

ORDINANCE No. 2017-20  
An Ordinance of the City of Carlsbad, New Mexico  
Granting a Franchise to TDS Broadband Service LLC  
for the Construction and Operation of a Cable System

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, NM

The City of Carlsbad, having determined that the financial, legal and technical ability of TDS Broadband Service LLC is reasonably sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, does hereby ordain as follows:

Section I  
Definition of Terms

1.1 Terms. For the purpose of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- a. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.
- b. "Basic Cable" is the tier of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.
- c. "Cable Act" means the Cable Communications Policy Act of 1984, as amended.
- d. "Cable Service" means (1) the one-way transmission to subscribers of video programming or other programming service, and (ii) subscriber interaction, if any, which is required for the selection of such Video Programming or any other lawful communication service.
- e. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communications equipment that is designed to provide Cable Service and other service to subscribers.
- f. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- g. "Franchise" shall mean the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is granted as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable

System for the purpose of offering Cable Service or other service to Subscribers.

- h. "Franchise Authority" means the City of Carlsbad, or the lawful successor, transferee, or assignee thereof.
- i. "Grantee" means TDS Broadband Service LLC or the lawful successor, transferee, or assignee thereof.
- j. "Gross Revenues" mean the monthly Cable Service revenues received by Grantee from Subscribers of the Cable System inclusive of franchise fees received from subscribers; provided, however, that such phrase shall not include (i) revenues received from any national advertising carried on the Cable system; (ii) any taxes on Cable Service which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.
- k. "Person" means an individual, partnership, association, joint stock company, trust corporation, or governmental entity.
- l. "Public Way" shall mean the surface of, and space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchise Authority in the Service Area which shall entitle the Franchise Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchise Authority within the Service Area for the purpose of installing, operating, repairing and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchise Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchise Authority and the Grantee to the use thereof for the purposes of installing or transmitting Grantee's Cable Service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.
- m. "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any addition thereto by annexation or other legal means.

- n. "Service Tier" means a category of Cable Service or other services, provided by Grantee and for which a separate charge is made by Grantee.
- o. "Subscriber" means a person or user of the Cable System who lawfully receives Cable Services or other service therefrom with Grantee's express permission.
- p. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## Section II Grant of Franchise

II.1 Grant. The City hereby grants to Grantee a non-exclusive Franchise which authorizes the Grantee to construct and operate a Cable System and offer Cable Service and other services in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.

II.2 Term. The Franchise granted pursuant to this Ordinance shall be for a term of ten (10) years from the effective date of the Franchise as set forth in Section 2.3, unless otherwise lawfully terminated in accordance with the terms of this Ordinance.

II.3 Acceptance; Effective Date. Grantee shall accept the Franchise granted pursuant hereto by signing this ordinance and filing same with the City Clerk or other appropriate official or agency of the Franchising Authority within sixty (60) days after the passage and final adoption of this Ordinance. Subject to the acceptance by Grantee, the effective date of this Ordinance shall be the sixtieth day after its passage and final adoption.

II.4 Consideration of Other Cable Franchises. In the event the Franchising Authority enters into another franchise, permit, license, authorization or other agreement ("Authorization") with any other person or entity other than Grantee to enter into the City's streets and public ways for the purpose of constructing or operating a Cable System or providing Cable Service, such Authorization shall not be on terms and conditions more favorable or less burdensome to such entity than those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

## Section III Standards of Service

III.1 Conditions of Street Occupancy. All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and

with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.

III.2 Restoration of Public Ways. If during the course of Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

III.3 Relocation at Request of Franchising Authority. Upon its receipt of reasonable advance notice, not to be less than five (5) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority; but, the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

III.4 Relocation at Request of Third Party. The Grantee shall, on the request of any person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.

III.5 Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth over-hanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. The Grantee shall reasonably compensate the Franchising Authority or property owner for any damages caused by such trimming, or shall, at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the System undertaken by Grantee. Such replacement shall satisfy any and all obligations Grantee may have to the Franchise Authority and the property owner pursuant to the terms of this Section.

III.6 Use of Grantee's Equipment by Franchising Authority. Subject to any applicable state or federal regulations or tariffs, the Franchising Authority may make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any Public Way; provided that (a) space is reasonably available and such use by the Franchising Authority does not interfere with a current or future use by the Grantee; (b) the Franchising Authority holds the Grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to, reasonable attorneys' fees and costs; (c) access is provided by Grantee only at specified demarcation points; and (d) such use is upon mutually agreeable terms and conditions; and, (e) at Grantee's sole discretion, the Franchising Authority may be required either to pay a reasonable rental fee or otherwise reasonably compensate Grantee for the use of such poles or conduits; provided, however, that Grantee agrees that such compensation or charge

shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the Service Area. "Public Purpose" as used herein is non-commercial municipal use such as fire, police, traffic, water, telephone, and/or signal systems, but not any Cable Service or other service in competition with Grantee.

