

**Chapter 99**  
**Cable Television Franchise**  
**Article I - Phoenix Cable Incorporated**

[HISTORY: Adopted by the Board of Commissioners of Henderson County. Amended 7-11-1991; 11-18-1992; 6-3-1996; 11-19-1997; 8-8-1998; 12-4-1995; 8-20-2003.]

**Section 1. Grant of Franchise.**

The County of Henderson, North Carolina ("the County") hereby grants to Phoenix Cable Incorporated and/or one of its controlled affiliates ("the Grantee") and its successors and assigns, a non-exclusive cable television franchise upon the terms and conditions set forth herein.

**1.1.** Authority granted. There is hereby granted, to the extent the County has the authority to grant such rights, to the Grantee the right to construct, maintain and operate a cable television system in the Franchise Area, and the right, privilege and franchise to construct and operate in, over, under and along streets, roads, alleys, easements, right-of-way and other public ways and areas in the unincorporated Gerton and Bat Cave Fire District Boundaries of the County, all necessary or desirable poles, towers, wires, cables and other equipment and facilities of the cable television system authorized herein.

**1.2.** Term of Franchise. The Franchise granted herein shall be for an initial term of 20 years from the effective date and may be renewed in accordance with the provisions of the Cable Communications Policy Act of 1984 ("the Cable Act") and other applicable law.

**1.3.** Effective Date. The effective date of the Franchise shall be the date of acceptance by the Grantee. Acceptance shall be made in writing within thirty days of approval of the Franchise by the County Commissioners and the acceptance shall indicate Grantee's agreement to the terms and conditions of this Franchise.

**1.4.** Nonexclusive Franchise. The Franchise and the rights granted herein shall be non-exclusive. The County shall have the right to grant to other persons or entities rights similar to those granted herein, provided however that such rights granted to others may not be on terms more favorable than those granted herein.

**1.5.** Franchise Area. The Franchise shall cover the unincorporated area of the County, generally referred to as the Gerton, Bat Cave area of the County. This being the area contained within the Gerton and Bat Cave Fire District boundaries. Notwithstanding anything contained herein, Grantee shall not be required to extend cable service or lines except as provided in Section 5.3.

**Section 2. Definitions.**

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein, unless the context clearly indicates that another meaning is intended. 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 word "shall" is always mandatory and not merely directory. The captions supplied herein for each section are for convenience only. The captions are not part of the section and are not to be used in construing the language of the section.

(a) "Cable Television System" is any facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service, including video programming, by wire or cable to subscribing members of the public who pay for such service.

(b) "Channel" is a band of frequencies in the electromagnetic spectrum capable of carrying audio-visual television signals and/or non-video signals.

(c) "Federal Communications Commission" or "FCC" is the present federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the laws of the United States.

(d) "Franchise" is an authorization granted by the County Commission of Henderson County which permits the construction, operation and maintenance of a cable television system within the Franchise Area under the terms of this ordinance.

(e) "Franchise Area" means that portion of the County for which a franchise is granted under the authority of this ordinance. The Franchise area includes unincorporated Gerton and Bat Cave Fire District Boundaries of Henderson County.

(f) "Grantee" is Phoenix Cable Incorporated and/or one of its controlled affiliates, successors and assigns.

(g) "Gross Subscriber Revenues" means revenues derived by the Grantee from all subscriber services. The term "gross subscriber revenues" shall not include revenue from any refundable subscriber deposits or from any taxes, whether the costs of such taxes are passed on to subscribers or not.

(h) "Installed cable plant" shall mean cables, wires, amplifiers and other electronic equipment, and other facilities or equipment actually installed as part of Grantee's cable television system in the franchise area.

(i) "Persons" are any people, firms, corporation, associations, or other legally recognized entities.

(j) "Public Area" is the surface of and the space above and below any public street, avenue, highway, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, alley, right-of-way, public utility easement, and any other public ground or water within or belonging to the County.

(k) "SMATV" is a communications system which provides video services similar to cable television, but which is located on private property and provides services only to private dwellings located on the property.

