

RESOLUTION NO. 02-06-72

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING THE CHANGE OF CONTROL OF THE CABLE TELEVISION FRANCHISE, FROM AT&T CORP. TO AT&T COMCAST CORPORATION AND APPROVING THE TRANSFER OF THE FRANCHISE FROM AT&T CORP.'S SUBSIDIARY, TCI CABLEVISION OF FLORIDA, INC., TO ANOTHER AT&T CORP. SUBSIDIARY, TCI CABLEVISION OF GEORGIA, INC., (PROVIDING SERVICES LOCALLY AS AT&T BROADBAND), PROVIDING FOR CERTAIN CONDITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on September 26, 2000, the City Council of Marathon, Florida ("Council"), adopted Ordinance No. 00-00-09 of the City of Marathon, Florida (hereinafter referred to as the "Ordinance"), and provided for the issuance and regulation of cable franchises for, and the installation, construction and operation of Cable Systems within the City; and

WHEREAS, on May 22, 2001, pursuant to Resolution No. 01-05-28, the City of Marathon, Florida ("City"), entered into a Franchise Agreement with TCI Cablevision of Florida, Inc. ("Franchise Agreement"), providing services locally as AT&T Broadband, and its ultimate parent corporation being AT&T Corp. ("AT&T").

WHEREAS, AT&T maintains that instead of entering into a Franchise Agreement between the City and its TCI Cablevision of Florida Inc., subsidiary, it meant to enter into a Franchise Agreement between the City and a different subsidiary, TCI Cablevision of Georgia, Inc., another wholly-owned subsidiary of AT&T (hereinafter "TCI" or "Franchisee"); and

WHEREAS, AT&T has requested the City's consent to transfer the Franchise from TCI Cablevision of Florida, Inc., to TCI Cablevision of Georgia, Inc.; and

WHEREAS, AT&T intends to merge with Comcast Corporation ("Comcast") to create a new company to be known as AT&T Comcast Corporation ("AT&T Comcast") pursuant to the terms of an Agreement and Plan of Merger dated December 19, 2001 by and among AT&T Corp., AT&T Broadband Corp., Comcast Corporation and certain of their respective affiliates, and a Separation

and Distribution Agreement dated December 19, 2001 by and between AT&T Corp. and AT&T Broadband Corp. (the "Merger"); and

WHEREAS, AT&T and Comcast have requested the City's consent to the Merger in accordance with the requirements of the Franchise Agreement and have filed an FCC Form 394 ("Change of Control Application") with the City requesting such consent to the Merger and to the change of control of the Franchisee from AT&T to AT&T Comcast Corporation ("Transfer"); and

WHEREAS, in accordance with applicable law and Section 21 and 22 of the Franchise Agreement, the City has reviewed the Change of Control Application and determined that the Merger will not adversely affect the public interest; and

WHEREAS, prior to the Merger, pursuant to an internal corporate restructuring, the Franchise or indirect ownership of the Franchisee may be transferred through one or more internal transfers or mergers to another direct or indirect subsidiary of AT&T, or Franchisee may elect as permitted by law to convert or reorganize its legal form to a limited liability company (together with the Merger, hereinafter referred to collectively as the "Transactions"); and

WHEREAS, following the Transactions, the Franchisee will be controlled by AT&T Comcast Corporation but Franchisee will continue to operate the System and continue to hold and be responsible for performance of the Franchise; and

WHEREAS, the City has required the written acknowledgment from Franchisee of the terms and conditions of this Resolution as a condition precedent to the adoption of this Resolution; and

WHEREAS, based upon the representations of the Franchisee, AT&T and Comcast, and the recommendations of City staff, the City Council of the City of Marathon, Florida finds that it is in the best interests of the City to consent to the change of control of the Franchisee from AT&T Corp. to AT&T Comcast Corporation;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

**Section 1.** The above recitals are true and correct and are incorporated herein by this reference.

**Section 2.** The City Council of Marathon, Florida hereby consents to the Transfer of the Franchise Agreement from TCI Cablevision of Florida, Inc., to TCI Cablevision of Georgia, Inc., providing services locally as AT&T Broadband. Effective the date of this Resolution, TCI Cablevision of Georgia, Inc., shall be the Franchisee in the Franchise Agreement granted pursuant to Resolution No.

