

RESOLUTION NO. 01-05-28

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, PURSUANT TO ITS CABLE ORDINANCE APPROVING A FRANCHISE WITH TCI CABLEVISION OF FLORIDA, INC., (PROVIDING SERVICES LOCALLY AS AT&T BROADBAND) A FLORIDA CORPORATION, TO OWN, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to the Communications Act of 1934, as amended, 47 U.S.C. 521 et seq., the City of Marathon, (the "City") may grant or renew a franchise to construct, operate and maintain a cable system; and

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, AT&T Broadband ("AT&T") desires to obtain a franchise to construct, install, maintain, and operate a cable system in the City; and

WHEREAS, the construction, installation, maintenance, and operation of such a System involves the use and occupation of the streets of the City, over which the City exercises governmental control; and

WHEREAS, the City Council has evaluated AT&T's application in light of the requirements of federal and state law and the Ordinance, and the City Council has conducted a public hearing concerning AT&T's request and application; and

WHEREAS, pursuant to Chapter 166, Florida Statutes, the City has conducted a duly noticed public hearing at which it considered the economic impact upon private property within

the franchise area, the public need for such franchise, the capacity of the public rights-of-way to accommodate the cable system, the present and future use of the public rights-of-way to be used by the cable system, the potential disruption to existing users of the public rights-of-way to be used by the cable system and the resultant inconvenience that may occur to the public, the financial ability of AT&T to perform, and other matters that the City considers to be relevant to the public interest; and

WHEREAS, the City has relied on AT&T's representations and the City has considered all information presented to it by AT&T and the public; and

WHEREAS, based on said representations and information, the City has determined that a grant to AT&T of a nonexclusive franchise to construct, install, maintain and operate a cable system in the City, subject to the terms and conditions set forth in the Franchise Agreement and in the Ordinance, are consistent with the public interest.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, AS FOLLOWS:

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

Section 2. Agreement. The Franchise Agreement between TCI Cablevision of Florida, Inc. and the City (the "Franchise Agreement"), a copy of which is attached as Exhibit "A," is approved, and the Mayor is authorized to execute the Agreement subject to the approval as to legal form and sufficiency by the City Attorney.

Section 3. That the City Manager and City Attorney are authorized to make minor revisions to such Franchise Agreement as are deemed necessary and proper for the best interests

of the City.

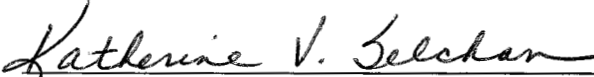
Section 4. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 22nd day of May, 2001.




ROBERT MILLER, MAYOR

ATTEST:



Katherine V. Selchan
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:



CITY ATTORNEY

CABLE FRANCHISE AGREEMENT

Between

MARATHON, FLORIDA

And

TCI CABLEVISION OF FLORIDA, INC.

THIS FRANCHISE AGREEMENT, effective this 22ND day of MAY, 2001, is by and between Marathon, Florida, a Florida municipal corporation existing under the laws of the state of Florida ("the City") and TCI Cablevision of Florida, Inc., doing business locally as AT&T Broadband ("AT&T").

WITNESSETH:

NOW, THEREFORE, in consideration of the City's grant to AT&T of a nonexclusive franchise to own, construct, install, maintain and operate a Cable System within the City, and to use and occupy the streets of the City for that purpose, and in consideration of AT&T's promise to provide cable service to residents of the City pursuant to the Ordinance and under the terms and conditions set forth herein, and in consideration of the promises and undertakings herein,

THE PARTIES AGREE AS FOLLOWS:

Section 1. Definitions.

Except as otherwise provided herein, the definitions in Section 02 of Ordinance No. 00-09-09 of the City of Marathon, Florida, shall govern this Franchise Agreement. In addition, the following definitions shall apply:

A. Ordinance shall mean Ordinance No. 00-09-09 of the City of Marathon, Florida, as amended and as said Ordinance may hereinafter be amended.

B. Franchisee or AT&T shall mean TCI Cablevision of Florida, Inc., a Florida corporation, and its lawful and permitted successors, assigns and transferees pursuant to Sections 30 and 31 of this Agreement and Ordinance No. 00-09-09 of the City of Marathon, Florida.

C. Franchise Area shall mean the entire area within the legal boundaries of the City, and such other areas as may hereinafter be annexed or incorporated by the City during the term of the Franchise.