(l) "Subscriber Service" is that cable service provided to paying subscribers of Grantees' cable system for a fee, whether furnished on a regular, continuing basis, or upon the specific request of the subscriber.

(m) "Subscriber" means any person who pays the applicable rate to receive cable service from Grantee's cable television system.

### **Section 3. Franchise Fee.**

**3.1.** The Grantee shall pay the County a franchise fee based upon a percentage of its annual "gross subscriber revenues" from the operation of the cable system in the Franchise Area according to the following schedule:

Year of Franchise	Percentage of Franchise Fee
1 to 3	3%
4 to 7	4%
8 to 20	5%

Franchise fee payments shall be made on a semiannual basis and shall be due within 30 days after the expiration of each calendar half.

**3.2.** The Grantee shall file with the County, within thirty (30) days after the expiration of each quarter of the calendar year or portion thereof during which its franchise is in force, a statement showing the gross subscriber revenues of the Grantee during the preceding calendar year or portion thereof and the amount of franchise fees due for the period. The term "gross subscriber revenues" shall not include revenue from any refundable subscriber deposits or from any taxes, whether the costs of such taxes are passed on to subscribers or not.

**3.3.** The County shall have the right, upon reasonable notice and during normal business hours, to inspect the Grantee's records showing the gross revenues from which Grantee's franchise payments are computed and at County expense, the County shall have the right to audit such records. No acceptance of payment shall be construed as a release of any claim the County may have for further or additional sums payable under this Franchise; however, any franchise fee statement rendered to the County and to which no exception is made by the county within three (3) years after the date thereof shall be deemed to be accurate and shall not thereafter be subject to question or made the basis of any claim by the County against the Grantee.

**3.4.** The payment of the franchise fees specified herein shall be in addition to any ad valorem taxes which the County may levy on the Grantee's real or personal property, except that installed cable plant shall not be subject to such ad valorem taxes. "Installed cable plant" shall mean cables, wires, amplifiers and other electronic equipment, and other facilities or equipment actually installed as part of Grantee's cable television system in the franchise area.

### **Section 4. Construction Requirements.**

**4.1.** Authorizations and Permits. Upon acceptance of the Franchise, Grantee shall promptly file applications for any necessary authorizations or permits and shall diligently pursue approval of the same as

well as any necessary agreements, easements or other instruments needed for construction and operation of the cable system.

**4.2. No Discrimination in Construction.** In planning and undertaking construction of the cable system, Grantee shall treat all areas and neighborhoods of the Franchise Area equally, except to the extent that any physical or geographical circumstances may delay construction in particular areas. All requirements for construction and line extension shall be governed by the density requirements contained in Section 5.3.

**4.3. Density Requirement for Construction and Line Extension.** The Grantee agrees to extend the cable system and to provide cable service to all occupied dwelling units in the Franchise Area, provided however, that Grantee shall not be required to extend its system or provide service to any dwelling unit where there are not, on the average, at least forty (40) occupied dwelling units per mile of cable, measured from the dwelling unit to the point on the cable system from which the necessary extension must be made in order to provide service to the dwelling unit in question. The forty (40) homes per mile shall be measured by the cable mile and not by the linear mile, i.e., for each mile of cable necessary to provide service to the area, there must be an average of forty (40) homes per mile. In addition, Grantee shall not be required to provide cable service to any dwelling unit where the drop line is 150 feet or more from the nearest feeder line from which the dwelling unit can be served. The "drop line" is the wire or cable used to connect the individual dwelling unit to the feeder lines of the cable system located in the right-of-way.

For purposes of this section, "dwelling unit" shall mean occupied units of residential housing designed for single-family occupancy, including but not limited to apartments, condominiums, townhouses and single-family houses. Residential units in multiple-family developments, such as apartments, townhouses or condominiums shall not be considered dwelling units for purposes of this section if the development is served by a SMATV system or similar television system.

#### **Section 4.4. Safety Requirements.**

(a) The Grantee shall at all times employ ordinary care and shall install, maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(b) All structures and all lines, equipment, and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the County, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

(c) The Grantee shall, at no cost to the County, except where compensation is allowed to other users of public rights-of-way, relocate at any time any component of its system which interferes with a new installation or modification of an old installation maintained or installed by the County.

