project contemplated in paragraph 7.1 herein, and shall also provide a quarterly construction report to the County in a form reasonably acceptable to the County when major construction projects such as Cable System upgrades or rebuilds, the construction of an institutional network, or interconnection project are being undertaken;

D. Maintain a file showing its general plan and timetable for construction of the Cable System, and shall provide County with access to that file on request;

E. Notify County residents in any construction area at least one day in advance before first entering onto property to perform any work in conjunction with Cable System construction, and shall additionally notify affected residents in advance of any work which will involve excavation, replacement of poles, or tree trimming;

F. Provide as-built and design maps in an AutoCAD format for the County's review at the local office of the Grantee after the completion of System construction in any geographic area; and

G. Make available to the County upon request maps showing the actual location of additions or extensions to its lines within sixty (60) days of completion of Cable System construction in any geographic area.

7.7 System Maintenance.

A. Interruptions to be Minimized. Whenever possible the Grantee shall schedule maintenance so that activities likely to result in an interruption of service are performed during periods of minimum subscriber use of the Cable

System. The Grantee shall make best efforts to minimize interruptions of service consistent with reasonable and customary construction practices.

B. Maintenance Practices. In addition to its other obligations, the Grantee shall (1) use replacement components of good and durable quality, with characteristics better or equal to replaced equipment; and (2) follow the more stringent of industry maintenance standards or corporate maintenance standards.

7.8 System Performance. The Cable System shall meet or exceed the standards set forth in 47 CFR §76, subpart K ("FCC Standards"), as those standards may be in effect at all times. If the FCC Standards are eliminated and not replaced, the County may continue to enforce the standards which existed prior to the date of elimination. County reserves its rights, as those may exist now or in the future, to establish technical standards; any such standards shall be amended or added in conjunction with, and subject to, Section 23.2 of this Franchise.

7.9 Right-of-Way Construction and Occupation: Grantee acknowledges and agrees that the collocation of facilities and the coordination of construction in the public rights-of-way in order to limit the impact of such facilities or construction on other users is an important public policy. Grantee shall collocate its facilities and cooperate during any construction in the public rights-of-way with other users of the public rights-of-way to the same extent that all other users are similarly required to do so. Consistent with any regulations or policies adopted by the County that are generally applicable to all rights-of-way users, the County or other users of the public rights-of-way may apply to the Grantee to use Grantee's facilities located in the rights-of-way for a fee and the Grantee shall likewise be afforded the opportunity to apply to other users; provided, however, that this Franchise Agreement creates no third party rights in any person and provided further that Grantee shall be under no obligation to accept such applications. The County retains the right to verify that all users of the public rights-of-way are complying with its collocation and cooperation regulations or policies and may impose additional conditions where necessary to assure these policies are being fulfilled.

7.10 System Extension.

A. Extensions and Initial Rebuild: Grantee shall, with all due diligence, construct its Cable System to serve all such areas within the Franchise Area to the extent technically and economically feasible within 24 months of the effective date of this franchise. At a minimum, grantee shall within 12 months of the effective date of this franchise complete the rebuild of the system in all areas currently served.

B. Line Extension Requirements.

1. Franchise Area Boundaries. Within the Franchise Area boundaries as shown on the maps in Exhibit A, the Grantee must extend service upon request to any residence for no charge other than the then-prevailing normal installation charge and/or the extension or long drop charge, described below in 7.10 B and C, unless the Grantee

demonstrates to the County's satisfaction that extraordinary circumstances justify a waiver of this requirement.

2. New Areas. In cases of new construction or property development within the Franchise Area where utilities are to be placed underground, the developer or property owner shall give notice to the Grantee no later than the time of notice to public utilities. Said notice shall specify the date on which open trenching will become available for Grantee's installation of conduit, pedestals and or vaults and laterals to be provided at Grantee's expense. Grantee shall provide specification as needed for trenching.

Cost of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except if the Grantee fails to install its conduit, pedestals and or vaults, and laterals within five (5) working days of the date the trenches have become available as designated in the notice given by the developer or property owner, then should the trenching be closed after the five day period, the cost of trenching will be borne by the Grantee. Except for the notice of the particular date on which trenching will become available to Grantee, any notice provided to Grantee by the County of a pending plat shall satisfy the requirement of reasonable notice if sent to the local general manager or Cable System engineer of Grantee prior to the approval of the plat.

a. For areas added to the Franchise Area pursuant to Section 1.4, above, the Grantee will extend its trunk and distribution system to serve residential subscribers requesting service after the date hereof at the then-prevailing normal installation charge and/or the long drop charge unless the Grantee demonstrates to the County's satisfaction that extraordinary circumstances justify a waiver.

b. Cost Sharing. In the event that the new residential subscriber requesting service is not located within five hundred (500) feet of active plant and the equivalent of 40 homes per mile of the nearest existing Cable System plant, the Grantee will extend its Cable System upon the request of fifty percent (50%) of the occupied homes in the unserved area based upon the following cost-sharing formula:

- i. $\frac{\text{Total Cost to Construct Extension}^1}{\text{Cable Miles of Extension}} = \text{Cost Per Cable Mile of Extension}$
- ii. $\frac{\text{Cost Per Cable Mile of Extension}}{40} = \text{Grantee's Share of Cost Per Subscriber Unit}$
- iii. $\text{Grantee's Share of Cost Per Subscriber Unit Times Number of Subscriber Units Passed} = \text{Grantee's Share of Total Cost of Extension}$
- iv. $\text{Total Cost to Construct Extension Minus Grantee's Share of Total} = \text{Total Subscriber's Share}^2$
- v. $\frac{\text{Total Subscriber Share}}{\text{Number of Subscribers Requesting Service}} = \text{Cost Per Subscriber}^3$

C. Subscriber Drops. The Grantee shall not assess any additional cost for service drops of one hundred fifty (150) feet or less unless the Grantee demonstrates to the County's satisfaction that extraordinary circumstances justify a higher charge. Where a drop exceeds one hundred fifty (150) feet in length, the Grantee may charge the subscriber a "long drop charge", which shall be the difference between the Grantee's actual costs associated with installing a one hundred fifty (150) foot drop and the Grantee's actual cost of installing the longer drop.

D. Undergrounding of Drops. In any area where the Grantee would be entitled to install a drop above-ground, the Grantee will provide the subscriber the option to have the drop installed underground, but may charge the subscriber the difference between the actual cost of the above-ground installation and the actual cost of the underground installation.

