

TOWN OF SAN ANSELMO

RESOLUTION NO. 3271

**A RESOLUTION OF THE TOWN OF SAN ANSELMO
APPROVING AND AUTHORIZING THE TOWN MANAGER
TO TAKE STEPS NECESSARY FOR THE TOWN TO AMEND
THE MARIN COUNTY CABLE RATE REGULATION JOINT
POWERS AUTHORITY AGREEMENT**

WHEREAS, in October 1992 the United States Congress enacted the Cable Television Consumer Protection and Competition Act of 1992 (the "Act"), which, among other things, authorized local franchising authorities to regulate rates for cable television services under certain circumstances; and

WHEREAS, pursuant to Resolution, the San Anselmo Town Council authorized the Town Manager to enter into the Marin County Cable Rate Regulation Joint Powers Authority Agreement (the "Agreement")

WHEREAS, further review and amendments to the Act have necessitated amendments to the "Agreement."

WHEREAS, the Town Council deems it to be in the best interests of the citizens and residents of the Town to approve and authorize the Authority to take all steps necessary in connection with the regulation of rates for cable television services and equipment in the Town;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL:

Section 1. The Town Manager is hereby authorized to sign the Amended Agreement (a copy of which is attached hereto and made a part hereof) on behalf of the Town, and take all other actions necessary to implement the Agreement on behalf of the Town.

Section 2. Upon execution of the Agreement by the Town Manager, the Authority is hereby delegated full authority to act on behalf of the Town in all matters related to the regulation of rates for cable services and equipment charges by cable licensees in the Town, including, without limitation, authority to adopt and enforce regulations governing the regulation of rates for cable services and equipment and to make filings at the FCC or in court on behalf of the Authority.

Section 3. The Town Manager shall keep the Town Council informed of actions taken pursuant to this Resolution, and of developments relating to cable television regulation.

Section 4. All resolutions, ordinances or other provisions of Town law, or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of San Anselmo held this 26th day of July, 1994, by the following vote:

AYES: Breen, Chignell, Kroot, Yarish, Zaharoff

NOES: (None)

ABSENT: (None)

Attest:


Clerk

MARIN COUNTY CABLE RATE REGULATION
JOINT POWERS AUTHORITY AGREEMENT

A JOINT POWERS AGREEMENT ENTERED INTO BETWEEN THE UNDERSIGNED LOCAL GOVERNMENTS, PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 6500.1, AND CREATING THE MARIN COUNTY CABLE RATE REGULATION JOINT POWERS AUTHORITY AS THE CABLE TELEVISION REGULATORY AUTHORITY FOR THE PARTICIPATING LOCAL GOVERNMENTS.

THIS AGREEMENT is by and between the undersigned local governments ("Participants").

WHEREAS, in October 1992 the United States Congress enacted the Cable Television Consumer Protection and Competition Act of 1992 (the "Act"), which, among other things, authorized local franchising authorities to regulate rates for cable television services and equipment under certain circumstances; and

WHEREAS, the Act requires the Federal Communications Commission ("FCC") to promulgate rules concerning, among other things, the requirements and procedures for regulation of rates for certain cable television services and equipment by local franchising authorities; and

WHEREAS, the rules adopted by the FCC require that a franchising authority wishing to regulate rates for basic cable service and equipment must adopt and administer regulations consistent with the regulations adopted by the FCC pursuant to 47 U.S.C. § 543(b); and

WHEREAS, the Participants deem it to be in the best interests of their citizens and residents to adopt such regulations to implement cable rate regulation authority under the Act and the FCC rules; and

Consumer Protection and Competition Act of 1992, and as hereinafter may be amended, and, if not defined therein, their common and ordinary meaning.

2.1 "Basic Service" or "Basic Cable Service" has the same meaning as the term "basic service" at 47 C.F.R. § 76.901.

2.2. "Cable Operator" means the recipient of any license as defined in section 2.8.

2.3. "Cable Service" means the one-way transmission of video or other programming services over a cable system to subscribers together with any subscriber interaction, if any, which is required for the selection of such programming services available to all subscribers generally.

