

**COLUMBUS COUNTY**  
**BOARD OF COMMISSIONERS**  
**MINUTES**

The Honorable Board of Columbus County Commissioners met in their said office at 111 Washington Street, Whiteville, NC, at 7:30 P.M., November 20, 1995, it being the third Monday.

**BOARD MEMBERS PRESENT:**

Sammie Jacobs, Chairman

Lynwood Norris, Vice Chairman

Spruell Randolph Britt

David L. Dutton, Jr.

A. Dial Gray, III

C.W. Williams

C. E. "Gene" Wilson

James E. Hill, Jr. Attorney

Dempsey B. Herring  
Interim County Administrator

Ida L. Smith, Clerk to Board

Chairman Sammie Jacobs called the meeting to order and Commissioner A. Dial Gray, III gave the invocation.

**BOARD MINUTES APPROVAL**

A motion was made by Commissioner Britt, seconded by Commissioner Norris and passed unanimously to approve the Minutes of the November 6, 1995, Board Meeting as recorded.

**AWARD - RETIREMENT PLAQUE**

Amanda Bible, former Library Director, was presented with a "Retirement Plaque" as follows:

PRESENTED TO

AMANDA R. BIBLE

\* \* \* \* \*

IN GRATEFUL APPRECIATION OF YOUR SERVICE

AS THE COLUMBUS COUNTY LIBRARY DIRECTOR

6-18-73 - 7-31-95

\* \* \* \* \*

COLUMBUS COUNTY BOARD OF COMMISSIONERS

**BUDGET AMENDMENTS**

A motion was made by Commissioner Williams, seconded by Commissioner Norris and passed unanimously to approve the following budget amendments.

Accept 10-335-0000 Miscellaneous Revenue (Donations for Farm-City Week Dinner)	\$2,075
Expend 10-605-5700 Miscellaneous Revenue	2,075
Accept 10-335-0000 Miscellaneous Revenue (Donations for air truck supplies)	\$2,148
Expend 10-530-3300 Departmental Supplies	2,148

**COLUMBUS COUNTY WATER & SEWER DISTRICT I - CONTRACT III BID****APPROVED**

Dempsey Herring, Interim Administrator, reported that the bid received from McArthur Construction Company on the Columbus County Water & Sewer District I - Contract III came in approximately \$550,000 over budget. Negotiations were entered into with McArthur Construction and they reduced their price by approximately \$190,000 while another \$140,000 was reduced by deleting several lines which served no customers. There is an additional \$180,000 in loan money that could be obtained from Farmers Home Administration, which combined with the contingency money of \$70,000 left over from Contract I, could cover the overrun and allow work to begin, or the project can be advertised for rebid.

A motion was made by Commissioner Norris, seconded by Commissioner Britt and passed unanimously to award the project to McArthur Construction Company for the amount of \$1,430,621.00 and to apply for additional funds in the amount of \$180,000.00 from Farmers Home Administration combined with the contingency of \$70,000 left over from Contract I, to cover the overruns.

**APPOINTMENT - SOUTHEASTERN REGIONAL MENTAL HEALTH**

A motion was made by Commissioner Norris, seconded by Commissioner Britt and passed unanimously to reappoint Mr. Junius B. Lee III to serve on the Southeastern Regional Mental Health Developmental Disabilities and Substance Abuse Authority for a four (4) year term, with term expiring November 30, 1999.

**ORDINANCE - REGULATING CABLE TELEVISION**

A motion was made by Commissioner Wilson, seconded by Commissioner Dutton and passed unanimously to adopt the following

Ordinance regulating cable television systems in Columbus County.

**AN ORDINANCE REGULATING CABLE TELEVISION  
SYSTEMS IN COLUMBUS COUNTY, NORTH CAROLINA**

**WHEREAS**, N.C.G.S. Section 153A-137 authorizes counties to grant franchises for operation of cable television systems within any unincorporated portion of the County; and

**WHEREAS**, the Board of Commissioners is concerned about the operation of cable television systems within the unincorporated areas of Columbus County; and

**WHEREAS**, the Board of Commissioners is of the opinion that these regulations are in the best interest of the health, safety and welfare of the citizens of the unincorporated areas of Columbus County.

**NOW, THEREFORE, BE IT ORDAINED** by the Columbus County Board of Commissioners that:

**DIVISION 1: GENERALLY**

**Section 110: Purpose**

In the public interest and for the promotion of the public health, safety, welfare and convenience, and pursuant to statutory authority contained in N.C.G.S. section 153A-137 and other applicable laws, the following rules are adopted, which rules set forth the conditions, limitations, restrictions and requirements under which a person may construct or cause to be constructed, operate and maintain a community antenna television system and engage in the business of providing a community antenna television service in the unincorporated area of the county. (Ord. of 9-8-91 & 1; Ord. of 5-5-86)

**Section 111: Definitions**

For the purpose of this article, the following terms, phrases, words, abbreviations and their derivations shall have the same meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include singular number, and words in the singular number include the plural.

- (a) **Applicant** shall mean any person submitting an application to the county for a franchise to operate a CATV system under the terms and conditions set forth by the Board of

*Commissioners.*

- (b) *Board shall mean the governing body of County Commissioners of the County.*
- (c) *CATV shall mean a community antenna television system as hereinafter defined.*
- (d) *Chairman shall mean the existing or succeeding chairman of the Board of Commissioners of the county or his designate.*
- (e) *Channel shall mean a band of frequencies in the electromagnetic spectrum which is capable of carrying either one (1) audio-video television signal or a number of nonvideo signals.*
- (f) *Chief Finance Officer shall mean the Finance Officer of the county.*
- (g) *Community antenna television system (hereinafter called CATV system) shall mean a system of antennas, coaxial cables, wires, wave guides, or other conductors, equipment or facility designed, constructed or used primarily for the interception and receipt of television, radio or other electronic signals, directly or indirectly, and the distribution or transmission of such signals by means of cables or other similar devices to subscribers, including the capability for the two-way communications.*
- (h) *County shall mean the County of Columbus, State of North Carolina, political subdivision of the State of North Carolina.*
- (i) *County Administrator shall mean the chief administrative officer of the county, presently known as the County Administrator, or his designee.*
- (j) *County Attorney shall mean the chief legal officer of the county, presently known as the County Attorney.*
- (k) *Federal Communications Commission or FCC shall mean that agency as presently constituted by the United State Congress or any successor agency.*
- (l) *Franchise shall mean the permission, license, franchise or authority given hereunder to conduct and operate a*