D. Notice to the cable operator shall be deemed effective upon receipt. Notice to the City shall be effective upon receipt by the City Manager.

E. Gross Revenues on which franchise fee payments to the City are calculated shall be defined as provided for in Section 02 Q. of Ordinance No. 00-09-09.

Section 2. Grant of Franchise.

A. Subject to the terms of this Franchise Agreement and the Ordinance, the City hereby grants Franchisee a franchise for the right and privilege to own, construct, install, maintain and operate a cable system within the Franchise Area.

B. Unless otherwise authorized by law, any franchise granted pursuant to this Franchise Agreement is solely for the provision of cable service. To the extent required by applicable law, Franchisee shall obtain authorization from the City for the privilege of providing other telecommunications services including, but not limited to, telephone service.

C. No service agreement entered into by Franchisee after the effective date of this Agreement shall set forth as its term "for the length of its franchise with the City of Marathon and any renewals thereof." As a condition of this Franchise, the Franchisee may not require an exclusive service agreement with any multi-dwelling unit subscriber(s). Failure to comply with this Subsection shall be considered a material breach of this Franchise Agreement.

D. Within thirty (30) days of the approval by the City of this Franchise Agreement, Franchisee shall pay to the City the amount of seven thousand five hundred dollars (\$7,500).

Section 3. Term of Franchise.

This Franchise shall expire on December 31, 2004, unless otherwise sooner terminated or otherwise extended in accordance with the terms of this Franchise Agreement. The Franchise shall commence upon the date that the Resolution approving this Franchise becomes effective, provided the Franchisee has given the City the written acceptance required by Section 27 hereof and any and all payments due City. This Franchise Agreement is subject to all other requirements and conditions set forth in this Franchise Agreement and in the Ordinance of the City for a grant of a franchise to become effective.

Section 4. Franchise Subject to Communications Act, State Law and Ordinance.

A. This Franchise Agreement is subject to and shall be governed by all terms, conditions and provisions of the Communications Act, any amendments thereto, and any other applicable provision of federal or state law, existing or hereafter adopted.

B. This Franchise Agreement is subject to and shall be governed by all terms, conditions and provisions of the Ordinance of the City, in addition to the terms, conditions and provisions set forth in this Franchise Agreement, existing or hereafter adopted.

C. Both the City and the Franchisee reserve all rights either of them may have under Federal or State law with respect to the enforceability of any provision contained in this Franchise or Ordinance No. 00-09-09.

Section 5. Franchisee Subject To Other Laws, Police Power.

A. Franchisee is subject to and agrees to comply with all applicable local, City, state and federal laws, ordinances, rules, regulations and orders, existing or hereafter adopted.

B. Franchisee shall at all times be subject to all lawful exercise of the police power of the City, and this Agreement is not intended to limit or enlarge the City's exercise of such power in any way.

Section 6. Insurance.

A. Franchisee shall obtain and maintain insurance of the types and minimum amounts required in the Ordinance in such a manner as to comply with each and every requirement of that Section.

B. The Franchisee shall provide proof to the City of compliance with this Section no later than sixty (60) days from the date of the Council Resolution approving the grant of the Franchise. Should Franchisee fail to provide the City with proof of insurance within the prescribed time period Franchisee shall pay to the City Five Hundred Dollars (\$500.00) per day as liquidated damages for each day or part thereof such violation continues.

Section 7. Indemnification of the City.

Franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its elected or appointed officials, employees, committees and boards, against any and all claims, suits, costs, losses, damages, expenditures causes of action, proceedings, judgments for equitable relief, and costs and expenses so as to comply with the Ordinance.

Section 8. Construction Bond.

Pursuant to the Ordinance, Franchisee shall, no later than thirty (30) days from the date of the Council Resolution approving the grant of the Franchise, furnish to the City a construction bond in the amount of Fifty Thousand Dollars (\$50,000.00) ("Bond"). Notwithstanding anything to the contrary, Franchisee shall be prohibited from commencing construction prior to receipt of said Bond by the City. The Bond shall be maintained for a period of twelve (12) months following termination or expiration of the Franchise.

Section 9. Use of Streets.

A. Franchisee agrees at all times to comply with and abide by all applicable provisions of the City Code.

B. All of Franchisee's cable system distribution facilities shall be installed and maintained underground to the extent required by the Ordinance.

