

RESOLUTION NO. 121-92

A RESOLUTION APPROVING CONDITIONALLY THE TRANSFER AND ASSIGNMENT OF CABLE TELEVISION FRANCHISES FROM OLYMPIC CABLEVISION LIMITED PARTNERSHIP TO FALCON VIDEO COMMUNICATIONS, L.P. TO EXPAND, IMPROVE, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE COUNTY OF MASON, STATE OF WASHINGTON.

WHEREAS, Olympic Cablevision Limited Partnership ("Olympic") operates a cable television system in portions of Mason County, Washington ("County") pursuant to a franchise granted by the County pursuant to Resolution No. 58-81, dated June 1, 1981, and transferred to Olympic pursuant to Resolution No. 66-86, dated July 22, 1986 (the "1981 Franchise"); and

WHEREAS, Olympic operates a cable television system in other portions of the County pursuant to a franchise granted by the County to Olympic pursuant to Resolution 65-88, dated August 9, 1988 (the "1988 Franchise"); and

WHEREAS, Olympic and Falcon Video Communications, L.P., a Delaware limited partnership ("Falcon"), have entered into a Stock Purchase Agreement by and among Olympic, its General Partner (Vista Olympic, Inc., a Washington corporation), its limited partners, Vista Cablevision, Inc. and Falcon providing for: (a) the transfer and assignment of the partnership interests of Olympic Cablevision, Inc. ("Newco"), including all of the rights and obligations under the 1981 Franchise and the 1988 Franchise (collectively, "the Franchises") in return for all the shares of Newco; (b) the transfer and assignment of the shares of Newco to Falcon; and (c) the liquidation of Newco and the transfer of the assets of the system to Falcon, including all of the rights and obligations under the Franchises (said transactions are hereafter referred to as the "Transaction"); and

WHEREAS, the terms and conditions of the Franchises require that the sale or transfer of the Franchises may not take effect without the prior approval of the County; and

WHEREAS, Olympic has requested that the County approve the transfer of the Franchises to Falcon; and

WHEREAS, the Board of Mason County Commissioners ("Board") has requested certain relevant information in order to determine whether or not to approve the transfer; and

WHEREAS, Olympic and Falcon have not provided all of the information requested, and in particular, has failed to provide financial information the Board deems necessary to make the determination; and

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WHEREAS, the Board has made no review of past performance by Olympic and approval of this transfer does not in any way constitute a waiver or acquiescence in any acts or omissions by Olympic, and the County expressly reserves all rights it has under the Franchises and applicable law; and

WHEREAS, both Olympic and Falcon have requested that the transfer be approved quickly, and Mason County is willing to accommodate this request, but only if the interests of the County and cable subscribers are protected; and

WHEREAS, the Board hereby approves the transfer, but if and only if the following terms and conditions are satisfied;

IT IS RESOLVED THAT:

The transfer of the Franchises is approved upon written acceptance by Falcon, Olympic and Falcon Video Communications Investors, L.P. of all terms and conditions set forth herein. Approval is also given to Falcon to grant a security interest in the assets of the cable system for the purpose of financing the Transaction, capital expenditures and working capital of the system or its operation, provided that the security is granted on terms that are not adverse to the County's or subscribers' rights under the Franchises, this Resolution or applicable law.

Section 1. Transfer.

Newco may hold the Franchises only for the purposes of completing the Transaction and must transfer all its interests therein to Falcon no later than December 15, 1992. If it fails to do so, then this approval shall be null and void, and Falcon and Newco shall forfeit their rights under the Franchises, without the need for further action by the County.

Section 2. Future Transfers.

(a) In addition to and without limiting the transactions subject to approval under the Franchises, the Managing General Partner of Falcon responsible for the day-to-day management of the system will be Falcon Video Communications Investors, L.P., the General Partner of which is Falcon Holding Group, Inc. If the Managing General Partner changes, or new Managing General Partners are added, or if the addition or deletion of any general or limited partner adversely affects the financial position of the partnership as a

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whole, or the value of its assets, such change shall require the prior approval of Mason County.

Notwithstanding the foregoing, if Falcon Holding Group, Inc. is merged with or undergoes a reorganization within the Falcon group of affiliated entities, but exclusive of sales to third parties, and the successor in interest agrees to assume all of the obligations, liabilities and responsibilities of Falcon Holding Group, Inc., and where such merger or reorganization does not have an adverse or potentially adverse impact on subscribers, such change shall not require prior approval of the County. Falcon agrees to notify the County of any such merger or reorganization and will provide the County with relevant information about any such transaction.

(b) Approval of this transfer is not approval of any other transfer contemplated or permitted under the Transaction or any agreements associated therewith, including but not limited to financing agreements.

Section 3. Warranties.

(a) Falcon and Newco hereby represent and warrant that their compliance with the Franchises is not contingent on any act or event occurring or failing to occur, including but not limited to the consummation of any future transaction or financing agreement.

