

Chapter 5.26

TELECOMMUNICATIONS ORDINANCE

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ARTICLE I GENERAL PROVISIONS

5.26.010 Purposes. (a) The purposes of this chapter include, but are not limited to, the promotion of the general welfare of the citizens of the town and the citizens of the Marin community by:

- (1) Establishing a master plan for the franchising of telecommunications providers within the Marin community,
- (2) Establishing a regulatory framework for the administration of franchises in order to insure that the potential recreational, educational, social, economic, commercial and other advantages of telecommunications will in fact inure to the benefit of the Marin community and the citizens thereof,
- (3) Recognizing the right of local jurisdictions to manage, maintain and control the public rights-of-way within their jurisdictions,
- (4) Implementing the provisions of the Telecommunications Act of 1996; and
- (5) Regulating the operations of franchisees for the purpose of protecting and promoting the public health, peace, safety and welfare.

(b) The provisions of this section shall not be deemed to confer any right upon a franchisee which is not otherwise conferred by another express provision of this chapter. (Ord. 540 §1(part), 1997).

5.26.020 Definitions. As used in this chapter the following terms, phrases and words shall be ascribed the following meanings, unless the context indicates otherwise. The word "shall" is mandatory, and the word "may" is permissive. Words not defined in this section shall be given their common and ordinary meanings, consistent with the context in which such words are used and the purposes of this chapter.

"Agency" means the Marin Telecommunications Agency as established in this chapter.

"Cable television services" means "cable service" as that term is defined in Section 602(6) of the Communications Act of 1934 as amended [47 U.S.C. 522(6)].

"Cable television system" means a "cable system" as that term is defined in Section 602(7) of the Communications Act of 1934 as amended [47 U.S.C. 522(7)].

"Constituent jurisdictions" means the county of Marin and each of the municipalities of Belvedere, Corte Madera, Fairfax, Larkspur, Mill Valley, Novato, Ross, San Anselmo, Sausalito, San Rafael, and Tiburon which enact this chapter.

"County" means the county of Marin.

"Encroachment permit" means a permit issued to a franchisee by one or more of the county or the municipalities.

"FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor thereof.

"Franchise" means and includes any franchise, license, permit or other form of authorization, issued pursuant to the provisions of this chapter or its predecessor provisions by which telecommunications facilities are authorized to be placed within or to occupy streets.

"Franchise documents" means, with respect to a franchise issued by the agency pursuant to the delegation of the provisions of this chapter, the provisions of this chapter, the map defining any service area for the franchise as may be adopted by ordinance or resolution, the provisions of any request for proposals issued in connection with that franchise, the provisions of the application for the franchise submitted by the franchisee (if accepted by the agency), the provisions of any ordinance or resolution offering the franchise, and the provisions of any certificate of acceptance by the franchisee of the franchise.

"Franchisee" means the party to whom a franchise to place telecommunications facilities within the streets is issued by the agency pursuant to the delegation of the provisions of this chapter and its successors and assigns.

"Governing body" means, with respect to the county, the board of supervisors, with respect to a city within the Marin community, the city council, and with respect to a town within the Marin community, the town council.

"Marin community" means the entire geographical territory of the constituent jurisdictions.

"Municipalities" means each of the municipalities of Belvedere, Corte Madera, Fairfax, Larkspur, Mill Valley, Novato, Ross, San Anselmo, Sausalito, San Rafael and Tiburon which enact this chapter.

"Ross Valley jurisdiction" means the municipalities of Fairfax, Ross or San Anselmo.

"South Marin jurisdiction" means the municipalities of Belvedere, Corte Madera, Larkspur, Mill Valley, Sausalito or Tiburon.

"Streets" means the surface of and the space above and below any street, road, highway, freeway, thoroughfare, parkway, sidewalk, bridge, court, lane, path, alley, way, drive, circle, utility right-of-way or any other easement which now or hereafter exists for the provision of public or quasi-public services (including recreational usages) to residential or other properties, and on which the constituent jurisdictions are expressly or impliedly authorized or empowered to permit use for the installation and operation of telecommunications facilities.

"Subscriber" means a lawful recipient of cable television services from a cable television system.

"Telecommunications facilities" means any system of antennae, cables, wires, lines, towers, waveguides, or other conductors, converters, amplifiers, headend equipment, master controls, earth stations, equipment and facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals within the constituent jurisdictions, some part or portion of which occupies the streets as defined in this section and includes, but is not limited to, telecommunications facilities, communications satellite systems and related terminal equipment, and other modes of transmitting, emitting, or receiving images and sounds or intelligence by means of wire, radio, optical, electromagnetic or other means.

"User" means a lawful recipient of service which utilizes in whole or in part telecommunications facilities located in whole or in part in streets. (Ord. 540 §1(part), 1997).

5.26.030 Franchise required. Except (1) as otherwise provided by this chapter or (2) as otherwise expressly provided and authorized by the state of California or (3) as otherwise expressly provided and authorized by the United States, streets within the Marin community shall not be occupied by or used for telecommunications facilities except under a franchise issued by the agency pursuant to the provisions of this chapter. Moreover, the agency shall be the recipient of all in lieu fees paid by any operator of an open video system as that term is used in Section 653 of the Communications Act of 1934 as amended (47 U.S.C. 573). It is the intent of this provision to give the broadest possible application to the requirement of a franchise to be issued by the agency as is permissible under applicable state and federal law. (Ord. 540 §1(part), 1997).