E. Time for Extension. The Grantee shall extend service as described herein to any person who requests it under Normal Operating Conditions and unless otherwise provided herein:

1. If the person is located in the Franchise Area within the County, and service can be provided by activating or installing a drop to that location, service shall be provided within ten (10) days of the request;

2. If the person is located in a newly added area to the Franchise Area pursuant to Section 1.4B, service shall be provided in accordance with the following timelines and conditions.

¹ "Total Cost to Construct Extension" is defined as the actual turnkey cost to construct the entire extension including electronics, pole make-ready charges, and labor, but not the cost of the subscriber drop.

² Grantee shall not be required to construct any portion of an extension until the full amount of the Total Subscriber's Share is received.

³ Those subscribers requesting service can allocate costs between requesting subscribers in a manner mutually agreed by the requesting subscribers.

a. If the person is located in an area where service can be provided by activating or installing a drop, service shall be provided within ten (10) days of the request;

b. If the person requests service where a System extension of 2,640 cable-bearing strand feet (one-half [$\frac{1}{2}$] cable mile) or less is required (weather and ground conditions permitting), Grantee must provide service according to the following timeline:

i. Within fourteen (14) days of its receiving a request for Cable Service, Grantee shall apply for any required permits and shall file such permits with the appropriate local or state agency or office, and

ii. Grantee shall provide service to that location within forty-five (45) days from the date that the Grantee has obtained any required permits for such construction to the person's location.

c. If the person requests service where a System extension of more than 2,640 cable-bearing strand feet (one-half [$\frac{1}{2}$] cable mile) is required, Grantee must provide service according to the following timetable (weather and ground conditions permitting):

i. Within fourteen (14) days of its receiving a request for Cable Service, Grantee shall apply for any required permits and shall file such permits with the appropriate local or state agency or office, and

ii. Grantee shall provide service to that location within six (6) months from the date that the Grantee has obtained any required permits for such construction to the person's location.

7.11 Governmental Access Programming.

A. Access Channels.

1. On the effective date of the Franchise, the Grantee shall provide one (1) analog channel for non-commercial governmental access programming capable of delivering with the same or better picture quality as other broadcast channels.

2. Definition of Government Access Channel. For purposes of this Section and for all other Sections of this Agreement that may relate to this Section, the term “channel” shall refer to the video channel capacity set aside for government access use that is delivered to each subscriber in the Franchise Area and the separate franchise areas of the cities of Buellton, Solvang, Santa Maria, Lompoc, and Guadalupe. The access channel capacity that is to be provided must be capable of transmitting signals in any format and can be used to transmit video and audio signals only, or other information (including, by way of example and not limitation any secondary audio, text, digital information, high definition signals, or compressed video and audio signals that would be classified as a “Cable Service” pursuant to federal law). A non-standard NTSC (National Television Standards Committee) use shall be subject to the Grantee’s prompt prior review and approval to ensure that the use will not cause unreasonable technical interference with other channels. Any usage of the access channel capacity must be in furtherance of non-commercial access purposes.

3. Digital Conversion of the Government Access Channel. Upon Grantee’s conversion of its entire Cable System from analog to offering video channels in a fully digital format, the County, may upon six (6) months notice to Grantee, exchange the analog channel used for government access programming for two (2) digitally compressed video channel. Grantee shall be required to deliver digital government access channels to subscribers in a format that is receivable by the subscriber without any additional expense over the cost of Grantee’s basic digital service offering. If Grantee converts government access channels to digital format, Grantee must provide all the transmission or reception equipment on Grantee’s side of the demarcation point to allow the County to deliver access programming to Grantee and to subscribers in a digitally compressed format. Nothing in the subsection shall require the County to produce or transmit programming to Grantee in digital format. If during the term of this Franchise Grantee converts its entire Cable System to digital format government access programming may continue to be transmitted to Grantee in analog format and Grantee shall maintain equipment necessary to convert such analog signals to the appropriate format for airing on its Cable System.

4. The Grantee may not exercise editorial control over the content of programming on the designated government access channels

5. The government access channels designated to the County shall be made available by the Grantee to the County at no charge. The Grantee shall include the Government channel in its published channel lineup card provided to subscribers.

6. Government access channels may not be used for the airing of programming with a commercial purpose including but not limited to

advertising and selling of products or services or which contains commercial content without the express written permission of the Grantee.

B. Cable Drops for Access Locations. The Grantee shall, upon request of the County Administrator's Office, install one drop and provide basic Cable Service at no charge (i) to any Educational Institution within the Franchise Area, and (ii) to any County owned or leased buildings within the Franchise Area. The County and Educational Institutions may install facilities and equipment to transmit the signal to all rooms within their buildings.

C. Channel Movement. In the event Grantee is required by federal law or regulation to change the channel number of a government access channel, Grantee shall provide thirty (30) days advance notice to the County and its subscribers. Should Grantee decide to change the channel number for any other reason, Grantee shall notify the County of such a Discretionary Change and the reasons therefore at least sixty (60) days prior to the date of the proposed change. If the Grantee moves an access channel from its initial channel number location to another location for any reason during the term of the Franchise Agreement, the Grantee shall pay a fee of Three Thousand dollars (\$3,000) per affected channel(s), if notification is provided to the County consistent with the deadlines listed above. If the Grantee fails to provide notice consistent with the deadlines listed above, the Grantee shall pay a fee of Five Thousand Dollars (\$5,000) per access channel. The channel relocation fees paid to the County shall be used to replace print materials, channel ID's, and other promotional materials (as well as other video materials) containing the old channel number (s), and to otherwise promote the new location of the channel(s). Grantee will not move any access channel more than once in a three-year period, unless required to by law or regulation.

D. Itemization of Contributions. The County and the Grantee agree that the Governmental Access Capital Grant (the "Grants") may be itemized on subscriber bills consistent with FCC regulations;

7.12 Advancements in Cable Services.

A. At County's request, Grantee shall provide information on any Cable Service not being provided to County residents which are being provided on an operational basis (excluding trials and pilot programs) in Systems operated by Grantee as of the effective date of the Agreement

B. If Grantee is providing Cable Service on an operational basis in any of its Systems, and any other System acquired by Grantee after the effective date of this Agreement, and the County desires that such Cable Service be provided to subscribers in the County, the County may require Grantee to provide said Cable Service within six (6) months of the County's written request;

provided, however, that the provision of such Cable Service meets the criteria set forth, below:

1. The offering of the Cable Service is permissible under applicable federal and state laws, ordinances, rules and regulations, and;

2. Grantee has secured all certificates, licenses, authorizations and approvals from federal and state agencies necessary for the offering of such Cable Service; provided, however, that the Grantee shall seek to obtain such approvals in a diligent and timely manner, and;

3. Existing or potential subscribers in the County have demonstrated an interest in subscribing to the Cable Service, including a demonstrable willingness to pay a reasonable rate for such Cable Service, as evidenced by at least one statistically significant survey; provided, however, that upon the reasonable request of the County it shall be Grantee's burden to demonstrate to the County's reasonable satisfaction that such subscriber interest is insufficient, and;

4. The investment necessary to provide such Cable Service can reasonably be expected to be recovered from the incremental revenue anticipated from the provision of such Cable Service, together with a reasonable rate of return.

