

ITEM(S) TO BE CONSIDERED UNDER:

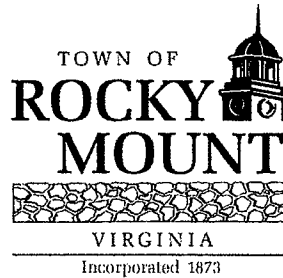
Consent Item     Old Business     New Business     Other

|                            |               |
|----------------------------|---------------|
| FOR COUNCIL MEETING DATED: | June 14, 2010 |
|----------------------------|---------------|

|                                  |   |
|----------------------------------|---|
| <b>STAFF MAKING REQUEST:</b>     | C. James Ervin, Town Manager  |
| <b>BRIEF SUMMARY OF REQUEST:</b> | <p>The Town of Rocky Mount was notified by Shentel that it intends to purchase the local Cable Television system. They provided a transfer form for our review (FCC form 394). The Town of Rocky Mount must consent to this sale.</p> <p>This form and the transfer was reviewed by the Town and County jointly and a meeting took place whereby Town staff and County staff met with representatives of Shentel to go over their plans for the system and their future support for Cable 12. Shentel presents itself as a cable system operator rather than a cable system investor. Information from other localities supports this description.</p> <p>The Town and County negotiated with Shentel regarding Cable 12 and customer service issues. The negotiations produced a pledge of continued support for Cable 12, a large transition period for email customers, and a tentative agreement to locate a customer service office in Rocky Mount.</p> <p>Based upon a review of the company, it is the opinion of staff that it is in the Town's interest to consent to the transfer as Shentel has a better customer service track record than JetBroadband, is a more local company than JetBroadband, and has a track record of running systems for growth versus investment.</p> <p>A representative of Shentel will be present to address Town Council.</p> |
| <b>ACTION NEEDED:</b>            | Approval/denial of draft "Resolution of the Town of Rocky Mount, Virginia Approving the Assignment of the Cable Television Franchise".  |

Attachment(s): Yes

|  |   |
|--|---|
| <b>FOLLOW-UP ACTION:</b><br>(To be completed by Town Clerk)                                      | <b>GIVEN TO (DEPT. HEAD)</b><br>(To be completed by Town Clerk)     |
| <b>COMPLETED ACTION:</b> (To be filled in by Town Clerk)<br>(To be completed by Department Head) | <b>GIVEN TO TOWN CLERK:</b><br>(To be completed by Department Head) |
| <b>DATE COMPLETED AND ACTION TAKEN:</b>  | <b>DATE GIVEN TO TOWN CLERK:</b>                                    |



**RESOLUTION OF THE TOWN OF ROCKY MOUNT, VIRGINIA  
APPROVING THE ASSIGNMENT OF THE CABLE TELEVISION FRANCHISE**

**WHEREAS**, JetBroadband, LLC d/b/a JetBroadband ("Franchisee") owns, operates and maintains a cable television system ("System") serving the Town of Rocky Mount, Virginia, pursuant to a franchise agreement (the "Franchise") issued by the Town of Rocky Mount, Virginia (the "Franchise Authority"), and Franchisee is the duly authorized holder of the Franchise; and

**WHEREAS**, on April 16, 2010 Shentel Cable Company ("Shentel") has entered into an Asset Purchase Agreement (the "Agreement") with JetBroadband VA, LLC in which, among other things, the Franchisee proposes to sell and assign to Shentel Cable Company certain of the assets, including the Franchise, used by the Franchisee in the operation of the System (the "Transaction"); and

**WHEREAS**, Franchisee and Shentel have requested the consent of the Franchise Authority for the assignment of the Franchise in accordance with the requirements of the Franchise and applicable law and have filed with the Franchise Authority a franchise assignment application on FCC Form 394 that includes relevant information concerning the Transaction and the legal, technical and financial qualifications of Shentel (collectively, the "Application"); and

**WHEREAS**, the Franchise Authority has reviewed the Application, examined the legal, financial and technical qualifications of Shentel, followed all required procedures to consider and act upon the Application, and considered the comments of all interested parties; and

**WHEREAS**, Shentel has represented that it will meet the customer service standards promulgated by the NCTA, and, if necessary to satisfy such standards, will hire additional customer service representatives; and

**WHEREAS**, Shentel has represented that it will comply with the terms and conditions of the Franchise; and

**WHEREAS**, Shentel agrees that it will continue to support Rocky Mount and Franklin County's Cable Channel 12 with no less than the support that Cable Channel 12 receives currently from JetBroadband VA, LLC including both financial support and a facilities lease including electrical service.

**WHEREAS**, the Franchise Authority believes that it is in the best interest of the community to approve the Application and the assignment of the Franchise and the System to Shentel, as described in the Application; and

**NOW, THEREFORE, BE IT RESOLVED BY THE FRANCHISE AUTHORITY AS FOLLOWS:**

**SECTION 1.** The Franchise Authority hereby approves the Application and consents to the assignment of the Franchise and the System to Shentel, all in accordance with the terms of the Franchise and applicable law and Shentel shall comply with the terms and conditions of the Franchise.