*community antenna television system in the county.*

- (m) *Grantee shall mean the person as above defined to whom or to which a franchise is granted by the board of Commissioners under this article or anyone who succeeds the person in accordance with the provisions of the franchise.*
- (n) *Gross revenues shall mean any and all compensation and other compensation in any form whatsoever received by the grantee pursuant to its exercise of the franchise granted to it, and any contributing grant or subsidy, including connect, disconnect and installation fees, received directly or indirectly by the grantee herein from subscribers or users within the county; except gross revenues shall not include any taxes on services furnished by the grantee herein imposed directly or any subscriber or user by any state, city or other governmental unit and collected by the grantee on behalf of such governmental unit; nor shall gross revenues include delinquent account balances until the same are paid, at which time they automatically become included in gross revenues.*

*Gross revenues shall also be reduced by converter deposits, refunds to subscribers, and any franchise fee or sales tax which is separately stated to the subscriber. (If Grantee chooses not to state separately on subscribers' statements the amount of the franchise fee, then the County and the Grantee shall agree upon the applicable percentage to apply against Grantee's gross receipts to yield an effective 5% franchise fee to the County, but which will not require Grantee to pay in excess of 5%). As to revenues received by Grantee from advertisements on the Grantee's system, Grantee shall include in the franchise fee only that portion of such receipts applied by Grantee as a pro rata share of the County's subscribers located in the unincorporated areas of Columbus County in relation to the total of the Grantee's subscribers in all of Columbus County, North*

Carolina.

- (o) *Local Government Access Channels* shall mean channels on the CATV system which are placed on both the basic service and the tier service and reserved by this article for use by the county.
- (p) *Pay television* shall mean the delivery over the CATV system of video and audio signals in intelligible form to subscribers for a fee or charge (over and above the charge for basic service) on a per-program or per-channel basis.
- (q) *Person* shall mean an individual or association of individuals or any firm, corporation or other business entity.
- (r) *Public access channels* shall mean channels on the CATV system specifically designated as noncommercial, public access channels.
- (s) *Street or Road* shall mean the surface or and the space above and below any public street, road, highway, freeway, lane, path, public way, or place, alley, court, boulevard, parkway, drive or other easement now or hereinafter held by the state or any of its municipal corporations or political subdivisions for the purpose of public travel and shall include other easements or rights-of-way as shall now be held or hereafter held by the state or any of its municipal corporations or political subdivisions existing within said unincorporated areas of the county to which the grantee may become entitled to the use thereof for the purpose of installing or transmitting CATV system transmissions over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a CATV system.
- (t) *Subscriber* shall mean any person or entity lawfully receiving for any purpose the CATV service of the grantee herein.

**DIVISION 2. FRANCHISE****Section 117: Grant of franchise**

(a) Effective December 1, 1995, it shall be unlawful for any person to engage in the construction, operation or maintenance of a CATV system in the unincorporated areas of the county unless such person or the person for whom such action is being taken shall have first obtained and shall currently hold a valid franchise granted pursuant to this article, and shall have agreed in writing to be bound by its terms and such other terms as shall be contained in said written franchise agreement. It shall also be unlawful for any person to provide a CATV service in the unincorporated areas of the county unless such person shall have first obtained and does currently hold a valid franchise granted pursuant to the provisions of this article and shall have agreed in writing to be bound by its terms and such other terms as shall be contained in said written franchise agreement.

(b) The County Board of Commissioners shall be empowered to grant hereunder the exclusive or nonexclusive right, privilege and franchise to construct, erect, operate and maintain a CATV system in the unincorporated portions of the county, subject to conditions and restrictions as hereafter provided. After public hearing, said right, privilege and franchise may be offered to qualified applicants after said applicants have been examined by the county, said examination to consider (but not to be limited to or by) the legal, character, financial, technical and other qualifications of the applicant, and whether construction plans and arrangements are shown to be both feasible and adequate to meet the minimum requirements herein established.

(c) Any authority hereby granted to construct, erect, operate and maintain a CATV system in the county and to obtain all rights-of-way and easements pursuant thereto is not and shall not be deemed to be an exclusive right or permission. The county expressly reserves the right to grant similar nonexclusive franchises to other persons to conduct CATV within the same or other areas of the county at any time or any period of time. No additional franchise granted by the county shall in any way affect the obligations of the grantee in any other franchise granted

hereunder.

(d) The title of the office or official of the county that has primary responsibility for the continuing administration of the franchise and implementation of complaint procedures is the County Administrator.

(e) Notice of the procedure for reporting and resolving complaints will be given to each subscriber at the time of initial installation to the cable system. A twenty-four hour contact telephone number will be given to each subscriber for each subscriber to directly report their complaints to the grantee of any franchise granted hereunder.

(f) For all areas annexed or developed after the effective date of the franchise, the Grantee of any franchise hereunder shall offer cable television service to all potential residential subscribers where there exists a minimum density of twenty (20) dwelling units per mile of cable, as measured from the end of the Grantee's existing trunk cable. The Grantee may elect, but has no obligation, to offer cable television service to areas not meeting the above standard.

(g) Where there exists a minimum density of twenty (20) dwelling units per mile of cable, as measured from the end of the Grantee's existing trunk cable, the Grantee of any franchise hereunder shall offer cable television service to all potential non-residential cable subscribers that can be served at no additional expense to the Grantee and that enter into a contract for service with the Grantee at commercial rates. The Grantee may elect, but has no obligation, to offer cable television service to areas not meeting the above standards.

**Section 118: Term**

(a) A franchise herein granted shall extend no longer than fifteen (15) years, or the maximum term allowable for the granting of franchises by the Federal Communications Commission, whichever is shorter, unless the same shall sooner expire by reason of other provisions hereof.

(b) The term of any franchise shall commence on the date of the approval of such franchise by the County Commissioners.