(b) If any warranty or material representation made herein is intentionally, or knowingly false, and the County or subscribers are substantially or materially harmed as a result of such false warranty or representation, in addition to pursuing all other rights it may have under the Franchises, or at law or equity, Mason County may cancel Falcon's and Newco's Franchises, by notice, without providing an opportunity to cure. Falcon represents that it has carefully and diligently read every document related to the transaction that may affect its compliance with the Franchises, including all financing documents.

Section 4. Rates.

(a) The 1981 and 1988 Franchises, Section 10, are amended to read as follows: "The County of Mason shall have authority to regulate rates except as prohibited by law. Falcon must provide the Board with written notice 60 days in advance of any proposed rate increase or to the maximum period permitted by law, if less than 60 days."

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(b) The County has not been permitted to review Falcon's pro formas or other information regarding the costs incurred with respect to the transfer of the Mason County Franchises, and does not, by this approval, in any respect, directly or indirectly, at law or at equity, agree that they are permitted to recover the costs of the Transaction in future rates.

Section 5. System Expansion and Upgrade.

(a) Within six (6) months after the effective date of the transfer, Falcon will present the County with a plan under which service will be provided to all persons in the franchise area with a density of 30 homes per mile, as measured from the nearest cable trunk distribution line from which service can be extended. Falcon will extend cable service to all portions of the Franchise area which meet a minimum housing standard of at least 30 dwelling units or potential subscribers within one strand mile of cable, as measured from the nearest cable trunk distribution line from which service can be extended. The standard installation charge shall apply to drops of up to one hundred fifty (150) feet in length. Drops in excess of 150 feet shall be negotiated on the basis of additional labor and materials costs for that portion of the drop which exceeds 150 feet. If there are fewer than the required minimum number of dwelling units, Falcon shall make service available to potential subscribers on a cost sharing basis, according to the following method: (1) The number of occupied dwellings per strand mile of cable shall be divided by 30. The resulting percentage will be the percentage of the actual total construction cost (labor and materials) which will be paid by Falcon. The remaining portion of the total construction costs must be paid by those residents within that mile of cable who wish to share the remaining cost to obtain cable service. Such residents must agree to pay in full and in advance, or on a mutually acceptable installment payment plan, the full amount of the remaining portion of costs before Falcon shall be required to extend service to the dwellings in this area. (2) If, after the additional costs have been paid and within one year of the date that construction and installation is completed in the area, other residents within the area who have not shared in the costs wish to subscribe to cable service, then the new subscribers shall pay a pro rata share of the total costs to Falcon and Falcon shall issue a credit on the cable bills of those residents in the area who are cable subscribers and have paid a share of the costs. Falcon may appeal to the Board for relief from this obligation, where such extension of service would, in a defined and limited area, be economically infeasible.

(b) Falcon shall also present a proposed Upgrade Plan for upgrading the existing system and associated subscribers rates. The Upgrade Plan shall include proposed service rates that will be charged during and upon completion of the system expansion and upgrade, and Falcon must explain the need and

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basis for any increase in rates. Falcon will provide the proposed Upgrade Plan at least 90 days prior to implementation.

(c) Within twelve (12) months following the effective date of the transfer, Falcon agrees to complete construction and installation of a fiber optic cable extending from the headend site in Port Orchard to the current microwave receive site in Belfair for the purpose of replacing the existing microwave transmission facility in order to improve signal quality in the system and to permit extension of cable service to the south Mason Lake area. The twelve month period specified above shall be subject to extension caused by delays in receiving necessary licenses, permits, pole attachment agreements, easements, etc., which are entirely beyond the control of Falcon.

(d) The County does not warrant or represent that the system upgrade or extension satisfies, or is reasonable in light of, community needs for purposes of any renewal term, if any.

Section 6. Coordination of Expiration Dates of Franchises.

(a) The 1981 Franchise and the 1988 Franchise, Section 10, are amended by striking "for a term of fifteen (15) years after the effective date of this franchise" and inserting "until and including April 30, 1998."

Section 7. Provision of Access Facilities and Equipment.

The 1981 and 1988 Franchises are amended by adding,

"Section 23. Provision of Access Facilities and Equipment. Falcon, at its expense, will provide the County with an S-VHS camcorder and playback deck in Mason County. Falcon will, at its expense, provide the County with all accessories necessary to ensure that the camcorder and playback deck are effective and operable. Falcon shall provide and maintain, at its expense, the channel capacity and all lines and equipment that is presently provided and maintained by Olympic as local origination/public, education and governmental access channels. Presently, Olympic provides one channel for local origination/PEG access programming. Falcon will negotiate in good faith with Telecommunications, Inc. ("TCI") to make available to the County, at Falcon's expense, at least 10 hours of studio time per

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month at Bremerton Cable Access Television ("BCAT"). The BCAT studio will be used in conjunction with production and editing of County access tapes. If the negotiation is unsuccessful, Falcon will negotiate for a comparable arrangement to use a studio in an area convenient to Mason County.

Section 8. Franchise Fees.

(a) The 1981 and 1988 Franchises, Section 12, are amended by deleting "a 3% franchise fee" and inserting "a 5% franchise fee."