01-05-28.

**Section 3.** The City Council of Marathon, Florida hereby consents to the change of control from AT&T Corp. to AT&T Comcast Corporation as the ultimate parent corporation of the Franchisee. This Resolution is conditioned upon the closing of the Merger in substantially the same form as the Transactions described in the Change of Control Application no later than March 31, 2003. In the event that this condition is not met, the consent granted herein shall be voidable at the sole option of the City.

**Section 4.** The City's consent herein does not constitute and shall not be construed to constitute a waiver of any of the City's rights under its Franchise Agreement or other applicable law. The City hereby reserves any rights it may have under the Franchise Agreement and applicable law and the City's failure to enforce or to compel compliance with any provision of the Franchise Agreement or applicable law shall not constitute a waiver of such provision or of Franchisee's non-compliance.

**Section 5.** The City hereby consents to and approves the assignment, mortgage, pledge, or other encumbrance, if any, of the Franchise, the System, or assets relating thereto, as collateral for a loan.

**Section 6.** The City's consent is subject to the following conditions. Failure of the Franchisee or of AT&T Comcast to satisfy their respective conditions shall render the consent granted herein void ab initio and the City's consent will be deemed to have been denied as of the date of this Resolution.

- a. Written acceptance by the Franchisee, within thirty (30) days of adopting this Resolution, that it is in agreement with all the terms of this Resolution and will comply with all requirements of this Resolution, all lawful and applicable requirements of the Franchise, and applicable law.
- b. Written agreement by AT&T Comcast Corporation within thirty (30) days of adopting this Resolution, that it will use its best efforts to ensure that the Franchisee complies with the terms of the Franchise, applicable state law and the City's Code, including the Cable Ordinance, and that the Franchisee effects changes, as promptly as practicable, in the operation of the system, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing.
- c. Franchisee acknowledges that Section 10 of the Franchise Agreement entered into May 22, 2001 is in full force and effect and that Franchisee must comply with this Section.

d. Franchisee acknowledges that the Enforcement Remedies contained in Section 25 of the Franchise Agreement are in full force and effect for Franchisee's failure to offer services required by subsection 6(c) above or for its failure to comply with any other provision of this Resolution, Cable Ordinance, or the Franchise Agreement. This remedy is in addition to any other remedies the City may have under the Franchise or applicable law.

e. Within the 90 day period following the completion of the merger between Comcast and AT&T Broadband, Franchisee will commence good faith negotiations with the City with respect to the terms of a franchise renewal and will make every effort to reach agreement on the terms of a renewal within 90 days of commencement of such negotiations. Upon the completion of the merger, Franchisee intends, pursuant to its franchise renewal, to respond to cable-related community needs consistent with the Cable Act, including an upgrade of the system consistent with similarly situated communities in South Florida.

**Section 7.** This Resolution shall have the force of a continuing agreement with Franchisee and AT&T Comcast, and neither the City nor the Franchisee shall amend or otherwise alter this Resolution without the written consent of the other party.

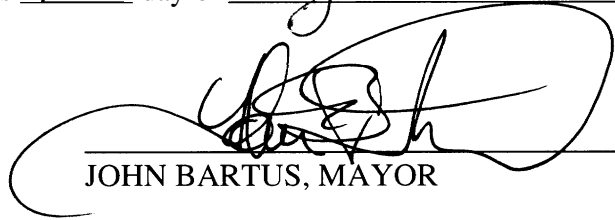
**Section 8.** If any clause, section, or part of this Resolution shall be held by any Court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part shall be considered as eliminated and in no way affecting the validity of the other provisions of this Resolution.