2.4. "Cable System" means any facility, operating by means of coaxial cable, optical fiber, or other transmission lines or forms of transmission and associated signal generation, reception and control equipment, that is designed to provide telecommunications services and makes use of the surface or any space in, over or under any public rights of way. Such term does not include (a) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (b) a facility that serves only subscribers in one (1) or more multiple unit dwellings under common ownership, control, or management, unless such facility uses any Street; (c) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility will be considered a cable system to the extent it is used in the transmission of video programming, whether on a common carrier or non-

easements, or any property in which the Participants hold any kind of property interest and any temporary or permanent fixtures or improvements located thereon.

2.12. "Subscriber" means any person who legally receives service delivered over a cable system.

SECTION 3. STATUTORY AUTHORITY

This Agreement is a joint powers agreement pursuant to the Government Code Section 6500. Except as to matters which are governed solely by federal law or regulation, it shall be construed, and the legal relations between the parties determined, in accordance with the laws of the State of California.

SECTION 4. DURATION

4.1. This Agreement shall remain in effect until March 21, 2001 from the date of execution, or until terminated pursuant to the provisions of Section 21.1, whichever comes first.

4.2. This Agreement may be renewed for additional ten-year periods, without limitation, by consent of two or more of the Participants. If the Agreement is renewed, any Participants which decline to renew shall be considered to have withdrawn under Section 21 herein.

SECTION 5. CREATION OF THE AUTHORITY

5.1. There shall be established by this Agreement a cable television regulatory authority entitled the Marin County Cable Rate Regulation Joint Powers Authority.

7.3 No employee of a licensee of a Participant shall serve as a member of the Authority.

7.4 Each member shall have one vote. The Authority shall adopt by-laws by a two-thirds vote of its members, and the by-laws may be amended only by a two-thirds vote of Authority members. The by-laws shall address such matters as the selection and duties of Authority officers, the scheduling of Authority meetings, the formation of committees, Authority procedures and such other matters as the Authority finds appropriate, consistent with the terms of this Agreement.

7.5 All other business of the Authority other than the adoption or amendment of its by-laws may be conducted by a majority vote of a quorum of Authority members, a majority of Authority membership constituting a quorum.

SECTION 8. POWERS OF THE AUTHORITY

The Authority shall act as the agent of the Participants in all matters relating to the regulation of cable licenses and enforcement of cable television licenses other than making the final decision as to the granting, revocation, renewal, or denial of renewal of cable television licenses, which power is reserved by the governing bodies of the Participants. The Authority shall have the following specific powers, which are hereby delegated to the Authority:

8.1. To make and enforce such regulations as it shall find reasonable or necessary in the exercise of its lawful powers, to hold hearings pursuant to such regulations, and to do all things reasonable or necessary effectively to perform the duties specified in this Agreement;

SECTION 9. FINANCING OF THE AUTHORITY

9.1 The Authority shall adopt an operating budget for its activities before April 1 each year. The budget shall set forth anticipated expenses, financing sources and proposed service levels necessary to carry out the purposes of this agreement. Each Participant's financial cost shall be paid within 30 days of billing.

9.2 The financial responsibility of each Participant shall be based upon its pro-rata share of the total number of CATV subscribers of all of the Participants' communities. The total budget shall be divided by the total number of subscribers to obtain a subscriber rate, and each Participant's share of responsibility for the Authority's budget shall be equal to the product of the subscriber rate and the number of CATV subscribers in that Participant's jurisdiction.

9.3 The initial Authority budget shall be adopted by the Authority within one hundred and twenty (120) days of the date this Agreement is executed by all of its Participant's. Any Participant who fails or refuses to approve the budget within forty-five (45) days of its submittal to the Participants shall be deemed to have withdrawn from the Authority. The time for budget approval may be extended by a majority vote of the members of the Authority.

9.4 In subsequent years, a Participant shall approve the annual budget within forty-five (45) days of its submittal to the Participant. Failure or refusal to so approve the annual budget by a Participant shall be deemed to be a withdrawal by the Participant pursuant to Paragraph 20 of this Agreement; provided, however, that if the budget increases a Participant's contribution by less than \$1,000.00, the Participant

SECTION 10. RATE REGULATION -- SCOPE AND APPLICABILITY

10.1 The Authority is hereby empowered to regulate the rates for basic service and equipment within the County for any cable licensee that holds a license granted by a Participant, to the full extent permitted by law, and to take any and all steps necessary or incident to carrying out such powers.