5.26.040 General characteristics of franchise. (a) Any franchise issued by the agency pursuant to the provisions of this chapter, shall be deemed to:

(1) Authorize utilization of the streets for the public or quasi-public purpose of installing telecommunications facilities;

(2) Be nonexclusive, and neither expressly nor impliedly be deemed to preclude the issuance of subsequent and additional franchises to place telecommunications facilities within the streets within the Marin community;

(3) Be for a term prescribed by the agency as issuing authority (including any optional renewal term or optional extension) which shall not extend beyond December 31, 2027; and

(4) Include provisions for the payment of the maximum lawful level of franchise fees and, in the case of open video systems as defined in Section 653 of the Communications Act of 1934 as amended (47 U.S.C. 573), the maximum lawful level of in lieu fees pursuant to Section 653(c)(2)(B).

(b) Such a franchise shall not be deemed to authorize or either expressly or impliedly permit the franchisee, except with the consent of the owners, to provide or install telecommunications facilities upon private property, including, but not limited to apartment complexes, condominiums, mobile home parks and residential subdivision developments with private roads, provided that this subsection shall not be construed to prohibit a franchisee from entering upon or utilizing private property as an incident to its use of the streets to the extent entry or use is expressly or impliedly authorized by the right conferred by a franchise issued by the agency to occupy the streets.

(c) Such a franchise shall not be deemed to either expressly or impliedly restrain, restrict or delimit the authority of the constituent jurisdictions to exercise their police power authority over cellular telephone antenna and transmitter siting.

(d) Any franchise for the provision of cable television services by cable television systems shall require the cable television system to report the number of subscribers served thereby on a regular and periodic basis. (Ord. 540 §1(part), 1997).

5.26.050 Franchise as contract. A franchise issued by the agency pursuant to the provisions of this chapter shall be deemed to constitute a contract between the franchisee and the agency. Each franchisee shall be deemed to have contractually committed itself to comply with the terms, conditions and provisions of the franchise documents, and with all rules, orders, regulations, and determinations applicable to the franchise which are issued, promulgated or made pursuant to the provisions of this chapter. The regulatory authority conferred by the provisions of this chapter, including the power to issue regulations and to amend the provisions of this chapter as reserved under Section 5.26.270, shall constitute a reserved authority to the agency under any franchise issued by the agency. No franchisee under any franchise issued by the agency shall have any right to restrain, restrict or delimit the right or power of the constituent jurisdictions to amend the provisions of this chapter. (Ord. 540 §1(part), 1997).

5.26.060 Franchise areas. The franchise area for any franchise issued by the agency under the provisions of this chapter shall be defined by the board of directors of the agency. No franchisee shall be authorized by the provisions of this chapter to construct, install or operate telecommunications facilities within the streets of the Marin community outside its designated franchise area. (Ord. 540 §1(part), 1997).

5.26.070 Utility poles and structures. No franchise issued by the agency pursuant to the provisions of this chapter shall be deemed to expressly or impliedly authorize the franchisee to utilize poles or structures owned by any public or private utility which are or hereafter located within streets, without the express consent of the utility. (Ord. 540 §1(part), 1997).

5.26.080 Authority. With respect to the county and municipalities enacting this chapter, it is declared that this chapter is enacted pursuant to the authority conferred by their charters, as applicable, and pursuant to the police powers conferred by Article X, Section 7 of the California Constitution for the promotion and protection of the peace, health, safety and general welfare of the citizens within their respective constituent jurisdictions. (Ord. 540 §1(part), 1997).

5.26.090 Future incorporations/withdrawals. (a) It is declared that the unified process for the administration of franchises issued pursuant to the provisions of this chapter is necessary for protection and promotion of the convenience and welfare of all of the citizens of the Marin community, and that fragmentation in administration or right to administer such franchises resulting from the future incorporation of municipalities within the unincorporated area of the county or from the unilateral withdrawal of constituent jurisdictions from membership in the agency would be detrimental to the convenience and welfare and the purposes of this chapter.

(b) Therefore, the incorporation of any municipality within the unincorporated area of the county or the withdrawal of any constituent jurisdictions from membership in the agency (not resulting in the termination of the agency) during the initial term of any franchise issued pursuant to the provisions of this chapter shall not operate to either divest the franchisee of its authority to install or provide services through its telecommunications facilities within the newly incorporated or withdrawing area or vest the newly created municipality or the withdrawing constituent jurisdiction with any administrative or other authority whatsoever respecting operations by the franchisee under the franchise. During such initial term, the agency shall continue to administer the provisions of this chapter for the benefit of the inhabitants of a newly incorporated or withdrawing area in the same manner as if the area had not been incorporated or if the constituent jurisdiction had not withdrawn except that the net franchise fees allocable to the newly incorporated area shall be paid to the newly incorporated jurisdiction rather than to the constituent jurisdictions from which it was formed. Notwithstanding the foregoing, a duly appointed member of the governing body of a withdrawing jurisdiction may continue to participate and vote in actions coming before the agency after withdrawal which pertain solely and exclusively to a franchise in which a franchisee has installed and is providing services through at least a portion of its telecommunications facilities, which are located within the jurisdiction of the withdrawing jurisdiction (such a franchise hereinafter an "affecting franchise"), provided that nothing in this sentence shall authorize the member appointed by the withdrawing jurisdiction to participate or vote in any matters pertaining to or having an effect upon more than a single affecting franchise. In the event that a constituent jurisdiction should withdraw and that withdrawal should become effective before a cable television franchise assigned to the agency as a part of its initial entry shall have been renewed, extended or otherwise materially amended, the agency shall reassign said franchise and the franchise fees derived therefrom shall continue to be paid to the constituent jurisdiction which was the franchisor prior to the effective date.

