



Incorporated 1927

Town of Lake Lure

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MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL HELD TUESDAY, NOVEMBER 28, 1995, 7:30 P. M. AT THE LAKE LURE COMMUNITY CENTER

PRESENT: Mayor Max E. Lehner
Mayor Pro-tem Bud Schichtel
Commissioner Bill Bush
Commissioner Bill Church
Commissioner Jack Donovan

John R. Strutner, Town Manager
Sam Karr, Finance Director
J. Christopher Callahan, Town Attorney

ABSENT: N/A

CALL TO ORDER

Mayor Lehner called the meeting to order at approximately 7:30 p.m.

INVOCATION

Attorney Callahan gave the invocation.

APPROVAL OF MINUTES

Commissioner Schichtel moved, seconded by Commissioner Donovan, to approve the following minutes as amended (10/24/95, 7:30 p.m., page 7, under audience of citizens, Jack Powell, add: Jack Powell signed up to speak under the Audience of Citizens. Mr. Powell questioned the appropriateness

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of a sign used during the election campaign that made reference to "a team" which he felt implied an endorsement of the candidates by the Town Council.):

Regular Council Meeting	10/24/95	7:30 p.m.	Community Center
Regular Council Meeting	11/14/95	9:30 a.m.	Community Center
Closed Session Meeting	11/14/95	9:30 a.m.	Community Center

The vote of approval was unanimous.

Anita Taylor, Deputy Town Clerk, presented to Town Council the following statement in regards to the amendment made in the minutes of October 24, 1995 regarding Jack Powell's comments under audience of citizens:

According to Fleming Bell (Institute of Government) -- When typing minutes of Council meetings you do not have to include a record of all discussion. You do not even have to record which citizens spoke. However, if people are speaking under a public hearing then you may want to record more discussion for history sake since Council may or may not take action on the subject. Example: If there was a law suit on the subject a year or so later on that particular subject which Council did or did not take action upon, the history of the discussion may be beneficial.

Minutes are based upon actions and conditions to make action. If too much discussion is put into the minutes then you are more apt to spend a lot of time debating if that's the way you want the minutes worded.

The Clerk is to write the minutes the way in which she thinks Council would want. The minutes belong to the Council and whatever they wish to change during the approval of the minutes is their prerogative. Flemming suggests that each Council member be given a rough draft of minutes prior to the meeting in which they are to be approved so they can discuss any desired changes or amendments during the meeting.

Not putting a lot of discussion into a set of minutes is perfectly legal, especially if no action is taken on the subject of discussion.

**PUBLIC HEARING -- RECEIVE CITIZEN COMMENTS
REGARDING THE TRANSFER OF OWNERSHIP OF THE
CABLE SYSTEM FROM PHOENIX AMERICAN INCOME FUND
TO NORTHLAND PREMIER CABLE LIMITED PARTNERSHIP**

Commissioner Bush moved, seconded by Commissioner Church, to enter into the public hearing to receive citizen comments regarding the transfer of ownership of the cable system from Phoenix American Income Fund to NorthLand Premier Limited Partnership. The vote of approval was unanimous.

David H. Harris, Custom Communications, who is currently hired by the Town to handle cable franchises negotiation presented the following board report:

BACKGROUND

Phoenix Cable intends to sell substantially all of its assets, including all of its rights, title and interest in its franchise agreement with the Town of Lake Lure, to Northland Premier Cable Limited Partnership, a Washington State limited partnership.

The Federal law on transfers of ownership in cable television systems is contained in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (collectively, the "Cable Act"). The key Cable Act provision on transfers of ownership is Section 617, commonly known as the antitrafficking provision (47 U. S. C. 537).

The provision which allows Lake Lure to approve a transfer is contained in Section 617 which states that if a franchising authority has the right to approve a sale or transfer (under the franchise agreement), the franchising authority must take action within 120 days of the operator's request for approval of sale or transfer. There are other provisions of Section 617, but these provisions do not apply to this sale and transfer.