C. When not underground, Franchisee shall utilize, with the owner's permission, existing conduits, poles, or other facilities whenever technically and economically feasible. The Franchisee has the duty and the responsibility to obtain or establish the existence of an easement or dedication for its use. Copies of agreements for use of conduits or other facilities shall be filed with the City, pursuant to the Ordinance.

D. All of Franchisee's transmission lines, equipment, structures and other facilities shall be installed, located and maintained so as to cause minimum interference with the rights and convenience of property owners.

E. All safety practices required by applicable federal, state or local law or accepted industry practices and standards shall be used during construction, maintenance and repair of the cable system.

F. As required by the City, and upon receipt of written notice from the City, Franchisee shall remove, relocate, replace or modify at its own expense (except as otherwise required by law) its facilities within any public Street for the reasons set forth in the Ordinance.

G. Franchisee shall obtain any required permits and pay any required fees before commencing any construction on or otherwise disturbing any private property or public Streets as a result of its construction or operations. Franchisee shall, at its own expense, restore such property pursuant to the requirement of the Ordinance. If such restoration is not performed in a reasonable and satisfactory manner within the time frame required by the City, the City may, after prior written notice to Franchisee, cause the repairs to be made at Franchisee's expense pursuant to the Ordinance.

H. Where practicable, the City shall provide notice of any emergency requiring relocation of Franchisee's facilities. However, if the City is required to perform emergency Street work requiring relocation of Franchisee's facilities in the Streets, then the City shall be reimbursed for its reasonable costs in accordance with the Ordinance.

I. Franchisee shall not place facilities, equipment or fixtures where they will interfere with any other companies lawfully using the public rights-of-way serving the residents of the City. All such facilities, equipment or fixtures placed in any public Street or public right-of-way shall, to the best of the Franchisee's ability, be placed close to the line of the lot abutting on the public Street, in a manner so as not to interfere with use of the public Street.

Section 10. Minimum Facilities and Services.

A. Notwithstanding Section 21 of the Ordinance, the following shall control with regard to *Minimum Facilities and Services* and shall specifically supersede any and all provisions contained in Ordinance No. 00-09-09.

B. At all times after the Effective Date hereof, Franchisee's Cable System shall, at a minimum, provide capacity equivalent to at least fifty-five (55) activated downstream video channels. Franchisee's Cable System shall, at a minimum have the capability of carrying the same number of satellite and digital channels as carried as of the date of this Franchise. If Franchisee commences an upgrade of its Cable System in other areas of Monroe County, then Franchisee shall commence an upgrade of its Cable System serving the City within six-months of commencing the Monroe County upgrade, and Franchisee shall complete the upgrade of its Cable System in the City within one-year of completing the upgrade in other areas of the County.

C. Franchisee shall provide reasonable notification to all subscribers of the Cable System upgrade or rebuild as follows:

1. Franchisee agrees to notify all subscribers of the Cable System upgrade or rebuild through mailings to subscribers and reasonable notice over the Cable System.

2. Franchisee shall prepare a press release to announce the Cable System upgrade or rebuild and shall submit such press release for publication to a local newspaper of general circulation.

3. Franchisee shall notify all subscribers affected by any scheduled service outage associated with the system upgrade or rebuild by notifying the City Manager and using reasonable efforts to notify subscribers.

4. Franchisee agrees to credit each affected subscriber's account upon subscriber's request for any service interruption of more than four (4) hours on a pro rated basis.

D. Nothing in this Section shall prevent Franchisee from completing any upgrade or rebuild of the Cable System sooner than required in this Franchise Agreement.

E. Franchisee agrees to submit to the City a construction plan for any reconstruction and rebuild of its existing cable system, including maps, construction schedules, and Street work and repair plans. The construction plan shall also include a map of the entire City and shall clearly provide a schedule detailing the time of the availability of the upgraded or rebuilt cable system to subscribers in each and every area of the City served by the cable system.

F. Failure to comply with the requirements of this Section, including any delay beyond the dates specified therein, unless due to circumstances beyond the control of Franchisee and approved in advance by the Council, will constitute a material breach of the Franchise Agreement and may, in the City's discretion, result in imposition of liquidated damages pursuant to Section 25 hereof in addition to sanctions under the Ordinance, including without limitation, franchise revocation.