**SECTION 2.** The Franchise Authority confirms that (a) the Franchise was properly granted or assigned to Franchisee and is in full force and effect, (b) the Franchise represents the entire understanding of the parties and the Franchisee has no obligations to the Franchise Authority other than those specifically stated in the Franchise, (c) the Franchisee is materially in compliance with the provisions of the Franchise and applicable law, and (d) there exists no fact or circumstance known to the Franchise Authority which constitutes or which, with the passage of time or the giving of notice or both, would constitute a default or breach under the Franchise or would allow the Franchise Authority to cancel or terminate the rights of Franchisee thereunder.

**SECTION 3.** The Franchise Authority hereby consents to and approves the (a) pledge or grant of a security interest to, or the exercise of associated remedies by, any lender(s) in Shentel's assets, including, but not limited to, the Franchise, or of interests in Shentel, for purposes of securing any indebtedness, and (b) the assignment or transfer of Shentel's assets, including the Franchise, provided that such assignment or transfer is to an entity directly or indirectly controlling, controlled by or under common control with Shentel.

**SECTION 4.** The Franchise Authority's approval of the Application and its consent to the assignment of the Franchise to Shentel shall be effective immediately, and Shentel shall notify the Franchise Authority upon the closing of the Transaction (the "Closing Date").

**SECTION 5.** The Franchise Authority releases the Franchisee, effective upon the Closing Date, from all obligations and liabilities under the Franchise and applicable law that accrue on and after the Closing Date, provided that Shentel shall be responsible for any obligations and liabilities under the Franchise that accrue on and after the Closing Date.

**SECTION 6.** Shentel shall provide existing customers who purchase internet services from the Franchisee, a twelve month transition period from the Closing Date to change their domain name and/or email address.

**SECTION 7.** Shentel shall continue to support Rocky Mount and Franklin County's Cable Channel 12 with no less than the support that Cable Channel 12 receives currently from Shentel Cable Company including both financial support and a facilities lease including electrical service.

**SECTION 8.** This Resolution shall have the force of a continuing agreement with Franchisee and Shentel, and the Franchising Authority shall not revoke, amend or otherwise alter this Resolution without the consent of the Franchisee and Shentel.

**PASSED, ADOPTED AND APPROVED** this 14<sup>th</sup> day June 2010.

**TOWN OF ROCKY MOUNT, VA**

By: \_\_\_\_\_  
Name: Steven C. Angle  
Title: Mayor

ATTEST:

\_\_\_\_\_  
Patricia H. Keatts  
Town Clerk:

I, the undersigned, being the duly appointed, qualified and acting Town Clerk of the Town of Rocky Mount, Virginia, hereby certify that the foregoing Resolution is a true, correct and accurate copy as duly and lawfully passed and adopted by the Rocky Mount Town Council on the 14<sup>th</sup> day of June 2010.



RECEIVED

JUN - 4 2010

P.O. Box 459 • Edinburg, Virginia 22824-0459 • (540) 984-4141

June 2, 2010

Franklin County  
40 East Court Street  
Rocky Mount, VA 24151

Re: Cable Television Franchise Agreement; Letter Agreement dated May 25, 2007

Dear Sir:

Please accept this letter as confirmation that, as of the date of the closing of the acquisition of Jet Broadband VA, LLC's assets, Shentel intends to honor the requirements of the Letter Agreement dated May 25, 2007 between Franklin County and Jet Broadband (the "Letter Agreement"), which includes build-out requirements, a local office requirement, and a requirement for continued support of Channel 12. Shentel considers the Letter Agreement to be incorporated into and part of the existing Franchise, so no further documentation should be required. Please let me know if you disagree.

Shentel is excited to have the opportunity to serve Franklin County, and we look forward to working with you. If you have any questions or require additional information, please do not hesitate to contact me at (540) 984-5320.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann Flowers".

Ann Flowers  
General Counsel, Vice President

AF/sak



May 25, 2007

RE: Request to Transfer Cable Television Franchise from Cebridge Acquisition, LLC  
d/b/a Suddenlink to JetBroadband VA, LLC

To Whom It May Concern:

JetBroadband VA, LLC has expressed a desire to assume the responsibilities of the Franklin County Cable Television System Franchise Agreement as entered into on October 1, 2002 between the County of Franklin and Interlink Communication Partners, LLC, doing business as Charter Communications and as transferred to Cebridge Acquisition, LLC dba Suddenlink Communications on July 1, 2006. Such transfer to JetBroadband VA, LLC is anticipated to take effect on or about August 1, 2007.

In connection with this request to transfer and in response to our recent telephone conversation, should such franchise transfer be completed, JetBroadband agrees that within one (1) year of such transfer, JetBroadband will extend cable plant and provide cable service to the following areas within Franklin County:

- Edwardsville Road- 5.9 miles with the new cable plant passing 74 occupied homes
- Chestnut Forest Drive - 1.5 miles with the new cable plant passing 22 occupied homes
- Shady Acres - 0.8 miles with the new cable plant passing 13 occupied homes
- Wisteria Lane - 1,220 feet with the new cable plant passing 6 occupied homes
- Hardy Road - 2.1 miles to get to Lynville on the Lake, with the new cable plant passing 38 occupied homes
- Lynville on the Lake - 2.2 miles with the new cable plant passing 49 occupied homes

Based upon a ride out of the above areas, JetBroadband has determined that the number of homes stipulated in the six plant extensions listed above satisfy the franchise agreement in all cases.