10.2 The provisions set forth in Sections 10 through 17 hereof are intended to be consistent with all Federal Communications Commission ("FCC") regulations governing the regulation of cable service rates and equipment, and the rules set forth herein will be interpreted, and rates will be regulated, in a manner consistent with FCC regulations, as if those regulations were set forth in full herein; a cable licensee is prohibited from engaging in any activity it is prohibited from engaging in under FCC rules, as if those rules were set forth in full herein.

10.3 The Authority is hereby empowered to adopt additional regulations for the regulation of rates for cable service and equipment to the full extent permitted by law and to amend the cable rate regulations set forth in Sections 11 through 17 hereof to the extent necessary to comply with FCC rules and regulations or to more effectively carry out the rate regulatory authority granted to it hereunder, provided that any such amendment is consistent with applicable FCC rules and any other applicable law.

10.4 The Authority is hereby empowered to file and prosecute with the FCC complaints against the rates charged by any cable licensee for cable programming services or equipment.

11.1.2 Filings: Where Made. Every rate filing must be submitted to the Joint Powers Authority. A rate filing shall be considered filed for review on the date the rate filing and all required copies are received by the Authority. Ten (10) copies of each rate filing (including all supporting materials) must be submitted.

11.1.3 Filings: Contents. Subject to any FCC regulations governing the burden of proof, a rate filing submitted by a licensee must show that the rates the licensee proposes to charge for basic service and equipment are reasonable. Except as inconsistent with FCC rules:

11.1.3.1 Every rate filing must clearly state in a covering letter whether it justifies existing rates; or proposes an increase in rates. The covering letter must also identify any rate that is derived in whole or in part based upon cost of service, and identify any pages of the rate filing that contain information that the licensee claims is proprietary. It must state whether any part of the proposed increase is based on an inflation adjustment or an alleged increase in external costs. The cover letter should also contain a brief, narrative description of any proposed changes in rates or in service.

11.1.3.2 The pages of each rate filing must be numbered sequentially.

11.1.3.3 The rate filing must contain all applicable FCC forms and these forms must be correctly completed.

licensee must identify the name and address of any entity with which it has a contract, other than a programmer, which derives revenues from the system, and must state whether and how the revenues of that entity were included in the cost of service. In addition, the cost of service shall clearly show the derivation of a proposed charge per channel and the application of that charge to yield a basic service rate. It must also show and support the derivation and allocation of any amounts included in the derivation of the rate for:

11.1.3.7 operation and maintenance expenses;

11.1.3.8 administrative and general expenses;

11.1.3.9 programming expenses (identifying retransmission consent costs and copyright fees separately);

11.1.3.10 costs for PEG access and any institutional network;

11.1.3.11 license fee expenses;

11.1.3.12 investment in the system and associated depreciation;

11.1.3.13 other expenses, including federal, state and local taxes, itemized; and

11.1.3.14 the proposed return on equity and actual interest expense paid by the licensee.

tolls the rate in whole or in part, its written order shall explain that it requires additional time to review the rate filing, identify generally any then-known deficiencies in the licensee's filing and state that the licensee may cure any deficiency in its filing by submitting a supplementary filing as provided in Section 11.3. With respect to existing rates, tolling means the rates may remain in effect, subject to refund; with respect to rate changes, tolling means the portion of the rate change that is tolled may not go into effect.

11.3 Supplementary Filings.

11.3.1 If a proposed rate is tolled in whole or in part, the licensee shall submit a supplementary filing 20 days from the date the tolling order issues, containing corrections, if any, to its filing (including any required supplement to its cost of service filing) and any response to information filed by interested parties or to the recommendations of the Joint Powers Authority staff, or any additional information necessary to support the proposed rate. The Authority may require additional supplementary filings as necessary to carry out its rate regulatory responsibilities. A licensee must submit any such supplementary filings within 20 days of a request from the Authority, or such other time period as the Authority may reasonably set. Supplementary filings must be filed in accordance with Section 11.1.2.