*Section 119: Application for CATV franchise*

(a) *The franchise application or franchise renewal shall be on a written application and upon a form approved by the County Board of Commissioners. A fee of five hundred (\$500.00) Dollars shall be submitted to the county as part of the application or franchise renewal process.*

(b) *The form shall set forth such facts in detail as the County Board of Commissioners or its designee may deem appropriate, including, but not limited to:*

- (1) *If the applicant is an individual, partnership or unincorporated association, its statement shall contain the names and addresses of all persons (including corporations) having a proprietary or equitable interest in and to the prospective franchise. The nature of such proprietary or equitable interest shall also be described. The term "equitable interest" shall include all assignments for value, as well as all contingent assignments of any right or privilege under the prospective franchise, and shall also include any benefit, payment or emolument whatsoever resulting from the grant of a franchise under this article.*
- (2) *If the applicant is a non-public corporation, the statement shall furnish, additionally, the names and addresses of the officers, directors and shareholders of the corporation, together with the number of shares held by each shareholder, whether such shares are held or to be held legally of record or beneficially.*
- (3) *If the applicant is a publicly held corporation, as defined by the rules and regulations of the Securities and Exchange Commission, the statement shall contain the states in which incorporated and/or qualified to do business, the names and addresses of the officers and directors of the corporation, the names and addresses and number of shares owned by all stockholders, both nominal and beneficial, owning five (5%) percent or more of the outstanding stock of any class, and shall include a certified copy of its articles of incorporation, together*

with amendments thereto. If requested to do so by the county, the application shall state the names and addresses of all persons whose beneficial interest in the applicant amounts to five (5%) percent or more regardless of how said interest is held, together with the number of shares owned or held by each.

- (4) A statement demonstrating the applicant's experience and expertise, if any, in establishing a CATV system and in providing CATV service, including the names and locations of any other CATV systems currently and, if requested, formerly constructed, operated or maintained by the applicant.
- (5) A full disclosure of the ownership of the facilities to be used in rendering the service, including any contemplated ownership of or for the facilities to be used once service commences.
- (6) A copy of applicant's certified audit for the fiscal year next preceding the application date prepared by a certified public accountant and an income statement and balance sheet for the fiscal quarter next preceding the application, which may be either audited or unaudited, which shall show the applicant's financial status and its financial ability to complete the construction of the proposed CATV system, to complete any proposed additions to the existing CATV system, and to provide the CATV service. Information with respect to financial projection of the proposed system, including methods of financing, shall be submitted as part of the application. All financial documents requested and submitted in compliance with this article shall be prepared in accordance with generally accepted accounting principles. All financial and ownership information relating to the applicant submitted in compliance with this article shall be confidential and shall not be regarded as public information to the extent provided by law.
- (7) A detailed schedule of the rate and charges which the applicant intends to charge subscribers for installation

and services, together with a list of those services to be provided to subscribers; the facilities to be employed and the general routes of the cables used in redistributing signals; the service area or areas, district or districts; the commencement and completion dates of initial construction of the CATV system and the proposed dates the service will be available to the area or areas, district or districts named; and a construction schedule for the service area or district named which shall give particular attention to projected service to more remote areas or districts.

- (8) For purposes of the franchise, a copy of any arrangement, agreement or contract, if existing, between the applicant and any public utility providing for the use of facilities of such public utility, including but not limited to poles, lines, cables or conduits.
- (9) A statement setting forth all agreements and understandings, whether written, oral or implied, existing between the applicant and any person or entity with respect to the ownership, control or transfer of the proposed franchise or the proposed CATV system and service. If a franchise is granted to a person who is an agent or representative of another person, and such relationship is not disclosed in the original application, such franchise shall be void and of no force and effect.
- (10) The county may, following submission of the application, request such other clarifying information as it may deem appropriate.
- (11) All applications shall be considered firm and final and shall be signed and verified by the person whose relationship to the applicant shall be set forth and shall bind the applicant to the provisions thereof and to the applicant's responses thereto.

**Section 120: Construction Of And/Or Additions To The CATV System**

(a) Any grantee hereunder shall obtain or retain all necessary permits and authorizations which may be required in the

conduct of its business, including without limitation joint use agreements, microwave radio licenses and authorizations or permits from appropriate county and state agencies.

(b) At the county's request, before commencing installation of additional poles, cables, wires or other equipment within the franchise area, the grantee shall submit to the county a plat or map showing the proposed location, specifications and manner of installation of such poles, cables, wires or other equipment and of existing poles, cables, wires, streets, alleys or highways where such installations are proposed.

(c) The grantee's plant and equipment, including structures, poles, wires, cable and appurtenances, shall be installed in accordance with good engineering practices and in accord with the National Safety Electrical Code and all local codes; shall not endanger or interfere with the lives of persons or county property and improvements thereto; and shall not unnecessarily or unreasonably hinder or obstruct pedestrian or vehicular traffic or cause interference with the proper use or streets or convenience of owners of property adjoining such streets, alleys or other public ways and places. All installation shall be of a permanent nature and shall be maintained in a safe condition.

**Section 121: Services to be provided**

The cable television system to be operated by a grantee under this article shall comply with all Federal Communications Commission Rules and Regulations, Title 47, part 76, subpart G, as they may be amended, revised and/or added to from time to time. The system will be constructed, maintained and operated in accordance with Federal Communications Commission Rules and Regulations, title 47, part 76, subpart K, 76.605, and as they may be amended, revised and/or added to from time to time, so as to provide efficient, convenient and adequate service in accordance with the state of the art to its subscribers, and shall operate on a full-time basis, less normal maintenance time. All channel alerting systems shall be provided by the grantee so as to permit emergency audio announcements on all channels simultaneously. The Emergency Preparedness Coordinator shall be that person appointed by the County to determine the existence of an emergency and the necessity

of activating the all-channel alerting system.

**Section 122: Complaints**

(a) The grantee shall maintain an office, or answering service, or a designated agent within the county which can be easily contacted by the public, capable of receiving, responding to and initiating investigations of complaints from subscribers, regarding problems with the franchisee's cable television system, twenty-four (24) hours a day, seven (7) days a week, as required by the Customer Service Standards as set forth in the Cable Television Consumer Protection and Competition Act of 1992 (as amended).