C. The County shall not require Grantee to provide such Cable Service if any of the requirements described above cannot reasonably be expected to be fulfilled.

D. The provisions of this Section 7.12 shall not apply to any service other than Cable Service as that term is defined in federal law.

7.13 Ascertainment of Programming.

A. Prior to offering an expanded programming lineup as a result of the cable system upgrade, the Grantee shall conduct an ascertainment of the programming needs, interests, and preferences of the subscribers within its franchise area. The Grantee shall report to the County the results of the Grantee's programming ascertainment and any actions taken, or to be taken, by the Grantee pursuant thereto. Thereafter the Grantee shall biannually determine whether the programming available on its lineup continues to meet the needs and interests of the community and make such information available upon request to County; all information so provided will be kept confidential by County.

B. The County at its sole option may undertake a survey of community views of cable operations in the County, including but not limited to programming, response to community needs, and customer service.

7.14 No County Control. During the term of this Franchise, the County may not prohibit the Grantee from providing any program or class of programs, or otherwise

sensor communications over the Cable System; except that, nothing in this section shall be read to authorize the Grantee to air programming prohibited by law.

7.15 Emergency Alert System. The Grantee shall comply with the federal Emergency Alert System (EAS) regulations (47 CFR §11.1, *et seq.*)

SECTION 8. CONSTRUCTION STANDARDS

8.1. This Franchise does not confer the right to place or maintain facilities in any particular location, or in any particular manner, or at all times in the rights of way or any other property occupied pursuant to this Franchise.

8.2 This Franchise confers upon the Grantee the right to place or maintain facilities in those locations, or in those manners, or at those times in the rights of way or any other property occupied pursuant to this Franchise as allowed by applicable law.

8.3. Without limiting the provisions of Ordinance Section 43-7:

A. Grantee agrees that its occupation of the rights of way and such property is subject to the supervision and control of the County.

B. Grantee agrees to move, relocate or remove its facilities as directed by the County upon at least thirty (30) days written notice. At the request of the Grantee the County will meet to discuss Grantee concerns regarding such movement of Grantee facilities. Grantee agrees that should it fail to move, relocate or remove its facilities as directed by the County, the County may perform the work required and Grantee shall pay the cost thereof; and agrees that in the event of emergency, the County may move, relocate or remove Grantee's facilities without notice to Grantee. Except as specifically stated, any action that the Grantee may be required to take shall be at Grantee's expense

C. The construction, installation, operation, and maintenance of the Cable System and all parts thereof shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with the following safety, construction, and technical specifications, codes and standards, as they exist at the time of install or as amended or adopted hereafter:

1. Occupational Safety and Health Administration (OSHA) Safety and Health Standards;
2. National Electrical Code;
3. National Electrical Safety Code (NESC);
4. Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration;

5. Construction, Marking and Lighting of Antenna Structures, FCC Rules 47 CFR Part 17;

6. all federal, state and municipal construction requirements, including FCC Rules and Regulations and environmental regulations;

7. all building and zoning codes, and all land use restrictions and local safety codes; and

8. the Enabling Ordinance.

9. CALTRANS Standards for Vehicular Traffic Control

D. In the event of a conflict among codes and standards, the Grantee shall apply that code or standard which provides the most protection to the public and the public right-of-way. The County reserves any rights that may exist to adopt reasonable additional standards after consultation with the Grantee as required to ensure that work continues to be performed in an orderly and workmanlike manner.

SECTION 9. RATE REGULATION

9.1 The County may regulate Grantee's rates and charges consistent with federal law.

9.2 Grantee shall comply with all federal laws and regulations regarding the rates it charges, the information provided to subscribers and the County about its rates and services, and notices of changes in its rates or services.

9.3 The Grantee will notify subscribers of any proposed increase in its rates or services at least thirty (30) days before said increase is to become effective, or as required by federal law or regulation. Grantee shall notify the County thirty (30) days prior to the effective date of said increase. The notice shall comply with FCC regulations regarding service and rate change notification.

SECTION 10. FRANCHISE FEES

10.1 The Grantee shall pay to the County an amount equal to five percent (5%) of Grantee's gross revenues derived from the operation of its Cable System to provide Cable Services in the County. In the event that a franchise fee in an amount higher than five percent (5%) of Grantee's gross revenues is permitted by federal law, the County shall meet and confer with Grantee prior to increasing the amount of the franchise fee. Prior to increasing the franchise fee above five percent (5%) of gross

revenues, the County shall provide notice to the Grantee and the opportunity for public comment at an announced County Board meeting.

10.2 In the event that the Grantee shall, during the term of the Franchise, offer a package of bundled, tied, or combined Cable Services (which are subject to the franchise fee) with non-Cable Services (which may not be subject to the franchise fee) to individual subscribers, the revenue from such bundled services shall be allocated consistent with the rates or prices advertised by Grantee through its marketing materials or on its published rate card. In the event Grantee does not advertise nor publish separate prices for the combined services, and in the absence of state or federal law governing this matter, the percentage that the price for the combined services is discounted from the regular retail rates of the individual services shall be pro-rated across all the services in the bundled package; provided, however, that the net revenues derived from services subject to mandatory tariff rates imposed by the California Public Utilities Commission (or other governmental entity having such authority) shall be deducted from the combined revenue to determine the revenue subject to the franchise fee. (As an example, Grantee may offer a "bundle" of video, voice and data services for a flat fee of \$75.00 where the retail rate services purchased on an individual basis would equal \$100.00. Assuming that there is no service subject to the mandated tariff rate, Grantee would apply a twenty-five percent (25%) discount to each service. Thus, if the retail rate for the Cable Service in the bundle were \$50.00, Grantee would recognize Cable Service revenue in the amount of \$37.50 and pay a franchise fee on that revenue.)