G. Franchisee agrees to provide cable service, without charge, to all existing government buildings, and to all government buildings of the City that may be constructed or opened within the City or annexed areas during the term of this Franchise Agreement, where Franchisee's plant is the closest franchised cable operator to the requesting location. Such

service shall include the basic cable service tier and all programming offered on the cable programming service tier including any additional programming added to those two levels of service, to the extent a separate charge is not associated with such additional programming. Where provision of cable service to a City building is not technically and economically feasible, Franchisee shall provide comparable service to such locations via alternate distribution system upon approval of the City Manager.

H. School Commitments.

1. Franchisee shall, at a minimum, provide the facilities and services required pursuant to the Ordinance in all public and private schools (grades K-12) located within two hundred (200) feet of the activated plant of its cable systems. Such connections will be made free of charge and as promptly as possible to all schools requesting such a connection. Upon request, Franchisee will provide, at cost, such a service connection to any other K-12 public school located within its franchise areas but beyond two hundred (200) feet of the activated plant of its cable systems. If any internal wiring installation is requested to serve additional outlets in any school, it will be provided at cost; provided, however, that such internal wiring will be provided without charge if Franchisee is able to coordinate with other comparable electrical wiring installation in cases of new construction or substantial rehabilitation of existing schools in Franchisee's Franchise Area.

2. Franchisee shall provide a service connection, including any requested internal wiring for additional outlets, to any public, private, primary, middle and secondary school (including but not limited to those defined by, and which receives funding pursuant to, Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. 421a *et seq.*, as amended) located within its Franchise Area. Such connections will be provided at cost and as promptly as possible to all such schools requesting such a connection.

3. Any public or private school connected pursuant to subparagraphs 1 or 2 may elect to install its own internal wiring (provided such wiring meets required technical specifications) and to bear the cost thereof.

4. To the extent available, Franchisee will provide a free education program listing to each connected school. Additional copies of such program listings will be provided, if requested by a school, at cost. Such educational program listing will identify and describe programming on Franchisee's system that is appropriate for use in the classroom and will provide suggested curriculum support ideas.

5. To the extent available, Franchisee will provide to each connected school materials for teachers that explain the educational applications of Franchisee's broadband cable systems and services. Additional copies of such materials will be provided, upon request, at cost.

6. Within one year after Franchisee or any parent, affiliate or subsidiary makes an on-line service for personal computers commercially available on the system, Franchisee will, upon request by the City or local school department, or any individual school,

public and private, or library, provide such schools and libraries within the City with, at minimum one free connection to such on-line service. At a minimum, such on-line service will provide access to the Internet. Upon request, each connected school and/or library will receive at minimum one free cable modem and free, unlimited access to the Franchisee's on-line service. Additional cable modems and operational support and services (for example, assisting connected schools in setting up and maintaining reliable Internet connections), will be provided to connected schools and libraries at a cost not to exceed Franchisee's actual cost, upon request. In addition, Franchisee will sponsor local workshops in each region to educate teachers about its on-line service and to provide connected schools with an opportunity for hands-on training.

7. Nothing herein shall preclude Franchisee from providing benefits to schools, which exceed those provided herein.

I. All video signals received for transmission that contain closed circuit captioning information for the hearing impaired shall in turn contain such information in the form received when transmitted by the cable operator to the subscribers of the Cable System.

J. Franchisee's system shall be capable of transmitting, and shall transmit to subscribers, any stereo signals and any other form of advanced television signals received and carried by the system in the form received.

K. Franchisee shall take affirmative, economically feasible steps to ensure maximum availability of the services and facilities of the system, including without limitation, all access channel services and facilities to handicapped persons, including hearing-impaired persons. Franchisee shall comply fully with all applicable laws concerning handicapped or disabled persons, and shall indemnify and hold the City harmless from any suit, claim, or demand against it for violation of such laws that arises from Franchisee's provision, or failure to provide, services in conformity with such laws.

L. Upon the request of the City, the Franchisee shall lease to the City, capacity equivalent to one analog video channel on terms and conditions no less favorable than those offered by Franchisee to any other third party. Any other lease of capacity shall be upon mutually agreeable terms and conditions.

M. The Village and Franchisee agree and acknowledge that this Section supersedes and controls any sections or requirements in Ordinance No. 00-09-09 to provide a State-of-the-Art Cable System.

Section 11. Access Channels and Facilities.

