

**TOWN OF MEAD, COLORADO
RESOLUTION NO. 24 -R-2002**

**A RESOLUTION OF THE TOWN OF MEAD COLORADO, REGARDING THE
REVIEW OF THE REQUEST TO TRANSFER THE TESS COMMUNICATIONS, INC.
CATV FRANCHISE TO K2 COMMUNICATIONS, LLC, ADOPTING CERTAIN
FINDINGS OF FACT AND CONCLUSIONS FAVORABLE TO THE TRANSFER.**

WHEREAS, K2 Communications, LLC ("K2") has requested that the Board of Trustees of the Town of the Mead approve a transfer of the TESS Communications, Inc. ("TESS") franchise to construct, operate, and maintain a Community Antenna Television System ("CATV") and distribution facilities within the Town of Mead; and

WHEREAS, K2 has purchased the assets of TESS located within the Town of Mead, including the existing CATV system, from the U.S. Bankruptcy Court and has petitioned the Board to approve this transfer at its August 26, 2002 the meeting; and

WHEREAS, Section 5-2-200 of the *Mead Municipal Code* establishes certain restrictions on the transfer of a CATV Franchise granted by the Town.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE
TOWN OF MEAD, WELD COUNTY, COLORADO; THAT;**

Section 1. Findings of Fact.

- a. Section 5-2-200 (a) provides: "Except in cases found by the Board of Trustees to involve extreme hardship, no franchise granted pursuant to this Article may be transferred until construction of the system for which the franchise was issued shall be eighty-five percent (85%) completed in the initial service area. Thereafter, a franchise may be transferred only upon the prior written consent of the Town, which consent shall not be unreasonably withheld."

The Board of Trustees finds upon the record of testimony offered by Mead Entertainment and Information Cable Inc. ("MEI"), at a public hearing for the transfer of MEI's franchise to TESS conducted July 31, 2000, and confirmed by testimony from K2 at the hearing for the transfer of TESS's franchise, that construction within the initial service area was completed in 1995. Therefore, MEI's franchise was eligible for transfer to TESS and the TESS franchise is eligible for transfer to K2.

- b. Section 5-2-200 (b) provides: "A transfer of more than twenty percent (20%) of the capital stock of a corporate Grantee not registered as a publicly held corporation with the United States Securities Exchange Commission, or a transfer of a controlling interest in the Grantee organized as a partnership shall be deemed to be a transfer of a franchise for the purposes of this Section. No sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the Town Clerk an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the franchise and agreeing to perform all the conditions thereon."

The Board of Trustees finds upon testimony given and by letter dated September, 6, 2002 that K2 Communications, LLC "agrees to be bound by the terms and conditions prescribed for TESS in its CATV System franchise, as amended..." and has furthermore agreed to the filing of the appropriate documentation of the purchase from the U.S. Bankruptcy Court with the Town Clerk on September 27, 2002 in satisfaction of the above restriction.

- c. Section 5-2-200 (c) provides: "The proposed assignee must show technical ability, financial capability, legal qualifications and general character qualifications as determined by the Town and must agree to comply with all provisions of the franchise and such conditions as may be prescribed by the Board of Trustees expressed by resolution. The Town shall be deemed to have denied a proposed transfer or assignment in the event that its consent is not communicated in writing to the Grantee within one hundred twenty (120) days following receipt of written notice of the proposed transfer or assignment."

