

Re: Network, Services, Access, and Marketing Agreement (the “Agreement”) by and between the Rancho Santa Fe Association (“RSFA”) and Race Telecommunications, Inc. (“Race”)

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B. **Revenue Guaranty Payment.** If Race receives less than **\$35,000/month** in gross revenue from all sources in the community during the Revenue Guaranty Period (defined below), RSFA is obligated to pay Race the difference (so Race receives gross revenue of at least \$35,000/month). The **“Revenue Guaranty Period”** is the 24-month period commencing on the first day of the 7th month after the date Race first provides any customer in the community with any Service. (*Section 9.b*)

C. **Indemnity.** RSFA indemnifies Race for all claims and liabilities caused by the negligence or willful misconduct of RSFA’s agents employees or contractors. (*Section 19*)

III. **RSFA Rights.**

A. **RSFA Network Rights.** RSFA has the following rights with respect to the Network:

1. RSFA maintains ownership of the Network at all times. (*Section 1.d*)
2. Upon expiration of the Agreement, RSFA can purchase any of Race’s electronics and equipment at the current book value (net of depreciation). (*Section 2.b*)

B. **RSFA Services Rights.**

1. RSFA is entitled to approve the form of Service Contract used by Race to provide Services to the community and the form of access agreement that Races uses to provide other service providers with access to the Network. (*Sections 2.c and 3.b*)
2. RSFA is entitled to approve any changes to the standard rates specified in the Agreement, negotiated rates (for non-standard services), or rates charged to other service providers for use of the Network. (*Sections 2.c and 3.b*)
3. RSFA is entitled to receive the following from Race without charge (*Section 5*):
 - a) One complimentary account, providing dedicated high speed internet service, and dedicated voice service (but not video service).
 - b) Assistance in setting up a private RSFA intranet over dedicated fiber by configuring Race routers with proper virtual local area networks (VLANs).
 - c) Two video channels on Race’s IPTV system for exclusive use by RSFA. (RSFA is responsible for content and equipment to install the channels.)

C. **Other RSFA Rights.**

1. RSFA will receive 90% of all Network Access Fees (as defined below) received by Race, payable on the 20th day of each month. (*Section 9.a*)
2. RSFA is entitled to receive the Revenue Reports (see IV.C.5.) and, no more than once a year, to audit Race’s records to confirm the accuracy of the Revenue Reports. (*Section 9.c*)
3. RSFA is entitled to charge Race’s customers a monthly fee, in an amount determined by RSFA (the **“Network Recovery Fee”**), to recover RSFA’s investment and establish reserves for replenishment. Race will collect and remit to RSFA the Network Recovery Fee. (*Section 10*)

IV. Race Obligations

A. **Race Network Obligations.** Race has the following obligations under the Agreement with respect to the Network:

1. Connect the Network to the internet through two physically diverse pathways shown on Exhibit C. (*Section 2.a*)
2. Install any power conditioning equipment and all internet service provider (ISP) equipment necessary to provide Services (defined below) to the community. (*Section 2.a*)
3. Operate, maintain, repair, upgrade and otherwise manage the Network for the benefit of RSFA and the community. (*Section 2.b.i*)
4. Monitor aggregate in-service internet link utilization at 5 minute intervals and send RSFA a report by the 15th of each month containing the link utilization data for the previous month. If there are 3 days where the 5-minute link utilization average exceeds 75% of the link capacity at least once in a 24-hour period, Race must upgrade the link capacity at its own expense. (*Section 2.b.iii*)
5. Provide non-discriminatory access to the Network to other service providers (so long as they are not offering a service which is competitive with a Race), on commercially reasonable terms and fees ("**Network Access Fees**"). All terms for access by other service providers are subject to review and approval by RSFA. (*Section 2.c*)
6. Keep and maintain all relevant records related to the Network and providing Services and to provide such records to RSFA upon request or upon termination of the Agreement. (*Section 2.d*)
7. Construct (or cause a third party to construct) the lateral fiber connections between each residence and business that wishes to receive Services and the Network (each a "Lateral Connection"). All construction must comply with the Construction Rules in Exhibit D and both Race and all contractors must carry minimum insurance set forth in Exhibit J.) (*Sections 3.a*)