A. Access Channel Capacity. Pursuant to the Ordinance, Franchisee shall provide to the City one (1) Access Channel for the use of the City which the City may elect to use, in whole or in part on a shared basis, for video and audio services for educational and/or governmental access programming. The City agrees that the first Access Channel will be shared with programming from Monroe County. If this first Access Channel is used for at least eight hours per day with locally produced non-duplicative programming (bulletin board messages shall not

be considered such programming), Monday through Friday for six consecutive weeks, Franchisee shall provide at no charge to the City a second Access Channel for the City's use. In the event the programming on the first Access Channel falls below the amount specified above, then the City agrees that Franchisee shall have the right to deactivate the second Access Channel.

B. Franchisee hereby agrees that it will continue to provide capability for live cablecast of all City Council meetings from the location designated by the City. The location so designated, until further notice, is the Marathon Government Center, located at 2798 Overseas Highway, Marathon, Florida 33050. The Access Channel(s) provided by Franchisee shall be available for use for live, taped and/or character-generated programming twenty-four (24) hours per day within the Franchise Area.

1. Franchisee's Cable System shall be configured so that any government or educational programming delivered to the system from Marathon Government Center or otherwise required hereunder may be delivered downstream on the system on any of the activated downstream Access Channels required by this Section or upon request from the City from such other access facilities in Monroe County as may be provided by Franchisee that are technically and financially feasible.

2. Franchisee shall make available all necessary headend and system electronic distribution and distribution equipment so that any programming transmitted from Marathon Government Center and any subsequent upstream origination location designated by the City may be transmitted downstream to all subscribers on any of the downstream Access Channels provided pursuant to this Section hereof.

C. In addition to the foregoing provisions Franchisee agrees to provide the City with the technical ability to produce and transmit programming over the Access Channels directly from any studio facilities that Franchisee may maintain during the term of this agreement, provided that such studio facilities have such capabilities of transmitting programming downstream to the Franchise Area. At a minimum, Franchisee shall make available its existing studio facilities, equipment and personnel in Monroe and Miami-Dade counties for use by the City for production of taped programming subject to reasonable notice and availability.

D. Franchisee agrees that all access channels will be provided to subscribers on the Cable System as a part of basic service and that, if such information is supplied to Franchisee or known by Franchisee pursuant to its responsibilities under this Section hereof, Franchisee will publicize the channel location(s) of the access channel(s) as part of any ordinary channel listings it provides to subscribers.

E. Access Facilities, Equipment and Capital.

1. Within sixty (60) days of the Effective Date of the Franchise Agreement, Franchisee shall purchase and install for the City's use a Character Generator and shall provide the City with the capability of placing character generated messages on the City Access Channel. The Character Generator shall be the Chyron PC-CODI or an equivalent manufacturer and model at a cost between two thousand-five hundred dollars (\$2,500) and five thousand dollars (\$5,000).

In lieu of providing and installing a Character Generator, Franchisee may provide the City with a cash grant in the amount of five thousand dollars (\$5,000) for purchase and installation of such equipment.

2. To the extent allowed by law, Franchisee hereby agrees that the facilities, equipment, services, and all other support to be provided by Franchisee pursuant to this Section constitute capital costs which are required by the franchise to be incurred by Franchisee for public, educational, or governmental access facilities within the meaning of Section 622(g)(2)(C) of the Communications Act, 47 U.S.C. 542(g) (2) (C); that such grant does not constitute a franchise fee or tax within the meaning of Communications Act, state law, the Ordinance, or this Franchise Agreement.

Section 12. Emergency Use of Facilities.

A. Franchisee shall comply with all FCC rules on emergency use of facilities.

B. Franchisee shall provide standby power generating capacity at the cable system headend and capable of providing at least two (2) hours of emergency power supply. Standby batteries, capable of providing at least two (2) hours of emergency power, shall be installed in the cable distribution plant.

Section 13. Lock-out Devices.

Franchisee shall make available at reasonable charge to any residential subscriber, upon the request of such subscriber, a "parental guidance" or "lock-out" device which shall permit the subscriber, at his or her option, to eliminate the audio and visual transmissions from any channel reception to the extent technically feasible.

Section 14. Closed-circuit Captioning for the Hearing Impaired.

Franchisee shall make available at a reasonable charge to any hearing-impaired residential subscriber, upon the request of such subscriber, any equipment beyond the subscriber's equipment capable of decoding closed-circuit captioning information for the hearing impaired.

Section 15. Line Extension Policy.

