

ENDED

ORDINANCE NO. 12

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AN ORDINANCE GRANTING TO CLAUDE SMITH, d/b/a SMITH CABLEVISION, A FRANCHISE PERMITTING GRANTEE THE NON-EXCLUSIVE USE, PRIVILEGE, POWER AND AUTHORITY TO CONSTRUCT, MAINTAIN, OPERATE, SET, LAY AND REMOVE ALL NECESSARY POLES, TOWERS, ANTENNAE, SIGNAL AMPLIFICATION APPARATUS, WIRES, CABLE, TRANSFORMERS, GUY POSTS AND GUY WIRES, APPLIANCES AND EQUIPMENT IN THE STREETS, ALLEYS, AVENUES AND PUBLIC WAYS, EASEMENTS AND RIGHTS OF WAY WITHIN EDDY COUNTY, NEW MEXICO; PROPERLY TO LOCATE, CONSTRUCT, MAINTAIN, OPERATE AND REMOVE A TELEVISION SIGNAL SERVICE IN THE COUNTY FOR A PERIOD OF TEN (10) YEARS WITH AN OPTION FOR AN ADDITIONAL TEN-YEAR PERIOD AFTER AN APPROPRIATE PUBLIC HEARING AFFORDING DUE PROCESS: PROVIDING FOR THE FORFEITURE THEREOF: PROVIDING FOR CANCELLATION OF THE FRANCHISE UPON GRANTEE'S FAILURE TO MAKE SUCH TELEVISION SERVICE AVAILABLE TO THE PUBLIC WITHIN THE DATES SET FORTH; PROVIDING FOR A THREE PERCENT ANNUAL NET RECEIPTS FEE TO BE PAID TO EDDY COUNTY QUARTERLY; PRESCRIBING CERTAIN OTHER TERMS AND CONDITIONS REQUIRED BY THE RULES AND REGULATIONS OF THE FEDERAL COMMUNICATION COMMISSION (F.C.C.); AND PROVIDING THAT THIS ORDINANCE SHALL BE SEVERABLE.

WHEREAS, THE BOARD OF COUNTY COMMISSIONERS OF EDDY COUNTY HAS APPROVED OF SAID QUALIFICATIONS AND ARRANGEMENTS AS PART OF A FULL PUBLIC PROCEEDING AFFORDING DUE PROCESS.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF EDDY COUNTY, NEW MEXICO:

Section 1. Eddy County, New Mexico, does hereby grant unto CLAUDE SMITH, d/b/a SMITH CABLEVISION, the non-exclusive right, privilege, franchise and right of way in, under, upon, across and along the streets, alleys, avenues and public ways, easements and rights of way, of and within the County for the purpose of erecting, setting, constructing and maintaining all necessary and convenient poles, towers, antennae, guy wires, wires, cables, transformers, boosters, signal amplifying apparatus, guy posts, equip-

1 ment and appliances properly to locate, construct, maintain, oper-
 2 ate and remove a television signal service and distributing system
 3 within the County of Eddy; the franchise rights herein granted
 4 include the right of grantee to trim the branches of any trees
 5 located on the streets, alleys, avenues and public ways, easements
 6 and rights of way of and within the County of Eddy for the purpose
 7 of erecting, setting, constructing, maintaining and removing the
 8 facilities of grantee necessary for the furnishing of its tele-
 9 vision signal service. Grantee is further granted the non-exclu-
 10 sive right, privilege and franchise in Eddy County, New Mexico, to
 11 distribute to subscribers information from any source, in addition
 12 to the television signals provided by it. This franchise shall be
 13 for a period of ten (10) years from the effective date of this
 14 ordinance. Grantee shall have the option to renew this franchise
 15 for an additional ten-year period after approval by the Board of
 16 County Commissioners of Eddy County, New Mexico, following a public
 17 hearing affording due process. Grantee shall notify the County
 18 Manager by writing of its desire to renew the franchise at least
 19 sixty (60) days prior to the expiration of the original ten-year
 20 term disclosing its intention to extend the term of this ordinance
 21 for an additional ten-year period from the expiration date hereof.

22 Section 2. Grantee shall so set its poles and place its
 23 cables, wires and appliances so as not to interfere with the ordi-
 24 nary travel and use of the streets, alleys, avenues or public ways,
 25 easements and rights of way, and shall so maintain them during the
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1 life of this franchise. All of such installations shall be of a
 2 permanent nature, durable and of sufficient height not to inter-
 3 fere unreasonably in any manner with the rights of the public or of
 4 individual property owners. Such construction work shall be in
 5 accordance with such reasonable rules and regulations as may be
 6 adopted by the Board of County Commissioners. Nothing herein con-
 7 tained shall prevent grantee from leasing pole rights from existing
 8 public utility companies.

