

RESOLUTION NO. 1557

**A RESOLUTION AUTHORIZING THE TRANSFER OF THE CABLE
FRANCHISE HELD BY TCI CABLEVISION OF OHIO, INC.
TO AT&T BROADBAND OF OHIO, LLC.**

The Troutdale City Council finds:

1. Certain cable franchises granted to KBL Portland Cablesystems, L.P. and KBL Multnomah Cablesystems, L.P. were transferred in 1999, with the Jurisdiction's approval, to TCI Cablevision of Ohio, Inc. ("Transferor") (a subsidiary of AT&T Broadband and its ultimate parent company AT&T Corp.) Thereafter, Transferor on or about June 1, 1999 assumed ownership and control of the KBL-Portland Cablesystems, L.P. cable franchise granted by the City of Portland ("East Portland franchise") and the KBL Multnomah Cablesystems, L.P. cable franchise granted by Multnomah County and the Cities of Fairview, Gresham, Troutdale, and Wood Village ("East Multnomah franchise").
2. The Mt. Hood Cable Regulatory Commission ("MHCRC") was created by Intergovernmental Agreement (dated December 24, 1992) ("IGA") to carry out cable regulation and administration on behalf of Multnomah County and the cities of Gresham, Fairview, Portland, Troutdale, and Wood Village ("the Jurisdictions"). Among other things, the Commission acts in an advisory capacity to the Jurisdictions in connection with potential or proposed transfers or changes in ownership or control of any cable franchisee of the Jurisdictions. As set forth in the IGA, any change in ownership or control of a cable communications system or a Grantee is an area where the Jurisdictions have reserved full authority to act on their own behalf, but each Jurisdiction has agreed to take no action in these areas until the Commission has had a prior opportunity to consider the matter.
3. MHCRC staff was notified on February 16, 2001 that, as part of an internal restructuring, AT&T Broadband was requesting consent to the further transfer of the East Portland and East Multnomah assets and franchises from Transferor to another AT&T affiliate: AT&T Broadband of Ohio, LLC ("Transferee"). The notification was accompanied by an FCC Form 394 "Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise" for the East Portland and East Multnomah franchises. The notification and accompanying FCC Form 394 filing requested the consent of each of the Jurisdictions, respectively, for the proposed transfer of the East Portland and East Multnomah franchises and assets from Transferor to Transferee.
4. The AT&T East Portland franchise and the AT&T East Multnomah franchise prohibit any transfer without the prior consent of the applicable MHCRC Jurisdiction. Specifically, Sections 17.1 and 17.2 of the AT&T East Portland franchise and the AT&T East Multnomah franchise prohibit a franchise transfer or change in control without the prior consent of the Jurisdictions expressed by ordinance or resolution, as applicable.

5. MHCRC staff sent a letter dated March 6, 2001 to an authorized representative of the Transferor and Transferee requesting additional information. Transferor and Transferee provided a responsive and reasonably complete reply to the MHCRC letter by the letter's requested due date of March 26, 2001.
6. The information included in the initial Form 394 filing and in the reply to the MHCRC staff letter has been reviewed by MHCRC staff and MHCRC financial counsel KFA Services ("KFA"). MHCRC staff and KFA concluded that, subject to the inclusion of certain conditions, the transfer of the subject franchises from Transferor to Transferee should not materially affect the financial capability of the franchisee, and should not materially affect the management or operation of the local cable systems operated by the franchisee.
7. The MHCRC held a public meeting and work session on April 16, 2001 to review the information received from AT&T, MHCRC staff, and KFA and to make a recommendation to the Jurisdictions.
8. After considering the information received, the MHCRC has recommended that the Jurisdictions approve the proposed transfer of the AT&T East Portland franchise and the AT&T East Multnomah franchise from Transferor to Transferee subject to Transferee's acceptance of certain conditions, as set forth in MHCRC Resolution No. 2001-4, adopted by the MHCRC on April 16, 2001, and attached hereto as Exhibit B.
9. Transferee's application for the transfer of the AT&T East Portland franchise and the AT&T East Multnomah franchise should be approved with the conditions set forth herein. If Transferee and Transferee's guarantor TCI West, Inc. do not accept these conditions, the application should be denied.

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

Section 1. Transfer Approval and Conditions

- A. Subject to the conditions set out in the acceptance form attached as Exhibit A to this resolution, the City of Troutdale approves Transferee's request to transfer the AT&T East Portland cable franchise (KBL Portland Cablesystems, L.P.) (Ord. No. 170758, passed by the Portland City Council December 4, 1996) and/or the AT&T East Multnomah franchise (KBL Multnomah Cablesystems, L.P.) effective May 23, 1998, granted by Multnomah County and the Cities of Fairview, Gresham, Troutdale, and Wood Village.
- B. Within 30 days after passage of this resolution by the City of Troutdale, Transferee and Transferee's guarantor TCI West, Inc. and, where applicable, Transferee's ultimate parent AT& T Corp., shall file a written, executed acceptance of this resolution. The acceptance shall be in the form attached hereto as Exhibit A. Transferee shall file such written acceptance with the City of Portland Office of Cable Communications and Franchise Management, as staff for the MHCRC and

Jurisdictions. The executed acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained therein.