11.3.2 A supplementary filing also must contain such information as the Joint Powers Authority directs the licensee to provide.

11.3.3.4 a sworn statement by the licensee's chief financial officer or an independent, certified accountant stating that he or she has examined all external costs (including all programming costs) and has offset against any increase claimed, the amount of any decreases in external costs, and the amount by which any increase in external costs was below the GNP-PI, as required by 47 C.F.R. § 76.922(d)(2); affirming that the licensee has only sought to recover any external cost to the extent that cost exceeded the GNP-PI; and affirming that the licensee has not attempted to recover any increase in the cost of programming purchased by an affiliate except as provided in 47 C.F.R. § 76.922(d)(2)(vi).

11.3.4 Upon receiving the supplementary filing, the Joint Powers Authority shall promptly cause to be published a notice that a filing has been received and that it is available for public review (except those parts which may be withheld as proprietary). The notice shall state that interested parties may comment on the filing, and shall provide interested parties twenty (20) days to submit written comments on the filing to the Joint Powers Authority. Any comments received and any recommendations for action by the Joint Powers Authority staff shall be made available for public inspection no later than thirty (30) days prior to the date the Joint Powers Authority must act under Section 11.3.6. The licensee may submit a response to public comments or the Joint Powers Authority staff's recommendations, but must do so no later than ten (10) days after those recommendations are made available for public inspection. The response shall be filed with the Joint Powers Authority.

must explain why the licensee's proposed rate was unreasonable and why the prescribed rate is reasonable. However, before prescribing a rate or ordering a refund to subscribers, the Joint Powers Authority shall ensure the licensee has had notice and opportunity to comment on the proposed rate or refunds. If the recommendations of the Joint Powers Authority staff propose a refund or a rate, then mailing a copy of the recommendation to the licensee at the time they are made available for public inspection shall be deemed to provide the licensee this notice and the licensee must comment on the refund or rate in its response to the recommendations.

12.3 No order approving or setting a rate using the FCC benchmarks shall be interpreted to establish the just and reasonable rate to subscribers. Every such rate approved or established shall be subject to further reduction and refund to the extent permitted under applicable laws and regulations, as the same may be amended from time to time. By way of illustration and not limitation, should the FCC reduce the benchmarks, the Joint Powers Authority shall have the right to reduce a licensee's rates and to require the licensee to refund any amounts collected above the benchmark, except to the extent prohibited by federal law.

SECTION 13. LICENSEES' DUTIES

13.1 A licensee must implement remedial requirements, including prospective rate reductions and refunds, within sixty (60) days of the date the Joint Powers Authority issues an order mandating a remedy.

13.5.2 Because federal law limits the time available for an initial response to a filing by a licensee, before the order contemplated by Section 11.2 issues, the licensee must be prepared to respond to requests for information regarding its filing within five (5) days of the date an information request is mailed to it. The information may include the information the licensee would be required to provide as part of any supplementary filing.

SECTION 14. DUTIES OF THE JOINT POWERS AUTHORITY CHAIR AND STAFF

14.1 The Joint Powers Authority may delegate certain responsibilities, other than decisions required by Sections 11.2.2 and 11.3.5, to the Chair of the Joint Powers Authority or to staff. Staff may include consultants. Without limitation and by way of illustration:

14.1.1 The Chair or staff shall ensure notices are given to the public and each licensee as required herein and by FCC regulations.

14.1.2 The Chair or staff may submit requests for information to the licensee and establish deadlines for response to them, as provided in Section 13.

14.1.3 For good cause, the Chair may waive any provision herein or extend any deadline for filing or response except as to such matters as are mandatory under FCC regulations.