9 Section 3. Grantee shall offer to furnish and distribute its
 10 television signal service to all persons desiring the same within
 11 the limits of the areas defined in Exhibit A, a copy of which is
 12 attached hereto and incorporated herein by reference, within a
 13 reasonable time and in accordance with the provisions of Section 7.
 14 It shall have the right to extend its facilities, in, under, upon,
 15 across and along the streets, alleys, avenues and public ways,
 16 easements, and rights of way, of any addition or additions thereto
 17 and to use the streets, alleys, avenues, and public ways, easements
 18 and rights of way therein for its facilities to continue such
 19 signals to points beyond the area demarked by Exhibit A, provided,
 20 that no extension of service beyond the area demarked by Exhibit A
 21 shall occur until service within the area demarked by Exhibit A has
 22 been reasonably provided unless permission is granted by the Board
 23 of County Commissioners. Grantee further agrees to wire all those
 24 parts within the area demarked by Exhibit A where economically
 25 feasible or which contain forty (40) homes per cable mile.

Section 4. It is agreed that for the purposes of this Section and elsewhere when applicable, the following definitions are adopted:

- "(a) Residential Subscriber shall mean a purchaser of the service of grantee by one tap of grantee's cable, such service to be used by the purchaser for his own benefit and entertainment, and not for the purpose either of resale or the furtherance of any business in which he is engaged.
- "(b) A Tap of grantees cable is defined as the equipment or apparatus connected to grantees distribution system necessary to provide necessary signals to a television set.
- "(c) Commercial Subscriber is defined to mean any subscriber to the service of grantee by one tap of grantee's cable who is not a residential or apartment house subscriber.

Grantee shall be authorized to make reasonable and non-discriminatory conditions upon its furnishing service to any residential, apartment house or commercial subscriber.

Grantee, by the acceptance of this franchise, agrees that the following maximum rates for residential subscriber shall apply:

- "(d) An installation fee for each tap of grantees cable \$20.00
- "(e) A monthly rental from each residential subscriber for the first television receiver of each residential subscriber to which grantee furnishes service 10.50
- "(f) A monthly rental from each residential subscriber for each additional television receiver of such residential subscriber to which grantee furnishes service 2.50

1 "(g) A non-recurring installation charge to
 2 each residential subscriber, which shall
 3 be no more than the actual cost to grantee
 4 of the facilities provided by grantee for
 5 furnishing service to additional television
 6 receivers owned and/or controlled by and
 7 located in the residence of each residen-
 8 tial subscriber requesting such additional
 9 service

10 and that the following rates for commercial subscribers shall
 11 apply:

12	"(h) An installation fee for each tap of grantee's cable	\$16.00
13	"(i) A monthly rental from each commercial subscriber for the first television re- ceiver of each commercial subscriber to which grantee furnishes service	8.50
14	"(j) A monthly rental from each commercial subscriber for each additional tele- vision receiver of such commercial sub- scriber to which grantee furnishes ser- vice	2.50
15	"(k) A non-recurring installation charge to each commercial subscriber which shall be no more than the actual cost to grantee of the facilities provided by grantee for furnishing service to addi- tional television receivers owned and/or controlled by and located in the com- mercial premises of each commercial sub- scriber requesting such additional service	
16	"(l) A monthly charge for maintenance of the ancillary facilities mentioned in sub- paragraphs (o) and (p) above necessary to furnish properly the additional ser- vice requested by each commercial sub- scriber, which charge shall be established by agreement between grantee and each such commercial subscriber and shall be paid monthly to grantee concurrently with the charges mentioned in sub-paragraphs (n) and (o)	

1 All facilities necessary to furnish the service of grantee to its
2 residential, apartment house and commercial subscribers to such
3 service shall be and remain the property of grantee, and grantee
4 shall have the duty and the exclusive right to install, maintain,
5 modify, alter and remove all such facilities. Furthermore, grantee
6 shall have the right to prohibit any unauthorized use of facilities
7 by any subscriber, including the use of grantee's facilities and
8 equipment for the purpose of competing with grantee. The rates set
9 forth above may be increased only with prior approval of the Board
10 of County Commissioners after an appropriate public hearing afford-
11 ing due process. Grantee, from time to time, may seek approval
12 of the Board of County Commissioners for a rate increase; however,
13 rates approved shall remain in effect for not less than twelve (12)
14 calendar months after effective date. Board of County Commissioners
15 approval of subscriber rates shall not be unreasonably withheld.