- C. The failure, refusal or neglect by Transferee and Transferee's guarantor TCI West, Inc. and, where applicable, Transferee's ultimate parent AT&T Corp., to file such written acceptance by such time shall constitute an abandonment and rejection of the rights and privileges conferred hereby.
- D. If for any reason Transferee, Transferee's guarantor TCI West, Inc. and, where applicable, Transferee's ultimate parent AT&T Corp. fail, refuse or neglect to file the written acceptance as set forth in Subsection b. above, or in the event the transaction which is the subject of the written acceptance as set forth in Subsection b. above is not finally consummated or does not reach final closure for any reason, or in the event such closure is reached on terms substantially and materially different to the terms described in the FCC Form 394 and subsequent information provided by the Transferee and relied upon by the MHCRC and the Jurisdiction, Transferee's request for transfer of the East Portland and/or East Multnomah franchise shall be deemed denied.

Section 2. Emergency

The City of Troutdale declares that an emergency exists because the Transferor and Transferee are relying on closure of the underlying transaction by May 15, 2001; therefore, this resolution shall be in full force and effect from and after its passage by the Jurisdiction.

YEAS:	<u>6</u>
NAYS:	<u>0</u>
ABSTAINED:	<u>0</u>


Paul Thalhotz, Mayor

Dated: 6-13-01



Debbie Stickney, City Recorder
Adopted: 6-12-01

EXHIBIT A

ACCEPTANCE FORM

The City of Troutdale
c/o Mt. Hood Cable Regulatory Commission
1120 SW Fifth Ave Room 704
Portland, OR 97204

This is to advise the City of Troutdale that Transferee and Transferee's guarantor TCI West, Inc. and, with respect to the obligations of paragraph (c) hereof, Transferee's ultimate parent AT& T Corp. ("AT&T"), hereby unqualifiedly accept the provisions applicable to them in accordance with Resolution No. _____, passed by the City of Troutdale on June 12, 2001, regarding the transfer to the Transferee of the following cable franchises:

- KBL Portland Cablesystems, L.P., Ord. No. 170758, passed by the Portland City Council December 4, 1996 ("East Portland franchise"); and,
- KBL Multnomah Cablesystems, L.P., effective May 23, 1998, granted by Multnomah County and the Cities of Fairview, Gresham, Troutdale, and Wood Village. ("East Multnomah franchise")

and agree, as applicable, to abide by the following terms and conditions:

- a. Compliance with franchises. In all respects and without exception, Transferee accepts and shall comply with each and every provision of the East Portland and East Multnomah franchises, including all lawful applicable ordinances, orders, contracts, agreements, commitments, side letters, and regulatory actions taken pursuant thereto, as applicable, whether prior or subsequent to the date such franchises were transferred to Transferee.
- b. Acceptance of applicable provisions of 1999 MHCRC Jurisdiction transfer ordinances. In all respects and without exception, Transferee accepts and shall comply with the provisions applicable to TCI Cablevision of Ohio, Inc. ("Transferor") of the following 1999 MHCRC Jurisdiction ordinances (or resolutions, as applicable) which authorized transfer of the East Portland and East Multnomah cable franchises to Transferor:
 - (1) Ordinance No. 7-1999, passed by the City of Fairview on May 19, 1999;
 - (2) Ordinance No. 1474, passed by the City of Gresham on May 4, 1999 (first reading) and May 18, 1999 (second reading);
 - (3) Resolution No. 99-89, passed by the Multnomah County Board of Commissioners May 20, 1999;
 - (4) Ordinance No. 173385, passed by the Portland City Council May 19, 1999;
 - (5) Resolution No. 1433, passed by the Troutdale City Council May 11, 1999;and

(6) Ordinance 2-1999, passed by the Wood Village City Council on May 12, 1999.