(c) Upon expiration of the initial term of a franchise, the provisions of this chapter shall cease to be applicable to that portion of the telecommunications facilities and the operations by the franchisee thereof within the municipal limits of any municipality which is incorporated subsequent to the commencement of the initial term or within the territorial limits of any constituent jurisdiction which has unilaterally withdrawn from membership in the agency. The Marin community shall not be deemed to include any area within the limits of a municipality incorporated after the date this chapter becomes effective and prior to the filing of the certificate of acceptance of any franchise. (Ord. 540 §1(part), 1997).

5.26.100 Annexations. (a) The annexation by a municipality which has either not enacted this chapter or is not a member of the agency of unincorporated area of the county during the initial term of any franchise issued pursuant to the provisions of this chapter shall not operate to either divest the franchisee of its authority to install or provide services through its telecommunications facilities within the annexed area or vest the municipality with any administrative or other authority whatsoever respecting operations by the franchisee under the franchise. During the initial term, the agency shall continue to administer the provisions of this chapter for the benefit of the inhabitants of the annexed area in the same manner as if the area had not been annexed.

(b) Upon expiration of the initial term of a franchise, the provisions of this chapter shall cease to be applicable to that portion of the telecommunications facilities and the operations by the franchisee thereof within any area which has been annexed by such a municipality. The Marin community shall not be deemed to include any area annexed by such a municipality subsequent to the date this chapter becomes effective and prior to the filing of the certificate of any franchise. (Ord. 540 §1(part), 1997).

5.26.110 Ordinances--Police power. All zoning and other land use ordinances, building, electrical, plumbing and mechanical codes, business license ordinances and all other ordinances of general application now in existence or hereafter enacted by the governing bodies of the constituent jurisdictions (hereinafter "ordinances") shall be fully applicable to the exercise of any franchise issued by the agency pursuant to the provisions of this chapter, and the franchisee shall comply therewith. In the event of a conflict between the provisions of this chapter or a franchise issued by the agency pursuant hereto and those of any specific provision of the ordinances of a constituent jurisdiction, the specific provisions of such ordinances shall prevail. (Ord. 540 §1(part), 1997).

5.26.120 Operability--Amendments. (a) The provisions of this chapter shall not become effective or operable unless said provisions are enacted in substantially identical form by (a) the county of Marin, (b) the city of San Rafael and (c) at least six of the remaining constituent jurisdictions and become fully effective therein on or before July 1, 1998. If the provisions of this chapter are enacted in substantially identical form by (a) the county of Marin, (b) the city of San Rafael and (c) at least six of the remaining constituent jurisdictions and become fully effective therein on or before July 1, 1998, the provisions of this chapter shall become effective and the agency shall come into existence on July 1, 1998 (hereinafter "the effective date"). As to those constituent jurisdictions which enact the provisions of this chapter after the effective date hereof, the provisions of this chapter shall become applicable within the geographic boundaries of each of the constituent jurisdictions upon the enactment of the governing body of each such constituent jurisdiction of the provisions of this chapter in substantially identical form.

(b) From and after the effective date, no addition to, deletion from, alteration of the provisions of, repeal or other amendment of this chapter shall become effective unless each amendment or repeal is enacted by the governing body of a majority of the constituent jurisdictions who are then members of the agency. After enactment of the provisions of this chapter by a governing body of a constituent jurisdiction, no addition to, deletion from, alteration of the provisions of, repeal or other amendment of this chapter enacted by the governing bodies of the other constituent jurisdictions shall become effective within the boundaries of any of such constituent jurisdictions unless and until such amendment is enacted by the governing body of the particular constituent jurisdiction. (Ord. 540 §1(part), 1997).

5.26.130 Right to amend. Except as hereinafter provided, in the absence of an emergency, and without the consent of the franchisee, the provisions of this chapter shall not be altered or repealed as applied to a franchise issued by the agency for which a certificate of acceptance has been filed in compliance with the provisions of thereof and in advance of the effective date of the alteration or repeal. (Ord. 540 §1(part), 1997).

5.26.140 Franchisor. Any franchise issued by the agency pursuant to the provisions of this chapter shall be in the name of the agency as the franchisor. Any franchise issued by any of the constituent jurisdictions prior to the effective date hereof shall be deemed to merge into and devolve upon the agency as of the effective date hereof pursuant to the provisions of Section 5.26.260 of this chapter and shall thereafter be deemed to be in the name of the agency as franchisor, provided that the cable television franchise issued by Novato to Chambers Cable of Southern Cal., Inc., an Oregon corporation, shall not be deemed to merge into and devolve upon the agency except upon (1) the option of Novato or (2) the date upon which it comes under substantially common ownership with the TCI franchises issued by the other constituent jurisdictions and provided further that until such time as that franchise shall have been renewed, extended or otherwise materially amended, the agency shall direct the franchisee to pay all franchise fees due thereunder directly to the constituent jurisdiction. (Ord. 540 §1(part), 1997).