14.1.4 The Chair or staff shall prepare any recommendations to the Joint Powers Authority contemplated by Sections 11.2 and 11.3. If the Chair or staff recommends that any proposed rate increase be denied in whole or in part, he or she shall:

SECTION 16. PROPRIETARY INFORMATION

16.1 If these provisions, or any request for information, requires the production of proprietary information, the licensee must produce the information. However, at the time the allegedly proprietary information is submitted, a licensee may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure. The request must identify specifically what portions of the information are requested to receive confidential treatment; must state the reason why the licensee believes the information should be treated as proprietary; and must set forth the facts (and legal argument where appropriate) that support those reasons. The request for confidentiality will be granted if the Joint Powers Authority determines that the preponderance of the evidence shows that non-disclosure is consistent with applicable provisions of California law. The Joint Powers Authority shall place in a public file for inspection any decision that results in information being withheld. If the licensee requests confidentiality and the request is denied, (1) where the licensee is proposing a rate increase, it may withdraw the proposal, in which case the allegedly proprietary information will be returned to it; or (2) the licensee may seek review within five (5) working days of the denial in any appropriate forum. Release of the information will be stayed pending review.

16.2 Any interested party may file with the Joint Powers Authority a request to inspect material withheld as proprietary. The Joint Powers Authority shall weigh the policy considerations favoring non-disclosure against the reasons cited for permitting inspection in light of the facts of the particular case. The Joint Powers

19.2. Amendment of Prior Law. Ordinances or resolutions adopted by the Participants to authorize this Agreement shall include language stating that the terms of this Agreement supersede any conflicting provisions of local law in effect prior to that enactment to the full extent permitted by law.

19.3. Effective Date. The effective date of this Agreement shall be the later of:

- (a) the first date on which all the Participants have authorized this Agreement by resolution and signed it; or
- (c) the date on which a certified copy of this Agreement is filed with the secretary of state, pursuant to California Government Code §§ 6503.5 and 6503.7.

SECTION 20. AMENDMENT

This Agreement may be changed, modified, or amended only by the agreement of a majority of the Participants, pursuant to an instrument in writing duly executed by the Participants.

SECTION 21. TERMINATION AND WITHDRAWAL

21.1. Termination. This Agreement may be terminated by mutual consent of a majority of the Participants. Upon such agreement, each Participant shall pass a resolution or ordinance enacting the termination. The Authority shall thereupon cease to exist.

21.4.1.1. For purposes of subsection 21.4, Participants' pro rata shares of the Authority's property shall be defined as the total dollar value of all real and personal property belonging to the Authority as of the date of termination, allocated among the Participants according to the total number of cable subscribers receiving cable service within each Participant's jurisdiction. In such computations all subscribers receiving cable service from any cable operator shall be included; subscribers, if any, that receive cable service from more than one cable operator shall be counted once for each separate operator's subscription they receive.

21.4.1.2. The date of termination, for purposes of subsection 21.4 shall be the effective date of an agreement to terminate this Agreement, or, if no agreement to terminate is to be executed, the first date on which all Participants have ratified by resolution the termination of this Agreement.

21.4.1.3. If property belonging to the Authority is to be sold pursuant to subsection 21.4, each Participant shall have the right to make an offer for that property before it is sold to a non-Participant. The Authority need not accept any such offers, but shall dispose of its property according to its best judgment in the interests of (a) a fair distribution of the assets among the Participants and (b) the preservation and improvement of cable service in the County.

21.4.2. Upon Withdrawal. Any Participant that withdraws from this Agreement shall be entitled to receive a pro rata share of the Authority's property. Such a share may be taken in cash, payable within 90 days of withdrawal; in the form of a promissory note or similar instrument executed by the Authority; or in kind.

c. The new Participant shall comply with such other conditions as may be determined appropriate by the members of the Authority, before such new Participant is admitted as a Participant of the Authority.

d. The new Participant shall execute a counterpart of this Agreement creating the Authority.

SECTION 25. SEVERABILITY

If any part, section, subsection, or other portion of this Agreement or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Agreement, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect.

THIS AGREEMENT is entered into by the undersigned on the dates so indicated

COUNTY OF MARIN

CITY OF BELVEDERE

By: _____
Name

By: _____
Name

Date

Date

TOWN OF CORTE MADERA

TOWN OF FAIRFAX

By: _____
Name

By: _____
Name

Date

Date

SIGNATURES CONTINUED ON NEXT PAGE