- (c) Guarantee. Transferee shall re-confirm and continue, in a form satisfactory to the Jurisdictions, the guarantee of franchise performance by TCI West, Inc. in accordance with the provisions of Section (b) of Exhibit A to the 1999 MHCRC Jurisdiction ordinances (or resolutions, as applicable) specified in paragraph (b) hereof, and accepted by Transferor, TCI West, Inc., and AT&T Corp.
- (d) Cost reimbursement. As required by the East Portland and East Multnomah Franchises, Transferee shall reimburse all direct, out-of-pocket costs of the MHCRC and the Jurisdictions incurred in analyzing and acting upon the transfer request, within 30 days of receipt by Transferee of an itemized statement of such cost.
- (e) Transferee responsible for any non-compliance by franchisee. Transferee specifically acknowledges and expressly accepts that the Jurisdictions do not waive and expressly reserve all legal rights and authority in regard to any and all non-compliance under the East Portland franchise and the East Multnomah franchise that may now exist or may later be discovered to have existed during the term of the franchise(s), even if prior to the transfer authorized by the resolution that is the subject of this Acceptance.
- (f) Automatic nullification in the event of material change in terms. In the event the transaction which is the subject of this Acceptance is not finally consummated or does not reach final closure for any reason, or in the event such closure is reached on terms substantially and materially different to the terms described in the FCC Form 394 and subsequent information provided by the Transferee and relied upon by the MHCRC, then Transferee acknowledges that the Jurisdictions' ordinance or resolution, together with the written acceptance provided hereunder, shall be automatically null and void without further action by either party.

AT&T BROADBAND OF OHIO, LLC

BY:
NAME:
TITLE:
DATE

TCI WEST, INC.

BY:
NAME:
TITLE:
DATE

AT&T CORP.

BY:
NAME:
TITLE:
DATE:

TO BE NOTARIZED FOR EACH SIGNATOR, SEPARATELY

State of

County of

This Acceptance was acknowledged before me on the day _____ of _____,

1999, by _____ as a duly authorized officer of _____.

Notary Public for:

My Commission Expires:

H://mhrcaccd1

EXHIBIT B

Before the
Mt. Hood Cable Regulatory Commission
1120 SW Fifth Avenue, Room 704
Portland, OR 97204

Recommend MHCRC Jurisdictions)	
approve with conditions proposed)	
transfer of cable franchises of KBL)	Res. 2001-04
Portland and KBL Multnomah)	Adopted by the Commission
Cablesystems, L.P. from TCI)	April 16, 2001
Cablevision of Ohio, Inc. to)	
AT&T Broadband of Ohio, LLC)	

Section 1. Findings.

- 1.1 Authority. The Mt. Hood Cable Regulatory Commission ("MHCRC" or "Commission") was created by Intergovernmental Agreement (dated December 24, 1992) ("IGA") to carry out cable regulation and administration on behalf of Multnomah County and the cities of Gresham, Fairview, Portland, Troutdale, and Wood Village ("the Jurisdictions"). Among other things, the Commission acts in an advisory capacity to the Jurisdictions in connection with potential or proposed transfers or changes in ownership or control of any cable franchisee of the Jurisdictions. As set forth in the IGA, any change in ownership or control of a cable communications system or a Grantee is an area where the Jurisdictions have reserved full authority to act on their own behalf, but each Jurisdiction has agreed to take no action in these areas until the Commission has had a prior opportunity to consider the matter.
- 1.2 Transfer (1999) of former Paragon Cable franchises to TCI Cablevision of Ohio, Inc. Upon the recommendation of the MHCRC (Res. No. 99-4, adopted April 19, 1999) and the subsequent approval of each MHCRC Jurisdiction as applicable, certain cable franchises granted to KBL Portland Cablesystems, L.P. and KBL Multnomah Cablesystems, L.P. (then doing business as Paragon Cable) and associated assets were transferred to TCI Cablevision of Ohio, Inc. ("Transferor") (a subsidiary of AT&T Broadband and its ultimate parent company AT&T Corp.). Thereafter, Transferor on or about June 1, 1999 assumed ownership and control of the KBL-Portland Cablesystems, L.P. cable franchise granted by the City of Portland ("East Portland franchise") and the KBL Multnomah Cablesystems, L.P. cable franchise granted by Multnomah County and the Cities of Fairview, Gresham, Troutdale, and Wood Village ("East Multnomah franchise").
- 1.3 Request (2001) for consent to transfer franchises to AT&T Broadband of Ohio, LLC. MHCRC staff was notified on February 16, 2001 that, as part of an internal restructuring, AT&T Broadband was requesting consent to the further transfer of the East Portland and East Multnomah assets and franchises from Transferor to another AT&T affiliate: AT&T Broadband of Ohio, LLC ("Transferee"). The notification was accompanied by an FCC Form 394 "Application for Franchise Authority Consent to Assignment or Transfer of Control of

Cable Television Franchise” for the East Portland and East Multnomah franchises. The notification and accompanying FCC Form 394 filing requested the consent of each of the Jurisdictions, respectively, for the proposed transfer of the East Portland and East Multnomah franchises and assets from Transferor to Transferee.