5.26.150 Communications with regulatory agencies. Copies of all petitions, applications, communications and reports submitted by a franchisee to the FCC, Securities and Exchange Commission Public Utilities Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting construction or operation of telecommunications facilities within the Marin community, also shall be filed simultaneously with the clerk of the board of directors of the agency. Copies of responses or any other communications from the regulatory agencies to a franchisee relating to such matters shall likewise be filed immediately on receipt with the clerk. (Ord. 540 §1(part), 1997).

5.26.160 Right of Intervention. The agency shall have the right of intervention in any suit or proceedings touching upon telecommunications facilities within the Marin community to any degree whatsoever and to which a franchisee is a party, and the franchisee shall not oppose such intervention by the agency. (Ord. 540 §1(part), 1997).

5.26.170 Limitation of actions. (a) Except as otherwise expressly provided by this chapter, any judicial proceeding, whether for the recovery of damages or otherwise, brought for the purpose of adjudicating the validity of any provision of this chapter or amendments thereof shall be commenced not later than thirty calendar days following the effective date hereof. Any such judicial proceeding brought for the purpose of adjudicating the validity of any ordinance, resolution, rule, order, regulation, determination or arbitration award of the agency which purports to have been made pursuant to the delegation of the provisions of this chapter or pursuant to the provisions of any of the other franchise documents shall be commenced not later than thirty calendar days following date of enactment, adoption, issuance or making of such ordinance, resolution, rule, regulation, determination or arbitration award. No judicial proceeding shall be commenced in violation of the limitations prescribed by this section.

(b) The provisions of this section shall not be applicable to any judicial proceeding, whether for the recovery of damages or otherwise, commenced by the agency, county or municipalities for breach or enforcement of the provisions of this chapter or any regulation, determination or arbitration award purporting to have been issued thereunder. (Ord. 540 §1(part), 1997).

5.26.180 Changes in law. Should the state of California or any agency thereof, the United States or any federal agency or any state or federal court require either the agency, county, municipalities or a franchisee to act in a manner which is inconsistent with any provisions of the franchise documents relating to any franchise or withdraw or otherwise impair the authority of the agency to act in respect to the provisions of the franchise documents relating to any franchise, the board of directors of the agency shall be authorized to determine whether a material provision of the franchise documents is affected in relation to the rights and benefits conferred by the franchise documents upon the agency, county, municipalities or the public. Upon such determination, the franchise documents shall be subject to modification or amendment to such extent as may be reasonably necessary to carry out the full intent and purposes thereof in relation to the rights and benefits of the agency, county, municipalities or the public and in relation to such state, federal or judicial requirement. The board of directors of the agency may terminate a franchise issued pursuant to the provisions of this chapter if it determines after consultation with the franchisee that substantial and material compliance with the franchise documents in relation to the rights or benefits of the agency, county, municipalities or the public has been frustrated by such a state, federal or judicial requirement. (Ord. 540 §1(part), 1997).

ARTICLE II AGENCY

5.26.200 Establishment of agency. Pursuant to the provisions of Title 1, Division 7, Chapter 5 of the Government Code, (commencing with Section 6500), there shall be established a separate and distinct public agency to be known as the Marin Telecommunications Agency (herein referred to as the "agency"). (Ord. 540 §1(part), 1997).

5.26.210 Membership. The agency shall be formed by and consist of, as members, the constituent jurisdictions to the extent that such constituent jurisdictions shall have enacted the provisions hereof in identical form. (Ord. 540 §1(part), 1997).

5.26.220 Board of directors. (a) All of the powers and authority of the agency shall be vested in a board of directors which consists of up to twelve members, one each appointed by the governing body of each of the constituent jurisdictions in the Marin community which shall have adopted the provisions hereof in identical form. The member so appointed must be a member of the governing body of that constituent jurisdiction at all times during his or her service as a member of the board of directors of the agency. The terms of the appointment of each member shall be as established by the governing body of that constituent jurisdiction.

(b) Each constituent jurisdiction shall be authorized to appoint an alternate representative to attend meetings of the board in the absence of the member, and, during such meetings, vote and exercise all other powers of the member. Such an appointment shall be effective when the constituent jurisdiction files with the clerk of the board of directors a written notice which identifies by name and residential address the alternate representative who has been appointed. Such alternate representatives shall serve at the pleasure of the constituent jurisdictions who appoint them, and such appointments may be revoked by the filing of a written notice of revocation with the clerk of the board of directors and reciting revocation of the appointment of a designated alternate representative. (Ord. 540 §1(part), 1997).

5.26.230 Resignation of members of board of directors. Any member of the board of directors may resign by giving written notice filed with the clerk of the board of directors. The successor to the resigning member shall be selected by and shall serve at the pleasure of the governing body of the constituent jurisdiction which appointed the resigning member. (Ord. 540 §1(part), 1997).

