

EDDY COUNTY
ORDINANCE NO. O-10-62
NON-EXCLUSIVE FRANCHISE AGREEMENT FOR
PENASCO VALLEY TELEPHONE COOPERATIVE, INC.

ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO
PENASCO VALLEY TELEPHONE COOPERATIVE, INC., A NEW MEXICO
CORPORATION AND PUBLIC UTILITY, BY EDDY COUNTY, NEW MEXICO

WHEREAS, PENASCO VALLEY TELEPHONE COOPERATIVE, INC., is a public utility providing services to residents of Eddy County; and

WHEREAS, pursuant to Section 4-37-1 et seq., and Section 3-42-1 et seq., N.M.S.A. 1978 Comp., as amended, Counties are authorized, by Ordinance, to grant a franchise to any person, firm or corporation for the construction and operation of any public utility; and

WHEREAS, PENASCO VALLEY TELEPHONE COOPERATIVE, INC. and the COUNTY OF EDDY, NEW MEXICO, have negotiated and proposed terms to comprise a Franchise Agreement between the parties, with said Franchise Agreement to be in force for a term of 10 years.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSIONERS OF THE COUNTY OF EDDY, NEW MEXICO, THAT THIS FRANCHISE BE GRANTED TO PENASCO VALLEY TELEPHONE COOPERATIVE, INC., ACCORDING TO THE FOLLOWING TERMS AND CONDITIONS:

Section 1. Grant of Franchise

1.1 Grant

The County of Eddy grants to Penasco Valley Telephone Cooperative, inc., a New Mexico Corporation ("PVT"), its legal representatives, successors, lessees and assigns, a franchise, permit, license, right-of-way and privilege ("Franchise") (a) to erect, construct, equip, maintain, repair and operate in the County equipment, systems and facilities to generate, store, sell, distribute, convey or otherwise provide telecommunications services, (b) to serve, supply and furnish to the County and its inhabitants and others telecommunications services for purposes useful to the County and its inhabitants and others, and (c) to use and occupy during the life of the Franchise all streets, avenues, alleys, highways, sidewalks, bridges, and other structures and places on public grounds of the County, both above and beneath the surface of same, as the streets, avenues, alleys, highways, sidewalks, bridges and other structures and places on public grounds of the County now existing, or as they may hereafter be extended for any lawful purposes upon the terms and conditions of the Franchise.

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1.2 Effective Date and Term of Franchise

The Franchise shall take effect thirty days from the passage hereof by the County Commission (the "Effective Date"), if accepted by PVT within the 30 days, and shall remain in force from and after the effective date of this resolution for a term of 10 years and shall be effective within the County's geographic boundaries, excluding any municipality, town or village. This franchise shall become effective no sooner than 30 days subsequent to the completion of the passage of this Ordinance granting a Franchise to PVT; if accepted after said 30 days, it shall become effective on the date of its acceptance by PVT.

1.3 Use of Right-of-Ways

Subject to the county's supervision and control, PVT is authorized and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges granted in the Franchise, provided that (i) all work done on the streets, avenues, alleys, highways, sidewalks, bridges and other structures and places on public grounds of the County shall be done with the utmost diligence and at the least inconvenience to the public, (ii) PVT shall within a reasonable time restore the streets, avenues, alleys, highways, sidewalks, bridges and other structures and places on public grounds excavated by it to their original condition as nearly as possible, and (iii) the work shall be done subject to the approval of the County.

1.4 Notice of Change by County

In the event of any proposed change in the bridges, public roads, streets or highways, or in the grades or drains of the public roads, streets or highways, which would require a relocation of PVT's facilities, the County shall give PVT written notice of the proposed change at least 60 days in advance. PVT shall bear the cost of relocating its facilities.

1.5 Franchise Nonexclusive

The Franchise is not exclusive, and nothing in the Franchise shall prevent the County from granting to any other person, firm, or corporation, or operating itself where proper under the law, like, similar or different rights, privileges and franchises. Nothing in this Franchise shall prevent the County or other public utilities owned, maintained or operated by public entities other than the County from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of PVT's System.

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- 1.6 Acceptance by PVT
PVT shall, within 30 days of the passage of this Ordinance, file with the County its written acceptance (in the form of Exhibit A) of the Franchise and upon filing the acceptance the Franchise shall constitute all the terms of the Franchise granted by the County to PVT.
- 1.7 Fees & Charges
The County shall have the right to negotiate any fees and charges that may be permitted under future legislation.

Section 2. Insurance

PVT shall maintain in full force and effect at its own cost and expense each of the following policies of insurance coverage:

- 2.1 Commercial General Liability Insurance
Such coverage shall have limits of no less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the County, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the County, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.
- 2.2 Commercial Automobile Liability Insurance
Such coverage shall have a minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate with respect to each of PVT's owned, hired and non-owned vehicles assigned to or used in the operation of PVT's System in the County. The policy shall contain a "severability of interests" provision.
- 2.3 Certificates
Each policy shall provide that a certificate of insurance shall be provided to the County stating that the policy or policies the insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the County, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, PVT shall provide a replacement coverage policy. PVT agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise.