There is no state law which governs the transfer or sale of cable systems.

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Section 7. d) Termination of Franchise, of the Lake Lure franchise agreement with Phoenix clearly states that no transfer or sale will take place without the written consent of the Board. The buyer shall agree in writing to comply with all provisions of the franchise agreement, currently in effect, and such other provisions and requirements as the Board may require. Therefore, it is crucial for the Board to clarify any ambiguities or other disputes in the current franchise agreement at the time of transfer.

The Act requires certain actions by the buyer, namely, submission of an FCC Form 394. The 394 has been submitted and has been made part of this report by reference. A complete copy of the 394 is available with the Town Clerk for your perusal.

At the Board's request the staff at Custom Communications has reviewed the legal, technical and financial qualification of Northland, the buyer, and is prepared to make a positive recommendation on the transfer. The review indicates the following:

Legal

Northland has responsibility for overseeing the day-to-day operation of cable television systems in ten states. My review and inquiries indicate no criminal or civil proceedings; no revocations, suspensions or non-renewals of franchise agreements in any of these systems; or cable franchise violations. Northland appears to have in and out of house legal counsel and special in-house expertise to deal with issues involving health care, C.O.B.R.A., Federal Communications rules and orders and other issues involving safety, EEO and employee matters.

Technical

Northland has a technical staff with over 15 years experience in the industry. Prompt and quality customer service as well as continuous employee education programs and preventive maintenance procedures are the norm for Northland.

In addition, Northland has promised, by letter of November 2, 1995 (letter attached) to upgrade the Lake Lure system in the following manner (summarized):

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1. Construct a 40-channel capacity microwave link from Forest City. This is budgeted and is scheduled for completion before June 1996.
2. Install approximately 16 miles of fiber optic cable to create a "fiber backbone" for a significant portion of the Lake Lure system. System maps are being prepared and the map project is budgeted in the 1996 budget. The project, however, may not be completed until 1997.

Financial

A review of the financial qualifications is critical because the financial capability of the buyer will impact directly on the ability of the buyer to live up to the commitments under the franchise. Cable television systems require substantial up-front investment in long term assets, which generate significant cash flow but also generate significant non cash charges to income in the form of depreciation and amortization expenses. Lenders and analysts are focused on cash flow and its relationship to overall debt levels and debt service requirements as a measure of the company's ability to meet future obligations and provide adequate reserves for capital improvements. To this end, I have examined the purchase agreement, and current and historical financial documents furnished by the buyer and attested to by Arthur Anderson, a nationally known accounting firm.

Specifically, I examined the following to insure that Northland was within the norms of the industry:

1. Operating ratio which is a ratio of operating expenses to revenues. Northland is 56 percent while the industry norm is 50-60 percent.
2. Operating margin which is a ratio of operating profit to revenues, or an operating profit margin. Northland is 44 percent while the industry norm is 40-50 percent.
3. Currently, lenders consider a ratio of outstanding debt to annual cash flow of up to 6.0 to 1 as moderate relative to the underlying value of the assets of a cable system. As of December 31, 1994, Northland's ratio was 4.63 to 1, well within industry standards.

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4. Lenders seek a ratio of annual cash flow to debt service requirements of 1.15 to 1 or greater. For the quarter ending December 31, 1994, Northlands ratio was 1.36 to 1, well within industry standards.

DISCUSSION:

As a general rule, the issue facing the Town is not whether to approve or deny the transfer but, rather, on what terms and conditions the proposed transfer will be approved. The Town may determine to approve the transfer upon certain conditions including:

1. Acceptance agreement. This can be in the form of an ordinance which the buyer agrees and is contractually bound by the current franchise agreement.
2. The buyer should be required to provide the Town with the same financial securities which are required of the existing cable operator.
3. The buyer should be required to provide a certificate of insurance to demonstrate the transferee has obtained insurance in the amounts required by the existing franchise agreement.
4. The buyer should be required to provide the Town with an acceptance fee in the amount of out-of-pocket costs to include consultant fees, publication costs, etc.
5. Any other condition which will insure the equitable transfer of the cable system from one operator to another. Conditions which have been placed into the transfer document include: franchise fee continues to be paid on a quarterly basis, improvement to the system, further negotiation on the development of a realistic and economically viable line extension policy to the Boys Camp Road area and Northland is in agreement to continue the in-progress renegotiation of the franchise.

