

RESOLUTION NO. 3-18

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS, COLORADO, CONSENTING TO THE TRANSFER OF CONTROL OF THE CITY'S CABLE SYSTEM FRANCHISEE TO FBB HOLDINGS, LLC

WHEREAS, on January 23, 2007, the City of Colorado Springs, Colorado (the "City") adopted Resolution No. 15-07, granting to Falcon Broadband, Inc. ("Franchisee"), a franchise to own and operate a cable system in the City (the "Franchise"); and

WHEREAS, on September 23, 2008, the City adopted Resolution No. 167-08 approving the transfer of the Franchise with Franchisee to FPTC, LLC ("FPTC"), in accordance with an Asset Purchase and Contribution Agreement entered into between Falcon Broadband, Inc. and FPTC (the "Agreement"), to be effective upon the closing of that transaction; and

WHEREAS, the FPTC transaction was never consummated so that Franchisee has remained the cable operator of the Franchise; and

WHEREAS, FBB Holdings, LLC, ("FBB Holdings") has entered into a Stock Purchase Agreement with Randy De Young and Cynthia De Young, current owners of all of the outstanding stock of the Franchisee, pursuant to which FBB Holdings will acquire a majority of the stock of Franchisee (the "Transaction"); and

WHEREAS, this consummation of the Transaction will affect a change of control of Franchisee; and

WHEREAS, pursuant to Section XXVIII of the Franchise, City approval is required for the transfer of control of the Franchise from Franchisee to FBB Holdings; and

WHEREAS, the Transaction will not result in a conveyance of the Franchise, but will result in a change in the control of Franchisee, and FBB Holdings will be engaged in activities that affect the management and operation of the cable system; and

WHEREAS, Franchisee and FBB Holdings has provided the City a copy of the FCC Form 394 so that the City may review the Transaction (the "Transfer Application"); and

WHEREAS, the City requested access to additional information regarding the Transaction not contained within the Form 394 and its attachments, which the City maintains was necessary for the City to conduct its review of the Transaction; and

WHEREAS, the City obtained access to additional information on November 14, 2017; and

WHEREAS, FBB Holdings has represented to the City that Franchisee is, and will continue to be post-closing, financially, legally and technically qualified to maintain and operate the cable system; and

WHEREAS, FBB Holdings and Franchisee have represented to the City that post-closing, the breadth and variety of video programming services and the broad categories of

programming available on the cable system will remain at least substantially equivalent to that available before the Transaction; and

WHEREAS, Franchisee has agreed to comply with the Franchise, as it may be amended and/or renewed, and applicable law from and after the completion of the Transaction; and

WHEREAS, Franchisee and FBB Holdings agree that Franchisee will continue to be responsible for the obligations and liabilities of, and continue to have responsibility for all acts and omissions, known and unknown under, the Franchise and the City Code, for all purposes, unless waived, in whole or part, by the City; and

WHEREAS, the City has investigated both the status of the Franchise, the Franchisee's compliance therewith, and the technical, legal and financial ability of FBB Holdings to control Franchisee's compliance with the Franchise; and

WHEREAS, all parties reserve all their respective rights under federal law with respect to any renewal of the Franchise, and agree that the approval of the Transaction does not constitute a waiver of any potential claim by any party in connection with issues of compliance with Franchise obligations; and

WHEREAS, based upon the City's investigation, and representations made to the City by FBB Holdings and Franchisee, upon which the City is relying, the City is prepared to approve the Transaction, pursuant to the conditions described herein.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS, COLORADO:

Section 1. The City hereby consents to and approves the transfer of control of the Franchisee from Falcon Broadband, Inc. to FBB Holdings, LLC.

Section 2. The City confirms that the Franchise is currently in full force and effect.

Section 3. This Resolution approving the transfer of control of Franchisee is based in part upon the following representations and acknowledgments made by Franchisee and FBB Holdings to the City which have been relied upon by the City:

a. That all of the attachments to the FCC Form 394 provided to the City with Form 394 and subsequently during the transfer review process constitutes the entire agreement regarding the Transaction.

b. That Franchisee will maintain staffing levels necessary to meet all applicable local and/or federal codes and regulations, and all federal regulations regarding technical standards of cable systems.

- c. That Franchisee remains obligated to comply with all terms, conditions and obligations of the existing Franchise for the terms of such agreement.
- d. That from and after the consummation of the Transaction, FBB Holdings will not take any action inconsistent with the obligations contained in the Franchise after the effective date hereof, provided however that nothing herein shall be construed as a guarantee by FBB Holdings of Franchisee's compliance with the Franchise. Franchisee shall fully comply with all of the terms and conditions set forth in the Franchise.
- e. That FBB Holdings and Franchisee shall ensure that Franchisee continues to make its records pertaining to the Franchise, including financial records, available to the City as required by the Franchise, while such Franchise remains in effect.
- f. That no future intra-corporate transfers, mergers, or other changes of ownership or control, affecting Franchisee, will change the obligations or liability of Franchisee to the City with respect to any of the terms, conditions and obligations of the Franchise, unless prior approval is granted by the City in writing.
- g. That Franchisee will comply with all applicable laws regarding rates for cable services within the Franchise area.
- h. That consummation of the Transaction in and of itself will not cause an increase in cable rates, and FBB Holdings is not planning to increase rates based upon the amount paid in connection with the change of control of the system. However, nothing in this paragraph shall be construed as a waiver of Franchisee's notice obligations under the Franchise or of either party's rights under applicable rate regulation law.
- i. That in the event of any failure to comply with the terms, conditions,

representations and/or acknowledgments contained in this Resolution, or any material misrepresentations concerning the same, the City may enforce any damages or penalty provisions pursuant to the Franchise and exercise any other remedy available to it by law.

Section 4. By passage of this Resolution, the City makes no representations concerning whether any violations or non-compliance issues exist with respect to the Franchise. Nothing in this Resolution shall be construed by the Franchisee and FBB Holdings as precluding the City from addressing any prior acts of noncompliance by Franchisee, pursuant to the terms of the Franchise.

Section 5. This Resolution is conditioned upon approval of the Transaction in substantially the same form as described in the FCC Form 394 and related documents delivered to the City with the Form 394 filing, and in documents delivered in response to the City's requests for supplemental information. Should the Transaction require a new filing with federal government agencies for approval of the Transaction, this Resolution shall be voidable, at the sole option of the City. FBB Holdings and Franchisee shall provide written notice to the City of the closing of the Transaction, within fifteen (15) days of the Transaction being finalized.

Dated at Colorado Springs, Colorado this 9th day of January, 2018.



Council President

ATTEST:



Sarah B. Johnson, City Clerk