10.3 Franchise fee payments due the County under this provision shall be computed at the end of each calendar quarter and shall be due and payable for the preceding quarter on or before April 30 (for the first quarter), July 31 (for the second quarter), October 31 (for the third quarter), and January 31 (for the fourth quarter) of each year. This payment schedule is a significant change from the schedule followed prior to this agreement. For the purpose of reducing adverse cash-flow effects on the County resulting from the change in the payment schedule, the payment made for first quarter of 2005 shall include, in addition to the franchise fees for the first quarter, a full reconciliation of franchise fees paid in 2004, and advance payment of second quarter payments.

10.4 No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of payment be construed as a release of any claim the County may have for further or additional sums payable under the Franchise by the Grantee.

10.5 The Grantee shall submit to the County a late fee on franchise fee payments which are submitted after the due dates as described in Section 10.3, except that the Grantee shall be granted a five day "grace" period. Any franchise fee payment submitted after the five-day grace period shall be subject to a late fee. The late fee shall be consistent with Section 43-16 of the Cable Ordinance which shall be at an interest rate equal to three percent (3%) above the rate for three-month Federal Treasury Bills at the most recent United States Treasury Department sale of such Treasury Bills occurring prior to the due date of the franchise fee payment.

10.6 The franchise fee shall be paid in addition to fees, charges, or assessments required by the County, unless such fee, charge, or assessment falls within the definition of a Franchise fee under the Cable Act. The payments made in support of PEG access capital pursuant to Section 7.11(D) shall not be included in the computation of franchise fees.

10.7 Audits to verify franchise fee payments may be conducted by the County. Grantee will provide the records required by the County to conduct the audit to the County, at a location agreed upon by the County and Grantee.

10.8 When the Franchise terminates for any reason (other than through the issuance of a renewal or superseding franchise), the Grantee shall file with the County within ninety (90) calendar days of the date its operations in the County cease, a financial statement, certified by a certified public accountant, the Grantee's chief financial officer, or other representative of the Grantee authorized to certify such document, showing the gross revenues received by the Grantee since the end of the previous fiscal year. Adjustments will be made at that time for franchise fees due to the date that the Grantee's operations under the terminated franchise ceased.

SECTION 11. RESERVED

SECTION 12. PROTECTION OF COUNTY AND ENFORCEMENT -- SECURITY FUND

12.1 On the effective date of the Franchise, the Grantee shall post with the County an irrevocable letter of credit in the amount of \$50,000. Subject to the process described in Section 14 of this Agreement, the County may draw on the letter of credit as a security fund to ensure the faithful performance of all provisions of the Enabling Ordinance, the Franchise Agreement, applicable law, and permits, and the payment by the Grantee of any penalties, liquidated damages, claims, liens, fees, or taxes due the County which arise by reason of the construction, operation, or maintenance of the Cable System. The Security Fund shall be maintained consistent with Section 43-8 (7) of the Enabling Ordinance.

12.2 The irrevocable letter of credit shall be subject to approval as to content and form by the County Counsel. The letter of credit shall in no event require the consent of the Grantee prior to the collection by the County of any amounts covered by the letter of credit.

12.3 Within three (3) business days of the date it draws on the Grantee's letter of credit, the County shall send written notice to the Grantee notifying it that the County has drawn on the fund, the amount withdrawn, and the specific reasons for the withdrawal.

12.4 Within thirty (30) calendar days after notice to the Grantee that the County has withdrawn an amount from the security fund, the Grantee shall take all necessary steps to restore the letter of credit to its full amount. If the Grantee fails to restore the security fund to the full amount within thirty (30) calendar days, such failure may be considered a material breach of this Franchise Agreement and may be used as grounds for revocation of the Franchise.

12.5 If the Franchise terminates for any reason, and the Grantee has ceased to provide service in the County, the balance of the security fund that remains following termination of the Franchise and satisfaction of all of its obligations which are secured by the fund shall be returned to the Grantee. Funds shall not be returned until the County has determined that the Grantee does not owe funds to the County and is not in default. The County shall make such a determination within ninety (90) days. If no action is taken within the aforesaid ninety (90) days, no default or underpayment will be deemed to have occurred.

SECTION 13. PROTECTION OF COUNTY AND ENFORCEMENT -- APPROVAL OF SURETIES: RELATION TO OTHER REMEDIES

13.1 Any insurance, bonds, security fund, or letter of credit required by this Franchise and the Enabling Ordinance shall be issued, respectively, by an admitted insurer in California, acceptable to the County, and by a financial institution located in California acceptable to the County.

13.2 Recovery by the County of any amounts under this Franchise and the Enabling Ordinance shall not in any respect limit the Grantee's duty to indemnify the County as provided in the Enabling Ordinance for any unrecoverable amounts due the County; nor shall recovery of any amounts in any respect prevent the County from imposing penalties under California law, or exercising any other right or remedy it may have under the Franchise or at law or equity.

SECTION 14. FRANCHISE VIOLATION - NOTICE AND PROCEDURES

14.1 Before pursuing any remedy contemplated by this Franchise, the County shall follow the procedures set forth in this Section 14.

14.2 The County shall notify Grantee in writing of any alleged material violation ("Violation Notice") of this Franchise or the Enabling Ordinance. The Violation Notice shall: (A) describe the alleged violation; (B) direct the Grantee to cure the alleged violation or show cause why the alleged violation should not be or cannot be cured; and, (C) state the time for response. The time for response by the Grantee to Violation Notice issued by the County shall be a period of thirty (30) days, except the County may establish a shorter time frame for violations that present a danger to public health, safety, or welfare.

14.3 Within the time period designated for response, the Grantee shall respond in writing to the County indicating that: (A) the Grantee intends to contest the Violation Notice, describing all facts relevant to its claim; or (B) the Grantee has completely cured the violation and providing documentation to the County demonstrating that the violation has been cured; or (C) the Grantee has begun to correct the violation, but that with all due diligence the violation cannot be cured immediately, and describe in detail steps already taken and the Grantee's plan and schedule for curing the violation. If liquidated damages are assessed by the County, the expiration of the cure period (specific to the matter for which the County is assessing liquidated damages) shall serve as the date for commencing the computation of liquidated damages. The date for ending the computation of such liquidated damages shall be the date on which the Violation is cured or the date that the Grantee submits a cure plan that is accepted by the County.

14.4 If the Grantee contests the Violation Notice, or the County concludes that the Grantee has failed to cure or submit an acceptable plan for curing the default in performance, the County may schedule an administrative hearing where the Grantee will be asked to show cause why it should not be found in violation of the Franchise. The Grantee shall be given at least twenty (20) days written notice of such a hearing.