#### **Section 5. Insurance Requirements.**

The Grantee shall maintain, throughout the term of the Franchise, liability insurance insuring against all damages, injuries, or other harm caused by Grantee or its agents, in the maximum amounts of:

(a) One million dollars (\$1,000,000) for bodily injury or death to any one person; with the additional limitation that the maximum coverage for bodily injury or death resulting from any one occurrence shall be \$1,000,000.

(b) One million dollars (\$1,000,000) for property damage from any one occurrence.

(c) Maximum aggregate liability, personal injury, death or property damage, of \$1,000,000.

#### **Section 6. Indemnification of County.**

The Grantee shall indemnify and save the County free and harmless at all times during the period of this Franchise from any and all liability, loss, cost or expense from accident or damage either to itself or to the person or property of others which may result or occur by reason of the exercise of the right and privileges herein granted; and shall, for the purposes of carrying out the provisions of this indemnification provision, have in full force and effect, and furnish evidence thereof to the County, a good and sufficient insurance policy as specified in Section 5 of this Franchise.

#### **Section 7. Conditions on Street Occupancy.**

(a) All transmission and distribution facilities, lines and equipment erected by the Grantee within the County shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners whose property adjoins any of the streets, alleys, or other public ways and places where the system is located.

(b) In case of the excavation or disturbance of any street, sidewalk, alley, public way or paved area, the Grantee shall, at its own cost and expense, replace and restore such street, sidewalk, alley, public way or paved area in as good a condition as before the work was done.

(c) To the extent the County has such legal authority and if at any time during the period of this Franchise the County shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, or close any portion of same, the Grantee, upon reasonable notice by the County, shall remove and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense, except to the extent other users of the rights-of-way are compensated for relocation expenses, in which event the Grantee shall be compensated in the same manner as other affected parties.

(d) Any poles or other fixtures placed in any public way by the Grantee shall be placed in such manner as not to interfere with the usual travel on such public way.

### **Section 8. Technical Service Requirements and Channel Capacity.**

**8.1.** The cable system to be constructed by Grantee shall be installed, maintained, and operated at all times in full compliance with the technical standards of the Federal Communications Commission. In accordance with the franchise proposal submitted to the County, the Grantee shall construct, maintain and operate a cable television system capable of providing a maximum of thirty-five (35) channels. Although the Grantee shall enjoy the editorial discretion to select, drop and rearrange the programming to be offered, the initial level of service shall be substantially the same as the twelve (12) channels currently offered by the Grantee.

**8.2.** Grantee shall not be required immediately to set aside or designate any channel or channels on its system for public or governmental use; provided however, that Grantee shall continue to assess and consult with the County concerning the demand or need for such access to the cable system, and maintain adequate channel capacity to enable it to meet the future needs of the County as such needs develop.

Upon reasonable request of the County, and upon the County's demonstration that appropriate programming is available to meet a demonstrated public or County need for such programming, Grantee will agree to carry such programming on its system. Grantee shall be permitted to carry such programming on any vacant channel, or portion of a channel, and if adequate space or time is not then available on the system, shall make such changes as Grantee determines are necessary to carry the programming.

**8.3.** The Grantee shall maintain a business office in Lake Lure for the purpose of receiving inquiries or complaints from its subscribers and the general public. Grantee shall answer calls at its business office during normal business hours and shall provide an answering machine for all calls received after business hours, 24 hours per day, 7 days per week. The Company shall investigate all complaints and shall attempt in good faith to resolve them fairly and in a reasonable time.

**8.4.** In the event of an interruption of service to a subscriber, the Grantee shall restore service within forty-eight (48) hours, unless the interruption is caused by emergency, disaster or circumstances beyond the reasonable control of the Grantee.

### **Section 9. Revocation of Franchise.**

**9.1.** The County may revoke the Franchise in the event Grantee shall refuse or neglect to comply substantially with the material requirements or limitations contained in this Franchise, but only after Grantee has been given notice of and a reasonable opportunity to cure the failure or default as provided hereinafter.