**III.7 Safety Requirements.** Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulation. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.

**III.8 Aerial and Underground Construction.** In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, Grantee shall have the sole discretion to construct operate and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this Section 3.8 shall require Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this Section 3.8, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Ordinance, Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

**III.9 Required Extensions of Service.** The Cable System as constructed as of the date of the passage and final adoption of this Ordinance substantially complies with the material provisions hereof. Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least seven (7) Subscribers within 1320 cable bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition, or market development of the Cable System, or as provided for under Section 3.10 of this Ordinance.

**III.10 Subscriber Charges for Extensions of Service.** No Subscriber shall be refused service arbitrarily. However, for un-usual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than seven (7) Subscribers per 1320 cable-bearing strand feet of trunk or distribution cable, Cable Service or

other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and Subscribers in the area in which Cable Service may be expanded, Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of potential Subscribers per 1320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals seven (7) Subscribers. Potential Subscribers will bear the remainder of the construction and other costs on a prorata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

III.11 Service to Public Buildings. The Grantee shall provide without charge one (1) outlet of Basic Service to each of the Franchising Authority's office building(s), fire station(s), police station(s), and public school building(s) that are passed by its Cable System. The outlets of Basic Service shall not be used to distribute or sell Cable Services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this Section 3.11, the Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds one hundred fifty (150) cable feet, unless it is technically feasible and so long as it will not adversely affect the operation, financial condition, or market development of the Cable system to do so, or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet. In the event that additional outlets of Basic Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials. Upon request of Grantee, the building owner may also be required to pay the service fees associated with the provision of Basic Service and the additional outlets relating thereto.

III.12 Emergency Alert Capacity. Grantee shall provide an operating Emergency Alert System ("EAS") in accordance with and as required by the provisions of FCC Regulations 47 C.F.R. Part II, and as such provisions may from time to time be amended. Grantee shall test the EAS as required by federal law. In the event the EAS is not performing consistent with FCC requirements, Grantee shall make all necessary adjustment to the EAS and the EAS shall be retested.

III.13 Educational and Governmental Access Channels. Grantee, as of the Effective Date of this Franchise Agreement, provides one (1) channel for non-commercial educational and/or governmental programming ("EG Channel") in accordance with applicable law. Grantee has use of such channel capacity when it is not being used for the EG purpose designated.

#### Section IV Regulation by Franchise Authority

##### I.1 Franchise Fee.

A. Grantee shall pay to the Franchising Authority a franchise fee equal to four percent (4%) of Gross Revenues received by Grantee from the operation of the Cable System on an monthly basis; provided, however, that Grantee may credit against any such payments (i) any tax, fee, or assessment of any kind imposed by Franchising Authority or other governmental entity on a cable operator, or subscriber, or both, solely because of their status as such; (ii) any tax, fee, or assessment which is unduly discriminatory against cable operators or subscribers (including any such tax, fee, or assessment imposed, both on utilities and cable operators and their services), and (iii) any other special tax, assessment, or fee such as a business, occupation, and entertainment tax. The franchise fee payment shall be due and payable thirty (30) days after the close of each calendar month. Each payment shall be accompanied by a brief report from a representative of Grantee showing the basis for the computation. In no event, shall the franchise fee payments required to be paid by Grantee exceed 5 percent of Gross Revenues received by Grantee in any 12-month period.

B. Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be six (6) years from the date on which payment by the Company is due. Unless within six (6) years from and after said payment due date the City initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, such recovery shall be barred and the City shall be estopped from asserting any claims whatsoever against the Company relating to any such alleged deficiencies.

IV.1 Rates and Charges. The Franchising Authority may not regulate the rates for the provision of Cable Service and other services, including, but not limited to, ancillary charges relating thereto, except as authorized pursuant to federal and state law including, but not limited to, the Cable Act and FCC Rules and Regulations relating thereto together with any and all amendments of all of the foregoing. Subject to applicable law, from time to time, Grantee has the right to modify its rates and charges including, but not limited to, the implementation of additional charges and rates; provided, however, that Grantee shall give notice to the Franchising Authority of any such modifications or additional charges thirty (30) days prior to the effective date thereof.

IV.2 Renewal of Franchise. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act (as such existed as of the effective date of the Cable Act), unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify Grantee of its preliminary assessments regarding the identity of future cable-related community needs and interests, as well as, the past performance of Grantee under the then current Franchise term. The Franchising Authority further agrees that such a preliminary assessment shall be provided to the Grantee prior to the time that the four (4) month period referred to in Section 626 is considered to begin. Notwithstanding anything to the contrary set forth in this Section 4.3, the Grantee and Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and Grantee may agree to undertake and finalize

negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof. The Grantee and the Franchising Authority consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act. A reproduction of Section 626 of the Cable Act as such existed as of the effective date of the Cable Act is attached hereto as Schedule 1 and incorporated herein by this reference.