14.5 The notice issued pursuant to Section 14.4 shall indicate the County's intent to review the contested matter and the time and place of the public hearing. The County shall: (A) provide public notice of the hearing in compliance with state law notice requirements; (B) hear any person interested therein; and (C) provide the Grantee an opportunity to be heard consistent with the County Board of Supervisor's procedures.

14.6 If the County determines, after conducting any hearing required by Sections 14.4-14.5, that Grantee has failed to satisfy its obligations under this Franchise or applicable law, the County may issue an order assessing liquidated damages, or (subject to Section 43-9 of the Enabling Ordinance and Section 15 of this Franchise) initiate proceedings to revoke the Franchise.

SECTION 15. TERMINATION, REVOCATION, FORFEITURE

15.1 In addition to all other rights, powers, and remedies reserved by the County, the County shall have the additional, separate, and distinct rights, subject to the process delineated in Section 14 of this Agreement, to revoke the Franchise,

A. the Grantee has defrauded or attempted to defraud the County or subscribers, or has submitted materially misleading or incomplete information to the County;

B. the Grantee has attempted to evade complying with any material provision of the Enabling Ordinance or applicable law relating to the construction, operation, or repair of its Cable System;

C. the Grantee violated any material provision of the Franchise or any material rule, order, or regulation enacted by the County Board of Supervisors in accordance with this Franchise; or

D. the Grantee has abandoned its Franchise (the Grantee shall be deemed to have abandoned its Franchise if it willfully refuses to operate the Cable System as required by its Franchise, when there is no event beyond the Grantee's control that prevents the operation of the Cable System, and where operation would not endanger the health or safety of the public or property).

15.2 Upon the revocation of the Franchise, or upon any other action that results in the termination of the Franchise, the County shall have the right to require the Grantee to remove, at the Grantee's expense, its Cable System from streets, and public property occupied pursuant to the revoked, canceled, or terminated Franchise. The County shall notify the Grantee in writing that the Cable System shall be removed, and identify a period, which shall be no less than six (6) months, during which the Grantee shall be required to continue to operate the Cable System as provided in Section 18. In removing its Cable System, the Grantee shall refill and compact, at its expense, any excavation that shall be made and shall leave all streets, public property, and private property in as good a condition as that prevailing prior to the Grantee's removal of the Cable System. The provisions of Sections 13 and 14 of this Franchise Agreement and Sections 43-8 of the Enabling Ordinance shall remain in full force and effect until the Cable System is removed.

15.3 Upon revocation or termination of the Franchise, if the County declines to acquire ownership of the Cable System, the Grantee may sell or transfer the ownership of the Cable System, subject to Section 43-6 of the Enabling Ordinance, so long as such transfer of ownership is completed within one (1) year of the date of termination or revocation.

SECTION 16. REMEDIES -- LIQUIDATED DAMAGES

16.1 Because the Grantee's failure to comply with provisions of this Franchise will result in injury to the County, and because it is difficult to determine the extent of such injury, pursuant to Section 43-9 of the Enabling Ordinance, the County and the Grantee hereby agree to the following liquidated damages, which represent both parties' best estimate of the harm resulting from the specified injury. Damage amounts may be adjusted during the term of Franchise by mutual agreement of the parties to take into account substantial increases in the consumer price index. Grantee waives any claim or defense that the liquidated damages provisions in this Agreement are unenforceable as a penalty or on the basis that they do not fairly approximate the actual damages caused by the breach. Grantee further agrees that the liquidated damage amounts represent the damages to the County and are collectible by and payable to the County and that the County may collect amounts up to the maximum amounts set forth below, in the County's sole discretion.

16.2 For failure to complete the rebuild and extension of the system within 12 months of the effective date of this agreement up to \$1,000/day for each day the violation continues.

16.3 For failure to extend service in accordance with Section 7.10(B) of the Franchise: up to \$750/day for each day the violation continues;

16.4 For failure to comply with the following requirements for providing public, educational, and governmental access programming: up to \$325/day for each day one or more of the following violations continues:

A. Providing the required number of channels as required pursuant to Section 7.11(A)(1) through (5).

B. Providing the connections to allow PEG access programming pursuant to Section 7.11(C).

C. Providing the cable drops for PEG access locations pursuant to Section 7.11(B).

16.5 For repeated, willful, or continuing failure to submit reports, maintain records, make required payments, fulfill other material requirements or provide documents or information specifically required pursuant to this Franchise: up to \$250/day for each day the violation continues;

16.6 For documented violations of customer service standards (except in individual instances where the affected subscriber is otherwise compensated): up to \$250 per violation per day;

16.7 For failure to comply with transfer provisions of the Enabling Ordinance: \$500/day from the operative date of the transaction that resulted in the transfer or from the date of any non-performance by Grantee of an action required under the transfer provisions of the Enabling Ordinance.

SECTION 17. REMEDIES -- CUMULATIVE

17.1 All remedies provided under this Franchise Agreement or the Enabling Ordinance shall be cumulative, unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall it relieve the Grantee of its obligations to comply with the Franchise. Remedies may be used singly or in combination; in addition, the County may exercise any rights it has under law or at equity.

SECTION 18. REMEDIES -- CONTINUITY OF SERVICE

18.1 It is the right of all subscribers in the franchise area to receive all available services from the Grantee as long as their financial and other obligations to the Grantee are satisfied.

18.2 In the event of the termination or transfer of the Franchise, the Grantee shall ensure that all subscribers receive continuous, uninterrupted service regardless of circumstances in accordance with this Section 18. At the County's request, the Grantee shall cooperate with the County to operate its Cable System for a temporary period following termination or transfer of the Franchise as necessary to maintain continuity of service to all subscribers, and shall cooperate in the development of plans required to ensure an orderly transition from one operator to another. The Transition Period will be no longer than the reasonable period required to select another Grantee and build a replacement Cable System, but in no event will exceed twenty-four (24) months. During such temporary period, the Cable System shall be operated consistent with the terms and conditions of this Franchise Agreement and the Enabling Ordinance.

18.3 In the event the Grantee fails to operate the Cable System for ninety-six (96) hours during a period of any seven consecutive (7) day period without prior notice to the County, or if the System is abandoned as defined in Section 15.1(D), the County may, at its option, operate the Cable System or designate an operator until such time as the Grantee restores service under conditions acceptable to the County or until the Franchise is revoked and a permanent operator is selected. If the County is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the County for all costs or damages resulting from the Grantee's failure to perform that are in excess of the revenues from the Cable System received by the County. Additionally, the Grantee will cooperate with the County to allow County employees and/or County agents unimpeded access to the Grantee's facilities and premises for purposes of continuing Cable System operation.