5.26.240 Existence. The agency shall not come into existence unless the provisions of this chapter are enacted by the number and composition of the constituent jurisdictions specified in Section 5.26.120 and become fully effective therein on or before July 1, 1998. If the provisions of this chapter are enacted in substantially identical form by the number and composition of the constituent jurisdictions specified in Section 5.26.120 and become fully effective therein on or before July 1, 1998, the agency shall come into existence on July 1, 1998. (Ord. 540 §1(part), 1997).

5.26.250 Purposes. The purposes of the agency shall be as follows:

(a) To implement by ordinance, resolution, rule, order, regulation and determination the purposes of this chapter as set forth in Section 5.26.010;

(b) To administer pursuant to the terms and conditions of the franchise documents, any franchise issued by the county or municipalities prior to the establishment of the agency as successor franchisor and irrevocable agent-in-fact for the constituent jurisdiction which initially granted the franchise;

(c) To administer pursuant to the terms and conditions of the franchise documents, any franchise issued by the agency pursuant to the provisions of this chapter;

(d) To exercise any and all powers of the constituent jurisdictions which any of them could have exercised independently in relation to telecommunications facilities;

(e) To exercise any and all powers now or hereafter granted to joint powers agencies by the general law of California, including without limitation those specified in Title 1, Division 7, Chapter 5 of the Government Code, (commencing with Section 6500); and

(f) To exercise any and all other powers conferred by any franchise documents. (Ord. 540 §1(part), 1997).

5.26.260 Assignment and merger of existing franchises. The constituent jurisdictions do, by the enactment hereof, merge, delegate, transfer, assign and grant, to the fullest extent allowed by law, all rights, benefits, duties and obligations as franchisor in any franchise which was granted by the respective constituent jurisdiction prior to the effective date hereof, including by way of example and not by way of limitation the franchise for cable television issued by the town on or about March 1, 1984 and presently held by TCI as franchisee, provided that any such merger, delegation, transfer, assignment and grant shall not affect to any degree whatever the duties and obligations of the franchisee thereunder and provided further that until such time as that franchise shall have been renewed, extended or otherwise materially amended, the agency shall direct the franchisee to pay all franchise fees due thereunder directly to the constituent jurisdiction. In the event that any such merger, delegation, transfer, assignment and grant would be deemed to affect the duties and obligations of the franchisee, then in lieu of such specific merger, delegation, transfer, assignment and grant, the constituent jurisdiction shall be deemed, by the enactment hereof, to have irrevocably appointed the agency as its exclusive agent and attorney-in-fact with respect to the rights, benefits, duties and obligations of that constituent jurisdiction as franchisor. (Ord. 540 §1(part), 1997).

5.26.270 Delegation of powers--Constituent jurisdictions. (a) The constituent jurisdictions do, by the enactment hereof, authorize, delegate and grant the agency, to the fullest extent allowed by law any power common to the constituent jurisdictions, including without limitation, the power to enact ordinances, the power to adopt resolutions, the power to promulgate rules and regulations, even though such common power may not be exercisable by each such contracting party in the geographical area in which such power is to be jointly exercised, provided that nothing in the foregoing is intended to delegate to the agency the powers of the constituent jurisdictions to regulate the siting of cellular telephone antennas and transmitters.

(b) In exercising the power to enact ordinances, the agency is jointly exercising a power common to all of the constituent jurisdictions and is administratively implementing a legislative determination of the constituent jurisdictions that the management of the local rights-of-way in terms of the demands of the various and competing forms of telecommunications demands a regional approach. (Ord. 540 §1(part), 1997).

5.26.280 Delegation of powers--Agency. (a) The board of directors of the agency shall be authorized to form and appoint advisory and other committees of citizens, officials or representatives of concerned interests, and delegate to each committee such powers and authority vested in it by the terms of this chapter as it deems appropriate; provided that the board of directors shall reserve the right and authority by means of appeal or otherwise, to make the final decision upon any matter relating to issuance or termination of a franchise issued pursuant to the provisions of this chapter or the administration thereof upon which a discretionary determination is authorized or required.

(b) Nothing in the foregoing shall be deemed to prevent the board of directors from delegating powers to an administrative committee of the board for the purposes of program development, policy formulation and program implementation (and such other and further purposes as may be allowed by law) pursuant to the provisions of Government Code Section 6508. In such an instance, the committee shall be composed of five members of the board as follows: (1) one member representing the county of Marin or the City of San Rafael, (2) two members representing South Marin jurisdictions, (3) one member representing a Ross Valley jurisdiction and (4) one member representing any constituent jurisdiction not otherwise represented on the committee. (Ord. 540 §1(part), 1997).

5.26.290 Agreement of formation. (a) The agency shall be deemed to be created upon execution by each member thereof of an agreement of formation. Enactment of this chapter constitutes approval by the governing bodies of the constituent jurisdictions of the terms of the agreement of formation.

(b) The chairperson of the governing body of the county and the mayors of the municipalities, which shall have adopted this chapter shall execute the following agreement of formation on or before the effective date.

