

RESOLUTION NO. 2009-274

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CHULA VISTA DIRECTING STAFF TO COMMENCE
TERMINATION OF THE NEXHORIZON FRANCHISE

WHEREAS, NexHorizon has failed to meet certain material provisions of the Franchise Agreement, and after reasonable attempts to cure such provisions staff has executed the notice required to consider possible termination of the Franchise Agreement; and

WHEREAS, on or about August 18, 2009, staff provided NexHorizon with a detailed list of the material provisions within the franchise agreement that NexHorizon has failed to comply; and

WHEREAS, staff has worked diligently with NexHorizon and has provided it with every reasonable opportunity to satisfy its obligations under the franchise agreement prior to the public hearing; and

WHEREAS, NexHorizon has not cured its failure to comply with certain material provisions of the franchise agreement; and

WHEREAS, the City has not received Franchise Fee and Utility User's Tax payments for the current fiscal year and the total payments are estimated to be approximately \$60,000; and

WHEREAS, additionally, staff has invested resources in the development and bid implementation process for two (2) 20a utility under grounding projects; and

WHEREAS, these costs for these projects are recoverable through an allocation pursuant to the Public Utilities Commission and funded by local ratepayers; and

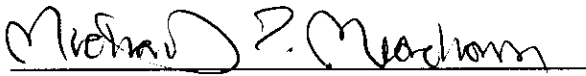
WHEREAS, the projects represent a value to the citizens of Chula Vista and to the extent the projects are not completed, costs increase or are duplicated by failure of the franchise to meet the obligations in a timely fashion, the City would either absorb those costs or the project would not be completed and the community would not receive the benefit of their investment; and

WHEREAS, the City has complied with Section 3.c. of the Franchise Agreement, regarding termination of the agreement.

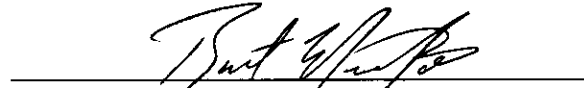
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chula Vista that City staff is directed to commence termination of the Franchise Agreement between the City of Chula Vista and NexHorizon Communications Inc. for failure to comply with material provisions of the Franchise Agreement.

Presented by

Approved as to form by



Michael T. Meacham
Director of Conservation and
Environmental Services



Bart C. Miesfeld
City Attorney

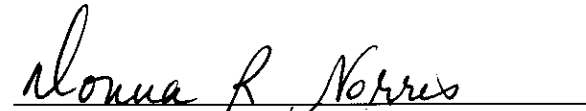
PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 17th day of November 2009 by the following vote:

AYES:	Councilmembers:	Bensoussan, Castaneda, Ramirez, Thompson and Cox
NAYS:	Councilmembers:	None
ABSENT:	Councilmembers:	None



Cheryl Cox, Mayor

ATTEST:



Donna R. Norris, CMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)
CITY OF CHULA VISTA)

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Resolution No. 2009-274 was duly passed, approved, and adopted by the City Council at a regular meeting of the Chula Vista City Council held on the 17th day of November 2009.

Executed this 17th day of November 2009.



Donna R. Norris, CMC, City Clerk