(b) Complaints concerning cable service shall be directed by the public to the grantee's complaint officer. Within such reasonable time as may be prescribed by the county, the grantee shall satisfy the complaint or state that it is unwilling or unable to do so. In the event the complaining subscriber is not satisfied with the action taken, the complaining subscriber may file a formal complaint with the county manager. Any word, phrase, or sentence which is contrary to the Cable Television Consumer Protection and Competition Act of 1992 (as amended) shall be deemed void and of no effect.

(c) If service to a subscriber is interrupted for more than forty-eight (48) consecutive hours following notice to the grantee and providing the outage is the fault of the grantee, each subscriber whose service is so affected shall be granted a rebate of a pro rata portion of the monthly subscriber fee for the time period the subscriber was deprived of service.

**Section 123: Rates and charges to subscribers**

The rates and charges to be made and collected by a grantee hereunder for cable television service to any subscriber shall be set forth in the franchise agreement between the county and the grantee; and shall be determined in accordance with the Cable Television Consumer Protection and Competition Act of 1992 (as amended). Rates for cable television service shall from time to time be established by each grantee, and a copy of its current rate schedule shall be maintained on file with the County Administrator.

**Section 124: Franchise fee**

(a) Within forty-five (45) days after each calendar quarter, a grantee hereunder shall pay to the county a franchise fee of five (5%) percent of the grantee's gross revenues during the preceding calendar quarter from cable television operations within the franchise area; however, at the option of the county, the fee shall be increased at such times as the rules of the Federal Communications Commission permit. No other fee, charge or consideration, except ad valorem taxes, shall be imposed by the county.

(b) Within thirty (30) days of the end of each calendar quarter during the franchise term, the grantee shall file with the county a statement of the grantee's gross revenues, as described and defined above, within the franchise area during the preceding quarter verified by the chief financial officer of the grantee and confirmed annually by an independent certified public accountant. Within ninety (90) days after the expiration of each fiscal year of the grantee during the franchise term, the grantee shall file with the county an annual report showing the gross revenues from cable television operations within the franchise area during the fiscal year. The grantee will also submit to the county, promptly upon receipt, a copy of each and every complaint (in each civil action) filed against it, and a copy each of all letters to and from the Federal Communications Commission and the Securities and Exchange Commission.

(c) In the event the grantee's franchise should be terminated or forfeited for any reason prior to the end of the term provided for herein, the grantee shall immediately submit to the county a statement of the gross revenues from cable television operation during the time elapsed since the end of the last calendar year for which a franchise fee was paid to the county by the grantee. Not later than thirty (30) days following the termination of the franchise, the grantee shall pay to the county five (5%) percent of such revenues, together with any other sums legally due and owing to the county.

(d) The county shall have the right to inspect the grantee's records from which the payments hereunder are computed and shall

have the right to audit and recompute the amount of such payments. Acceptance of payments by the county shall not be construed as a release, accord or satisfaction of any claim the county may have for further or additional sums payable hereunder or for any other performance or obligations required of the grantee, unless such acceptance is so specified in writing.

**Section 125: Revocation of franchise**

If a grantee hereunder fails to comply with, or has violated in any material respect, any provision of this article; or if the grantee has knowingly made a materially false statement in its franchise application; or if the grantee shall be adjudicated bankrupt or a receiver be appointed for its assets; or if the grantee, contrary to the public interest, fails to provide subscribers with regular, adequate and proper service, or if the installed cable system remains unused for a period of three (3) consecutive months; or if a grantee hereunder fails to meet its financial obligations and a judgment is rendered against the grantee which is not satisfied within thirty (30) days after becoming final, the grantee shall be deemed to be in default of its obligation hereunder. If each such default is not remedied or corrected within forty-five (45) days of the grantee's receipt of written notice thereof, the county may, after a public hearing, revoke the franchise and exact a penalty of ten (10%) percent of the gross revenues, as defined herein, of the grantee hereunder from and after the date of default until the latter of the date default is cured or the date of the last provision of services.

Notwithstanding this or any other provisions of this franchise, Grantee shall be in no way liable for delay in performance or for failure to perform in whole or in part its obligations hereunder due to any cause beyond its control including, but not limited to, strike or other labor dispute, war or act of war, riot, act of public enemy, accident, fire, flood or other act of God, technical failure or failure of suppliers.

**Section 126: Insurance**

(a) Any grantee hereunder shall obtain at its expense the following insurance policies:

- (1) A general comprehensive public liability insurance

policy, indemnifying, defending and saving harmless the county, its officers, boards, commissions, agents and employees, from any and all claims by any person whomsoever for injury or death of a person or persons occasioned or alleged to have been occasioned by the operations of the grantee under the franchise granted pursuant hereto, in the amount of at least Five Hundred Thousand (\$500,000.00) Dollars per personal injury or death of any two (2) or more persons in any one (1) occurrence.

(2) Property damage insurance indemnifying, defending and saving harmless the county, its officers, boards, commissioners, agents or employees, from and against all claims by any persons whomsoever for property damage occasioned or alleged to have been occasioned by the operation of the grantee under the franchise granted pursuant hereto, in the amount of at least Five Hundred Thousand (\$500,000.00) Dollars for property damages in any one (1) occurrence.

(3) Copyright infringement insurance indemnifying, defending and saving harmless the county, its officers, boards, commissions, agent or employees, from and against all claims by any person whomsoever for copyright infringement occasioned or alleged to have been occasioned by the operation of the grantee under the franchise granted pursuant hereto, in the amount of One Million (\$1,000,000.00) Dollars.

(4) Insurance in the amount of One Million (\$1,000,000.00) Dollars for all types of liability.

(b) All of the foregoing insurance contracts shall be in a form satisfactory to the county, shall be issued and maintained by companies authorized to do business in the state and acceptable to the county and shall be kept in full force and effect by the grantee during the term of the franchise and until completion of all obligations of the franchise, including any required removal of equipment, structures, facilities, apparatus and appurtenances. The contracts shall contain provisions requiring that thirty (30)



days' written notice of any modification or cancellation be given to both the county and the grantee. A current copy of each policy, or an appropriate certificate evidencing the required coverage, shall be filed with the county by the grantee.

