

**TOWN OF MEAD, COLORADO
RESOLUTION NO. 13-R-2000**

**A RESOLUTION OF THE TOWN OF MEAD COLORADO,
CONSENTING TO THE TRANSFER OF THE MEI CABLE FRANCHISE
TO TESS COMMUNICATIONS, INC.**

WHEREAS, TESS Communications, Inc. ("TESS") and Mead Entertainment & Information Cable Incorporated ("MEI") have requested that the Board of Trustees of the Town of Mead approve a transfer of MEI's franchise to construct, operate, and maintain a Cable Television System ("CATV") and distribution facilities within the Town of Mead; and

WHEREAS, TESS and MEI have jointly petitioned the Board to approve this transfer at its July 31, 2000 meeting; and

WHEREAS, Section 5-2-200 of the *Mead Municipal Code* establishes certain restrictions on the transfer of a Cable Television Franchises 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 testimony offered by MEI that construction within the initial service area was completed in 1995, therefore, MEI's franchise is eligible for transfer.

- 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 and by letter dated July 20, 2000, that TESS Communications, Inc. "agrees to be bound by the terms and

conditions prescribed for MEI in its CATV System franchise . . .” and has furthermore agreed to the filing of the appropriate documentation of the sale with the Town Clerk on August 1, 2000 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 July 20, 2000, that TESS Communications, Inc. 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:

- TESS is a Delaware corporation with the following subsidiaries, TESS Communications of Colorado, Inc., TESS Communications of Arizona, Inc. and TESS Communications of Nevada, Inc..
- TESS is certificated to provide local telecommunications exchange service in Colorado and Arizona, and has recently applied for certification in the state of Nevada. TESS has already constructed telecommunications facilities in Mead, CO that will allow it to provide service to the Margil Farms subdivision. Thus, TESS has a vested interest in providing advanced, quality communications services to Mead - including video.
- TESS holds an Open Video Systems Certification from the Federal Communications Commission for nine Colorado communities, three Arizona Communities, and one Nevada Community.
- TESS has more than 70 employees currently, and continues to grow. These employees have extensive backgrounds in constructing, operating and maintaining communications systems.
- TESS received an equity investment of \$10 million from Geocapital Partners, 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 of, 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

- b. That TESS Communications, Inc. through its duly authorized corporate officers sign the existing MEI franchise document attesting to their agreement to be bound thereto.
- c. That TESS Communications, Inc. enters good faith negotiations to agree on a new franchise agreement to be presented to the Board of Trustees within 45 days of the date of the transfer, unless such date is extended by Board action.

Section 3. Effective Date. This resolution shall become effective immediately upon adoption.

Section 4. 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 31st DAY OF July, 2000.

ATTEST:

TOWN OF MEAD

By Judy L. Hegwood
Judy L. Hegwood, Town Clerk

By Keith A. Goshia
Keith A. Goshia, Mayor