**9.2.** Should the County determine that Grantee is not in compliance with this Franchise, it shall so notify Grantee, and Grantee shall, within thirty (30) days, bring the system into compliance, reporting to the County the corrective action taken, or in the event that a longer period is needed, Grantee shall notify the County within thirty-day period of its estimate of the time and actions necessary to bring the system into compliance.

**9.3.** If the County is not satisfied that compliance has been achieved, or that good faith progress is being made toward compliance, it may schedule a public hearing to determine whether the Franchise should be revoked. The Grantee and the public shall be given at least thirty (30) days' notice of such a hearing, and all interested parties shall be heard in open hearing. At such hearing, the County shall be required to present evidence establishing Grantee's breach of its obligations under the Franchise and Grantee shall have the right to examine witnesses and present evidence on its behalf. At the conclusion of the public hearing, the County shall determine whether the Franchise should be revoked and shall set forth in writing, the facts and reasons upon which its decision is based. Grantee shall be entitled to contest any such revocation in any court of competent jurisdiction.

**Section 10. Termination of Franchise.**

In the event the franchise is terminated, whether by revocation, expiration, or otherwise, the Grantee may continue to operate the cable system pursuant to the terms and conditions of the terminated franchise, until the happening of one of the following:

- (a) A new franchise or an extension of an expired franchise is granted;
- (b) In the case of a revocation, or a denial of renewal or extension, the Grantee has acquiesced in such decision or a final adjudication has been made, including any appeal, and has resulted in a finding or order that Grantee is not entitled to a reinstatement renewal or extension of the franchise and is not otherwise entitled by law to continue operation of the cable system;
- (c) In the event that the county denies renewal, Grantee shall be afforded a period of six (6) months, from the effective date of the final order denying renewal, including any appeal, within which to sell, transfer or convey the cable system and the franchise to a qualified purchaser.

**Section 11. Transfer or Assignment of Franchise.**

Any transfer or assignment of the Franchise shall be made only by an instrument in writing, which shall include an acceptance of all terms and conditions of the Franchise by the transferee, a duly executed copy of which shall be furnished to the County within thirty (30) days after any such transfer or assignment.

**Section 12. Renewal of Franchise.**

The Franchise may be renewed or extended at any time upon such terms and conditions as are agreed by the County and the Grantee, after affording the public adequate notice and opportunity for comment. Renewal shall not be denied if Grantee has provided satisfactory service pursuant to the terms of this Franchise. In all other respects, the Franchise shall be subject to renewal in accordance with the standards and procedures set forth in the Cable Communications Policy Act of 1984.

**Section 13. Invalid Provision.**

If any provision of the Franchise or the particular application thereof, shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining provisions, and their application, shall not be affected thereby.

**Section 14. Repeal of Other Ordinances.**

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

**Resolution Approving Transfer of Cable System from Phoenix Cable Income Fund to Northland Premier Cable Limited Partnership**

1. The County hereby approves and consents to the transfer and assignment of the Franchise from Phoenix Cable to Northland.
2. The County hereby approves of (i) the encumbrance of the Franchise and the assets of the cable television system, and the assignment of same for security purposes, in connection with the acquisition and operation of the system and the financing and refinancing, from time to time, of the business operations of Northland; and (ii) the future assignment of the Franchise to Northland's managing general partner, Northland Communications Corporation ("NCC"), or to an affiliate of NCC.
3. Except as specifically set forth herein, the assignment and transfer of the franchise shall not alter, affect or otherwise change any of the terms or conditions of the Franchise.
4. In connection with the assignment and transfer of the Franchise to Northland the County certifies to Phoenix Cable and Northland that:
  - (a) Upon information and belief, the Franchise was duly and validly issued by the County, and upon its assignment to Northland, the duly authorized franchisee will be Northland.
  - (b) Upon information and belief, the Franchise is in full force and effect as of the date hereof, is valid and enforceable in accordance with its terms and will not expire until at least August 8, 2008.
  - (c) Upon information and belief, other than the payment of franchise fees owed by Phoenix Cable pursuant to the terms of the Franchise up through and including the date of closing for the transfer referenced hereinabove, no event of default under the Franchise, and no event which could become an event of default with the passage of time or the giving of notice, or both, has occurred and is continuing as of the date hereof.