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6. Meeting or exceeding the requirements of industry standards in legal, technical and financial tests.

Northland has accepted the terms of the attached draft transfer ordinance, by letter of November 18, 1995. (Letter attached)

Recommendation:

That the Board of Commissioners of the Town of Lake Lure approve the draft ordinance approving the transfer of Phoenix Cable to Northland Cable, with conditions as noted.

Dave Harris, representative for Custom Communications, introduced two representatives of Northland Communications Corporation who are H. Lee Johnson, Divisional Vice President and John Waechter, Marketing Director from Seattle Washington to answer questions pertaining to the transfer of Phoenix Cable to Northland Cable.

Divisional Vice President Johnson stated that Northland plans to immediately embark on two major projects to upgrade the technical quality and reliability of the cable system serving Lake Lure:

1. Microwave Link. Northland has plans to construct a 40-channel capacity microwave link between the Lake Lure headend and the Forest City headend (which is owned by an affiliate of Northland). Several off-air broadcast signals (which cannot be received clearly at Lake Lure) will be microwaved to the system yielding immediate and significant improvements to picture quality and signal reliability. Additionally, Northland plans to microwave Northland Cable News programming. NCN is a daily news, sports and informational programming service produced by Northland personnel for the local communities which NCN serves in Rutherford County. Some satellite-delivered cable programming services may be microwaved to Lake Lure if the quality of the signals can be measurably improved. The initial technical design work and the FCC-required transmission path study for the microwave reception and transmission equipment have been completed. Funds to purchase the materials have been earmarked in NCN preliminary 1996 budget. Subject to

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receipt of the needed FCC license, which NCN will pursue after closing the system purchase, NCN hopes to have the microwave link in operation before June 1996.

2. Fiber Optic Cable. NCN has preliminary plans to construct approximately 16 miles of fiber optic cable to create a "fiber backbone" for a significant portion of the Lake Lure system. Using this state-of-the-art equipment NCN expects to reduce the number of amplifiers in the system's cascades from over 50 to approximately 30. This reduction will yield a significant improvement in picture quality and signal reliability for all channels on the cable system. The installation of fiber optic cable will be the first in a series of steps to bring the cable system up to 400 MHz capacity. Because the seller does not have a complete set of as-built maps for the system, NCN has only the preliminary engineering work for the project. Having maps prepared by a qualified engineering/design firm, ordering the necessary equipment, and completing construction may take up to nine months. Funds for the project are included in NCN's preliminary 1996 budget. Northland is prepared to commit to bring the Lake Lure system up to at least 400 MHz within six years from the date the new franchise is granted.

Mayor Lehner invited citizens to speak at the public hearing. The following citizens requested to speak:

Mayor Lehner asked if the monthly rate would remain the same or change?

Mr. Lee Johnson stated that there would be no change in the rates immediately. NCN plans three levels of service such as an economy basic, a satellite basic, and a tier of service.

Commissioner-elect Bethmyrl Rose stated that currently Lake Lure has a local number to call for cable service and asked if the new cable service office was in Forest City which is a long distance call for Lake Lure citizens, would there be an 1-800-number to call?

Mr. Lee Johnson said that NCN will be setting up an 1-800-number and operates a 24-hour service department at anytime.

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Attorney Callahan asked Dave Harris what are the responsibilities that the Town assumes if they agree to transfer ownership to Northland for the remaining term of the agreement which expires in 1997? Mr. Harris stated that all of the responsibilities and everything in the agreement would be transferred to the new owner. The new owner would assume all responsibilities until the agreement expired.