**Section 127: Indemnification**

(a) Any grantee, hereunder shall at his sole cost and expense fully indemnify, defend and save harmless the county, its officers, boards, commissions and employees, against any and all claims, demands, suits, actions, liability and judgments for damage arising out of the construction, operation and maintenance of any CATV franchise granted hereunder, and against all liabilities to others, including but not limited to any liability for damages by reason of or arising out of any failure by the grantee to secure consents from the owners, authorized distributors or licensees of programs to be transmitted or distributed by the grantee, and against any loss, cost, expense and damages resulting therefrom, including reasonable attorney's fees, arising out of the exercise or enjoyment of the franchise, irrespective of the amount of the comprehensive liability policy required hereunder. This indemnity shall not apply to damages occasioned solely and exclusively by acts of the county, its agents or employees.

(b) The grantee shall indemnify, defend and save harmless the county, its officers, boards, commissions, agents and employees, from and against all claims of any person whomsoever for copyright infringement occasioned by the operation and control of a grantee under a franchise herein granted or alleged to have been so caused or occurred.

**Section 128: Performance bond**

(a) Any grantee hereunder shall, concurrently with the filing of its acceptance of a franchise, file with the Clerk to the Board of County Commissioners and at all times thereafter maintain in full force and effect for the term of a franchise, at the grantee's sole cost and expense, a bank letter of credit or a corporate surety bond with a company in a form approved by the County Attorney and in an amount set forth in the franchise agreement between the grantee and the county, renewable and negotiable annually, and conditioned upon the faithful performance of the

grantee of all of the terms and conditions of its franchise for the term thereof. Said surety bond renewal negotiation shall not extend beyond thirty (30) days, after which the county's decision shall be determinative and final.

(b) If the county shall, under other terms of a franchise, revoke the franchise of the grantee other than by reason of the involuntary acquisition by the county of the grantee's property, the county shall be entitled to recover under the terms of such bond the full amount of any loss occasioned to the county by reason of such breach or violation to the full amount of such bond.

(c) No recovery by the county of any sum pursuant to the performance bond required in this action shall constitute any limitation on the liability of the grantee to the county under the terms of this article, except that any sums so received by the county shall be deducted from any recovery which the county might have against the grantee under the terms of this article. Any recovery by the county of any sum pursuant to the performance bond required shall cause and require the grantee to renew and refund said bond back to the initial amount of the level as set forth in the franchise agreement between the grantee and the county.

**Section 129: Books and records of grantee**

(a) A grantee hereunder shall make available to the county annually copies of maps and/or plats of all existing and proposed installations (excluding customer house drop installations) upon streets, highways and public ways. These maps and plats shall conform to the requirements of the county and shall be kept continuously up-to-date.

(b) A grantee shall continuously keep on file with the county a current list of all the data required by section 119(b)(2), (3) hereof to be submitted with the application. In addition, upon request by the county, all officers and local management personnel of the grantee, together with their current addresses, shall be filed.

(c) All books and records of a grantee concerning its operations within the unincorporated areas of the county shall be made available for inspection and audit by the County Administrator or its designee within thirty (30) days after any request for such

inspection or audit has been made.

(d) Copies of all rules, regulations, terms and conditions established by a grantee, if any, for the operation of a CATV system under the franchise shall be filed with the Board of County Commissioners and at the local office of a grantee and shall be available for inspection during normal office hours.

(e) The grantee shall file annually with the Clerk to the Board of County Commissioners of the county within sixty (60) days after the end of the grantee's fiscal year, a copy of its report to its stockholders, if it prepares such a report, and an income statement applicable to its operations in the unincorporated areas of Columbus County during the preceding twelve (12) months, a balance sheet, and a statement of its properties devoted to CATV operations by categories and whether located within or without the city limits of any municipality within the county, giving its investment in such properties on the basis of original cost, less reasonable depreciation. These reports shall be prepared according to generally accepted accounting procedures by a certified public accountant or other person satisfactory to the county, and there shall be submitted with such reports such other reasonable information as the county shall request with respect to the grantee's properties and expenses relating to its CATV operations within the county.

**Section 130: Conditions on use of streets or roads**

(a) All transmission and distribution structures, lines and equipment erected by a grantee within the county shall be so located as to cause minimum interference with the proper use of streets, highways and public rights-of-way, and to cause minimum interference with the rights and reasonable convenience of property owners who abut any of said streets, highways or public rights-of-way. The CATV system shall be constructed and operated in compliance with all adopted county, state and national construction and electrical codes and shall be kept current with new codes as required.

(b) Except when absolutely necessary to service a subscriber and not simply because it shall be more convenient, economical or profitable for a grantee to so operate, and then only when

*expressly permitted in writing by the county under such conditions as it shall prescribe for the public welfare, a grantee shall not erect or authorize or permit others to erect any poles or facilities within the streets, highways or public rights-of-way within the county for the conduct of its CATV system but shall use the existing poles and other equipment of the appropriate electrical power and telephone and other utility companies under such terms and agreements as the grantee negotiates with these companies.*

*(c) No poles, cables, equipment or wires for the construction, maintenance and operation of the CATV system shall be installed or the installation thereof commenced on any existing poles within the county until the proposed location, specifications and manner of installation of such cables, equipment and wires shall have been set forth upon a plat or map showing the existing poles, streets, alleyways or highways within the county where such installations (excluding house drops) are proposed and submitted in writing by a grantee to the county.*

*(d) Should a grantee be required in the conduct of its business to locate property within the streets, highways or public rights-of-way, the nature of such property shall be disclosed to the county in a written statement which identifies and delineates such property for the purposes of disclosure.*

*(e) Whenever the state or other properly constituted authority shall require the relocation or reinstallation of any property of a grantee in any of its streets, highways or public rights-of-way within the county, it shall be the obligation of the grantee upon thirty (30) days' notice of such requirement to immediately remove and relocate or reinstall such property as may be reasonably necessary to meet the requirements of the state or such properly constituted authority. Such relocation, removal or reinstallation by a grantee shall be at no charge or expense to the county.*

*(f) Whenever in any place within the county all the electric and telephone utilities shall be located underground, it shall be the obligation of a grantee to locate or to cause its property to be located underground within such places. If the electric*

utilities and telephone utilities shall be located underground in any place within the county after a grantee shall have previously installed its property, nevertheless, a grantee shall at the same time or immediately thereafter remove and relocate its property also underground, in such places. In areas of the county where utilities are underground, the grantee may locate certain equipment above ground upon a showing of necessity and approval by the county. Facilities of a grantee placed underground at the property owners' request in an area where electric utilities and telephone utilities are aerial shall be installed with the additional expense paid by the property owner, if the grantee so elects.