(d) The franchise fee of five percent (5%) payable to the County under the terms of the Franchise is calculated on the franchisee's gross receipts collected during each six month period ending on June 30 and December 31 of each calendar year, and such fee is due, in arrears, within thirty (30) days after each June 30 and December 31 while the Franchise is in effect.

(e) The County anticipates receipt of a check from Phoenix Cable for payment of all franchise fees owed under the terms of the Franchise through October 31, 1995. Further, the County anticipates receipt of payment for all franchise fees owed under the terms of the Franchise up through and including the date of closing of the transfer referenced hereinabove within a reasonable time after the date of closing from Phoenix Cable or Northland. Payment of all Franchise fees under the terms of the Franchise will become the responsibility of Northland after the date of closing for the transfer referenced hereinabove.

(f) The County acknowledges receipt of a completed FCC Form 394 from Phoenix Cable and Northland.

5. The Franchise and this Resolution were and are adopted in accordance with the notice and procedure requirements of the laws of the State of North Carolina governing Counties and with the notice and procedure requirements prescribed by the County. The Franchise and this Resolution, including without limitation the grant of and the consent to the assignment of the Franchise, were and are adopted in accordance with and do not conflict with the laws, ordinances, resolutions and other regulations of the County, as presently in effect or as the same were in effect the time the particular action was taken.

6. This Resolution shall be effective immediately upon approval by the Board.

## **Article II - Essex 1980-3 Operating Partnership<sup>2</sup>**

### **Section 1. Grant and Term.**

Subject to the terms and conditions of "An Ordinance Establishing the Conditions for Awarding Non-Exclusive Franchises for Community Antenna Television Systems" (hereinafter referred to as the Henderson County CATV Ordinance), adopted on the 6th. day of November, 1989, and subsequently amended, and the other terms and conditions of this Grant of Franchise, Essex 1980-3 Operating Partnership, d/b/a MultiVision Cable TV, hereinafter referred to as Grantee, is hereby granted for the term of 15 years from and after the effective date hereof, the right, privilege and franchise to construct or have constructed, operate and maintain a cable television system and to operate a cable television service in the areas of the County's jurisdiction pursuant to §92-1 of the Henderson County Code.

### **Section 2. Construction of System.**

Grantee hereby agrees to extend cable television service to specific areas of Henderson County as shown on a construction schedule titled "Amendment A" and to complete such extensions by the dates therein stated. Grantee agrees to provide the County on an annual basis, but no later than February 1st of each calendar year of the Franchise, the following reports:

(a) A program of scheduled construction for the ensuing 12 month period that has been established with the consultation and consent of the Board of County Commissioners to be titled "Annual Construction Schedule."

(b) A report of the status of construction listed on "Attachment A" and on subsequent annual construction schedules, and on construction not previously listed and submitted.

Grantee further agrees to guarantee all such construction as provided for in Section 23 (Performance Bond) of the Henderson County CATV Ordinance.

### **Section 3. Contribution In Aid Of Construction.**

(a) For service areas with a density less than that required by the Henderson County CATV Ordinance (20 homes per mile) the system may be further extended upon request of one or more of the prospective subscribers in such areas based upon the following cost calculation: The cost of wiring such areas shall be calculated by taking the capital cost for extending such service divided by the number of subscribers in such area minus the costs of extending service to the subscriber in an area that meets the 20 homes per mile, or fractional proportion thereof, density requirement specified above. The resulting cost shall equal the per subscriber contribution relating to line extension of cable service in that particular area of the county as depicted in the following formula:

C - CA = SC  
LE P

\*C equals the cost of construction of new plant from the termination of existing cable plant; as determined by the Grantee and based on prevailing cost estimates;

\*CA equals the average cost of construction per mile for similar construction as determined by the Grantee;

\*P equals the 20 dwellings per mile;

\*LE equals the number of dwelling units both requesting service and paying a cost contribution for construction in the line extension area;

\*SC equals the per subscriber contribution in aid of construction in the line extension area.