Extending the cable plant along Cooper's Cove Road does not meet the franchise requirement in Section 5.1 of at least 15 homes per mile and it is currently uneconomical for JetBroadband to build out this area.

The two areas of Lake Shore Terrace (3.5 miles) and Windy Gap Village (3.5 miles) both meet the franchise requirement for home density, however both also involve adverse terrain. Since there are more homes per mile along these two extensions than along the Cooper's Cove Road extension, JetBroadband will survey the families living in these



areas, and if a mutually acceptable cost sharing arrangement can be agreed upon, JetBroadband will build out to these areas as well, as provided for in Section 5.2 of the franchise. JetBroadband agrees to complete such survey and offer a cost sharing arrangement to these areas within one (1) year of the successful completion of the franchise transfer.

JetBroadband further agrees to maintain for the duration of this franchise agreement a local office within the boundaries of Franklin County where customers may visit and speak to JetBroadband representatives about service issues as outlined in paragraph 9.1 of the franchise agreement and will maintain a Customer Service Call Center within Virginia with adequate staffing to achieve the requirements of paragraph 9.2.2 and 9.2.4.

JetBroadband further agrees to continue to support Franklin County's Cable Channel 12 with no less than the support that Cable Channel 12 receives currently from Suddenlink and will include both ~~technical support and facilities lease~~ ~~including site~~ ~~rent~~.

It is further agreed that paragraph 5.1 of the Cable Television System Franchise Agreement shall be interpreted as follows and such interpretation shall continue from the date of any such cable franchise transfer to JetBroadband.

Beginning with the second sentence paragraph 5.1 is interpreted as follows:

*The Franchisee shall extend its Cable System, after the initial rebuild, to all government offices, whether stand-alone or located within commercial buildings, and all future areas of the County upon reaching an average density of not less than 15 occupied dwelling units per linear roadway mile, with each dwelling unit with an accessible cable drop connection point no greater than 200 feet from the center-point or end of a road, street or highway to be included within such density determinations. All occupied multifamily dwelling units shall be included within the foregoing density calculations, with each distinct family dwelling unit therein being counted as a separate dwelling unit in these calculations. All homes meeting the maximum 200 foot cable drop distance from the center of the roadway and the roadway mileage between the new area to be built and the end of the nearest cable service shall be counted in the density calculations. Such extensions of the Cable System, and the offering of service to such new extension areas, shall be completed within six months of the date of notification by the County to the Franchisee of the area reaching the density requirements or within six months of the Franchisee on its own initiative discovering that the density requirements have been met. In the event that any area of the County exists where the foregoing Cable System extension requirements are not met, but where the average density of occupied dwelling units, as defined above, is not less than 10 such units per linear mile, then the Franchisee shall extend its Cable System to such area provided that at least 10*



*of such affected County residents per mile of cable extension sign a two year contract for a minimum of basic cable television service and pay for the first full year of service in advance; provided that following such contract execution and payment by the minimum-specified number of affected County residents, the Franchisee shall have no more than six months thereafter to provide cable service. The Franchisee shall have the right to petition the County for relief from the foregoing line extension requirements should it believe that compliance therewith would create a demonstrable economic hardship, and the County, after a public hearing on such petition during which evidence and testimony from the Franchisee and all interested members of the public shall be heard, shall issue a ruling on such petition within 90 days after its submission; absent such a timely ruling, the Franchisee's petition shall be deemed as granted. While the County may assist where possible, it shall be the responsibility of JetBroadband to seek out and locate new sub-division areas for placement of cable during the construction phase of such developments. JetBroadband further agrees they will be proactive in locating such sub-divisions and will make arrangements to have cable installed where appropriate for future use in said sub-divisions. The failure of JetBroadband or any previous franchisee to place cable in a sub-division while said sub-division is being built shall not be cause not to extend cable to an area. In any case, unless the provisions outline above concerning a right of Franchisee to petition the County for relief or the provisions of paragraph 5.2 concerning Adverse Terrain are invoked, the total costs of building cable plant in new and existing sub-divisions are the responsibility of JetBroadband or as otherwise detailed in paragraph 5.3 of the Franchise Agreement. Cable drops to individual homes from the cable plant shall not be counted in the mileage calculations for construction.*

It is further agreed that interpretations and agreements set forth in this letter shall be binding upon JetBroadband VA and any future franchisee for the duration of the current Cable Franchise Agreement as entered into on October 1, 2002 as amended or extended.

Both JetBroadband and Franklin County are looking forward to the offerings of high quality cable television services as well as additional ancillary service to the residents of Franklin County and to a mutually beneficial working relationship with each other.

David M. Baum  
President  
JetBroadband VA, LLC

Richard E. Huff, II  
County Administrator  
Franklin County, Virginia