

ATTACHMENT A

**RESOLUTION AUTHORIZING THE TOWN TO JOIN
THE TRIANGLE J COUNCIL OF GOVERNMENT'S
CABLE TELEVISION REGULATORY CONSORTIUM
Resolution No. 83/2001-02**

BE IT RESOLVED by the Carrboro Mayor and Board of Aldermen that the Board authorizes the Town to join the Triangle J Council of Government's Cable Television Regulatory Consortium.

The foregoing resolution having been submitted to a vote received the following and was duly adopted this 15th day of January 2002.

STATE OF NORTH CAROLINA

DURHAM COUNTY

CABLE CONSORTIUM SERVICE AGREEMENT

This AGREEMENT, made as of the ___ day of _____ 2001, by and between Triangle J Council of Governments ("TJCOG" or "the COG"), 4222 Emperor Boulevard, Durham, NC 27703, and the Town of Carrboro ("Local Government").

WITNESSETH:

WHEREAS, in response to the needs of its member governments, TJCOG has formed the Triangle J Cable Regulatory Consortium, the Cable Consortium, to assist its members in addressing their cable television and telecommunication responsibilities; and,

WHEREAS, in order to properly administer the Cable Consortium, TJCOG has secured a contractor that has substantial knowledge and experience in cable television administration, regulatory, franchising, licensing, public access television management and right-of-way enforcement matters necessary for local governments to assert their regulatory authority and protect the public interest; and,

WHEREAS, the Town of Carrboro is desirous of receiving assistance from TJCOG regarding the aforementioned administrative and regulatory services and wishes to become a member of the Cable Consortium; and,

WHEREAS, TJCOG wishes to enter into an agreement with the Town of Carrboro to provide the stated services and admit the Town of Carrboro into membership of the Cable Consortium;

NOW, THEREFORE, IT IS AGREED among the parties that the following terms and conditions shall apply to the admission of the Town of Carrboro into the membership of the Cable Consortium and to the delivery of services arising therefrom:

1. Definitions.

"Cable Consortium" shall mean: the various local governments comprising the Triangle J Cable Regulatory Consortium, under the auspices of the Triangle J Council of Governments.

"Cable Television Administration" shall mean: the provision of expert consultation regarding cable television and telecommunication regulatory matters that includes contract/franchise negotiation, contract compliance, contract enforcement, rate regulation, right-of-way management, transfer of ownership assessments and other cable-telecommunication services.

"Person" shall mean an individual, partnership, corporation, limited liability Company, association, trust, joint venture, unincorporated organization and any government, governmental department or agency or political subdivision thereof.


"Termination Date" shall mean the last day of the Term.

2. Term. The term of the consulting arrangement under Sections 3 and 4 of this Agreement (the "Term") shall commence on the date hereof and shall end on June 30, 2002. Thereafter the agreement shall renew automatically for annual periods commencing on July 1, 2002, unless terminated as provided in Section 10.
3. Scope of Services. TJCOG shall provide to the Town of Carrboro such assistance as may be related to cable television administration; public, education and government access television; and telecommunication regulatory matters as provided in Exhibit B.
4. Fees. The Town of Carrboro shall pay to TJCOG a consortia membership fee in accordance with the schedule attached hereto as Exhibit A. This fee will afford the Town of Carrboro a basic package of cable services as identified in said exhibit. "A-la-carte" and other services may be provided by TJCOG on an hourly, or flat fee basis consistent with a schedule of current billing rates as shown in said exhibit. Such rates shall remain fixed for at least one year from the date hereof. Any increase thereafter shall not exceed 10% and shall require 60 days advance written notice to the Town of Carrboro. Such rates include all administrative overhead expense, secretarial support, local telephone calls and profit. The Town of Carrboro shall promptly pay TJCOG for all reasonable and necessary expenses incurred in performing work in connection with this Agreement. To obtain reimbursement, TJCOG shall submit to the Town of Carrboro an itemized statement of such expenses together with copies of bills and receipts.
5. Amendments-Waiver. Any amendment to or modification of this Agreement and any waiver of any provision hereof, shall be in writing and shall require the prior written approval of the COG and the Town of Carrboro.
6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina applicable to contracts made and to be performed therein.
7. Consent to Jurisdiction. Each Party hereby agrees to submit to the nonexclusive jurisdiction of the court in and of the State of North Carolina and to the courts to which an appeal of the decisions of such courts may be taken and consents that service of process with respect to all courts in and of the State of North Carolina may be made by registered mail to such address set forth on page 1 hereof.
8. No Third Party Beneficiaries. This Agreement is not intended to confer any rights or remedies upon any Person other than the parties hereto and their successors and permitted assigns.
9. Independent Contractor. The parties expressly acknowledge hereto that the relationship of TJCOG to the Town of Carrboro is that of independent contractor. Nothing contained in this Agreement shall create an employer-employee, principal-agent, or partnership relationship between TJCOG and the Town of Carrboro. The Town of Carrboro shall not exercise control or direction over the manner or method by which services are rendered by TJCOG hereunder, either expressly or by implication.

