

RESOLUTION NO. 97-137

**RESOLUTION OF THE MARIN COUNTY BOARD OF SUPERVISORS  
APPROVING AGREEMENT OF FORMATION OF MARIN  
TELECOMMUNICATION AGENCY**

**WHEREAS**, the County and a substantial majority of the Cities and Towns of the County of Marin are desirous of entering into a joint powers agreement of formation of a Marin Telecommunications Agency the provisions of which are attached hereto as **EXHIBIT "A"**; and

**WHEREAS**, the County is in the process of adopting a Telecommunication Ordinance in connection with approval of the Agreement.

**NOW, THEREFORE, BE IT RESOLVED** as follows:

1. The Agreement of the Formation of a Marin Telecommunications Agency is hereby approved but only upon completion of all conditions contained therein; and upon adoption by the County of Marin of the Marin Telecommunications Ordinance but also only upon completion of all of the conditions contained therein.


2. The President of the Board of Supervisors is authorized to execute the Agreement on behalf of the County of Marin but only in accordance with completion of all of the conditions set forth in paragraph 1. hereinabove.

**PASSED AND ADOPTED** at the regular meeting of the Board of Supervisors of the County of Marin held on this 16th day of December 1997 by the following vote:

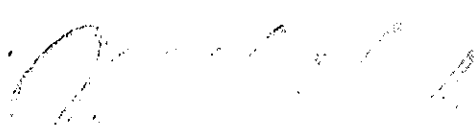
**AYES:** SUPERVISORS John Kress, Harold Brown, Jr., Steve Kinsey, Annette Rose,  
Harry Moore

**NOES:** -

**ABSENT:** -

  
\_\_\_\_\_  
Chairman, Board of Supervisors

**ATTEST:**

  
\_\_\_\_\_  
Clerk

**AGREEMENT OF FORMATION  
MARIN TELECOMMUNICATIONS AGENCY**

THIS AGREEMENT is made and entered into pursuant to the provisions of Section 6500 et seq. Of the Government Code of the State of California by and between the County of Marin (herein referred to as "County") and the Cities of Belvedere, Larkspur, Mill Valley, Novato, Sausalito and San Rafael, and the Towns of Corte Madera, Fairfax, Ross, San Anselmo and Tiburon, (the foregoing Cities and Towns are herein collectively referred to as "Municipalities" and the Constituent Jurisdictions are sometimes herein collectively referred to as the "Constituent Jurisdictions") who do hereby mutually agree as follows:

1. Establishment. There is hereby created an organization known and denominated as the MARIN TELECOMMUNICATIONS AGENCY, which shall be a public entity, separate and apart from the Constituent Jurisdictions. The Marin Telecommunications Agency (hereinafter referred to as "Agency") shall be governed by the terms of this Agreement, the terms of an ordinance enacted by each Jurisdiction which enters into this Agreement which is entitled "Telecommunications Ordinance", and is hereinafter referred to as the "Ordinance", and by such rules as are duly passed and adopted by the Board of Directors of the Agency.

Notwithstanding the provisions of the introductory paragraph of this Agreement, it is specifically contemplated that some of the Municipalities may not execute this Agreement and participate in the formation of and become members of the Agency. Therefore, the Agency shall be formed by, as members, the Constituent Jurisdictions, *provided that* all of such Constituent Jurisdictions do so.

2. Board of Directors. The Agency shall be governed by and the powers of the Agency vested in a Board of Directors, subject to its delegatory powers as set out in section 5.30270 of the Ordinance. The number of members of the Board of Directors, composition thereof, and tenure of Directors shall be prescribed by section 5.30220 of the Ordinance.

Meetings of the Board of Directors and of such advisory or other committees as the Board may appoint, shall be governed by the provisions of the Ralph N. Brown Act (Government Code Section 54950 et seq.). The Board of Directors shall establish a time and a place for its regular meetings, which shall be held not less frequently than every six (6) months.