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PVT shall furnish the County with a certificate of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificate and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

2.4 Deductibles

Any deductible of the policies shall not in any way limit PVT's liability to the County.

2.5 Endorsements

All policies shall contain, or shall be endorsed so that:

- (a) The County, its officers, officials, boards, commissions, and employees shall be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, PVT under this Franchise or applicable law, or in the construction, operation or repair, or ownership of the Telecommunications System;
- (b) PVT's insurance coverage shall be primary insurance with respect to the County, its officers, officials, boards, commissions, employees and agents. Any insurance or self-insurance maintained by the County, its officers, officials, boards, commissions, employees and agents shall be in excess of the PVT's insurance and shall not contribute to it; and
- (c) PVT's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

Section 3. Safety

3.1 Hazardous Substances

- (a) PVT shall comply with any and all applicable laws, statutes, regulations and orders concerning hazardous substances relating to PVT's Telecommunications System in the Rights-of-Way.
- (b) PVT agrees to indemnify the County against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the County arising out of a release of hazardous substances caused by PVT's Telecommunications System.

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3.2 Maintenance & Repairs

~~PVT shall provide and use any equipment and facilities necessary to control and carry PVT's signals so as to prevent injury to the County's property or property belonging to any Person. PVT, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by PVT in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.~~

3.3 Notice to Private Property Owners

Except in the case of emergency involving public safety or service interruptions to a large number of customers, PVT shall give notice to private property owners or legal tenants of work on private property.

3.4 Abandonment of Facilities

Whenever PVT intends to discontinue using any facility within the Rights-of-Way, PVT shall submit to the County a complete description of the facility and the date on which PVT intends to discontinue using the facility. PVT may remove the facility or request that the County permit it to remain in place. Notwithstanding PVT's request that any such facility remain in place, the County may require PVT to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The County may require PVT to perform a reasonable combination of modification and removal of the facility. PVT shall complete such removal or modification in accordance with a reasonable schedule set by the County. Until such time as PVT removes or modifies the facility as reasonably directed by the County, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, PVT shall retain all liability for such facility and be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use. If PVT abandons its facilities, the County may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes. If the County chooses to utilize any such abandoned facilities, PVT's liability for those facilities shall cease.

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3.5 Inspection of Construction and Facilities

The County may inspect any of PVT's facilities, equipment or construction at any time upon at least twenty-four (24) hours notice, or, in case of emergency, upon demand without prior notice. If PVT is out of compliance with its obligations hereunder, the County, in addition to taking any other action permitted under applicable law, may order PVT, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the County reasonably establishes. The County has the right to correct, inspect, administer and repair the unsafe condition if PVT fails to do so, and to reasonably charge PVT therefore.

3.6 Tree Trimming

PVT may prune or cause to be pruned, using proper pruning practices, any tree in the County's Rights-of-Way which interferes with PVT's facilities. PVT shall comply with any general ordinance or regulations of the County regarding tree trimming. Except in emergencies, PVT may not prune trees at a point below thirty (30) feet above sidewalk or road grade until two (2) weeks written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this two (2) week period. PVT shall have no liability whatsoever for any acts or omissions by the owner or occupant of the abutting premises. If the owner or occupant fails to do so, PVT may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or PVT's facilities from imminent danger only.

Section 4 Miscellaneous Provisions

4.1 Hold Harmless

PVT shall hold the County, its officers and agents harmless from any and all liability or claims of loss that may arise to be incurred from the erection, construction or operation of PVT's system and which are attributable to the negligence of PVT.

4.2 Force Majeure

PVT shall not be responsible or liable to any person, firm, or corporation for the interruption of any service provided by PVT arising from floods, fires, wind storms, ice storms, accidents, acts of God or any other cause beyond its control, but in case of any such interruption PVT shall use reasonable diligence to re-establish service as soon as possible.

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4.3 Conflicts

All, or part, of any resolutions or orders in conflict with the Franchise are repealed.

4.4 Severability

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

4.5 Preferential or Discriminatory Practices Prohibited

In connection with the performance of work under this Franchise, PVT agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the PVT further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, PVT shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws and regulations relating thereto.

4.4 Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the County or the PVT by written notice at any time. At the Effective Date of this Franchise:

PVT's contact address shall be:

Penasco Valley Telephone Cooperative, Inc.
Attention: Dale Laman
4011 West Main Street
Artesia, NM 88210

The County's contact address shall be:

County of Eddy
Attention: Eddy County Manager
101 W. Greene, Suite 110
Carlsbad, NM 88220

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FOR PENASCO VALLEY TELECOMMUNICATIONS

- 4.5 **Publication Costs**
~~PVT shall reimburse the County for all reasonable costs incurred in publishing this Franchise, if such publication is required.~~
- 4.6 **Binding Effect**
This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.
- 4.7 **No Joint Venture**
Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.
- 4.8 **Waiver**
The failure of the County at any time to require performance by the PVT of any provision hereof shall in no way affect the right of the County hereafter to enforce the same. Nor shall the waiver by the County of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.
- 4.9 **Agreement in Entirety**
This Franchise and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.
- 4.10 **Open Records**
(a). The County, including the County's auditor or his/her authorized representative, shall have access to, and the right to inspect, any books and records of PVT, and its parent corporations and Affiliates which are related to the administration or enforcement of the terms of this Franchise.