B. **Race Service Obligations.** Race has the following obligations with respect to Services:

1. Prior to providing Services or installing a Lateral Connection, Race must enter into a contract with the applicable customer, in a form that RSFA has approved and containing minimum standards for service quality (the "**Service Contract**"). (*Section 3.b*)
2. Offer the following to the community members:
 - a) Voice Service. Local and long-distance voice services using voice over internet protocol technology (VoIP), with 911 emergency services, reasonable packages for international calling, and a menu of features, including call forwarding, voice mail, caller ID, call blocking, and conferencing ability.
 - b) Video Service. Multi-channel high-definition video services (CATV) with capability of providing approximately 300 channels of standard definition and high definition channels over Internet Protocol (IP), known as IPTV, including a complete range of ancillary services for IPTV including set-top boxes and DVRs. Channel content will include local/national network channels, a complete line of sports channels, and subscription channels such as HBO and Showtime.

c) Internet Service. High speed internet service with minimum speeds of 1 GBPS. Business may elect for higher-capacity service.

d) Other. Any other service that RSFA and Race mutually agree shall be included within the definition of "Services" for purposes of the Agreement.

3. Race must meet or exceed industry standards for performance and customer care. Race must repair any damages it causes. (*Section 3.d*)

4. Race commits to maintain a level of community wide customer satisfaction that is reasonably acceptable to RSFA. (*Section 6*)

5. If any licenses or easements from community members are necessary for Lateral Connections or to install any equipment on customer property necessary for providing Services, Race is responsible for securing them (all of which will be assignable to RSFA after the Agreement expires). (*Section 11*)

C. Transition Obligations. If the Agreement is terminated, Race must:

1. Work cooperatively with RSFA to ensure seamless transition to another service provider without service interruption. (*Section 15*)

2. At RSFA's option, continue to perform Race's obligations to provide Services and maintain the Network per the terms of the Agreement until RSFA can transition to another service provider. (*Section 15*)

D. Other Race Obligations.

1. Race must comply with all applicable laws and manage any regulatory processes (including required filings) to insure Services and related facilities are in compliance and good standing at all times. (*Section 4*)

2. Race must establish and provide an on-site service organization capable of providing the required performance levels. (*Section 8*)

3. Race must maintain an "outside plant" service organization capable of completing 20 Lateral Connections a week until the community is 75% served and thereafter 10 Lateral Connections a week. (*Section 8*)

4. Race will maintain an RSFA-specific web site, through which community members can order services, report outages, provide feedback, etc. (*Section 8*)

5. Race will collect the Network Recovery Fee that RSFA decides to collect and remit the collected amount to RSFA monthly (by the 20th of each month). (*Section 10*)

6. Race is obligated to provide RSFA a monthly report on or before the 15th of each month (the "**Revenue Report**"), which includes the following (*Section 9.c*):

a) Gross Revenue received (with separate line items for the source of the Gross Revenue and if possible each Service provided)

b) Customers receiving each Service;

c) Service Providers paying Network Access Fees for access to the Network;

d) Network Access Fees collected by Race and the calculation of any RSFA Revenue Payment payable by Race to RSFA;

e) Gross Revenue Supplement payable by RSFA to Race and the calculation thereof (during the Revenue Guaranty Period); and

f) Network Recovery Fees collected by Race

E. Insurance and Indemnity.

1. Race is obligated to carry insurance meeting minimum standards in Exhibit J. (*Section 18*).

2. Race is obligated to indemnify RSFA for all claims and liabilities caused by the negligence or willful misconduct of Race's agents employees or contractors. Race also indemnifies RSFA for all claims and liabilities arising from Race's use of the Network and CO and for any third party claims arising out of breach or default by Race in the performance of its obligations under the Agreement. (*Section 19*)

V. Race Rights.

A. Race Fees. Race can charge its customers the following fees:

1. Installation of Lateral Connections (*Section 3.b*): No more than \$6.25 per linear foot of conduit installed (equitably reduced if there is existing conduit or trenching).

2. Installation Fees for Services (*Section 3.b*): No more than:

a) \$250 in connection with a 1 year Service Contract

b) \$150 in connection with a 2-year Service Contract

c) \$0 in connection with a 3-year or more Service

3. Service Fees (*Sections 3.b and 3.c; Exhibit E*): In general, Race must offer pricing for the Services that is at least 10% below what is charged for comparable services in the surrounding communities. The initial approved rates are as follows:

a) Voice Services: \$10 per month per line for Customers using Race Internet Services(including unlimited calling in the Continental US).

b) Video Services: \$98.00 per month for approximately 300 channels.

c) Internet Services: \$70.00 per month for residential 1 GBPS service; \$200 per month for business 1 GBPS service. Higher-capacity Service can be provided at negotiated rates (subject to RSFA approval).