A. Upon request and payment of all applicable charges, and provided that the requesting person gives Franchisee access to his or her premises in order to furnish, maintain and continue to offer service to that person, Franchisee shall, throughout the term of this Agreement, promptly furnish, maintain, and continue to provide all services distributed over the system to any person at his or her place of residence or commercial location within the City where Franchisee's plant is the closest activated plant to the requesting location or is within one-quarter cable mile and there are at minimum requests for service from 5 subscribers or locations within 1320 cable feet (one quarter mile).

B. Where service is requested at a location with a density of less than five (5) subscribers per 1320 cable-bearing strand feet of trunk or distribution cable, 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 the Franchisee and the Subscribers in the area in which service may be expanded, the Franchisee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable bearing strand feet of its trunks or distribution cable and whose denominator equals five (5) residences. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a pro rata basis.

Section 16. Cable Home Wiring Commitments.

Franchisee will comply with all FCC rules regarding cable home wiring, as amended from time to time.

Section 17. Franchise Fee.

A. Pursuant to the Ordinance, in consideration of the privilege granted herein to use and occupy the Streets to own, construct, install, maintain and operate its cable system, Franchisee shall pay to the City a franchise fee equal to either (1) five percent (5%) of its gross revenues as defined in the Ordinance; or (2) if a change in law increases the maximum allowable percentage to an amount greater than that specified in (1) above, that higher amount provided however, that such increase is affirmatively imposed by the City after a public hearing at which both the public and Franchisee are allowed to comment on the impact of the higher fee. Franchisee will pay to the City such higher amount effective with the next available billing cycle in which the higher charge may be placed on subscribers' bills.

B. Franchisee agrees that the quarterly statements required to be filed by the Franchisee with the City pursuant to the Ordinance shall be reported by a certified public accountant and certified as true and correct by a duly authorized officer of Franchisee. Franchisee shall bear the cost of the preparation of such statements.

C. Subject to applicable law, the acceptance by the City of any payment from Franchisee of the franchise fee shall not constitute a release or an accord and satisfaction of any claim the City may have against Franchisee for performance of any of its obligations under the Ordinance, this Franchise Agreement, or local, state or federal law.

D. Following the expiration or the termination for any reason of its Franchise, Franchisee shall pay the franchise fee owed as of the date that its operations ceased within ninety (90) calendar days of ceasing such operations. Such payment shall be accompanied by a gross revenues audit report prepared by a certified public accountant showing the revenues received by Franchisee since the end of the previous fiscal year.

E. Franchisee expressly agrees that: (i) the franchise fee payments to be made pursuant to this Section shall not be deemed to be in the nature of a tax; (ii) such franchise fee

payments shall be in addition to any and all taxes of a general applicability; (iii) Franchisee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said franchise fee payments from or against any of said City taxes or other fees or charges of general applicability which Franchisee is required to pay to the City, except as agreed herein or required by law; (iv) Franchisee shall not apply nor seek to apply all or any part of the amount of said franchise fee payments as a deduction or other credit from or against any of said City taxes or other fees or charges of general applicability, each of which shall be deemed to be separate and distinct obligations of Franchisee; and (v) the franchise fee specified herein is the minimum fair market value for the grant hereunder of a franchise for use of the Streets, including all public easements, public rights-of-way and other entitlement to use, occupy or traverse public property, for the purpose of operating a cable system.

Section 18. Reports and Records.

Franchisee shall furnish the City with all of the information as required under the Ordinance. Franchisee hereby expressly agrees to implement and maintain such practices and procedures as may be necessary to comply with said obligations.

Section 19. Right to Inspect Financial Records and Facilities.

A. Franchisee shall maintain a complete set of books and records, including plans, contracts, engineering, accounting, financial, statistical, customer and service records as required under the Ordinance for a period of not less than three years from the effective date hereof.

B. The City shall have the right to inspect, upon reasonable notice, at a location in Monroe County, the books and records as may be required by the City to perform its regulatory responsibilities under the Ordinance or the Franchise Agreement. The City agrees to carry out any such inspection during Franchisee's normal business hours and upon reasonable notice.

C. The City shall accord all books and records that it inspects under this Section the degree of confidentiality such books and records are entitled to under federal and state law. Franchisee's books and records shall not constitute public records, except to the extent required by federal and state law. To the extent Franchisee considers any books or records that it is required to produce to be confidential or otherwise protected from public disclosure, Franchisee shall designate which documents it views as protected and provide a written explanation to the City of the legal basis for Franchisee's claim of protection.