- 1.4 Information requested. MHCRC staff sent a letter dated March 6, 2001 to an authorized representative of the Transferor and Transferee requesting additional information. . Transferor and Transferee provided a responsive and reasonably complete reply to the MHCRC letter by the letter’s requested due date of March 26, 2001.
- 1.5 Analysis of information received. The information included in the initial Form 394 filing and in the reply to the MHCRC staff letter has been reviewed by MHCRC staff and MHCRC financial counsel KFA Services (“KFA”). MHCRC staff and KFA have concluded that, subject to the inclusion of certain conditions, the transfer of the subject franchises from Transferor to Transferee should not materially affect the financial capability of the franchisee, and should not materially affect the management or operation of the local cable systems operated by the franchisee.
- 1.6 Public meeting and MHCRC review. The MHCRC held a public meeting and work session on April 16, 2001 to review the information received from AT&T, MHCRC staff, and KFA and to make a recommendation to the Jurisdictions.
- 1.7 Approval of transfer with certain conditions. After considering the information received, the MHCRC has recommended that the Jurisdictions approve the proposed transfer of the AT&T East Portland franchise and the AT&T East Multnomah franchise from Transferor to Transferee subject to Transferee’s acceptance of certain conditions, including the following:
 - (a) unqualified acceptance by the Transferee of all the AT&T East Portland and the AT&T East Multnomah lawful franchise requirements requirements and obligations, even if such requirements and obligations relate to periods prior to the date of transfer approval;
 - (b) unqualified acceptance by the Transferee of the provisions of the following MHCRC Jurisdiction ordinances or resolutions, as applicable, authorizing transfer of the former Paragon cable franchises to TCI Cablevision of Ohio, Inc:
 - (1) Ordinance No. 7-1999, passed by the City of Fairview on May 19, 1999;
 - (2) Ordinance No. 1474, passed by the City of Gresham on May 4, 1999 (first reading) and May 18, 1999 (second reading);
 - (3) Resolution No. 99-89, passed by the Multnomah County Board of Commissioners May 20, 1999;
 - (4) Ordinance No. 173385 , passed by the Portland City Council May 19, 1999;
 - (5) Resolution No. 1433, passed by the Troutdale City Council May 11, 1999; and
 - (6) Ordinance 2-1999, passed by the Wood Village City Council on May 12, 1999.
 - (c) acknowledgement and agreement by Transferee that the Jurisdictions do not waive and expressly reserve all legal rights and authority in regard to any and all non-compliance arising under the AT&T East Portland and East Multnomah franchises that may now exist or may later be discovered to have existed during the term of the franchise(s), even if prior to the transfer authorized by this ordinance; and
 - (d) acknowledgement and agreement by Transferee that, in the event the transaction which is the subject of this Resolution is not finally consummated or does not reach final closure for

any reason, or in the event such closure is reached on terms which are substantially and materially different to the terms set forth in the FCC Form 394 and subsequent information provided by the Transferee and relied upon by the MHCRC and the Jurisdictions, then Transferee's request for transfer of the AT&T East Portland and East Multnomah franchises shall be deemed denied.

- 1.8 After consideration and discussion, including consideration of input from Transferor and Transferee, the MHCRC recommends that the Jurisdictions approve the proposed transfer by ordinance or resolution, as applicable, with such terms and conditions as are set forth in the attached Exhibit A to this Resolution.
- 1.9 Staff shall work with legal counsel for the Jurisdictions to incorporate necessary technical, non-substantive changes in the attached Exhibit A to prepare the necessary legal documents in final legal form suitable for the procedural requirements necessary for consideration and final action by the Jurisdictions.

Now, therefore, the Commission resolves:

Section 2.

- 2.1 The Commission recommends that the Jurisdictions consent to the transfer of the cable franchises granted to KBL Portland Cablesystems, L.P. (East Portland franchise), and KBL Multnomah Cablesystems, L.P. (East Multnomah franchise), from TCI Cablevision of Ohio, Inc. (Transferor) to AT&T Broadband of Ohio, LLC (Transferee) subject to the acceptance by Transferee of certain terms and conditions set forth in this Resolution, and in Exhibit A attached to this Resolution, and in such other side letters as may be necessary.
- 2.2 The MHCRC directs staff to work with legal counsel for the Jurisdictions to incorporate necessary technical, non-substantive changes in the attached Exhibit A so as to recreate Exhibit A in form suitable to the procedural and format requirements necessary for consideration and final action by the individual Jurisdictions.
- 2.3 To further these recommendations, the Commission recommends that the Jurisdictions approve an ordinance or resolution substantially similar in form to the one attached hereto as Exhibit A.

ADOPTED BY THE COMMISSION on April 16, 2000.

Norman D. Thomas, Chair

Reviewed by:

Ben Walters, Legal Counsel

Attachment:

Exhibit A Recommended form of consent ordinance (or resolution); with conditions.