SECTION 19. BOOKS AND RECORDS -- INSPECTION

19.1 The County may inspect and copy the books, records, maps, plans, and other documents, including financial documents, related to the operation of the Cable System in the Franchise Area that are in the control or possession of the Grantee in order to: (A) to enforce the County's rights or assess Grantee's compliance with the Franchise and applicable law; (B) in the exercise of any authority the County may have under this Franchise or applicable law; or (C) as may be necessary in connection with any proceeding the County may or must conduct under applicable law with respect to the Grantee's Cable System. Grantee is responsible for collecting the information requested. The material shall be produced at a location and at a time agreed upon between the County and Grantee. Material that the County requires the Grantee to produce under this section shall be produced upon prior written notice, no later than thirty (30) days after the request for production. Requests for extensions of time to respond shall not be unreasonably denied.

19.2 Access to Grantee's records shall not be denied to the County on the basis that said records contain "proprietary" information. Refusal to provide information required herein to the County shall be a material violation of the Franchise. The Grantee shall notify the County of any information which Grantee submits which contains trade secrets or proprietary information and which the Grantee wishes to have treated as confidential under the California Public Records law. The Public Records law shall govern the County's treatment of any such request and other applicable state and federal law.

SECTION 20. BOOKS AND RECORDS -- REPORTS AND RESPONSES TO QUESTIONS

20.1 The Grantee shall provide County with an Annual Report, in a form acceptable to the County, not later than April 30th of each year. The Annual Report shall contain:

- A. A report showing the number of customers served by Grantee's Cable System in the Franchise Area;
- B. A report showing the number of service calls completed by type of call during the prior year;
- C. A report showing the number of known Cable System outages as defined in the Enabling Ordinance for the prior year, identifying separately: (1) each planned outage, the time it occurred, its duration, and the estimated number of subscribers affected; and (2) each unplanned outage, the time it occurred, its estimated duration, the area and the estimated number of subscribers affected;
- D. A report showing the revenues received, by category, from the operation of the Cable System, and the amount of Franchise Fees paid; and
- E. A report showing the number of subscribers for: (1) each Cable Service tier; (2) each premium service; (3) pay-per-view, and; (4) any other Cable Service offering.
- F. A summary of Grantee's previous year's activities in the development of its Cable System in the County, including, but not limited to, any additions, deletions, or improvements begun, completed, or discontinued during the reporting year, any new services launched or discontinued, the number of homes passed, and the miles of cable distribution plant in service.

20.2 Unless otherwise specified herein the Grantee shall provide the following documents to the County upon thirty (30) days upon written request:

- A. Updated maps depicting the location of all cable plant, showing areas served and locations of all trunk lines and feeder lines in the County.
- B. A copy of the annual report, if any, of the Grantee, its parent, or any affiliate that controls, owns, or manages the Grantee and issues an annual report;
- C. Copyright filings regarding the operations of the Grantee's Cable System;
- D. FCC Forms 325 and 395 (or their successor forms) for the Grantee's Cable System; and
- E. Such other information which the County shall reasonably request relevant to Franchise regulation and to ensure compliance with this Franchise.

20.4 The Grantee shall file with the County any notice of deficiency, forfeiture, or other document issued by any state or federal agency which has instituted any investigation or civil or criminal proceeding naming the Cable System, the Grantee, or any operator of the Cable System, to the extent the same may affect or bear on the operations of the Grantee's Cable System.

20.5 The Grantee shall file, within ten days of filing or receipt, with the County any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Grantee, any parent or affiliate that controls or manages the Grantee, or any operator of the Cable System.

SECTION 21. BOOKS AND RECORDS -- MAINTENANCE

21.1 The Grantee shall comply with all FCC regulations regarding the maintenance of records for public inspection (47 CFR §76.1700, *et seq.*) The records shall be kept at the Grantee's system office and shall be available for County review and copying during normal business hours.

SECTION 22. PERFORMANCE MONITORING

22.1 Triennial Review

A. During the years, which commence on the third and sixth anniversaries of the effective date of the Franchise, the County may commence a review of the Grantee's performance under the Franchise. As part of this review, the County may consider: (1) whether the Grantee has complied with its obligations under the Franchise and applicable law; (2) whether customer service standards, technical standards, or bond or security fund requirements are adequate or excessive; and (3) other issues as may be raised by the Grantee, the County, or the public.

B. If a review is undertaken, the County shall conduct at least one public hearing at a lawfully noticed County Board of Supervisors meeting to provide the Grantee and the public the opportunity to comment on the Grantee's performance and other issues considered.

22.2 Exercise of Authority. The County may exercise appropriate regulatory authority under the provisions of this Franchise and applicable law, as amended from time to time.

SECTION 23. MISCELLANEOUS

23.1 Time of Essence; Maintenance of Records of Essence. In determining whether the Grantee has substantially complied with the Franchise, the County and the Grantee agree that time is of essence with respect to any obligation containing a deadline set forth herein. As a result, the Grantee's failure to complete construction, extend service, seek approval of transfers, or provide information in a timely manner may constitute substantial breaches of material terms of the Franchise. The maintenance of records and provision of reports in accordance with the Franchise is also of essence to this Franchise Agreement.

23.2 Effect of Preemption; Federal and State Law. The Grantee and the County must comply with all applicable provisions of federal and state law, except to the extent those provisions are lawfully superseded by a provision of the Enabling Ordinance. If the County's ability to enforce any Franchise provision is finally and conclusively preempted, then the provision shall be deemed preempted but only to the extent and for the period the preemption is required by law. If, as a result of a change in law, the provision would again be enforceable, it shall be enforceable and the Grantee will comply with all obligations thereunder after receipt of notice from the County.

23.3 Force Majeure. The Grantee shall not be deemed in default or non-compliance with provisions of its Franchise or the Enabling Ordinance where performance was rendered impossible by war, riots, civil disturbance, hurricanes, floods, other natural catastrophes, or similar events beyond the Grantee's control, and the Franchise shall not be revoked or the Grantee penalized for such non-compliance, provided the Grantee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its Franchise without unduly endangering the health, safety, and integrity of the Grantee's employees or property, or the health, safety, and integrity of the public, streets, public property, or private property.

23.4 Severability. If any provision of this Franchise Agreement is held by a court or by any federal or state agency of competent jurisdiction to be invalid as conflicting with any federal or state law, rule, or regulation now or hereafter in effect, the validity of the remaining sections hereof shall not be affected.