D. The City shall have the right to inspect, accompanied by a representative designated by Franchisee, Franchisee's facilities and property related to the operation of the cable system during Franchisee's normal business hours and upon reasonable notice.

Section 20. Customer Service Requirements.

A. Franchisee agrees to comply with each of the customer service requirements set forth in the Ordinance, which City may amend in its discretion subject to applicable law.

B. Pursuant to Section 11 of the Ordinance, Franchisee may maintain normal office hours based on its current practice. Franchisee hereby agrees to implement and maintain any practices and procedures that may be required to monitor compliance with the Ordinance.

Section 21. Transfer of Franchise.

A. Franchisee shall not without the City's prior consent: (i) transfer or assign the rights and/or obligations held by Franchisee under this Franchise Agreement to another person, group of persons or business entity; or (ii) transfer ownership or other interest in Franchisee or its Cable System from one person or group of persons to another person or group of persons so that control of this Franchise is transferred. A transfer shall be considered "pro forma" when it involves a transfer to a person, group of persons or business entity wholly owned by Franchisee and will not result in a change in the control or ownership of the Franchisee.

B. Franchisee may file an application to transfer its franchise or to transfer control of Franchisee in full compliance with Section 17 of the Ordinance.

Section 22. Procedures for Requesting Approval of Transfer.

In addition to the requirements set forth in Sections 17 of the Ordinance, the following procedures shall be followed by Franchisee in requesting the City's consent to transfer its franchise or to transfer control of Franchisee.

A. At least one hundred twenty (120) calendar days prior to the contemplated effective date of a transfer, Franchisee shall submit to the City an application for approval of the transfer. The City may for good cause reduce such time period. Such application shall include the following:

1. A statement of the reason for the contemplated transfer.
2. The name, address and telephone number of the proposed transferee.
3. A detailed statement of the corporate or other business entity organization of the proposed transferee, including but not limited to the following:

(a) The names, business addresses, state of residence and country of citizenship of all general partners and/or corporate officers and directors of the proposed transferee.

(b) The names, business addresses, state of residence and country of citizenship of all persons and entities having, controlling, or being entitled to have or control ten percent (10%) or more of the ownership of the proposed transferee and the respective ownership share of each such person or entity.

(c) The names and addresses of any subsidiary of the proposed transferee and of any other business entity owning or controlling in whole or in part or owned or controlled in whole or in part by the proposed transferee.

(d) A detailed and complete financial statement of the proposed transferee, prepared by a certified public accountant if audited statements were made, and if not, by a duly authorized financial officer of the proposed transferee, for the three (3) fiscal years immediately preceding the date of the request for transfer approval, and a letter or other acceptable evidence in writing from a duly authorized officer of the proposed transferee setting forth a clear and accurate description of the amount and sources of funding for the proposal transaction and its sufficiency to provide whatever capital shall be required by the proposed transferee to construct, install, rebuild, maintain and operate the proposed system in the City. If the corporate or business entity organization of the proposed transferee has not been in existence for a full three (3) years, the proposed transferee shall submit a certified financial statement for the period of its existence.

(e) A description of all previous experience of the proposed transferee in operating cable television systems and providing cable television services or related or similar services, including a statement identifying, by place and date, any other cable television franchise(s) awarded to the proposed transferee, its parent, subsidiaries, or affiliates; the status of said franchise(s) with respect to completion thereof; the total estimated cost of completion of such system(s); and a summary of the amount of the proposed transferee's and its parent's or subsidiary's resources committed to the completion thereof.

(f) Upon request from the City, a detailed pro forma financial plan describing for each remaining year of the franchise, the projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements, and statement of sources and uses of funds. Where the transfer is part of a larger transaction and such information is not prepared for the single system in the City, the proposed transferee may provide such information on a consolidated basis including the system in the City, but shall provide information on the size of the City system, in terms of number of subscribers, relative to the transaction, so that pro rata estimates may be made.

(g) A detailed description of the proposed plan of operation of the proposed transferee, which shall include, but not be limited to the following:

(i) A detailed map indicating all new areas proposed to be served, a proposed time schedule for the installation of all equipment necessary to become operational throughout the new areas to be served, and the projected total cost for new construction of the system.

(ii) A statement or schedule setting forth all proposed classifications of rates and charges to be made against subscribers and all rates and charges and to each of any said classifications, including installation charges, service charges, special, extraordinary, or other charges.

4. Upon request, the terms and conditions of the Franchise Agreement between the transferor and proposed transferee relating to the operation of the Cable System in the City.