(b) In those areas where the Grantee is not obligated to provide service, the Grantee shall, within 30 days following a request for service, conduct a survey to determine the number of homes in the immediate service area and shall inform each potential subscriber of the contribution in aid of construction policy, as calculated according to section (a) above, that will be charged. The Grantee will apply for pole attachment agreements, easements, and rights-of-way within 30 days of receiving from all prospective subscribers within the line extension area a Contribution in Aid of Construction in accordance with the foregoing formula. Cable television service(s) shall be made available and fully activated to all requesting subscribers who made a Contribution in Aid of Construction within 60 days of receipt of pole attachment agreements, easements, and rights-of-way by the Grantee.

(c) During the 2 year period commencing with the completion of any particular line extension constructed in accordance with (a) above, the Grantee shall pay a pro-rata refund to any previous subscribers who made a contribution in aid of construction, as new subscribers are added to that particular line extension. The amount of refund shall be determined by application of the line extension formula in section (a) above, reducing the per capita contribution in aid of construction each time a new subscriber is added.

(d) If the Grantee is denied free access to any private streets and ways, the Grantee shall not be required to provide service to residences along such streets and ways unless reasonable access thereto is available for placement of trunk and feeder lines along public ways. The Grantee shall not be required to extend service to residences located along public ways where such extension requires use of a privately-owned easement for placement of trunk and feeder lines to which the Grantee has been denied access after reasonable efforts to obtain such access.

(e) For new unbuilt or unoccupied housing developments, apartment buildings, mobile home parks and similar developments (the "Development") the system shall be further extended upon request of the owner of the Development, upon payment to the Grantee of the costs of material and labor necessary to extend the system to the Development (the "Total Project Cost"). The Total Project cost will then be divided by the number of home lots or apartments units (as the case may be) to determine a "per lot" contribution in aid of construction dollar amount ("Per Lot Contribution in Aid of Construction Amount"). For five years from the payment of the Total Project Cost, within 60 days after the resident of the lot (or apartment) subscribes to cable television service from the Grantee, the Grantee shall pay to the developer the respective Per Lot Contribution In Aid of Construction Amount.

#### **Section 4. Grantee's Representations and Covenants.**

The acceptance of this Franchise Ordinance by the Grantee shall constitute representations and covenants by it that:

(a) It waives all rights and privileges awarded under any previous franchise or ordinance and upon execution of this Grant of Franchise and subsequent acceptance of same, any and all prior Grant of Franchise or agreements shall be deemed null and void.

(b) It accepts and agrees to all of the provisions of this Grant of Franchise and those instruments incorporated herein by reference.

(c) It has examined all the provisions of this and the Henderson County CATV Ordinance and waives any claims that any provisions hereof are unreasonable, arbitrary or void.

(d) It recognizes the right of the County to make reasonable amendments to the Henderson County CATV Ordinance as it now exists and as it is now amended during the term of the Franchise, providing, that no such change shall compromise the Grantee's ability to perform satisfactorily its obligations

or rights under this Grant of Franchise. It further recognizes and agrees that Henderson County shall in no way be bound to renew the Franchise at the end of the franchise term.

(e) It acknowledges that its rights hereunder are subject to the police power of Henderson County to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws enacted by Henderson County pursuant to such powers.

#### **Section 5. Acceptance of Franchise.**

This Grant of Franchise shall not be valid unless accepted by Grantee within the time and in the manner provided in the Henderson County CATV Ordinance, said acceptance to be in writing and in such form and executed in such a manner to be a valid and legally binding acceptance.

#### **Section 6. Effective Date.**

This ordinance shall be in force and take effect on and after the 11th day of July, 1991, upon it being adopted at two regular meetings of the Board of County Commissioners of Henderson County, North Carolina, as provided by law.