A meeting composed of at least six (6) members of the Board shall constitute a quorum for the purpose of transacting business, and a majority of the quorum shall be necessary to approve any action of the Board *provided that notwithstanding the foregoing* the following actions shall require the approval of not less than six (6) members of the Board in recorded vote: (1) the

enactment of an ordinance, (2) the approval of a final budget, (3) the initiation of litigation (not including the authorization of defense brought against the Agency and the initiation of a cross-complaint), and (4) the creation or assumption of indebtedness.

No action taken by the Board of Directors shall be effective except by duly adopted motion receiving the votes of a majority of the Directors of the Board then present.

The Board of Directors shall annually elect its Chairperson.

The Clerk of the Board of Supervisors of the County shall serve as Secretary to the Board of Directors, unless the Board by resolution shall designate the Clerk of another Constituent Jurisdiction to so serve, shall be responsible for recordation of the official actions by the Board, and shall be the official custodian of all records of the Board of Directors.

3. Powers. The Board of Directors of the Agency shall be vested with the following powers:

To employ in the name of the Agency such staff as the Board of Directors deems appropriate. Such staff shall be appointed by and serve at the pleasure of the Board of Directors.

To make and enter into contracts in the name of the Agency as authorized by or in order to carry out the objects or purposes of this Agreement or the Ordinance, including, but not limited to, contracts with any Constituent Jurisdiction providing for provision by personnel of that Constituent Jurisdiction of services for the Agency and reimbursement of that Constituent Jurisdiction by the Agency of the costs thereof;

To acquire in the name of the Agency, take title to, hold and dispose of real and personal property;

To incur in the name of the Agency debts, liabilities and obligations, which shall not constitute debts, obligations or liabilities of any of the member agencies;

To accept in the name of the Agency grants, gifts and donations in the public interest to carry out the purposes and functions of the Agency; and

To exercise such other powers as are expressly conferred by the provisions of this Agreement or the Ordinance.

The Board of Directors shall also be authorized to sue in the name of the Agency. The Agency shall be subject to suit in its name.

4. Limitations. Pursuant to the provisions of Government Code Section 6509, the powers of the Agency are subject to the restrictions upon the manner of exercising such powers of one (1) of the designated member agencies. For such purposes, the County of Marin is hereby designated.

5. Budget. Prior to July 1st of each fiscal year, the Board of Directors shall adopt a final budget.

6. Payments.

(a) Existing Franchises. As to Franchises in existence prior to the Effective Date of the Ordinance which have been devolved upon the Agency pursuant to Sections 5.30.140 and 5.30.260 above, and which have not theretofore been renewed, extended or otherwise materially amended, the Franchise Fees derived therefrom shall, notwithstanding the assignment to the Agency, be paid to the Constituent Jurisdiction which was the franchisor prior to the Effective Date and the Constituent Jurisdiction shall thereupon be billed by the Agency for that Constituent Jurisdiction's allocable share of the Agency's budget for the applicable period. The Agency's budget shall be allocated among the Constituent Jurisdictions who are members of the Agency in the same proportion as the ratios which the total number of Subscribers in each of the Constituent Jurisdictions bear to the total number of Subscribers in the Constituent Jurisdictions which are then members of the Agency, as disclosed by reports as to numbers of Subscribers filed by said Cable Television Systems with the Agency. Such amounts billed to the Constituent Jurisdiction shall be due and payable within thirty (30) days of the billing date and shall be an enforceable contractual obligation of the Constituent Jurisdiction to the Agency.

(b) Agency Cable Franchises. As to Franchises for the provision of Cable Television Services by Cable Television Systems which were granted by the Agency or renewed, extended or otherwise materially amended by the Agency, the Net Franchise Fees (the total franchise fees received by the Agency less the Agency's budget for the applicable period and reasonable reserves) shall be paid to each of the Constituent Jurisdictions who are members of the Agency in the same proportion as the ratios which the total number of Subscribers in each of the Constituent Jurisdictions bear to the total number of Subscribers in the Constituent Jurisdictions who are members of the Agency, as disclosed by reports as to numbers of Subscribers filed by said Cable Television Systems with the Agency.