5. A statement of acceptance signed by a duly authorized officer of the proposed transferee of all of the terms and conditions of the Ordinance and this Franchise.

Section 23. Renewal of Franchise.

Renewal of this Franchise shall be governed by the applicable provisions of the Ordinance.

Section 24. Rates.

A. Nothing in the Ordinance or this Franchise Agreement shall prohibit the City from regulating rates for cable services, installation, disconnection, and equipment rental and sales to the full extent permitted by state and federal law.

B. Subject to applicable law, Franchisee further agrees that it shall not increase rates or charges for basic cable service, installation, disconnection, or equipment rental without at least thirty (30) days prior written notice to subscribers and the City.

Section 25. Enforcement Remedies.

A. Liquidated Damages. Because the City may suffer damages from any violation by Franchisee of this Agreement or of the Ordinance, which damages may be difficult to quantify, the City and Franchisee agree to the following schedule of liquidated damages:

1. For failure to complete system upgrades/rebuilds and offer service as required by Sections 10 and 11 hereof, unless the City specifically approves a delay, Franchisee shall pay Five Hundred Dollars (\$500.00) per day for each day, or part thereof, the deficiency continues.

2. For failure to comply with any provision of the Ordinance, failure to comply with any other provision of this Franchise Agreement, or failure to comply with any lawful order of the City within thirty (30) days of receipt of notice of such non-compliance from the City, Franchisee shall pay One Hundred Dollars (\$100.00) per day for each day, or part thereof, that such non-compliance continues.

B. Before assessing liquidated damages against Franchisee, the City shall give Franchisee written notice of the violation and its intention to assess such damages, which notice shall contain a description of the alleged violation. Franchisee shall cure said violation no later than thirty (30) days of the date of receipt of the notice. The City may collect liquidated damages owed through any means allowed by law.

C. Revocation or Termination of Franchise. Franchisee's franchise is subject to revocation pursuant to the Ordinance for any of the reasons set forth therein. In the event the City exercises its right to revoke the franchise, the procedures set forth in the Ordinance shall apply.

Section 26. Area wide Interconnection.

Notwithstanding the requirements of the Ordinance, Franchisee shall not be required to interconnect its Cable System with any other cable operator or Cable System within the City or serving subscribers within the City.

Section 27. Written Notice of Acceptance.

Within ten (10) days of the Council Resolution approving the grant of this Franchise Agreement, Franchisee shall provide the City Manager with written acceptance of all the terms and conditions of this Franchise Agreement.

Section 28. Execution in Counterpart.

This Franchise Agreement may be executed in counterpart.

Section 29. Savings.

All rates, fees, charges and financial obligations previously accrued by the Franchisee pursuant to any prior or current ordinances or resolutions shall continue and remain due and owing until paid.

Section 30. Severability.

If any part, section, subsection, or other portion of this Franchise Agreement or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Franchise Agreement, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The Village declares that no invalid or prescribed provision or application was an inducement to the enactment of this Franchise Agreement, and that it would have enacted this Resolution regardless of the invalid or prescribed provision or application.

Section 31. Applicable Law.

This Franchise Agreement shall be construed in accordance with the law of the State of Florida and is subject to applicable local, state and federal law.

Section 32. Amendment of this Agreement.

No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY OF MARATHON

ATTEST:

Katherine V. Selcher
City Clerk

By: [Signature]
Robert Miller, Mayor

The 22nd day of May, 2001

By: [Signature]
Craig Wrathell, City Manager

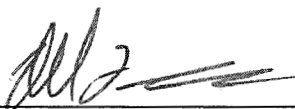
The 22nd day of May, 2001

Approved as to form:

[Signature]
City Attorney

22nd day of May, 2001

Agreed to and accepted by Franchisee:
TCI Cablevision of Florida, Inc. doing
business locally as AT&T Broadband

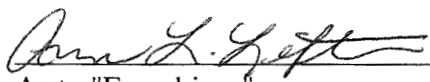
By: 

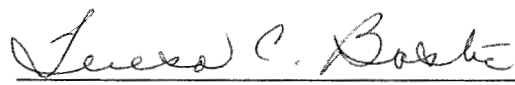
Print Name: KELVIN FEE

Title: SR. VICE PRESIDENT

Date: 4 day of JUNE, 2001

Witnesses:


As to "Franchisee"


As to "Franchisee"