Attorney Callahan also questioned the current rates being charged for Rutherfordton and Forest City being higher than what is being charged for Lake Lure by Phoenix. Mr. Callahan asked if there could be something put into the agreement transfer that states that Phoenix will not raise the rates to the same level as towns who provide more or less the same number of channels. Secondly, request that the Lake Lure cable rates for the remaining two years of the agreement not be raised higher than the rest of the County. Also, can Phoenix raise cable rates anytime they want to?

Mr. Dave Harris said that Phoenix cannot raise rates anytime they want to and stated that the FCC has a clear cut set of rules about what you can do -- it has price caps. The FCC has told cable operators that they can only get 29 cents per channel when they start moving them around. The cable operator by FCC rule is allowed to get 11.25 percent return out of his money. Mr. Harris cautioned Council as to whatever you direct in the franchise agreement, such as requesting the cable operator to upgrade to a bigger system, could result in an additional charge on the cable bill as a franchise requirement.

Commissioner Bush stated that the Town had received several complaints as to the way cable has been physically handled, such as the cable lying on the ground, and over trees. Mr. Bush said that citizens did not like this method of installing cable lines and hoped that Northland would not use the same method.

Mr. Johnson responded by saying that Northland did not use that same policy.

Mr. Harris requested that Mr. Johnson explain the technical inspection. Mr. Johnson stated that Northland made a technical inspection and provided a list to Phoenix of things that needed to be done/corrected. If these things were

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not done by Phoenix, Northland would do it themselves and submit a bill to Phoenix. Reported that Phoenix had crews already working on correcting a lot of the problems.

Commissioner Donovan questioned how long does the Town have before renewing the cable franchise agreement?

Attorney Callahan stated that the federal law requires the process to begin now to go ahead and start reviewing the contract for 1997 (3 years in advance).

Mr. Dave Harris told Council that a draft franchise agreement has been made, which at this time is not ready for public inspection. The draft agreement will be presented to Council sometime in February or March.

Mr. Lee Johnson told Council members that it would be easy for Northland to purchase and operate under the current cable system, but that is not Northland's goal. Northland's goal is to have a long-term relationship and be welcomed back in another agreement with the Town of Lake Lure. Mr. Johnson said that Northland was going to do everything in their power to improve the cable system and make Lake Lure proud of it.

Commissioner-elect Rose asked Mr. Johnson to explain what the basic cost of the three levels of service and what is offered.

Mr. Johnson responded that he did not have the information with him at this time, but could get it.

Commissioner Bush asked what would be the official date of the proposed transfer from Phoenix to Northland?

Mr. Johnson responded by saying the goal would be December 7, 1995.

Attorney Callahan asked Mr. Harris if under the current state statute, does the franchise ordinance require two separate readings on the ordinance to be passed?

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Mr. Harris stated yes there is a requirement of the two separate readings on the franchise ordinance.

Callahan also asked since the Town was only doing a transfer of ownership does this same rule apply?

Mr. Harris said no that the rule does not apply to the transfer of ownership.

Hugo Moirano, a Lake Lure resident, asked if the fiber-optic backbone connects in with Bostic.

Mr. Johnson said no that it does not connect in with Bostic. The microwave links between Lake Lure headend and Forest City headend.

Commissioner Schichtel asked question in regards to whether the improvements on the list submitted to Phoenix would be completed by December 7, 1995?

Mr. Johnson said no that everything on the list would not be completed by December 7th. All has to be cleared by the FCC and it normally takes six to eight weeks. The first phase will be to put the microwave project together.

Jack Powell, a Lake Lure resident, asked is it required to have a fiber optic cable into the source in order to be able transfer data?

Mr. Johnson said no. It will be fiber to feeder.

John Waechter, Marketing Director of Seattle Washington, said that by using fiber optic you will see improved quality and reliability in the cable service.