(b) The 1981 and 1988 Franchises, Section 12, are amended to add a new paragraph stating, "Beginning on the effective date of this Resolution, the Franchisee will pay the five percent (5%) franchise fee on Falcon's gross annual revenue from all sources attributable to the operations of Falcon Cable systems within the franchise area."

Section 9. Acceptance of Franchise and Responsibility for Compliance.

(a) Falcon, and Newco for so long as it holds the Franchises, agree to be bound by and to comply with all terms of the Franchises, as amended herein, and agree that the Franchises, as amended, and this Resolution impose valid and binding obligations, enforceable according to their terms.

(b) The Board has not been provided copies of financing arrangements upon which the Transaction is based. The Board has not reviewed and makes no representation or endorsement with respect to the validity of such arrangements or the conditions contained therein. The financing arrangements may in no way subordinate the rights of the County under the Franchises, as amended, and this Resolution.

(c) The Board has not reviewed Olympic's compliance with the existing Franchises or its past performance with respect to the services that it has provided to the Community, and the Board makes no representation that Olympic's past performance has been adequate or that it has complied with the Franchises. The Board is granting this transfer based on Falcon's agreement that it is assuming legal responsibility for franchise compliance, including responsibility for correcting any noncompliance by Olympic. For purposes of any renewal, if any, Falcon hereby waives all rights to assert or claim that the County has waived any right to assert or claim that Olympic's service was unreasonable in light of community needs, or that the County acquiesced in Olympic's conduct. The County does not by approval of this transfer or

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otherwise in any way represent or warrant that any service or course of conduct provided by Olympic has been reasonable in light of community needs.

(d) The Board agrees that for the remainder of the franchise term as amended the existing franchise requirement relating to the provision of a "local" office by the Franchisee shall be deemed to be satisfied with by the maintenance of an office in Port Orchard.

Section 10. Security and Guarantees.

(a) Falcon will provide, through its credit facilities and equity capital, all amounts required for expanding, improving, operating and maintaining the cable system in the County of Mason to satisfy all Franchise requirements, as amended by this Resolution.

(b) Falcon Video Communications Investors, L.P. guarantees the performance of Falcon and Newco, and if either Falcon or Newco fails to comply with each and every provision of the Franchises or this Resolution, then Falcon Video Communications Investors, L.P. shall be fully responsible for complying with the Franchises and this Resolution. This guaranty shall survive even if the Franchises are amended, or if regulations or ordinances affecting the Franchises are adopted or amended by the County, or if state and federal laws affecting the Franchises are amended or adopted.

Section 11. Financial Records.

Falcon shall make available to Mason County all records regarding Olympic's revenues pertaining to the Mason County cable system, for purposes of auditing franchise fee payments paid by Olympic. The records will be made available by Vista Cablevision, Inc. and/or Falcon upon reasonable notice by the County and such records will be made available for review by the County during regular business hours at the Port Orchard office.

Section 12. Applicable Law

The Franchises and this Resolution shall be governed, interpreted and enforced according to the laws of the State of Washington and relevant federal law. The parties agree that proper venue and jurisdiction rests exclusively with the state and federal courts of Washington.

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Section 13. Effective Date.

(a) This resolution shall take effect as of the date it is passed, contingent upon the occurrence of both of the following conditions: (1) Olympic, Falcon and Falcon Video Communications Investors, L.P. file with the County Auditor written acceptance of all terms and conditions of this Resolution and the Franchises, as amended by this Resolution, and (2) Olympic submits a certified check for \$8,000 to cover the cost of the transfer, which amount shall be in addition to any franchise fee it's owed, which fees shall be paid by Falcon at the time of the next required franchise fee payment date under the Franchises. Provided that, if these conditions are not satisfied within thirty (30) days after the Transaction contemplated herein closes, this Resolution shall be null and void, and the transfer is not approved.

(b) The 1981 and 1988 Franchises are hereby amended upon the effective date of this Resolution, as required to implement the provisions hereof.

Section 14. Severability.

Should any section, clause or provision of this Resolution be declared invalid by a court of record, the County and Falcon shall enter into good faith negotiations to amend the Franchises as required to maintain the relative benefits and burdens among the parties, as contemplated herein.

PASSED, ADOPTED AND APPROVED this 24th day of November, 1992.

BOARD OF COUNTY COMMISSIONERS
MASON COUNTY, WASHINGTON



Laura E. Porter, Chairperson

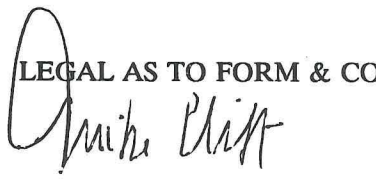
ATTEST:



Rebecca S. Rogers, Clerk of the Board

Joel R. Myer, Commissioner

LEGAL AS TO FORM & CONTENT:



Mike Clift, Deputy Prosecutor

William O. Hunter, Commissioner

ACCEPTED BY: FALCON VIDEO COMMUNICATIONS, L.P.
a Delaware limited partnership
BY: Falcon Video Communications, Investors, L.P.
a California limited partnership,
its general partner
BY: Falcon Holding Group, Inc.,
a California corporation
its general partner

BY: 

Howard J. Gan, Vice President