(c) Agency Non-Cable Franchises (All Constituent Jurisdictions) As to Franchises which were granted by the Agency or renewed, extended or otherwise materially amended by the Agency, the Net Franchise Fees (the total franchise fees received by the Agency less the Agency's budget for the applicable period and reasonable reserves) shall be paid to the Constituent Jurisdictions who are members of the Agency in the same proportion as the ratios which the population of the unincorporated area of the County and incorporated area of the Municipalities bear to the

total population of the Constituent Jurisdictions who are members of the Agency, as disclosed by the Federal Decennial Census for 1990 for the period ending June 30, 2001, the Federal Decennial Census for 2000 during the period commencing July 1, 2001 and ending June 30, 2011, the Federal Decennial Census for 2010 during the period commencing July 1, 2011 and ending June 30, 2021, the Federal Decennial Census for 2020 during any period after July 1, 2021.

(d) Agency Non-Cable Franchises (Less than All Constituent Jurisdictions) As to Franchises which were granted by the Agency and which substantially and directly affect less than all of the Constituent Jurisdictions, the Net Franchise Fees (the total franchise fees received by the Agency less the Agency's budget for the applicable period and reasonable reserves) shall be paid to the affected Constituent Jurisdictions who are members of the Agency in the same proportion as the ratios which the population of each affected Constituent Jurisdiction bears to the total population of the affected Constituent Jurisdictions who are members of the Agency, as disclosed by the Federal Decennial Census for 1990 for the period ending June 30, 2001, the Federal Decennial Census for 2000 during the period commencing July 1, 2001 and ending June 30, 2011, the Federal Decennial Census for 2010 during the period commencing July 1, 2011 and ending June 30, 2021, the Federal Decennial Census for 2020 during any period after July 1, 2021.

(e) Allocation of Agency Budget. For purposes of the foregoing calculations, the Agency's budget for the applicable period and reasonable reserves shall be allocated as between various types of Franchises in the relative proportions of the Franchise Fees derived therefrom.

Each distribution shall be accompanied by a statement by the Auditor of the Agency stating the amounts of all Franchise Fees received by the Agency for the distribution period, the dates of receipt, the amount of revenue required to finance the Agency Budget, and the population and/or subscriber ratios upon which apportionment of the distribution is being made.

7. Treasurer. The Treasurer of the County shall be the depository of funds of the Agency, and said Treasurer shall be the ex officio Treasurer of the Agency, unless the Board of Directors shall act by resolution to appoint the Treasurer of another Constituent Jurisdiction or, to the extent provided by law, a certified public accountant, to that position.

The Treasurer shall receive and have custody of and disburse Agency funds on the warrant of the Auditor and shall make disbursements authorized by this Agreement. The Treasurer shall invest Agency funds in accordance with the general law. All interest collected on Agency funds shall be accounted for and posted to the account of said funds.

The County (or other Constituent Jurisdiction as applicable) may determine reasonable charges to be made against the Agency for the services of the Treasur-

er, and the Agency shall include such costs in its annual budget.

8. Auditing. The Auditor of the County shall be the ex officio Auditor of the Agency, and shall draw warrants against the funds of the Agency when the demands are approved by the Executive Director or other designee of the Board, unless the Board of Directors shall act by resolution to appoint some other person, as allowed by law, to that position. At the close of each fiscal year, as provided in Government Code Section 6505, the Auditor shall make an audit. In the alternative, the Board of Directors may contract with a certified public accountant to make an audit of the accounts and reports of the Agency.

The Auditor shall establish and maintain such funds and accounts as are deemed necessary to account for and report on receipts and disbursements. The Agency shall keep such additional records and accounts which are deemed necessary to account for and report on sources of funds, expenditures, grants and programs as may be required by good accounting practices. The books and records of the Agency shall be open to inspection at all reasonable times by representatives of the member agencies.

The County (or other Constituent Jurisdiction as applicable) may determine reasonable charges to be made against the Agency for the services of the Auditor, and the Agency shall include such costs in its annual budget.