**Section 9.** All Resolutions or parts of Resolution in conflict herewith are hereby repealed to the extent of such conflicts.

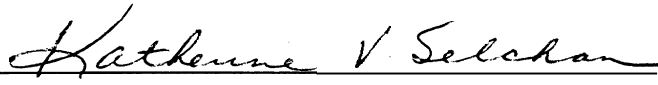
**Section 10.** The City Manager and City Attorney are authorized to make minor revisions to this Resolution, with approval of the Franchisee, if they determine it is in the best interest of the City to do so.

**Section 11.** This Resolution shall take effect immediately upon its adoption by the City Council of the City of Marathon, Florida.

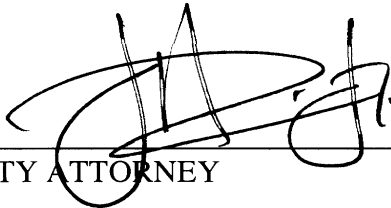
PASSED AND ADOPTED this 11th day of June, 2002.

  
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JOHN BARTUS, MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY

  
\_\_\_\_\_  
CITY ATTORNEY



*Kathy - Amy*  
**AT&T Broadband**

Florida Market

2501 SW 145<sup>th</sup> Avenue  
Suite 200  
Miramar, Florida 33027

July 1, 2002

VIA FEDERAL EXPRESS

Mr. Craig Wrathell  
City Manager  
City of Marathon  
10045-55 Overseas Highway  
Marathon, FL 33050

Dear Mr. Wrathell:

Enclosed please find the Certificates of Acknowledgement from TCI Cablevision of Georgia, Inc agreeing to the terms of Resolution 02-06-27 and from AT&T Comcast Corporation agreeing to use its best efforts to ensure that the Franchisee will comply with the lawful and applicable terms of the franchise.

Thanks you for your assistance in helping this Resolution pass.

Should you have any questions, please don't hesitate to contact me at 954-534-7466.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael E. Tanck", is written over a horizontal line.

Michael E. Tanck  
Director of Franchising and Government Affairs

cc: Gary Resnick, Esq.

JUL - 2

CERTIFICATE OF ACKNOWLEDGEMENT

TCI Cablevision of Georgia, Inc. ("Franchisee?") hereby agrees to the terms and conditions of Resolution No.02-06-72 ("the Resolution") adopted by the City of Marathon, Florida ("the City") on June 11, 2002 approving the change of control of the Franchisee from AT&T Corp. to AT&T Comcast Corporation and agrees that it will comply with all requirements of the Resolution, all lawful and applicable requirements of the franchise agreement between the Franchisee and the City dated May 22, 2001 ("Franchise Agreement"), Ordinance No.00-09-09 ( the "Ordinance") and applicable law.

IN WITNESS WHEREOF, this Certificate of Acknowledgement is executed as of the date set forth below.

TCI CABLEVISION OF GEORGIA, INC.

By: Allen Filipiak

Title: Senior V. ce President

Date: 6/26/02

**CERTIFICATE OF ACKNOWLEDGEMENT**

Pursuant to the Resolution No.02-06-72 adopted by the City of Marathon, Florida on June 11,2002 approving the change of control of the Franchisee from AT&T Corp. to AT&T Comcast Corporation, AT&T Comcast Corporation agrees that it will use its best efforts to ensure that the Franchisee complies with the lawful and applicable terms of the Franchise Agreement, applicable state law and the Ordinance and that the Franchisee effects changes as promptly as practicable in the operation of the cable television system, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing.

This Certificate of Acknowledgement can be signed in counterparts.

**IN WITNESS WHEREOF**, this Certificate of Acknowledgement is executed as of the date set forth below.

**AT&T COMCAST CORPORATION**

By: *Henry Wray*

Title: *Executive Vice President & CO-Secretary*

Date: *June 27, 2002*