#### **A Resolution Approving a Change in Ownership Interest and Management Control of U.S. Cable Television Group, L.P.**

1. The Henderson County Board of Commissioners hereby grants its consent to the purchase by Cablevision, through its wholly-owned subsidiary, V Cable, Inc., of 20% ownership of U.S. Cable, and of its management control of U.S. Cable, said consent being conditioned on the following:

(a) That a copy of each document reflecting the acquisition of interest in U.S. Cable, and the assumption of corporate management of U.S. Cable shall be filed with the Clerk to the Henderson County Board of Commissioners within 30 days after such shall have been executed or effected and each shall reflect therein the consent of the Henderson County Board of Commissioners; and

(b) That the current optic fiber overlay program consisting of approximately 28.5 miles of optic fiber shall be completely installed and in operation on or before May 18, 1993; and

(c) That the cable systems serving Henderson County, N.C., the management control of which by V Cable the Henderson County Board of Commissioners is hereby granting conditional approval of, be brought into compliance with the current FCC rules and regulations on or before December 18, 1992, written documentation and proof of such compliance to be provided to the Henderson County Board of Commissioners by V Cable, Inc. on or before December 18, 1992.

2. This resolution shall not become effective until the close of business on the date upon which Cablevision, through V Cable, Inc., acquires its ownership interest in, and management control of U.S. Cable.

#### **A Resolution Approving a Change in Ownership Interest and Management Control of U.S. Cable Television Group, L.P.**

1. The Franchisor hereby grants its consent to the purchase by V Cable GP, Inc. and V Cable Inc., of 100% ownership in U.S. Cable through redemption of the ownership interests not already held by Cablevision.

2. The Franchisor hereby grants its consent to the assumption of sole management control by Cablevision of U.S. Cable.

3. The Franchisor hereby grants a conditional consent to the transfer of the Franchise from Essex to ECC Holding Corporation, said consent to be conditioned upon the following:

(a) Essex and ECC Holding Corporation shall fully execute a duly authorized, written instrument transferring or assigning all right, title and interest of the franchise from Essex to ECC Holding Corporation, ("Assignment Document"). Said Assignment Document shall contain an express provision (in form acceptable to the Henderson County Attorney) in which ECC Holding Corporation assumes all liabilities, responsibilities, duties, and obligations associated with the Franchise, including but not limited to abiding by the terms of the Franchise and the Henderson County Ordinance Establishing the Conditions for Awarding Non-Exclusive Franchises For Community Antenna Television Systems (the "Ordinance"), as hereafter amended. Said Assignment Document shall reflect the consent of the Franchisor.

(b) ECC Holding Corporation and Essex shall provide a copy of the Assignment Document to Franchisor within 30 days of the date of its execution as required by Section 18(c) of the Ordinance.



(c) Upon the due execution of the Assignment Document and delivery of said copy to Franchisor, the transfer of the Franchise from Essex to ECC Holding Corporation shall be deemed approved.

4. This Resolution shall not be effective until the close of business on the date upon which Cablevision, through V Cable, Inc., acquires its ownership interest in U.S. Cable. Cablevision shall notify Franchisor when such acquisition has occurred.

5. All notices, copies, or written correspondence required to be sent to Franchisor by the terms of this Resolution must be mailed or hand-delivered to the Henderson County Planning Director, Mr. Matt Matteson, 101 East Allen Street, Hendersonville, NC 28792.

6. This Resolution is hereby declared to be a measure in the interest of public peace, health, welfare, and safety.

**A Resolution of the County of Henderson, North Carolina Authorizing the Transfer of Control of a Cable Television Franchise from ECC Holding Corporation to Mediacom Southeast, LLC.**

1. The County hereby consents to the transfer of control of the Franchise from ECC to Mediacom ("Franchisee"), pursuant to the conditions described in the Application, that such consent to transfer of control is granted subject to the following conditions:

(a) The Franchisee has represented to the County that the proposed merger will not affect the current identity of the Franchisee. That the Franchisee continues to have all obligations and liabilities under the Franchise and Ordinance, any covenant, condition and agreement, including, without limitation, all obligations, if any, of the Franchisee as are currently required to have been performed but have not been performed.