(g) In case of disturbance of any street, highway, public right-of-way or utility easement within the county caused by a grantee, a grantee shall, within thirty (30) days at its own cost and expense and in a manner approved by the state or other properly constituted authority, replace and restore such street, highway or public right-of-way, or utility easement in as good condition as before the work involving such disturbance was done, all in accordance with standards, rules and regulations of the North Carolina Department of Transportation or any division thereof.

(h) The grantee shall, at its expense, and after forty-eight (48) hours' notice thereof, protect, support, temporarily disconnect, or relocate in the same street or other public place any property of the grantee when required by the county or the state department of transportation by reason of traffic conditions, public safety, street closing or abandonment, highway or street construction, change of establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines or other type of structures or improvements; and, the county or the North Carolina Department of Transportation shall not be liable for any disturbances of the grantee's installation resulting therefrom. This section applies to streets or roads as defined herein. The grantee shall carry out the instructions and directions of the North Carolina Department of Transportation district engineer, whenever it is necessary to raise or remove any of the grantee's wires or cables temporarily for the purpose of moving or removing a structure on the public streets or roads of the county. The

grantee shall do such tree trimming or other maintenance work as shall be necessary to maintain its lines and cables and other property in good working order. All matters mentioned herein shall be performed at the grantee's expense.

(i) A grantee shall, on the request of any person holding a building moving permit issued by the county, temporarily raise or lower its wires to permit the moving of such building. The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same, and a grantee shall have the authority to require such payment in advance. A grantee shall be given no less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes. In the event of a disagreement between a grantee and a holder of a permit, such disagreement will be resolved by the county.

(j) If at any time in case of fire or disaster within the county it shall become necessary in the judgment of the officer in charge of any volunteer fire department or fire department of any municipality to cut or move any of the wire cables, amplifiers, appliances or other fixtures of a grantee, this may be done; and the repairs thereby rendered necessary shall be made by a grantee, at its own cost and expense and without charge against such fire department or municipality.

(k) The grantee's work, while in progress, shall be properly executed at all times with suitable barricades, flags, lights, flares or other devices as are reasonably required to protect all members of the public having occasion to use the portion of the streets involved, or adjacent property. Any opening or obstruction in the streets shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings, the bounds of which shall be clearly designated by warning lights of approved types.

**Section 131: Emergency use of the facilities**

In the event of an emergency or disaster, a grantee shall upon request of the chairman make available its facilities to the county at no cost to the county for emergency use during the period of such emergency or disaster and shall provide such personnel as is necessary to properly operate under the circumstances. The County

shall designate the person(s) to whom the grantee shall make the facilities available. Any word, phrase or sentence which is contrary to the Cable Television Consumer Protection and Competition Act of 1992 (as amended) shall be deemed void and of no effect.

**Section 132: Compliance with law**

A grantee shall at all times comply with applicable federal, state and local laws and regulations. In the event Congress changes the laws or the Federal Communications Commission amends its rules or regulations to require the inclusion or additional provisions in this article or the deletion of existing provisions, this article shall be appropriately amended within one (1) year of action or any shorter period of time required by such action.

**Section 133: Conflict with laws**

Whenever any law of the state or the federal government or regulation of any agency of either shall be in conflict with and supersede any provision of this article, then for so long as such federal or state law or regulation shall be in force and effect such franchise provisions shall stand suspended and be of no force and effect; and a grantee herein shall not be required to comply with such provisions. Any word, phrase or sentence which is contrary to the Cable Television Consumer Protection and Competition Act of 1992 (as amended) shall be deemed void and of no effect. However, the validity of the remaining portions or provisions shall not be affected thereby. If such superseding legislation should be abolished, the provisions of the franchise agreement will resume in full force and effect.

**Section 134: Severability**

If any section, subsection, sentence, clause, phrase or portion of this article shall be held unconstitutional, invalid under state or federal law or inconsistent with the regulations of the Federal Communications Commission, all other provisions shall retain their full force and effect.

**Section 135: Sale or lease of franchise**

(a) A franchise granted hereunder shall be deemed a privilege to be held in personal trust by the grantee. It shall not be sold, sublet, transferred, leased, assigned or disposed of in whole or

in part either by forced or voluntary sale, merger, consolidation or otherwise without the prior consent of the County Board of Commissioners, expressed by resolution, and then only under such conditions as may therein be prescribed; nor shall title, either legal or equitable, or any right, interest or property therein pass to or vest in any person either by the act of a grantee or by operation of law without the written consent of the County Board of Commissioners. The Board of Commissioners shall act upon a request for such consent within ninety (90) days of the date thereof, and such consent shall not be unreasonably withheld. The granting, giving or reserving of any one (1) or more of such consents shall not render unnecessary any subsequent consent or consents.

(b) Nothing in the franchise shall act to give the grantee vested property rights such that the same may be effectively transferred or disposed of voluntarily or involuntarily without the consent of the County Board of Commissioners.

(c) Any transfer or assignment or other distribution of any of the rights under the franchise shall be made only by an instrument in writing, a duly executed copy of which shall be filed in the office of the Clerk to the Board of County Commissioners at least thirty (30) days after such a transfer or assignment shall have been executed or effected and shall reflect therein the consent of the County Board of Commissioners thereto.

(d) Nothing in this section shall be deemed to prohibit a mortgage or pledge of the CATV system equipment or any part thereof or a leasing by a grantee from another person of said CATV system equipment or part thereof for financing purposes or otherwise. Proceeds of such financing are to be used in the construction or operation of the system franchise hereunder. Any such mortgage, pledge or lease, with the exception of leases of office equipment such as photocopiers, typewriters, etc. used solely within the local office of the franchise within the County, shall be made only with the prior approval of the board and shall be subject and subordinate to the rights of the county under this article or applicable law, and provided that any involuntary transfer of ownership pursuant to such a mortgage or pledge shall be subject



to the Board of County Commissioners' right of consent.