AGREEMENT OF FORMATION MARIN TELECOMMUNICATIONS AGENCY

THIS AGREEMENT is made and entered into pursuant to the provisions of Section 6500 et seq. of the Government Code of the State of California by and between the County of Marin (herein referred to as "County") and the Cities of Belvedere, Larkspur, Mill Valley, Novato, Sausalito and San Rafael, and the Towns of Corte Madera, Fairfax, Ross, San Anselmo and Tiburon, (the foregoing Cities and Towns are herein collectively referred to as "Municipalities" and the Constituent Jurisdictions are sometimes herein collectively referred to as the "Constituent Jurisdictions") who do hereby mutually agree as follows:

1. Establishment. There is hereby created an organization known and denominated as the MARIN TELECOMMUNICATIONS AGENCY, which shall be a public entity, separate and apart from the Constituent Jurisdictions. The Marin Telecommunications Agency (hereinafter referred to as "Agency") shall be governed by the terms of this Agreement, the terms of an ordinance enacted by each Jurisdiction which enters into this Agreement which is entitled "Telecommunications Ordinance," and is hereinafter referred to as the "Ordinance," and by such rules as are duly passed and adopted by the Board of Directors of the Agency.

Notwithstanding the provisions of the introductory paragraph of this Agreement, it is specifically contemplated that some of the Municipalities may not execute this Agreement and participate in the formation of and become members of the Agency. Therefore, the Agency shall be formed by, as members, the Constituent Jurisdictions, provided that all of such Constituent Jurisdictions do so.

2. Board of Directors. The Agency shall be governed by and the powers of the Agency vested in a Board of Directors, subject to its delegatory powers as set out in section 5.26.280 of the Ordinance. The number of members of the Board of Directors, composition thereof, and tenure of Directors shall be prescribed by section 5.26.220 of the Ordinance.

Meetings of the Board of Directors and of such advisory or other committees as the Board may appoint, shall be governed by the provisions of the Ralph N. Brown Act (Government Code Section 54950 et seq.). The Board of Directors shall establish a time and a place for its regular meetings, which shall be held not less frequently than every six (6) months.

A meeting composed of at least six (6) members of the Board shall constitute a quorum for the purpose of transacting business, and a majority of the quorum shall be necessary to approve any action of the Board provided that notwithstanding the foregoing the following actions shall require the approval of not less than six (6) members of the Board in recorded vote: (1) the enactment of an ordinance, (2) the approval of a final budget, (3) the initiation of litigation (not including the authorization of defense brought against the Agency and the initiation of a cross-complaint), and (4) the creation or assumption of indebtedness.

No action taken by the Board of Directors shall be effective except by duly adopted motion receiving the votes of a majority of the Directors of the Board then present.

The Board of Directors shall annually elect its Chairperson.

The Clerk of the Board of Supervisors of the County shall serve as Secretary to the Board of Directors, unless the Board by resolution shall designate the Clerk of another Constituent Jurisdiction to so serve, shall be responsible for recordation of the official actions by the Board, and shall be the official custodian of all records of the Board of Directors.

3. Powers. The Board of Directors of the Agency shall be vested with the following powers:

To employ in the name of the Agency such staff as the Board of Directors deems appropriate. Such staff shall be appointed by and serve at the pleasure of the Board of Directors.

To make and enter into contracts in the name of the Agency as authorized by or in order to carry out the objects or purposes of this Agreement or the Ordinance, including, but not limited to, contracts with any Constituent Jurisdiction providing for provision by personnel of that Constituent Jurisdiction of services for the Agency and reimbursement of that Constituent Jurisdiction by the Agency of the costs thereof;

To acquire in the name of the Agency, take title to, hold and dispose of real and personal property;

To incur in the name of the Agency debts, liabilities and obligations, which shall not constitute debts, obligations or liabilities of any of the member agencies;

To accept in the name of the Agency grants, gifts and donations in the public interest to carry out the purposes and functions of the Agency; and

To exercise such other powers as are expressly conferred by the provisions of this Agreement or the Ordinance.

The Board of Directors shall also be authorized to sue in the name of the Agency. The Agency shall be subject to suit in its name.

4. Limitations. Pursuant to the provisions of Government Code Section 6509, the powers of the Agency are subject to the restrictions upon the manner of exercising such powers of one (1) of the designated member agencies. For such purposes, the County of Marin is hereby designated.

5. Budget. Prior to July 1st of each fiscal year, the Board of Directors shall adopt a final budget.

6. Payments.

(a) Existing Franchises. As to Franchises in existence prior to the Effective Date of the Ordinance which have been devolved upon the Agency pursuant to Sections 5.26.140 and 5.26.260 above, and which have not theretofore been renewed, extended or otherwise materially amended, the Franchise Fees derived therefrom shall, notwithstanding the assignment to the Agency, be paid to the Constituent Jurisdiction which was the franchisor prior to the Effective Date and the Constituent Jurisdiction shall thereupon be billed by the Agency for that Constituent Jurisdiction's allocable share of the Agency's budget for the applicable period. The Agency's budget shall be allocated among the Constituent Jurisdictions who are members of the Agency in the same proportion as the ratios which the total number of Subscribers in each of the Constituent Jurisdictions bear to the total number of Subscribers in the Constituent Jurisdictions which are then members of the Agency, as disclosed by reports as to numbers of Subscribers filed by said Cable Television Systems with the Agency. Such amounts billed to the Constituent Jurisdiction shall be due and payable within thirty (30) days of the billing date and shall be an enforceable contractual obligation of the Constituent Jurisdiction to the Agency.