23.5 Written Notice. Notices shall be given as follows:

To the County:

Office of the County Administrator
105 East Anapamu St.
Santa Barbara, California 93101
with copies to:

To Grantee:

General Manager
Comcast
2323 Thompson Way
Santa Maria, CA 93455

With a copy to:

Deputy General Counsel, Franchising
Comcast Cable Communications, Inc.
1500 Market Street Centre Square
Philadelphia, PA 19102-2148

Notice shall be deemed given three (3) business days after posting with pre-paid postage, first class mail certified and return receipt requested, or immediately upon hand-delivery to the person identified above, at the address specified above.

23.6 Warranties and Guarantees. If the County has reason to believe that Grantee cannot perform its obligations as described herein, the County may require the Grantee to provide guarantees and warranties from any entity that manages, owns, or controls it, to ensure compliance with this Franchise.

23.7 Benefit to the Parties. This Franchise shall inure to the benefit of both parties and shall be subject to the provisions of the Enabling Ordinance. In the event of a conflict between this Franchise and the Enabling Ordinance, unless expressly stated to the contrary herein, the provisions of this Franchise shall apply.

23.8 California Law Applies. Except as to matters, which are governed solely by federal law, this Franchise will be governed by and construed in accordance with the laws of the State of California.

23.9 Integration. This Franchise Agreement contains the entire understanding existing between the parties. There are no other Agreements, whether oral or written, which exist between the parties; provided, however, that the parties may enter into other written agreements or amendments as of the Effective Date of this Agreement or at any subsequent time.

SECTION 24

ADOPTION AND EFFECTIVE DATE

This ordinance shall take effect and be in force thirty days from the date of its passage, and before the expiration of fifteen days after its passage it shall be published, with the names of the members of the Board of Supervisors voting for and against the same, in the Santa Barbara News Press, a newspaper of general circulation published in the County of Santa Barbara. Following publication, the franchise shall be operative upon acceptance by the franchisee.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this _____ day of, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

MICHAEL F. BROWN
CLERK OF THE BOARD

By

Deputy Clerk-Recorder

Chairperson, Board of Supervisors
of the County of Santa Barbara
State of California

APPROVED AS TO FORM:
STEPHEN SHANE STARK
COUNTY COUNSEL

By

Kevin Ready, Sr.
Senior Deputy County Counsel

FOR GRANTEE

ACCEPTED THIS _____ DAY OF _____, 200_

Comcast Cablevision of Santa Maria, L.L.C.

By: _____

Name: _____

Title: _____

g:\cc\winword\ker\coxcomfranchise_ordinance.doc

EXHIBIT A

Santa Barbara County Franchise Area

EXHIBIT B

I-NET Institutional Service Agreement

**I-NET Institutional Service
Agreement**

Between

Comcast of Santa Maria, LLC

And

The County of Santa Barbara

I-NET INSTITUTIONAL SERVICE AGREEMENT

WHEREAS Comcast of Santa Maria, LLC has entered into an agreement with the County of Santa Barbara dated _____ for a renewal franchise for a Cable Television System in the unincorporated area of the County (Franchise Agreement); and,

WHEREAS, a provision of the Franchise Agreement requires Comcast of Santa Maria, LLC to provide the County of Santa Barbara with Institutional Network Services; and

WHEREAS, Comcast of Santa Maria, LLC and the County of Santa Barbara agree to administer the terms and conditions of the Institutional Network Services through an I-NET Institutional Service Agreement as follows:

SECTION I. GENERAL

1. General. The County of Santa Barbara, California (hereinafter called the "County") enters in to this I-NET Institutional Service Agreement (hereinafter called "I-NET Agreement") with Comcast of Santa Maria, LLC, (hereinafter called "Franchisee") for the provision of Institutional Network Services (hereinafter called "I-Net Services") within the service boundaries of the franchisee for the benefit of the County Government and educational Institutions as further identified in this agreement.
2. Term. This I-NET Agreement shall run concurrent with the term of the Franchise Agreement and shall terminate upon termination of the Franchise Agreement. In the event that the Franchise Agreement is extended beyond the initial franchise term (without renewal), this I-NET Agreement shall be automatically extended and shall not terminate until the end of the extended term.
3. Effective Date. This I-NET Agreement shall become effective on the date the Franchise Agreement is executed by the parties.

SECTION II I-NET SERVICE

1. "Dark Fiber" I-Net Service. The Franchisee shall provide I-Net Services to the County in the form of "Dark Fiber" services. The typical I-Net Service link between two County facilities shall consist of six (6) stands of single mode fiber optic cable or their equivalent capacity terminated in a County approved, rack mount fiber optic termination panel using "SC" terminations. Franchisee shall be responsible for providing entry conduit into County facilities. County shall be responsible for installing internal facility conduits required by the Franchisee. County shall also be responsible for providing the equipment rack for the fiber termination panel. The term "Dark Fiber" shall mean that the fiber optic cable or equivalent capacity provided by the Franchisee will not be provided with transmission service. The County shall be responsible for providing the electronics to transmit and receive signals over the fiber optic media.
2. Existing I-Net Services. I-Net Service in the form of "dark fiber" connecting a number of County facilities has been provided to the County by the Franchisee since 1995. This service has been provided at no cost to the County (other than maintenance costs as provided in Section 5 of this I-NET Agreement) and shall continue to be provided by the Franchisee at no cost to the County for the term of the Franchise Agreement and any extensions of that Franchise Agreement. The list of existing I-Net

connections, as well as I-Net connections the Franchisee has previously committed to providing to the County is identified in Exhibit A.

3. New I-Net Services. The 2004 Franchise agreement between the Franchisee and the County provides for I-Net services as set forth section 7.3 of that Franchise Agreement and the terms of this I-NET Agreement. In that regard, Institutional Services in the form of “dark fiber” shall be provided to five new locations as identified in Exhibit B. I-Net services to the new locations shall be provisioned by the Franchisee no later than the completion of the system upgrade. Furthermore, County may request up to 2 additional sites per year beginning on the third anniversary of the effective date of the Franchise Agreement. Up to \$10,000 cost for each such additional site shall be the responsibility of Franchisee, the balance to be the responsibility of County.
4. I-Net Maintenance. The Franchisee understands that the County’s voice and data networks provide service to facilities that provide essential Health, Safety and Welfare services to the public and must therefore operate reliably and be quickly restored whenever service interruptions occur. The Franchisee is responsible for maintaining the performance of the fiber optic links from the fiber optic termination panel at one end of each link to the fiber optic termination panel at other end of each link. Should the County determine through troubleshooting procedures that the fault in an I-Net link is due to a degraded fiber optic link, the Franchisee will be notified and shall respond to the outage within 4 hours, during normal business hours and within 8 hours during after-hours, weekends and holidays.
5. I-Net Maintenance Costs. The County agrees to pay Franchisee \$9,000 per year to reimburse the cost of maintaining the sites, whether any particular site was installed prior to the execution of the Franchise Agreement or installed as subsequently required by that Franchise Agreement.