(e) Upon the expiration or termination of a franchise, the county on its own motion or at the request of the grantee, may require the grantee to operate the franchise for an extended period of time not to exceed six (6) months from the date of any such resolution. All provisions of the franchise shall continue to apply to operations during an extension. The county shall serve written notice at the grantees' business office of intent to extend under this section at least thirty (30) days prior to the expiration of the original franchise.

**Section 136: Preferential or discriminatory practices**

A grantee shall not, as to rates, charges, service facilities, rules, regulations or any other respect, make or grant any undue preference or advantage to any person or subject any person to undue prejudice or disadvantage; however, connection and service charges may be waived or modified during promotional campaigns of the grantee.

**Section 137: Grantee to have no recourse**

(a) A grantee hereunder shall have no recourse whatsoever against the county for any loss, cost, expenses or damage arising out of the provisions or requirements of the franchise or because of the enforcement thereof by the county, nor for the failure of the county to have the authority to grant all or any part of the franchise or to properly exercise such authority.

(b) A grantee expressly acknowledges that upon accepting a franchise, it does so relying upon its own investigation and understanding the power and authority of the county to grant the franchise.

(c) By acceptance of the franchise, the grantee acknowledges that it has not been induced to enter into the franchise by any understanding or promise, or other statement, whether verbal or written, by or on behalf of the county or by any other third person concerning any term or condition of the franchise not expressed herein or on the franchise agreement between the county and the grantee.

(d) The grantee further acknowledges by the acceptance of the franchise that it has carefully read the terms and conditions

hereof, and is willing to and does accept all of the risks of the meaning of such terms and conditions and agrees that in the event of any ambiguity therein or in the event of any dispute over the meaning thereof the same shall be construed strictly against the grantee and in favor of the county. However, the grantee shall have the right to appeal to the Board of County Commissioners, whose decision shall be final.

**Section 138: Rights reserved to grantor**

Without limitation on the rights which the county might otherwise have, the county does hereby expressly reserve the right, power and authority to exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the county, including but not limited to the power and authority to amend this article; to determine through its County Board of Commissioners any question of fact relating to the meaning, terms, obligations or other factors of this article; and to grant additional franchises within the county to other persons for the conduct of CATV under any conditions whatsoever acceptable to the county, notwithstanding the same might be alleged to be more favorable than the rights granted herein.

**Section 139: Review of franchise**

(a) Because of the regulatory, technical, financial, marketing and legal uncertainties associated with the cable communications industry, any grantee hereunder and the county shall conduct review sessions under the following provisions in order to provide for a maximum degree of flexibility in the expansion and improvement of the delivery of service by a grantee of a franchise under this article and to help achieve a continued advancement and modernization of the cable television system for the county.

(b) Special review sessions may be held at any time during the term of the franchise, upon reasonable notice by either party to the other. A special review session shall be held in the event any clause or section of this article and/or the franchise agreement is avoided, nullified, deleted or modified by the authority of any regulatory agency having jurisdiction over the subject matter of the article or franchise, including the Federal Communications Commission, with all of whose rules a grantee will

comply.

(c) The following topics will be discussed at every scheduled review session:

- (1) Service;
- (2) Free or discounted services;
- (3) Application of any new cable television technologies;
- (4) System technical performance;
- (5) Services provided;
- (6) Programming offered;
- (7) Customer complaints; and
- (8) Privacy in human rights.

(d) Any word, phrase, or sentence contrary to the Cable Television Consumer Protection and Competition Act of 1992 (as amended) shall be deemed void and of no effect.

**Section 140: Rights of Individuals protected**

(a) A grantee shall be prohibited from using or allowing the use of subscriber lists for any purpose unconnected with the provision of service over the system.

(b) No monitoring of any terminal connected to the system shall take place without specific written authorization by the user of the terminal in question in each occasion; however, the grantee may provide for systemwide, non-individually addressed "sweeps", or the grantee's acquisition of information for purposes of verifying system integrity, controlling return path transmissions, or billing for pay services.

(c) It shall be unlawful to tape or monitor a system line without authorization from the parties whose communication might be overheard; however, the grantee may provide for systemwide, non-individually addressed "sweeps", or the grantee's acquisition of information for purposes of verifying system integrity, controlling return path transmissions, or billing for pay services.

(d) The grantee shall not, in its rates or charges, or in making available the services or facilities of its system, or in its rules or regulations, or in any other respect, make or grant preferences or advantages to any subscriber or potential subscriber to the system, or to any user or potential user of the system, and shall not subject any such persons to any prejudice or

disadvantage. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscriptions to the system or other legitimate uses thereof, nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification shall be entitled.

(e) The entire system of the grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies or other entities having a legitimate use for the system; and no one shall be arbitrarily excluded from its use. Allocation of use of said facilities shall be made according to the rules or decisions of regulatory agencies affecting the same; and where such rules or decisions are not effective to resolve a dispute between conflicting users or potential uses, the matter shall be submitted for resolution to the County Administrator, subject to appeal to the Board of Commissioners.

(f) In the carrying out of the construction, maintenance and operation of the CATV system, the grantee shall not discriminate against any employee or applicant for employment because of race, creed, color, marital status; age, sex or national origin. The grantee shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The grantee shall in all solicitations or advertisements for employees placed by or on behalf of the grantee, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, marital status, age or national origin.

(g) Any affected individual, partnership or corporation shall have the right to appeal any provision, requirement or ruling of the County Administrator to the Board of Commissioners.

**Section 141: Notice**

Whenever under the terms of the franchise either party shall be required or permitted to give notice to the other, such notice shall be in writing; and if to be served on the county, it shall be delivered either by first class U.S. Mail or by handing such

notice to the County Administrator at the Columbus County Administration Building, 111 Washington Street, Whiteville, North Carolina, 28472 or by handing such notice to such officer at such address as the grantee shall from time to time direct. The original name and address of the officer on behalf of the grantee shall be included in the grantee's acceptance of the franchise as provided for herein.