16 Section 5. Grantee agrees to provide adequate television
17 signals from those television stations in the area plus additional
18 signals approved by the F.C.C.

19 Section 6. As consideration for the adoption of this franchise
20 ordinance, grantee agrees to pay to the Treasurer of Eddy County
21 three percent (3%) of its annual net receipts. Net receipts shall
22 mean gross receipts derived from recurring monthly service charges,
23 and all other charges or service fees billed to purchasers of the
24 service less all operating expenses of the franchise; but capital
25 costs of constructing the cable system shall not be included in
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1 operating expenses. Such payment by grantee shall be in lieu of
2 all other licenses or fees levied or exacted by the County except
3 general ad valorem taxes and special assessments for local improve-
4 ments and New Mexico Gross Receipts Tax. The County shall have
5 reasonable access to all books and records of grantee in order to
6 determine and audit the gross receipts of grantee.

7 Section 7. All facilities and equipment of grantee shall be
8 constructed and maintained in accordance with the requirements and
9 specifications of the most recent edition of the National Electric-
10 al Safety Code and of the laws of the State of New Mexico, and
11 ordinances of Eddy County governing such installations as they may
12 exist from time to time during the term of this franchise. The
13 construction and maintenance of grantee's facilities shall not
14 interfere unreasonably with the use or maintenance of any facili-
15 ties or equipment of the County or of any public utility company
16 in, under, upon, across or along the streets, alleys, avenues and
17 public ways, easements and rights of way. Grantee agrees to in-
18 demnify and hold harmless the County from any and all liability
19 growing out of any injury to person or property as a result of its
20 operation under this franchise. Grantee shall obtain and maintain
21 at its sole cost and expense throughout the term of this franchise
22 or any renewals or extensions hereof, a policy of public liability
23 insurance, having liability limits of not less than Five Hundred
24 Thousand Dollars (\$500,000.00) for damage caused to any person or
25 property, individually, or for any one occurrence, and Eddy County
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1 shall be named as an additional insured or co-insured on the policy
2 which shall be issued only by an insurance carrier approved by the
3 Treasurer of Eddy County. Additionally, grantee shall obtain and
4 maintain at its sole cost and expense throughout the life of the
5 franchise, a performance bond of not less than Fifty Thousand
6 Dollars (\$50,000.00) guaranteeing its obligation herein to indem-
7 nify Eddy County for grantee's use of County roads, easements,
8 rights of way and county-owned lands. Grantee shall notify the
9 Eddy County Manager prior to cutting through or mining under any
10 County roads and shall arrange for and pay Eddy County to inspect
11 any such operation on County roads. The inspection fee shall be
12 set by resolution of the Board of County Commissioners. Grantee
13 shall restore all Eddy County roads which it cuts or undermines to
14 its original, or to a better, condition, as may be reasonably deter-
15 mined by the County's inspector.

16 (a) Grantee, whenever it shall receive a request for service
17 from at least ten (10) subscribers within 1,320' cable feet of its
18 trunk cable, shall extend its system to such subscribers at no cost
19 to the subscribers for system extension other than the usual con-
20 nection fees for all subscribers, provided that such extension is
21 technically and physically feasible. The 1,320 feet shall be
22 measured in extension length of grantee's cable required for ser-
23 vice located within the public way or easement and shall not in-
24 clude length of necessary service drop to the subscriber's home or
25 premises.

1 (b) No person, firm or corporation in the grantee's service
2 area shall be arbitrarily refused service. However, in recognition
3 of the capital costs involved, for unusual circumstances, such as
4 requirement for underground cable, or more than 150 feet of dis-
5 tance from distribution cable to connection of service to sub-
6 scribers, or a density of less than ten (10) subscribers per 1,320
7 feet of cable system, in order to prevent inequitable burdens on
8 potential cable subscribers in more densely populated areas, ser-
9 vice may be made available on the basis of cost of materials, labor
10 and easements.

11 Section 8. This franchise does not cover closed circuit pay
12 television service.

13 Section 9. Failure or refusal by grantee to observe the terms
14 and provisions of this franchise or failure of grantee, caused by
15 its negligence, to provide any service for a period of ninety (90)
16 consecutive days after it commences to render such service shall
17 entitle the County to terminate this franchise, in which event
18 grantee shall within a reasonable time remove from the streets,
19 alleys and public ways of the County all facilities installed by
20 it.