B. Right of First Refusal for New Services. RSFA has the first chance to provide a new or emerging service (not then being provided by Race) to the community. If RSFA wants a new or emerging service for the community, RSFA must first ask RSFA to provide it. If RSFA does not elect to provide the new service, or fails to provide an implementation plan within 6 months after it agreed to provide the new service, or RSFA and Race are unable to agree upon the implementation plan, RSFA may arrange for another service provider to provide the new service. (*Section 7*)

C. **Revenue Guaranty.** Race is guaranteed revenue of at least \$35,000/month during the 24-month Revenue Guaranty Period. (Section 9.b.) See II.B.

VI. **RSFA Advisory Board.**

A. **Formation/Composition.** Race and RSFA will establish an advisory board with 1 representative from Race, 3 representatives from RSFA (consisting of 2 staff members and 1 director), and 1 community member (the “**Advisory Board**”), with 3 members of the Advisory Board constituting a quorum and the vote of 3 members required for action. (Section 12)

B. **Obligations.** The Advisory Board will:

1. Meet quarterly and mutually agreed upon appropriate rules and procedures to govern the Advisory Board.
2. Operate as a platform for cooperation, review, consultation and recommendations in connection with the Network, Services, and Customer satisfaction
3. Develop and implement regular customary satisfaction surveys to measure overall satisfaction of Race customers. (Section 6)
4. Establish minimum target scores as the benchmark upon which Race’s performance will be measured. Two periods of declining performance will trigger a dispute resolution procedure. (Section 6)
5. Attempt to resolve controversies or disputes under the Agreement which do not rise to the level of Material Defaults.

VII. **Default and Remedies.**

A. **Material Breaches.** A “**Material Breach**” is a breaches by Race or RSFA of their specific obligations under the Agreement. (Section 14.a) If a Material Breach occurs:

1. Either RSFA or Race may terminate the Agreement if a Material Breach is not cured within 30 days after written notice (the cure period may be extended or shortened based on the circumstances). (Section 14.b.i)
2. RSFA may seek injunctive relief or specific performance by Race of its obligations under the Agreement. (Section 14.c)
3. If the parties dispute whether a Material Breach has occurred or are unable to agree upon the appropriate remedy, the dispute will be submitted to binding Arbitration. (Exhibit G, Section 2)

B. **Other Controversies or disputes.** If a controversy arises that is not a Material Breach (such as community dissatisfaction or declining survey results):

1. The parties will attempt to resolve such controversy or dispute by submitting it to the RSFA Advisory Board for up to 90 days for resolution.
2. If the RSFA Advisory Board is unable to reach a resolution, the parties will submit the controversy to the President of Race and RSFA senior management.

3. If the President of Race and RSFA senior management representatives are unable to resolve such controversy or dispute within 30 days, RSFA may terminate the Agreement.

C. Other Termination Rights.

1. RSFA or Race may terminate if the other party declares bankruptcy.

2. RSFA may terminate if Race loses any necessary license or is unable to perform under the Agreement due to any rules or regulations of the FCC or other governmental authority.

VIII. Other Significant Provisions.

A. Assignment. (Section 17)

1. Race generally is not allowed to assign this agreement to a third party without RSFA's consent, which will not be unreasonably withheld for a qualified service provider.

2. Race may, without RSFA's consent, but with prior notice, transfer the Agreement to a service provider purchasing all or substantially all of Race's assets or stock, provided, that, the service provider is qualified to assume Race's obligations.

3. If Race has transferred the Agreement per VIII.A.2. above, but RSFA reasonably believes that the successor service provider is not qualified, RSFA may terminate the Agreement and purchase Race's business serving the community at fair business value, as determined in accordance with the procedures set forth in Exhibit H.

B. Marketing.

1. Services provided by Race to the community will be branded as "RSF Connect" and, where appropriate "Power by Race." RSFA may not market any other service provider to the community (except for new services that Race did not elect to provide).

2. RSFA and Race will market the Network and Services to the community per an initial mutually acceptable marketing plan. Race is obligated to update the plan at least once a year and provide marketing materials to RSFA at no charge.

3. No public announcements or press release may be made without written approval.