(b) Agency Cable Franchises. As to Franchises for the provision of Cable Television Services by Cable Television Systems which were granted by the Agency or renewed, extended or otherwise materially amended by the Agency, the Net Franchise Fees (the total franchise fees received by the Agency less the Agency's budget for the applicable period and reasonable reserves) shall be paid to each of the Constituent Jurisdictions who are members of the Agency in the same proportion as the ratios which the total number of Subscribers in each of the Constituent Jurisdictions bear to the total number of Subscribers in the Constituent Jurisdictions who are members of the Agency, as disclosed by reports as to numbers of Subscribers filed by said Cable Television Systems with the Agency.

(c) Agency Non-Cable Franchises (All Constituent Jurisdictions). As to Franchises which were granted by the Agency or renewed, extended or otherwise materially amended by the Agency, the Net Franchise Fees (the total franchise fees received by the Agency less the Agency's budget for the applicable period and reasonable reserves) shall be paid to the Constituent Jurisdictions who are members of the Agency in the same proportion as the ratios which the population of the unincorporated area of the County and incorporated area of the Municipalities bear to the total population of the Constituent

Jurisdictions who are members of the Agency, as disclosed by the Federal Decennial Census for 1990 for the period ending June 30, 2001, the Federal Decennial Census for 2000 during the period commencing July 1, 2001 and ending June 30, 2011, the Federal Decennial Census for 2010 during the period commencing July 1, 2011 and ending June 30, 2021, the Federal Decennial Census for 2020 during any period after July 1, 2021.

(d) Agency Non-Cable Franchises (Less than All Constituent Jurisdictions). As to Franchises which were granted by the Agency and which substantially and directly affect less than all of the Constituent Jurisdictions, the Net Franchise Fees (the total franchise fees received by the Agency less the Agency's budget for the applicable period and reasonable reserves) shall be paid to the affected Constituent Jurisdictions who are members of the Agency in the same proportion as the ratios which the population of each affected Constituent Jurisdiction bears to the total population of the affected Constituent Jurisdictions who are members of the Agency, as disclosed by the Federal Decennial Census for 1990 for the period ending June 30, 2001, the Federal Decennial Census for 2000 during the period commencing July 1, 2001 and ending June 30, 2011, the Federal Decennial Census for 2010 during the period commencing July 1, 2011 and ending June 30, 2021, the Federal Decennial Census for 2020 during any period after July 1, 2021.

(e) Allocation of Agency Budget. For purposes of the foregoing calculations, the Agency's budget for the applicable period and reasonable reserves shall be allocated as between various types of Franchises in the relative proportions of the Franchise Fees derived therefrom.

Each distribution shall be accompanied by a statement by the Auditor of the Agency stating the amounts of all Franchise Fees received by the Agency for the distribution period, the dates of receipt, the amount of revenue required to finance the Agency Budget, and the population and/or subscriber ratios upon which apportionment of the distribution is being made.

7. Treasurer. The Treasurer of the County shall be the depository of funds of the Agency, and said Treasurer shall be the ex officio Treasurer of the Agency, unless the Board of Directors shall act by resolution to appoint the Treasurer of another Constituent Jurisdiction or, to the extent provided by law, a certified public accountant, to that position.

The Treasurer shall receive and have custody of and disburse Agency funds on the warrant of the Auditor and shall make disbursements authorized by this Agreement. The Treasurer shall invest Agency funds in accordance with the general law. All interest collected on Agency funds shall be accounted for and posted to the account of said funds.

The County (or other Constituent Jurisdiction as applicable) may determine reasonable charges to be made against the Agency for the services of the Treasurer, and the Agency shall include such costs in its annual budget.

8. Auditing. The Auditor of the County shall be the ex officio Auditor of the Agency, and shall draw warrants against the funds of the Agency when the demands are approved by the Executive Director or other designee of the Board, unless the Board of Directors shall act by resolution to appoint some other person, as allowed by law, to that position. At the close of each fiscal year, as provided in Government Code Section 6505, the Auditor shall make an audit. In the alternative, the Board of Directors may contract with a certified public accountant to make an audit of the accounts and reports of the Agency.

The Auditor shall establish and maintain such funds and accounts as are deemed necessary to account for and report on receipts and disbursements. The Agency shall keep such additional records and accounts which are deemed necessary to account for and report on sources of funds, expenditures, grants and programs as may be required by good accounting practices. The books and records of the Agency shall be open to inspection at all reasonable times by representatives of the member agencies.

The County (or other Constituent Jurisdiction as applicable) may determine reasonable charges to be made against the Agency for the services of the Auditor, and the Agency shall include such costs in its annual budget.

9. Term. Except as otherwise provided herein, this Agreement shall terminate and the Agency shall be deemed dissolved on December 31, 2027.

In the event that, at any time, the Board of Directors reasonably determines that it will no longer receive Franchise Fees under any Franchise then existing or reasonably expected to provide sufficient revenues to pay its costs of administration and yet make the required payments to the Constituent Jurisdictions, this Agreement shall be deemed terminated and the Agency shall be deemed dissolved on the date of that determination.