9. Term. Except as otherwise provided herein, this Agreement shall terminate and the Agency shall be deemed dissolved on December 31, 2027.

In the event that, at any time, the Board of Directors reasonably determines that it will no longer receive Franchise Fees under any Franchise then existing or reasonably expected to provide sufficient revenues to pay its costs of administration and yet make the required payments to the Constituent Jurisdictions, this Agreement shall be deemed terminated and the Agency shall be deemed dissolved on the date of that determination.

10. Disposition of Assets. Upon dissolution of the Agency, its assets shall be distributed to member agencies in the same proportion as distributions to member agencies have most recently been made pursuant to the provisions of Paragraph 6, above. Any real property owned by the Agency shall, in advance of dissolution, be conveyed by the Board of Directors to member agencies as tenants in common with proportional interests equal to the proportion of distributions most recently made pursuant to the provisions of said Paragraph 6.

11. Debts. The debts, liabilities and obligations of the Agency shall not constitute any debts, liabilities or obligations either jointly or severally of the County or the Municipalities.

12. Amendment. This Agreement may be amended by written contract approved

by and executed in behalf of the Governing Bodies of each member agency. No Franchisee shall be deemed to either expressly or impliedly be a party to this Agreement, a third party beneficiary thereof, or to have any interest which precludes amendment of the terms of this Agreement in any manner in which the Governing Bodies of the member agencies, in their discretion, may mutually agree.

13. Termination. Except as otherwise provided herein, this Agreement may only be terminated by the enactment of an ordinance in identical form by a majority of the of the Constituent Jurisdictions which are then members of the Agency specifying such termination, each such ordinance adopted within no more than ninety (90) days of each other. Upon such action, the Agency shall be deemed terminated and its assets disposed of pursuant to Paragraph 10 hereof.

14. Withdrawal. Any Constituent Jurisdiction may withdraw from membership in the Agency upon notice in writing to the Agency and the other members of the Agency by the enactment of an ordinance on or before May 1 of any year specifying that such withdrawal shall become effective not earlier than the end of the next successive fiscal year, *provided that* the withdrawal of any Constituent Jurisdictions from membership in the Agency (not resulting in the termination of the Agency pursuant to Paragraph 13 above) during the initial term of any Franchise issued pursuant to the provisions of this Chapter shall not operate to either divest the Franchisee of its authority to install or provide services through its Telecommunications Facilities within the area of the withdrawing Constituent Jurisdiction(s) or vest the withdrawing Constituent Jurisdiction with any administrative or other authority whatsoever respecting operations by the Franchisee under the Franchise. Notwithstanding the foregoing, a duly appointed member of the governing body of a withdrawing jurisdiction may continue to participate and vote in actions coming before the Agency after withdrawal which pertain solely and exclusively to a Franchise in which a Franchisee has installed and is providing services through at least a portion of its Telecommunications Facilities, which are located within the jurisdiction of the withdrawing jurisdiction (such a Franchise hereinafter an "Affecting Franchise"), *provided that* nothing in this sentence shall authorize the member appointed by the withdrawing jurisdiction to participate or vote in any matters pertaining to or having an effect upon more than a single Affecting Franchise. During such initial term, the Agency shall continue to administer the provisions of this Chapter for the benefit of the inhabitants of a Constituent Jurisdiction in the same manner as if the Constituent Jurisdiction had not withdrawn. In the event that a Constituent Jurisdiction should give timely notice of withdrawal and that withdrawal should become effective before a cable television franchise assigned to the Agency as a part of its initial entry shall have been renewed, extended or otherwise materially amended, the Agency shall reassign said franchise to the withdrawing entity, said entity shall resume administration of said franchise and the Franchise Fees derived therefrom shall continue to be paid to the Constituent Jurisdiction which was the franchisor prior to the Effective Date.