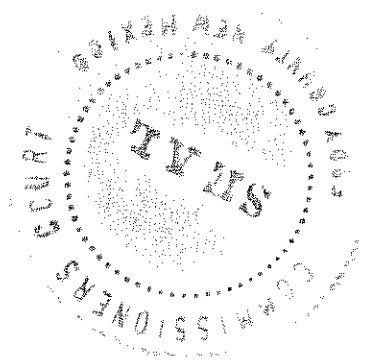
(b). The County is bound by the open public records and open public meetings laws of the State of New Mexico. The County, therefore, cannot guarantee the confidentiality of any information provided to the County under this Franchise agreement.

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PASSED, ADOPTED AND APPROVED THIS 5 DAY OF October, 2010.

THE BOARD OF COMMISSIONERS OF
EDDY COUNTY, NEW MEXICO

By Tony Hernandez
Tony Hernandez, Vice-Chairman



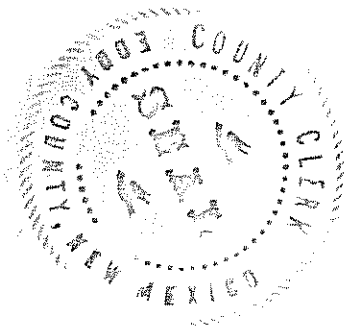
ATTEST:
Darlene Rosprim
Darlene Rosprim, County Clerk

CERTIFICATE OF EDDY COUNTY CLERK

I, DARLENE ROSPRIM, Eddy County Clerk, hereby certify that Eddy County Ordinance Number 10-62 being a Grant of a Franchise to Penasco Valley Telephone Cooperative, inc., was passed, approved and adopted by the Eddy County Board of Commissioners on the 5th day of Oct, 2010.

Darlene Rosprim
Darlene Rosprim, Eddy County Clerk

My term expires on: 12/31/2010



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EXHIBIT A
TO FRANCHISE GRANTED TO
PENASCO VALLEY TELEPHONE COOPERATIVE, INC.
BY EDDY COUNTY, NEW MEXICO
DATED October 5, 2010

To: The Eddy County Board of Commissioners
Eddy County, New Mexico
Carlsbad, New Mexico

In accordance with Section 1.2 of the Franchise granted to Penasco Valley Telephone Cooperative, inc. by Eddy County, New Mexico, on October 5, 2010, Penasco Valley Telephone Cooperative, inc., a New Mexico Corporation, accepts the Franchise.

Please indicate the date of the filing of this written acceptance in the space provided and return one copy to Penasco Valley Telephone Cooperative, inc..

Dated this 12th day of October, 2010.

PENASCO VALLEY TELEPHONE COOPERATIVE, INC.

By Dale Laman
Executive Vice President

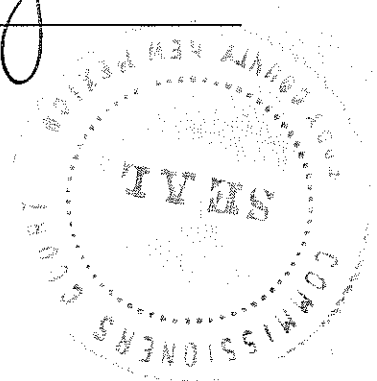
Filed with the County of Eddy, New Mexico, on this 19th day of October 2010.

BOARD OF COMMISSIONERS OF
EDDY COUNTY, NEW MEXICO

By [Signature]

ATTEST:

[Signature]
County Clerk



NOTICE OF PUBLIC HEARING

Proposed County Ordinance O-10-62

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO PENASCO VALLEY TELEPHONE COOPERATIVE, INC., A NEW MEXICO CORPORATION AND PUBLIC UTILITY, BY EDDY COUNTY, NEW MEXICO

The Eddy County Commission has scheduled a public hearing for 10:20 a.m. on Tuesday, October 5, 2010, in the Eddy County Commission Chambers, Eddy County Administration Complex, 101 W. Greene, Room 211, Carlsbad, NM 88220, to receive comments on proposed County Ordinance O-10-62.

Copies of the proposed ordinance may be obtained at the Office of the County Manager, 101 W. Greene, Suite 110, Carlsbad, NM 88220, (575) 887-9511, between 8:00 a.m. and 5:00 p.m., Monday – Friday. Written comments can be submitted to the same address no later than 5:00 p.m. Tuesday, September 28, 2010. The proposed ordinance will be posted on the county web site: www.co.eddy.nm.us. Questions may be directed to the County Manager at the above address. Anyone needing special accommodations should contact the County Manager's Office at the above address.

Eddy County Board of Commissioners

Allen R. Sartin, County Manager

STATE OF NEW MEXICO COUNTY OF EDDY
RECORDED ON OCTOBER 8, 2010 AT 10:09 A.M.
IN BOOK 2 PAGE 0210 OF THE ORDINANCE RECORDS
DARLENE ROSPRIM, COUNTY CLERK

DARLENE ROSPRIM