IV.3 Conditions of Sale. Except to the extent expressly required by federal or state law, if a renewal of Grantee's Franchise is denied and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at a fair market value, determined on the basis of the Cable System valued as a going concern.

Grantee and Franchising Authority agree that in the case of a lawful revocation of the franchise, at Grantee's request, which shall be made in its sole discretion, Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. The Franchising Authority further agrees that during such a period of time, it shall authorize the Grantee to continue to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, Grantee and Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that Grantee's continued operation of its Cable System during the six (6) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee. Notwithstanding anything to the contrary set forth in Section 4.4, neither Franchising Authority nor Grantee shall be required to violate federal or state law.

IV.4 Transfer of Franchise. Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an Affiliate, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for transfer in trust, by other hypothecation, or any assignment of any rights or interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

## Section V Compliance and Monitoring

V.1 Testing for Compliance. The Franchising Authority may perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving Grantee reasonable notice thereof, not to be less than two (2) business days, and providing a representative of Grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Grantee. In the event that such testing demonstrates that Grantee has substantially complied with such material



provisions hereof, the cost of such testing shall be borne by the Franchising Authority. Except in emergency circumstances, the Franchising Authority agrees that such testing shall be undertaken no more than two (2) times a year in the aggregate, and that the results thereof shall be made available to the Grantee upon Grantee's request.

V.2 Books and Records. The Grantee agrees that the Franchising Authority may review such of its books and records, during normal business hours and on a nondisruptive basis, as are reasonably necessary to monitor compliance with the terms hereof, or as otherwise required by law. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee to it as confidential, and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof.

## Section VI

### Insurance, Indemnification, and Bonds or Other Surety

VI.1 Insurance Requirements. Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Comprehensive General Liability Insurance in the amount of \$ 2,000,000 combined single limit or bodily injury, and property damage. Said insurance shall designate the Franchising Authority as an additional insured.

VI.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System, including, but not limited to, reasonable attorney's fees and costs.

VI.3 Bonds and other Surety. Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Franchising Authority acknowledges that the legal, financial, and technical qualifications of Grantee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. Grantee and Franchising Authority recognize that the costs associated with bonds and other surety may ultimately be borne by the subscribers in the form of increased rates for Cable Services. In order to minimize such costs, the Franchising Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefor. Initially, no bond or other surety will be required. In the event that one is required in the future, the Franchising Authority agrees to give Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in the Grantee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

## Section VII

## Enforcement and Termination of Franchise

VII.1 Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the alleged non-compliance.

VII.2 Grantee's Right to Cure or Respond. Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1 to (a) respond to the Franchising Authority contesting the assertion of noncompliance, or (b) to cure such default or, in the event that by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

VII.3 Public Hearing. In the event that Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within sixty (60) days after the Grantee is notified of the alleged default pursuant to Section 7.1, the Franchising Authority shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly scheduled meeting of the Franchising Authority which is scheduled at a time which is no less than five (5) business days therefrom. The Franchising Authority shall notify the Grantee of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

VII.4 Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after such meeting, determines that Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- a) Foreclose on all or any part of any security provided under this Franchise, if any, including without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchising Authority reasonably determines is necessary to remedy the default;
- b) Commence an action at law for monetary damages or seek other equitable relief; or
- c) In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or

The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the Franchising Authority to enforce prompt compliance.

VII.5 Acts of God. The Grantee shall not be held in default or non-compliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

## Section VIII

## Miscellaneous Provisions

VIII.1 Preemption. If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the Franchising Authority, the jurisdiction of the Franchising Authority shall cease and no longer exist.

VIII.2 Actions of Franchising Authority. In any action by the Franchising Authority or representative thereof, mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

VIII.3 Notice. Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Franchising Authority or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Carlsbad  
P. O. Box 1569  
Carlsbad, New Mexico 88220

The notices or responses to the Grantee shall be addressed as follows:

TDS Broadband Service LLC  
525 Junction Road  
Madison, Wisconsin 53717

ATTENTION: Legal Department

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

VIII.4 Descriptive Headings. The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

VIII.5 Severability. If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of common jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term, of the Franchise or any renewal or renewals thereof.

Passed and adopted this 12th day of September, 2017, by the following vote:

AYES: Anaya-Flores, Rodriguez, Doportto, Estrada, Carter, Shirley, Doss, Durham

NOES: None

ABSENT None

ATTEST:

City of Carlsbad

/s/ Annette Barrick

City Clerk

By: /s/ Mayor Janway

Mayor

ATTEST:

Assistant Secretary

By: President

President