The Board of Trustees finds upon testimony given and by letter dated September 6, 2002, that K2 Communications, LLC has the technical ability, financial capability, legal qualifications and general character qualifications necessary to operate, construct and maintain a CATV system by reason of the following:

- K2 Communications, LLC is a Colorado Limited Liability Company.
 - K2 Communications, LLC has purchased the assets of TESS located in Mead, Colorado from the U.S. Bankruptcy Court. Thus, K2 has a vested interest in providing advanced, quality communications services to Mead.
 - K2 Communications, LLC holds a Receive and Distribution of Cable TV Certification from the Federal Communications Commission for Colorado.
 - K2 Communications, LLC has two employees with extensive backgrounds in constructing, operating and maintaining communications systems.
 - K2 Communications, LLC received an equity investment of \$45,000 from Gary and Lisa Shields, and is currently seeking other equity investment opportunities.
- d. Section 5-2-200 (d) provides: "The Grantee shall promptly notify the Town of any actual or proposed change in, transfer of or acquisition by any other party, control of the Grantee as defined in Subsection (b) above. Every change, transfer or acquisition of control of the Grantee shall make the franchise subject to cancellation unless and until the Town shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Town may inquire into the qualifications of the prospective controlling party and the Grantee shall assist the Town in any such inquiry."

The Board of Trustees finds upon testimony given and by letter dated September 6, 2002, that K2 has complied with the intent and spirit of Section 5-2-200 (d).

- e. Section 5-2-200 (e) provides: "The consent or approval of the Board of Trustees to any

transfer of the franchise shall not constitute a waiver or release of the rights of the Town in and to the streets, and any transfer shall by its terms be expressly subordinate to the terms and conditions of a franchise."

The Board of Trustees finds upon testimony given and by letter dated September 6, 2002, that K2 ". . . agrees to be bound by the terms and conditions prescribed for TESS in its CATV System franchise, as amended..."

- f. Section 5-2-200 (f) provides: "The Board of Trustees reserves the right of "first refusal" to purchase a cable system at the market value price, if and when it is placed on the market for sale. The offer shall be by delivery of a contract within thirty (30) days of receipt of the notice required by Subsection (d) above. The contract shall be contingent upon obtaining financing (which may require a bond election)."

It is the decision of the Board of Trustees to waive its right of "first refusal" to purchase the TESS CATV system at the market value price.

- g. Section 5-2-200 (g) provides: "In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to the franchise agreement."

The Board of Trustees finds upon testimony given and by letter dated September 6, 2002, that K2 Communications, LLC, agrees to "... become a signatory to the franchise agreement once the Board approves the transfer..."

Section 2. **Conclusions.** Based on the above stated findings, the Board of Trustees of the Town of Mead hereby determines that the transfer of TESS's franchise to construct, operate, and maintain a Cable Television System ("CATV") and distribution facilities within the Town of Mead, to K2 Communications, LLC, is appropriate and in the best interests of the residents of the Town of Mead and said transfer shall be subject to the following conditions:

- a. That evidence of purchase of the TESS assets from the U.S. Bankruptcy Court shall be filed with the Town Clerk no later than September 27, 2002.
- b. That K2 Communications, LLC, through its duly authorized corporate officers, sign the existing TESS franchise document, as amended, attesting to their agreement to be bound thereto.
- c. That K2 Communications, LLC enters into good faith negotiations to agree on a new franchise agreement within two years of the date of the transfer, unless such date is extended by Board action.

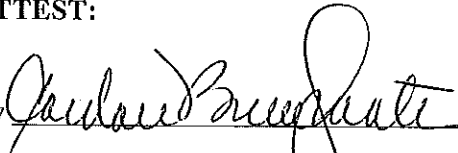
Section 3. **Orders.** The Mayor and Town Clerk are hereby authorized and directed to sign the Franchise Agreement between the Town and K2 Communications, LLC, said Franchise Agreement being subject to adoption by Ordinance.

Section 4. **Effective Date.** This resolution shall become effective immediately upon adoption.

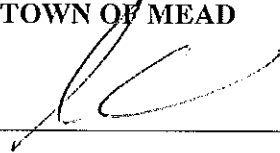
Section 5. **Certification.** The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 14th DAY OF October, 2002.

ATTEST:

By 
Candace Bridgwater, Town Clerk

TOWN OF MEAD

By 
Richard E. Kraemer, Mayor