10. Termination. The provisions of Sections 3 and 4 of this Agreement may be terminated by either the COG or the Town of Carrboro upon fifteen (15) days written notice without penalty. In the event of such termination, the Town of Carrboro shall be liable only for payments due hereunder and incurred by TJCOG prior to the date of the notice of termination.
11. Successors and Assigns. Neither of the contractor parties shall have the right to assign this Agreement to its successors and assigns, including all covenants and agreements hereunder, without the prior written consent of either TJCOG or the Town of Carrboro.
13. Captions: Gender and Number. The captions of the sections of this Agreement are for convenience of reference only and in no way define, limit or affect the scope or substance of any section of this Agreement. The gender and number used in this Agreement are used as reference terms only and shall apply with the same effect whether the parties are of the masculine, neuter or feminine gender, corporate or other form, and the singular shall likewise include the plural.
14. Entire Agreement. This Agreement constitutes the full and entire understanding and agreement between the parties hereto with regard to the subject hereof, and supersedes all prior agreements and understandings, whether oral or written, with respect hereto.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate originals, one of which is retained by each party as of the date and year first above written.

TRIANGLE J COUNCIL OF GOVERNMENTS

By: 

Dee Freeman, Executive Director

Town of Carrboro

By: _____

Robert Morgan, Town Manager

EXHIBIT A

RATES

- I. General Cable Television Administration Services (see Exhibit B) for TJCOG member governments at \$5,000 per consortia member per annum inclusive of one set of FCC 1205, FCC1235 and FCC1240 rate regulation filing per operator plus \$3,850 per consortia member per annum per FCC-394 cable television transfer of ownership proceeding.

Multiple cable TV rate filings submitted to a single consortia member for multiple CIUDs,¹ within the municipal limits shall be performed at the "additional form" rate appearing in Section II.

- II. A la carte rates for non-consortia members:

FCC-394 Transfer of Ownership @ \$12,000 per filing

FCC-1205 Equipment & Installation rate @ \$1500 per filing when combined with FCC1240; each additional form for same LFA and cable operator, but different CIUD, \$750

FCC-1235 "Add-on" system upgrade charge @ \$1500 per filing when combined with FCC1240; each additional form for same LFA and cable operator, but different CIUD, \$750

FCC-1240 Basic Service Tier rate @ \$4500 per filing; each additional form for same LFA and cable operator, but different CIUD, \$2250

New franchise issuance or renewals of existing or expired agreements are performed on a time and material basis.

- IV. FCC-394 Cable television transfer reviews are performed on time and materials basis for non-members at rates in Section VII.

- V. Cable television franchise renewals and fee receipt audits exceed the scope of this agreement and are negotiated separately.

- VI. Telecommunication (non-cable TV) and other documents prepared on a time and material basis at rates in Section VII.

Staff	<u>Rate</u>
Cable Consultant	\$110/hr
Legal	\$175/hr
Technical	\$175/hr
Other staff as required	\$85/hr
Administrative assistant	\$25/hour
Printing and duplication	cost

¹ CIUD = Community Unit Identification number

Exhibit B

The Triangle J Cable Regulatory Consortium advocates for and protects the public interest in the regulation and development of cable communications systems in the Triangle J Region and its member local governments; monitors and helps resolve cable subscribers' concerns in these jurisdictions; and participates in the planning and implementation of community use of communications technologies which make use of the public right of way.

The Consortium acknowledges that the policy and regulatory work of the Consortium is undertaken in a very dynamic communications technology environment. Consequently, the Consortium retains flexibility to modify or revise these Goals and Objectives as may be required from time to time.

Mission: Effectively administer cable television franchise agreements for consortia members.

Services:

1. Conduct effective cable rate regulation that meets the spirit and intent of federal legislation and FCC rules.
2. Identify and address franchise compliance issues in response to and, when possible, prior to cable company actions.
3. Provide consumer protection for citizens and subscribers in cable television matters by helping to resolve complaints, enforcing customer service standards and addressing other consumer-related franchise compliance issues. Establish an in-bound toll free number and/or e-mail service to receive cable complaints by cable customers residing within TJCOG cable consortia member jurisdictions.
4. Continue to analyze changes in technology and the mergers of telecommunications and cable companies to inform the consortia member jurisdictions about how those changes may impact consumers and local governments.
6. Arrange for franchise fee audits (cost plus basis) to ensure full payment by cable companies.
7. Review the cable operator's semi-annual technical report audits to make certain the system satisfies the FCC's technical specifications for signal transmission.
8. Encourage development and deployment of broadband (I-Net) services by consortia members using cable system technology for high-speed data transmission.
9. Support member jurisdictions implementation of FCC rules and federal laws related to cable television and telecommunications.
10. Promote cross-jurisdictional collaborations for information-sharing and coordinated strategies on issues of common concern.
11. Participate in and encourage advocacy efforts for federal legislative and agency proceedings on behalf of member clients.
12. Defend local government authority, management and control of public rights of way.
13. Advocate for open, nondiscriminatory access to the cable system broadband by unaffiliated Internet service providers.
14. Distribute, via e-mail, periodic updates related to cable television and other telecommunication matters that may adversely affect local government.