10. Disposition of Assets. Upon dissolution of the Agency, its assets shall be distributed to member agencies in the same proportion as distributions to member agencies have most recently been made pursuant to the provisions of Paragraph 6, above. Any real property owned by the Agency shall, in advance of dissolution, be conveyed by the Board of Directors to member agencies as tenants in common with proportional interests equal to the proportion of distributions most recently made pursuant to the provisions of said Paragraph 6.

11. Debts. The debts, liabilities and obligations of the Agency shall not constitute any debts, liabilities or obligations either jointly or severally of the County or the Municipalities.

12. Amendment. This Agreement may be amended by written contract approved by and executed in behalf of the Governing Bodies of each member agency. No Franchisee shall be deemed to either expressly or impliedly be a party to this Agreement, a third party beneficiary thereof, or to have any interest which precludes amendment of the terms of this Agreement in any manner in which the Governing Bodies of the member agencies, in their discretion, may mutually agree.

13. Termination. Except as otherwise provided herein, this Agreement may only be terminated by the enactment of an ordinance in identical form by a majority of the Constituent Jurisdictions which are then members of the Agency specifying such termination, each such ordinance adopted within no more than ninety (90) days of each other. Upon such action, the Agency shall be deemed terminated and its assets disposed of pursuant to Paragraph 10 hereof.

14. Withdrawal. Any Constituent Jurisdiction may withdraw from membership in the Agency upon notice in writing to the Agency and the other members of the Agency by the enactment of an ordinance on or before May 1 of any year specifying that such withdrawal shall become effective not earlier than the end of the next successive fiscal year, provided that the withdrawal of any Constituent Jurisdictions from membership in the Agency (not resulting in the termination of the Agency pursuant to Paragraph 13 above) during the initial term of any Franchise issued pursuant to the provisions of this Chapter shall not operate to either divest the Franchisee of its authority to install or provide services through its Telecommunications Facilities within the area of the withdrawing Constituent Jurisdiction(s) or vest the withdrawing Constituent Jurisdiction with any administrative or other authority whatsoever respecting operations by the Franchisee under the Franchise. Notwithstanding the foregoing, a duly appointed member of the governing body of a withdrawing jurisdiction may continue to participate and vote in actions coming before the Agency after withdrawal which pertain solely and exclusively to a Franchise in which a Franchisee has installed and is providing services through at least a portion of its Telecommunications Facilities, which are located within the jurisdiction of the withdrawing jurisdiction (such a Franchise hereinafter an "Affecting Franchise"), provided that nothing in this sentence shall authorize the member appointed by the withdrawing jurisdiction to participate or vote in any matters pertaining to or having an effect upon more than a single Affecting Franchise. During such initial term, the Agency shall continue to administer the provisions of this Chapter for the benefit of the inhabitants of a Constituent Jurisdiction in the same manner as if the Constituent Jurisdiction had not withdrawn. In the event that a Constituent Jurisdiction should give timely notice of withdrawal and that withdrawal should become effective before a cable television franchise assigned to the Agency as a part of its initial entry shall have been renewed, extended or otherwise materially amended, the Agency shall reassign said franchise to the withdrawing entity, said entity shall resume administration of said franchise and the Franchise Fees derived therefrom shall continue to be paid to the Constituent Jurisdiction which was the franchisor prior to the Effective Date.

15. Reservation of Rights. The provisions of this Agreement shall not be so construed as to in any manner restrict or impair the power or authority of the Constituent Jurisdictions to independently manage the sale, leasing, management, transfer and/or other disposition of Telecommunications Facilities owned by the Constituent Jurisdiction within their own jurisdictional boundaries. Nothing in the foregoing sentence shall be construed to obviate the necessity of a Franchise issued by the Agency in connection with the use of such Telecommunications Facilities.

16. Counterparts. This Agreement may be executed in counterpart.

IN WITNESS HEREOF the parties have approved and executed this Agreement as follows. (Ord. 540 §1(part), 1997).

ARTICLE III MISCELLANEOUS

5.26.300 Repeal of conflicting ordinances and actions. To the extent that any prior ordinance, resolution, rule, order, regulation and determination of the town may be deemed to conflict with any provision of this chapter, it is hereby repealed pro tanto, provided that no person or entity shall be relieved by reason of such repeal of any regulation, supervision or restraint by the town unless such regulation, supervision or restraint under such prior ordinance, resolution, rule, order, regulation, and determination of the town shall have been theretofore transferred to the agency by reason of the enactment of this chapter or otherwise. (Ord. 540 §1(part), 1997).

5.26.310 Severability. If any part, section, subsection, or other portion of this chapter or any application thereof to any person or circumstance is declared void, unconstitutional or otherwise invalid for any reason, such part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter and all applications thereof not having been declared void, unconstitutional or otherwise invalid, shall remain in full force and effect. (Ord. 540 §1(part), 1997).

5.26.320 Termination of MCCRRJPA. Pursuant to the provisions of section 21.1 of the MCCRRJPA agreement of formation, the town consents, as of the effective date of this chapter, to the termination of MCCRRJPA. (Ord. 540 §1(part), 1997).