(b) That the transfer approval shall not in any way waive, diminish or otherwise affect adversely any right that the County has, may have, or may at any time or in any manner subsequently acquire, with respect to any matter.

(c) That these conditions are based upon Franchisee's representations upon which the County has relied, and Franchisee shall execute and deliver to the County, documents embodying their agreement to and implementing the above conditions, in form and substance satisfactory to the County Attorney.

(d) No consent from the County shall be required for a transfer in trust, mortgage or other instrument of hypothecation, in whole or in part, to secure an indebtedness incurred by Franchisee to a reputable financial institution on or near the closing date of the transfer (as defined in the Purchase Agreement) provided that: (1) such transfer in trust, mortgage or other instrument of hypothecation does not result in a transfer of control of Franchise or Franchisee, and (2) such transfer in trust, mortgage or other instrument of hypothecation is under materially the same terms and conditions as the documents provided to the County.

(e) Mediacom and the County have negotiated and Mediacom has agreed, at no charge to the County or subscribers, to playback County programming on the access channel and continue to provide and maintain playback equipment for the access channel and to allow the county to use all or a portion of the access channel as is requested by the County.

(f) Further, this consent shall not in any way waive, diminish or otherwise adversely affect any right the County would have had including, but not limited to, any past due franchise fees under the Franchise, had the transfer or the County's consent to the transfer of control of the Franchise pursuant to the Application never occurred.

2. The County Manager is authorized to prepare and execute any agreements or other documents necessary or appropriate to implement this Transfer Resolution, provided such have been approved as to form by the County Attorney.

*North Carolina General Statutes  
Chapter 66.  
Commerce and Business.*

**§ 66-352. Award of franchise and commencement of service.**

- (a) Notice of Franchise. – A person who intends to provide cable service over a cable system in an area must file a notice of franchise with the Secretary before providing

the service. A person who files a notice of franchise must pay a fee in the amount set in [N.C.G.S. 57C-1-22](#) for filing articles of organization.

A notice of franchise is effective when it is filed with the Secretary. The notice of franchise must include all of the following:

- (1) The applicant's name, principal place of business, mailing address, physical address, telephone number, and e-mail address.
- (2) A description and map of the area to be served. If the description includes the area within the boundaries of a city, the area to be served is considered to include any area that is subsequently annexed to the city unless the notice limits the area to be served to the boundaries of the city on the effective date of the notice.
- (3) A list of each county and city in which the described service area is located, in whole or in part.
- (4) A schedule indicating when service is expected to be offered in the service area.

- (b) **Commencement of Service.** – A person who files a notice of franchise under subsection (a) of this section must begin providing cable service in the service area described in the notice within 120 days after the notice is filed. If cable service does not begin within this period, the notice of franchise terminates 130 days after it was filed. If cable service begins within this period, the holder of the State-issued franchise must file a notice of service with the Secretary within 10 days after the cable service begins. Cable service begins when it passes one or more households in the described service area. This subsection does not apply to a cable service provider who terminates an existing agreement whose franchise area includes all of the service area described in a notice of franchise filed by the provider under subsection (a) of this section.

A notice of service for a service area must include all of the following:

- (1) The effective date of a notice of franchise for that area.
- (2) A description and map of the service area.
- (3) A statement that cable service has begun in the service area.

- (c) **Extension.** – A person who intends to provide cable service over a cable system in an area that is contiguous with but outside the service area described in a notice of franchise on file with the Secretary must file a notice of franchise under subsection (a) of this section that includes the proposed area. The initial service requirements in subsection (b) of this section apply to the proposed area. If the map of the area to be served includes any area that is part of the service area of another State-issued franchise, the termination of a notice of franchise for the proposed area for failure to begin service within the required time does not affect the status of the other State-issued franchise.

- (d) **Withdrawal.** – A person may withdraw a notice of franchise by filing a notice of withdrawal with the Secretary. The notice of withdrawal must be filed at least 90 days before the service is withdrawn.