SECTION III. NOTIFICATION

Contact Information weekday and after-hours is as follows:

Comcast Cable Communications Inc.

General Office, 8 AM – 5 PM Weekdays	805-925-9504
After Hours Support	805-925-9504, or 805-331-5183

County of Santa Barbara

Central Help Desk, 7 AM to 5 PM, weekdays	805-692-1700
Network Supervisor, 7 AM to 5 PM, weekdays	805-568-2607
Network Manager, 8 AM to 5 PM, weekdays	805-568-2671

After-Hours Support	
Central Help Desk	805-692-1700

Auto-attendant system will answer with three options. Select the answering service option. The answering

service will send a text page to the 24 X 7 on-call technician. Leave your call back number with the answering service.

COUNTY OF SANTA BARBARA, CALIFORNIA

By: _____

Its: _____

Date: _____

COMCAST OF SANTA MARIA, LLC

By: _____

Its: _____

Date: _____

**COMCAST OF SANTA MARIA, LLC AND COMCAST OF LOMPOC, LLC
CUSTOMER SERVICE AGREEMENT WITH THE COUNTY OF SANTA BARBARA**

EXHIBIT A

<i>Santa Maria Area</i>	<i>Status</i>	<i>Strands</i>
Cook Street to Dept. Of Child Support Services (312 E. Cook Street to 201 South Miller)	Complete	6
Betteravia Center to Cook Street (2125 South Centerpointe Pkwy to 312 E. Cook Street)	Complete	6
Betteravia Center to Professional Parkway (2125 South Centerpointe Pkwy to 2400 Professional Parkway)	Complete	6
Betteravia Center to Waller Park (2125 South Centerpointe Pkwy to 300 Goodwin Road)	Complete	6
Waller Park to Animal H&R Office (300 Goodwin Road to 3415 Orcutt Road)	Complete	6
Betteravia Center to Foster Road Campus (2125 South Centerpointe Pkwy to 812 E. Foster Road)	Complete	6
Betteravia Center to Workforce Resource Center (2125 South Centerpointe to 1400 S Broadway)	Complete	6

<i>Santa Ynez/Buellton Area</i>		
Solvang Admin. Office to Fire Operations Office (1745 Mission Drive to 168 W Highway 246)	Complete	6
Fire Operations Office to Fire Protection Office (168 W Highway246 to 195 W Highway 246)	Complete	6

<i>Lompoc Area</i>		
Laurel Street Complex to Civic Center (110 West Laurel to 115 Civic Center Plaza)	Complete	6
Child Support services to Civic Center (401 E. Ocean to 115 Civic Center Plaza)	Complete	4
MISC Office to Civic Center (117 N. "B" street to 115 Civic Center Plaza)	Complete	4

<i>Inter-City Links</i>		
Santa Maria to Lompoc (2125 S. Centerpointe, Santa Maria to 115 Civic Center Plaza, Lompoc)	Complete	6
Lompoc to Solvang (115 Civic Center Plaza, Lompoc to 1745 Mission Drive, Solvang)	Complete	6

**COMCAST OF SANTA MARIA, LLC AND COMCAST OF LOMPOC, LLC
CUSTOMER SERVICE AGREEMENT WITH THE COUNTY OF SANTA BARBARA**

EXHIBIT B

NEW SANTA BARBARA COUNTY I-NET CONNECTIONS

Santa Maria/Orcutt Area

Location A	Location B	<i>Fiber Strands</i>
County Offices @ 218 W. Carmen Lane, Santa Maria	Betteravia Center @ 2125 South Centerpointe Pkwy, Santa Maria	6
OB Clinic, 220 S. Palisades Suite 104, Santa Maria	Betteravia Center @ 2125 South Centerpointe Pkwy, Santa Maria	4

Lompoc Area

Location A	Location B	<i>Fiber Strands</i>
Sheriff's Office @ 751 E. Burton Mesa Blvd. Lompoc	County Civic Center @ 115 Civic Center Plaza	6
County Road Yard @ Sweeny Road & Hwy 246	County Civic Center @ 115 Civic Center Plaza	6
DSS Offices, Valley Flower Plaza, 1133 N. H Street, Lompoc	DSS Offices @110 West Laurel Ave., Lompoc	6

U.S. Department of Homeland Security
500 C Street, SW
Washington, DC 20472

FEB 25 2004



FEMA

Mr. Charles F. Wynne
Governor's Authorized Representative
Governor's Office of Emergency Services
P.O. Box 419047
Rancho Cordova, California 95741

Dear Mr. Wynne:

This is in response to your appeal dated February 10, 2004, requesting implementation of the Individual Assistance program for Santa Barbara County under FEMA-1505-DR.

The joint Individual Assistance Preliminary Damage Assessment (PDA) conducted in the incorporated cities of Guadalupe and Santa Maria in Santa Barbara County on December 28, 2003, identified only one single-family home in the City of Guadalupe that was affected by the earthquake. Subsequent to the PDA, neither the State nor local officials reported any additional damages not previously surveyed in Santa Barbara County.

Based on the findings of all information gathered during the joint PDA, the January 13, 2004, major disaster declaration provided Individual Assistance and Public Assistance for San Luis Obispo County and Public Assistance only for Santa Barbara County.

At the State's request, on February 6, 2004, FEMA, Small Business Administration, State and local officials conducted a second survey of additional damages reported in the incorporated cities of Guadalupe and Santa Maria in Santa Barbara County. The majority of the affected residences suffered only minor damage and all are habitable. No extreme hardships were noted and, as of February 12, 2004, the local American Red Cross chapter had not received any significant requests for assistance.

Based on a thorough and careful review of all information gathered during the initial and second PDA, it has been determined that the damages in Santa Barbara County are not of the severity and magnitude to warrant designation for Individual Assistance under FEMA-1505-DR. Therefore, I must inform you that your appeal is denied.

This is FEMA's final decision on this issue in accordance with 44 CFR §206.46(b). I regret that we could not respond favorably to your request and hope that the assistance provided to the State under this declaration has been helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Craig".

Daniel A. Craig
Director
Recovery Division