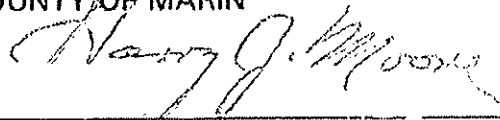
15. Reservation of Rights. The provisions of this Agreement shall not be so con-

strued as to in any manner restrict or impair the power or authority of the Constituent Jurisdictions to independently manage the sale, leasing, management, transfer and/or other disposition of Telecommunications Facilities owned by the Constituent Jurisdiction within their own jurisdictional boundaries. Nothing in the foregoing sentence shall be construed to obviate the necessity of a Franchise issued by the Agency in connection with the use of such Telecommunications Facilities,

16. Counterparts. This Agreement may be executed in counterpart.

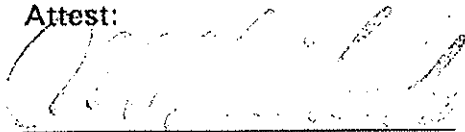
IN WITNESS HEREOF the parties have approved and executed this Agreement as follows.

COUNTY OF MARIN



Chairman, Board of Supervisors

Attest:



Clerk

Approved as to Form:

Allen A. Haim  
Chief Deputy County Counsel



**FIRST AMENDMENT TO AGREEMENT OF FORMATION  
MARIN TELECOMMUNICATIONS AGENCY**

This First Amendment to Agreement of Formation (“First Amendment”) is entered into as of June 5, 2013 (the “First Amendment Effective Date”), and is made by and among the County of Marin and the Cities of Belvedere, Larkspur, Mill Valley, Sausalito and San Rafael, and the Towns of Corte Madera, Fairfax, Ross, San Anselmo and Tiburon (collectively, the “Constituent Jurisdictions”), with reference to the following:

**RECITALS**

A. The Constituent Jurisdictions entered into that certain Agreement of Formation (the “Agreement”) in 1997 for the purpose of creating the Marin Telecommunications Agency, a joint powers authority existing pursuant to California Government Code 6500 *et seq.* (the “Agency”). All capitalized terms used herein without definition shall have the same meanings assigned to them in the Agreement.

B. Due to changes in state law affecting the operation of cable franchises, certain provisions of the Agreement relating to the distribution of franchise fees among Constituent Jurisdictions are either obsolete or cannot be implemented due to legal limitations on the Agency’s ability to obtain certain information about subscribers from providers.

C. The Constituent Jurisdictions have agreed to revise the provisions of the Agreement with respect to such distributions, all as provided more particularly below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Constituent Jurisdictions agree as follows:

**AGREEMENT**

1. The Recitals above are hereby declared to be true and correct, and are hereby incorporated into this Amendment as if fully set forth below.

2. Section 6, Payments, is hereby deleted in its entirety and replaced by the following revised Section 6, Franchise Fee Payments to Constituent Jurisdictions:

(a) DIVCA State Franchises. The Constituent Jurisdictions acknowledge and agree that all franchise fees payable to local jurisdictions from franchises issued by the state pursuant to the Digital Infrastructure and Video Competition Act of 2006 (“DIVCA”) are being paid to the Agency. From the total amount of such fees paid to the Agency annually, the Agency shall deduct the amount of its annual operating budget and reserves, as set forth in the final budget approved by the Board of Directors pursuant to Section 2 above. The remaining amount shall be distributed to the Constituent Jurisdictions as the franchise fees are received by

the Agency each quarter in accordance with the franchise fee reports for each Constituent Jurisdiction received by the Agency from each video provider.

(b) Other Franchises. For any other franchises that the Agency is legally entitled to grant, franchise fees will be distributed among the Constituent Jurisdictions as may be determined by the Board of Directors in accordance with the procedure set forth in Section 2 for adopting the annual budget.

(c) Agency Statements Required. Each distribution shall be accompanied by a statement describing the amounts of all franchise fees received by the Agency for each Constituent Jurisdiction during the distribution period, the dates of receipt, and the amount of revenue required to fund the Agency Budget and reserves.

3. This First Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same instrument.

Except as expressly modified by this First Amendment, all other terms and conditions of the Agreement remain in full force and effect.

*[Signatures appear on following pages.]*