21 Section 10. This franchise shall not be assignable or trans-
22 ferrable by grantee without the written consent of the Board of
23 County Commissioners. Approval of the transfer or assignment of
24 the franchise by the Board of County Commissioners shall not be
25 unreasonably withheld. Provided, however, that consent of the
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1 Board of County Commissioners shall not be required to place a
2 mortgage or lien upon the facilities of grantee for the purpose of
3 financing the installation, improvement, maintenance or extension
4 of its system. In the event of the bona fide foreclosure of any
5 such lien or mortgage whereby the entire system and facilities of
6 grantee are sold at public sale then the purchaser at such public
7 sale shall be deemed to have acquired all the rights and obliga-
8 tions of the grantee under this franchise.

9 Section 11. Grantee shall maintain a local business office or
10 agent which subscribers may telephone during regular business hours
11 without incurring added message or toll charges so that Cable T.V.
12 maintenance service shall be promptly available. Should a sub-
13 scriber have an unresolved complaint regarding the quality of cable
14 television service, equipment malfunctions or similar matters, the
15 subscriber shall be entitled to meet jointly with a representative
16 of the County and a representative of the grantee within thirty
17 (30) days to fully discuss and resolve such matters.

18 Section 12. Any modification resulting from amendment of
19 Section 76.31 ("Franchise Standards") of the Rules and Regulations
20 of the Federal Communications Commission shall be incorporated into
21 the Franchise as of the date such modifications become obligatory
22 under F.C.C. regulations, or in the event no obligatory date is
23 established, within one year of adoption or at the time of fran-
24 chise renewal, whichever occurs first.

25 Section 13. Grantee agrees to provide adequate television
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signals from those television stations in the area plus additional signals approved by the Federal Communications Commission. Grantee agrees to provide a minimum of four (4) channels of television consisting of one (1) Spanish language channel, one (1) sports channel, one (1) independent channel, and one (1) political channel. Grantee agrees to furnish, if and when available, a motion picture channel, and additional channels such as Home Box Office, Cinemax, Disney Network, etc., with rates for said services to be agreed upon by grantor and grantee in the future, as appropriate.

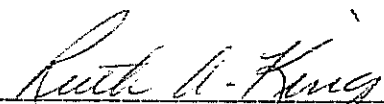
Section 14. This franchise shall be accepted by the grantee in writing.

Section 15. If any section or paragraph, clause, phrase or provision of this ordinance shall be invalid or unconstitutional, the same shall not affect the validity of the remainder of this ordinance.

Section 16. This ordinance shall be in full force and effect thirty (30) days after its enactment.

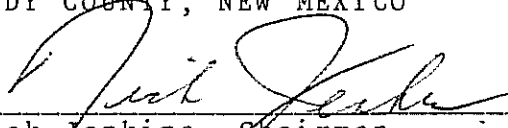
PASSED, ADOPTED AND APPROVED, as amended herein, this 19th day of February, 1985.

ATTEST:

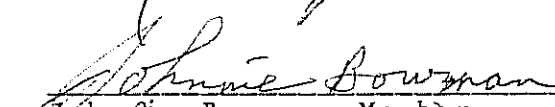


Ruth King, County Clerk

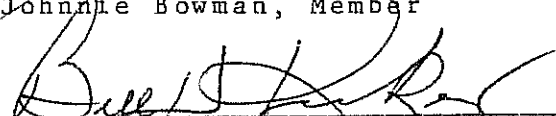
BOARD OF COUNTY COMMISSIONERS
EDDY COUNTY, NEW MEXICO



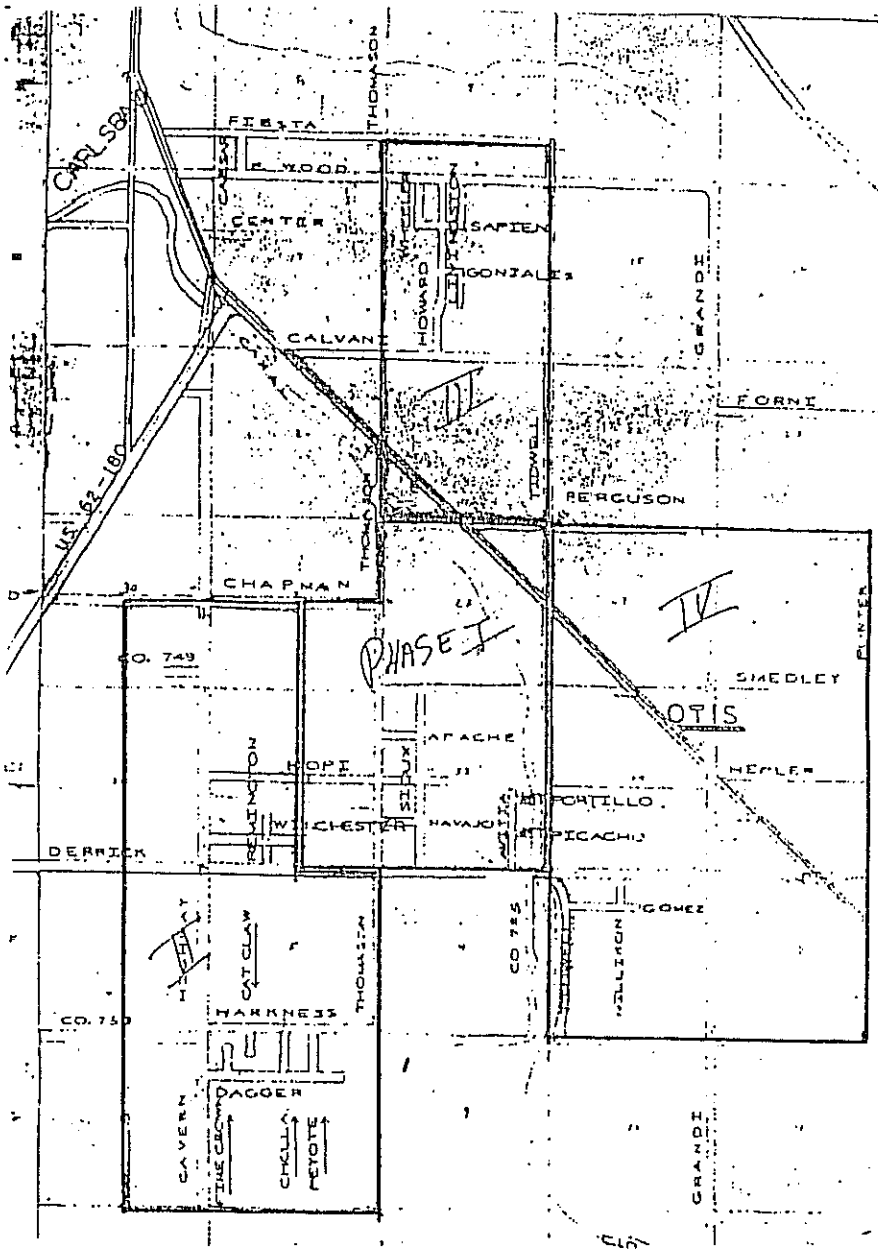
Nick Jenkins, Chairman



Johnnie Bowman, Member



Bill H. Kirkes, Member



Legend

Phases

- I
- ▣ II
- ▤ III
- ▥ IV

T.V. cable

Claude Smith

Exhibit A

STATE OF NEW MEXICO, County of Eddy, ss. I hereby certify that this instrument was filed for record on the
 18 day of July, A. D. 1983 at 2:07 o'clock P.M., and duly recorded
 in Book 1, Page 58 of the Records of Ordinances of said County.

ORDINANCE NO: 12 (Assignment,CONSENT TO ASSIGNMENT OF FRANCHISE

The undersigned Grantor of the franchise described in Ordinance No. 12, and duly recorded in Book 001, page 0077, of the records of ordinances of Eddy County, New Mexico (the "County") hereby consents to the assignment of the rights and obligations of Grantee, also known as Smith Communications Satellite Entertainment Co., a New Mexico general partnership ("Smith"), under such franchise to TCI Cablevision of New Mexico, Inc., a Delaware corporation ("TCICNM"). A copy of the aforementioned franchise ordinance is attached hereto as Exhibit A.

WHEREAS, Smith was granted a franchise to provide cable television service to residents of Eddy County, New Mexico by Ordinance No. 12; and

WHEREAS, Smith wishes to sell its cable television system in Eddy County to TCICNM;

NOW THEREFORE, the County, Smith and TCICNM hereby agree as follows:

1. Smith agrees to transfer and assign all of its interest in the franchise described in Ordinance No. 12 to TCICNM.
2. TCICNM agrees to accept and perform all obligations of Grantee under the franchise arising on and after the sale of the cable television system to TCICNM, and to deliver to the County Attorney copies of the Assignment and Assumption Agreements to be executed by Smith and TCICNM at the Closing of the transaction described herein.
3. In consideration of the foregoing agreement of TCICNM to accept and perform all obligations of the original franchise, the County, through its Board of County Commissioners, hereby consents to the Assignment of the Franchise from Smith to TCICNM.

IN WITNESS WHEREOF, the undersigned has executed this instrument on behalf of Eddy County, New Mexico as of the 10th day of June, 1987.

BOARD OF COUNTY COMMISSIONERS
EDDY COUNTY, NEW MEXICO

By: Bill H. Kirkes
Bill H. Kirkes, Chairman

ATTEST

Ruth King
Ruth King, County Clerk

6/16/87