Gene Whitesides, a Lake Lure resident, asked if cable was going to be available on Boys Camp Road.

Dave Harris said that he is working on an extension clause in the new cable agreement. There will be some cost shared by the people who live on

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Boys Camp road. Northland will have to look at the total cost of putting in the line and determine if there are enough subscribers to make it cost effective.

Truman Cobb, a Lake Lure resident, asked if there would be any disruptions of current service during upgrade and how long would it take?

Mr. Johnson said that there would be very short interruptions and the upgrade would be done after midnight. The target date for upgrade is to be completed by June.

Martha Jane Powers, a Lake Lure resident, asked how reliable is the fiber optic cable?

Mr. Johnson said that the fiber optic cable was very reliable and Northland plans to put in standby power supply units.

After discussion among Town Council, Commissioner Schichtel moved, seconded by Commissioner Donovan, to come out of the public hearing and re-enter the regular session of the meeting. The vote of approval was unanimous.

<p>ADOPTION OF AN ORDINANCE TO PROVIDE FOR THE TRANSFER OF OWNERSHIP OF PHOENIX AMERICAN INCOME FUND TO NORTHLAND PREMIER CABLE LIMITED PARTNERSHIP</p>
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After much discussion, Commissioner Bush moved, seconded by Commissioner Schichtel, to approve the draft ordinance approving and consenting to the transfer and assignment of the Cable Franchise from Phoenix Cable Income Fund to Northland Premier Cable Limited Partnership as submitted. The vote of approval was unanimous. (Ordinance attached).

<p>AUDIENCE OF CITIZENS</p>

Martha Jane Powers requested to speak under audience of citizens. Ms. Powers thanked Council members for the Town's contributions made to the Lake Lure Children's Christmas fund.

**OLD BUSINESS:
A. AUDITOR'S REPORT**

Town Auditor Robert C. Koone presented Council members a copy of the audit report for the Fiscal Year 1994-95. Mr. Koone gave a brief summary of the audit that has been performed of the Town's 1994-95 Fiscal Year activities.

After discussion, it was the consensus of Council to delay taking any action on the audit report until the next regular scheduled meeting on December 12th in order to give Council members an opportunity to review Mr. Koone's audit report. Council asked Town Auditor Koone to come back to the next scheduled regular Council meeting to answer questions by Council members regarding the audit report.

OTHER OLD BUSINESS

There was no other old business.

**NEW BUSINESS:
A. OATH OF OFFICE -- MAYOR MAX E. LEHNER**

Judge Loto Greenlee Caviness presented the Oath of Office to Mayor Max E. Lehner. Betty Lou Lehner, wife of Mayor Lehner, helped with the swearing into office by holding the Bible.

**NEW BUSINESS:
B. OATH OF OFFICE -- COMMISSIONER
BETHMYRL (BETH) ROSE**

Judge Loto Greenlee Caviness presented the Oath of Office to Commissioner Bethmyrl (Beth) Rose. Jack Rose, husband of Commissioner Rose, helped with the swearing into office by holding the Bible.

NEW BUSINESS:

C. OATH OF OFFICE -- COMMISSIONER CAROLYN H. COBB

Judge Loto Greenlee Caviness presented the Oath of Office to Commissioner Carolyn H. Cobb. Truman, husband of Commissioner Cobb, helped with the swearing into office by holding the Bible.

NEW BUSINESS:

D. PRESENT RESOLUTIONS OF APPRECIATION

Commissioner Cobb moved, seconded by Commissioner Schichtel, to approve the resolutions honoring outgoing Commissioners Bill Church and Jack Donovan. The vote of approval was unanimous.

Mayor Lehner presented the resolutions to Bill Church and Jack Donovan and thanked them for their service/contributions to the Town of Lake Lure.

E. SELECTION OF MAYOR PRO-TEM

Commissioner Rose moved, seconded by Commissioner Cobb, to nominate Commissioner Bill Bush to be the Mayor Pro-tem. The vote of approval was unanimous.