ADOPTED this the 20th day of November, 1995.

COLUMBUS COUNTY BOARD OF COMMISSIONERS

/s/ SAMMIE JACOBS, Chairman

/s/ LYNWOOD NORRIS, Vice Chairman

/s/ C.W. WILLIAMS

/s/ C.E. "GENE" WILSON

/s/ A. DIAL GRAY, III

/s/ SPRUELL RANDOLPH BRITT

/s/ DAVID L. DUTTON, JR.

ATTESTED BY:

/s/ IDA L. SMITH, Clerk to Board

**SHERIFF - APPROVAL TO ENTER INTO CONTRACT FOR GASOLINE WITH CAMPBELL OIL COMPANY**

Sheriff Jimmy Ferguson requested the Board to permit the Sheriff's Department to enter into a three (3) year contract with Campbell Oil Company for a central Fleet Card gasoline control system that would provide for more accountability and allow the County to get out of the underground tank business. The price would be based on inventory cost plus freight, taxes and \$.045 per gallon.

A motion was made by Commissioner Norris, seconded by Commissioner Gray and passed unanimously to approve the Sheriff's Department to enter into a three (3) year contract with Campbell Oil Company for a central Fleet Card gasoline control system. James E. Hill, Jr., County Attorney, is to draft the contract and present to the Board of Commissioners for final approval.

**SHERIFF - ADDITIONAL COMPUTERIZATION APPROVAL**

Sheriff Jimmy Ferguson addressed the Board in regards to new laws passed by the General Assembly during the last session which will require major implementation and new procedures to be

undertaken by the Sheriff's Office as follows:

1. House Bill 90 - Concealed handgun permits effective December 1, 1995.
2. Senate Bill 53 - Sexual Offender Registration effective January 1, 1996.
3. Senate Bill 402 - Act to strengthen the Domestic Violence Law, effective April 1, 1996.

Sheriff Ferguson stated that in order to implement the new laws that have been passed by the General Assembly it will take a new position at an annual salary, plus fringe benefits of \$17,825.57 and additional computerization for a maximum one time cost of \$14,947.95.

A motion was made by Commissioner Wilson, seconded by Commissioner Britt and passed unanimously to approve the request for the additional computerization and instructed the Administrator and the Sheriff to negotiate prices for the computer equipment and approve the following budget amendment.

Appropriate 10-660-9999 Non-Dept. Contingency	(\$14,947.95)
Expend 10-510-7400 Capital Outlay - Computer	\$14,947.95

A motion was made by Commissioner Norris, seconded by Commissioner Dutton and passed unanimously to table the request for a new position in the Sheriff's Department.

#### **LIBRARY - FRIENDS OF EAST COLUMBUS LIBRARY**

Ronnie Russ, Chairman of the Friends of the Library at East Columbus, Riegelwood, NC, addressed the Board in reference to the drainage of Highway 87 onto the East Columbus County Library property creating serious problems with the rest room. Also, the water on the property has provided an environment for snakes to make residence above and below the building. Another concern is burglary of the library which has occurred too frequently causing extensive damage. Mr. Russ requested the Board's consideration in regards to the problems in which they are experiencing.

Dempsey Herring, Interim Administrator, advised the Friends of the East Columbus Library that he would request the Department of Transportation to look into the drainage problem and ditch the property in order to alleviate the problem they are having. If there is no help available from the Department of Transportation, then action will be taken at a county level.

**LITTER PATROL - CHUCK A. STANLEY TO BE SWORN IN AS A LITTER PATROL OFFICER**

A motion was made by Commissioner Dutton, seconded by Commissioner Norris and passed unanimously to request Sheriff Jimmy Ferguson to swear in Chuck A. Stanley, as a Litter Patrol Officer, to allow him to write citations for those persons littering.

Sheriff Ferguson agreed to swear in Chuck A. Stanley as a Litter Patrol Officer and requested the Litter Patrol Officers to change their uniforms from that of the Sheriff's Department to uniforms representing the Litter Patrol as they are not under his supervision.

**MEETING RECESSED**

At 8:45 P.M., Chairman Jacobs declared a five (5) minute recess.

**MEETING RESUMED**

At 8:50 P.M., Chairman Jacobs called the meeting back to order.

**CLOSED SESSION**

At 8:52 P.M., A motion was made by Commissioner Dutton, seconded by Commissioner Norris to enter into executive session in accordance with G.S. 143-318.11. Reason: Item #6 - Personnel Matters.

**RESUME REGULAR SESSION**

At 9:28 P.M., A motion was made by Commissioner Williams, seconded by Commissioner Norris and passed unanimously to adjourn closed session and resume regular session.

No action was taken.

**FIRE & RESCUE - MAPS APPROVED FOR YAM CITY/TABOR CITY AND WILLIAMS FIRE DISTRICTS SUB-STATIONS**

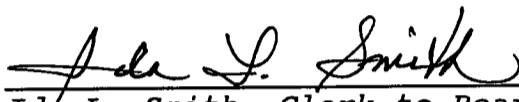
A motion was made by Commissioner Wilson, seconded by Commissioner Williams and passed unanimously to approve the final map for the extension to the proposed service districts for Yam City/Tabor City and Williams Volunteer Fire Departments and sub-stations in the designated areas as submitted with the stipulation that each extended area must have their sub-station complete and operational by January 1, 1998.

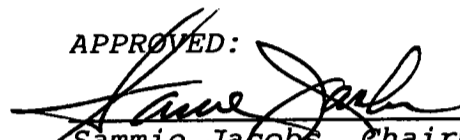
**APPOINTMENT - COUNTY ADMINISTRATOR**

A motion was made by Commissioner Gray, seconded by Commissioner Dutton and passed unanimously to appoint Dempsey B. Herring as County Administrator with a proposed employment contract to be negotiated by Mr. Herring and James E. Hill, Jr., and brought back to the Board for approval.

**ADJOURNMENT**

A motion was made by Commissioner Dutton, seconded by Commissioner Britt and passed unanimously to adjourn the meeting at 9:30 P.M.

  
\_\_\_\_\_  
Ida L. Smith, Clerk to Board

APPROVED:  
  
\_\_\_\_\_  
Sammie Jacobs, Chairman