F. TAX REFUNDS

Commissioner Bush moved, seconded by Commissioner Schichtel, to approve the following list of tax refunds totalling the amount of \$221.52 as furnished by Tax Collector Betty Hinson:

<u>Year</u>	<u>Name</u>	<u>Reason</u>	<u>Amount</u>
1994	Lambert Gibbs	Reduction of value by State	\$ 18.20

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1994 W. O. Keller Reduction of value by State \$203.32

TOTAL TAX REFUNDS \$221.52

The vote of approval was unanimous.

**G. SCHEDULE PUBLIC HEARING FOR PROPOSED REZONING
OF PROPERTY OWNED BY WERNER AND PATRICIA
MARINGER, AND SHANNON AND DOROTHY HYDE**

Zoning Administrator Mary Lynn Hayes, read aloud a memorandum of November 21, 1995 addressed to Town Council from the Lake Lure Zoning and Planning Board regarding recommendation to rezone property owned by Werner and Patricia Maringer and Shannon and Dorothy Hyde. (Memo attached).

Commissioner Bush moved, seconded by Commissioner Cobb, to schedule a public hearing for next regular scheduled meeting on December 12th, 9:30 a.m., to be held at the Fairfield Mountains Bald Mountain Country Club on the petition of Werner and Patricia Maringer, and Shannon and Dorothy Hyde to have their properties rezoned from R-1 and R-1A to R-3. Mr. and Mrs. Maringer propose to buy the property currently owned by Mr. and Mrs. Hyde and to build and operate a bed and breakfast facility. The vote of approval was unanimous.

H. OTHER NEW BUSINESS

There was no other new business.

STAFF REPORTS

Town Manager Strutner reported the following:

1. Ron Morgan did a preliminary report of the damage during the storm of less than \$1,000. The Town will not receive any emergency service money.

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2. Plan to a walk through the new municipal building with the architect and contractor on Thursday morning. The building is substantially complete. A certificate of occupancy has been issued. As of Friday the building will be turned over to the Town.
3. Furnishings are about 95 percent complete. Telephone system has been installed. Radio systems are complete.
4. Announced that Town staff would plan to move to the new municipal building on a Saturday.
5. Had taken bids for Powell Bill paving this year and have a contractor who is interested, but will not be able to start until December.

Finance Director Sam Karr reported that the major expense for October was \$25,000 for a down payment to Fairfield Mountains Volunteer Fire Department. The Town's major revenue for the month was \$57,224.72 from the Powell Bill Gasoline tax refunds.

COUNCIL COMMENTS

Town Attorney Callahan presented a handout to Council regarding "spot zoning". (Copy attached)

It was the consensus of Council to ask Town Attorney Callahan to investigate means by which hunting on town property can be limited.

Mayor Lehner thanked everyone for coming to the Council meeting and expressed his appreciation to the two out-going Commissioners Bill Church and Jack Donovan.

ADJOURNMENT

With no further items of discussion, Commissioner Bush moved, seconded

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by Commissioner Cobb, to adjourn the meeting. The vote of approval was unanimous.



ATTEST:

Mary A. Flack, CMC/AAE
Town Clerk

Mayor Max E. Lehner

AN ORDINANCE BY THE TOWN OF LAKE LURE, NORTH CAROLINA
APPROVING AND CONSENTING TO
THE TRANSFER AND ASSIGNMENT OF THE CABLE FRANCHISE
FROM PHOENIX CABLE INCOME FUND
TO
NORTHLAND PREMIER CABLE LIMITED PARTNERSHIP

WHEREAS, the Town of Lake Lure, North Carolina ("Town"), acting by and through its Board of Commissioners ("Commissioners"), passed and enacted a certain Ordinance dated August 24, 1982 and granted to The Cable T.V. Co., Inc. the authority to construct, operate and maintain a cable television system within the Town ("Franchise"); and

WHEREAS, the Town consented to the assignment and assumption and consent of the Franchise from The Cable T.V. Co., Inc. to Phoenix American Incorporated pursuant to that certain Franchise Assignment, Assumption and Consent dated May 11, 1987; and

WHEREAS, Phoenix American Incorporated subsequently assigned its rights to Phoenix Cable Income Fund ("Phoenix"), and Phoenix Cable now intends to sell substantially all of its assets, including all of its right, title and interest in the Franchise to Northland Premier Cable Limited Partnership, a Washington State limited partnership ("Northland"); and

WHEREAS, Northland plans to construct a 40-channel capacity microwave link between Lake Lure and Forest City, thereby improving the signal quality of several off-air broadcast signals; offer the Northland Cable News programming, a daily news, sports and information program; and complete the project before June 1996; and

WHEREAS, Northland has preliminary plans to construct a fiber optic backbone consisting of approximately sixteen miles of fiber optic cable within the Town's system; complete a set of "as built maps" for the Lake Lure cable system, said "as built maps" to be completed as soon as reasonably possible following the effective date of the transfer of the Franchise; and

WHEREAS, Northland is prepared to bring the Lake Lure system up to 400 MHz design capacity within thirty six months from the effective date of a renegotiated franchise agreement between Northland and the Town, said renegotiated franchise to be for a term of fifteen years with a five year renewal option; and

WHEREAS, after careful evaluation of the Federal Communication Commission Form 394, 1994 Annual Report of Northland Telecommunications Corporation and related filings concerning the transfer of ownership from Phoenix to Northland, it was found that Northland has the legal and technical expertise, as well as the financial stability, to operate, maintain and improve the cable television system within the Town; and

WHEREAS, it is in the best interests of the Town and its citizens to consent to the above referenced assignment and transfer of the Franchise.

NOW THEREFORE, be it ordained by the Board acting on behalf of the Town that:

1. The Town approves and consents to the transfer and assignment of the Franchise from Phoenix Cable to Northland.

2. The Town hereby approves of (i) the encumbrance of the Franchise and the assets of the cable television system, and the assignment of same for security purposes, in connection with the acquisition and operation of the system and the financing and refinancing, from time to time, of the business operations of Northland, and (ii) the future assignment of the Franchise to Northland's managing general partner, Northland Communications Corporation ("NCC"), or to an affiliate of NCC, provided that any assignee will meet the requirements of the Franchise.

3. Except as specifically set forth herein, the assignment and transfer of the Franchise shall not alter, affect or otherwise change any terms or conditions of the Franchise.

4. In connection with the assignment and transfer of the Franchise to Northland, the Town certifies to Phoenix Cable and Northland that:

(a) The Franchise was duly and validly issued by the Town, and upon its assignment to Northland, the duly authorized franchisee will be Northland.

(b) The Franchise is in full force and effect as of the date hereof, is valid and enforceable in accordance with its terms and will not expire until August 24, 1997. Northland will be the successor to Phoenix Cable in developing a new franchise which will, among other things, have a term of fifteen years with a five year renewal term.

(c) No event of default under the Franchise, and no event which could become an event of default with the passage of time or the giving of notice, or both, has occurred and is continuing as of the date hereof.

(d) The three percent (3%) franchise fee payable to the Town under the terms of the Franchise is calculated on the franchisee's gross subscriber revenue, as defined in the Franchise, collected during the twelve months beginning on January 1 and ending on December 31 and such fee is due, and payable on a quarterly basis.

(e) All fees owing to the Town pursuant to the Franchise have been paid through June 30, 1995.

(f) The Town acknowledges receipt of a completed FCC Form 394 from Phoenix Cable and Northland, incorporated herein by reference and on file with the Town Clerk.

5. In connection with the assignment and transfer of the Franchise to Northland, Northland certifies to the Town that:

(a) Northland plans to construct a 40-channel capacity microwave link

