

ORDINANCE NO. 3276

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, CONSENTING TO A TRANSFER OF CONTROL OF THE CABLE TELEVISION FRANCHISE RESULTING FROM THE MERGER OF AT&T WITH TCI; PROVIDING CONDITIONS RELATED THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, by adoption of Ordinance No. 2637, the City Council of the City of Mesquite, Texas ("City") approved TCI Cablevision of Dallas, Inc., a Texas Corporation ("TCI-D"), as successor franchisee under the City's cable television franchise, pursuant to Ordinance No. 1636 and 2211, as amended (the "Franchise"); and

WHEREAS, TCI-D as Franchisee is thereby duly authorized to operate and maintain a cable television system in Mesquite, Texas (the "system") by the City as the Franchise Authority pursuant to such Franchise; and

WHEREAS, pursuant to the Agreement and Plan of Restructuring and Merger dated as of June 23, 1998 (the "Merger Agreement"), between AT&T Corp. ("AT&T"), a newly formed and wholly owned subsidiary of AT&T ("Merger Sub"), and Tele-Communications, Inc. ("TCI"), the parent of TCI-D, Merger Sub will merge with and into TCI with TCI as the surviving corporation in the merger, and as a result of the transactions contemplated by the Merger Agreement (the "Transactions"), TCI-D will become a wholly owned subsidiary of AT&T; and

WHEREAS, TCI-D will continue to hold the Franchise after consummation of the Transactions and be fully obligated to the terms of that Franchise subject to applicable law following the Transactions; and

WHEREAS, a Federal Communication Commission Form 394 requesting the City's consent to the Transactions was filed with the City on September 3, 1998; and

WHEREAS, the City must be assured that all positions and rights the City has to resolve certain compliance matters related to the Franchisee's performance under the Franchise and applicable law are not altered or waived as a result of the City's consent to the Transactions;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:


SECTION 1. That the City does hereby consent to and approve the transactions to the extent that such consent is required by the terms of the Franchise and applicable law, subject to AT&T becoming a signatory to said franchise agreement as required by the Franchise, and the additional conditions stated below.

SECTION 2. AT&T has filed with the City the letter attached as Exhibit A hereto, acknowledging the terms and conditions of the Franchise.


SECTION 3. TCI-D has filed with the City the letter attached as Exhibit B hereto, agreeing that the Franchise will continue to be in full force and effect subject to applicable law following the Transactions, and agreeing that the City's consent to the Transactions will not affect the rights and positions of the City on any matter.

SECTION 4. The fact that the transfer of control of the Franchise is necessary to the health and welfare of the inhabitants of the City of Mesquite creates an urgency and an emergency and requires that this ordinance shall take effect immediately from and after its date of passage and the publication of its caption as the law in such cases provides.


DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas on the 4th day of January, 1999.


Mike Anderson
Mayor

ATTEST:


Ellen Williams
City Secretary

APPROVED:


B.J. Smith
City Attorney



O. Carey Epps
Chief Commercial Counsel

Suite 400
919 Congress Avenue
Austin, Texas 78701-2444
512 370-2055
FAX: 512 370-1019

EXHIBIT A

December 18, 1998

RECEIVED

DEC 21 1998

ADMINISTRATIVE
CITY OF MESQUITE

Mr. Mark Hindman
Assistant City Manager
City of Mesquite
P.O. Box 850137
Mesquite, TX 75185

Dear Mr. Hindman:

The Undersigned, on behalf of AT&T Corp., its subsidiaries and affiliates ("AT&T"), hereby warrants and represents that:

1. AT&T will not assert, in any forum or in any proceeding, whether the same be judicial, agency or legislative in nature, that the consent of the City of Mesquite ("City") to the merger between AT&T Corp. and Tele-Communications, Inc. ("Merger") in any way alters, estops or waives any present or future rights or positions the City has, or which it may have, with respect to any other issue whatsoever.
2. AT&T agrees that at no time will it contend, either directly or indirectly, that the City is barred, by reason of the Merger, from considering or raising claims based on the failure of TCI Cablevision of Dallas, Inc. ("TCI-Dallas") to comply with the terms and conditions of Ordinance No. 1636, as amended ("Franchise") or with applicable law.
3. AT&T agrees that the City waives none of its rights with respect to TCI-Dallas' compliance with the terms, conditions, requirements and obligations set forth in the Franchise, including the City's right to compel TCI-Dallas to comply with the Franchise. The City's approval of the Merger shall in no way be deemed a representation by the City that TCI-Dallas is in compliance with its obligations under the Franchise.
4. AT&T agrees that City's consent to the Merger in no way amends or alters the Franchise or any requirements therein in any way, and all provisions of the Franchise remain in full force and effect and are enforceable in accordance with their terms and with applicable law.
5. AT&T agrees that City's consent to the Merger shall not in any respect relieve TCI-Dallas or any of its successors in interest of responsibility for the past acts or omissions, known or unknown.

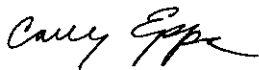
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December 18, 1998

6. AT&T acknowledges and agrees that, by consenting to the Merger, the City reserves all of its rights with respect to TCI-Dallas' future compliance with the terms, conditions, requirements and obligations set forth in the Franchise. No delay or failure to enforce any provision of the Franchise shall operate against the City as an estoppel or waiver.

7. AT&T represents and warrants that the Merger will not adversely affect the financial position of TCI-Dallas, or result in the Franchise's having responsibility for additional debt that will adversely affect the financial position of TCI-Dallas.

8. AT&T hereby acknowledges and recognizes the terms, conditions and provisions of the the Franchise and agrees that it will not cause, nor will it cause any of its subsidiaries or affiliates to cause, TCI-Dallas, or any successor holder of the Franchise over which AT&T exercises control and influence, to violate or fail to abide by the terms, conditions and provisions of the Franchise.

Sincerely,



O. Carey Epps



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RECEIVED

DEC 21 1998

ADMINISTRATION
CITY OF MESQUITE

EXHIBIT B

December 18, 1998

Mr. Mark Hindman
Assistant City Manager
City of Mesquite
P.O. Box 850137
Mesquite, TX 75185

Dear Mr. Hindman:

The Undersigned, on behalf of TCI Cablevision of Dallas, Inc. ("TCI-Dallas") hereby agrees to the following –

1. TCI-Dallas will continue to be fully obligated to the terms and conditions of Ordinance No. 1636, as amended ("Franchise") issued by the City of Mesquite ("City"), subject to applicable law, following the merger of AT&T Corp. with Tele-Communications, Inc. ("Merger"). This includes the provision of 1% of gross revenues for the Community Access Fund, Ordinance No. 2504, and the letter of understanding between TCI-Dallas and Eastfield College dated December 7, 1994, regarding the funding of local programming and/or local access broadcasting.
2. TCI-Dallas agrees that the City's consent to the Merger does not constitute a modification of Franchise obligations or a renewal of the Franchise under the Cable Act of 1984, as amended. On December 9, 1997, the City received a letter from TCI-Dallas requesting commencement of the franchise renewal process, pursuant to Section 626 of the 1984 Cable Act, as amended (47 U.S.C. § 546). Since that time, the parties have proceeded under both the formal provisions of that Section (subsections a-g) and the informal process (subsection h). TCI-Dallas agrees that this process will continue following the Merger.
3. TCI-Dallas agrees that the Merger does not affect any rights the City may have to consider Franchise compliance issues or violations of applicable law that may have occurred prior to the Merger, either in the context of the Franchise renewal or otherwise.
4. TCI-Dallas agrees that the Merger does not affect any rights the City may have to enforce provisions of the Franchise following the Merger that were not enforced prior to the Merger.
5. TCI-Dallas agrees that the City's consent to the Merger does not waive any of the positions or rights the City has to pursue franchise fee payment issues, whether related to periods before or after the Merger.

TCI of Dallas, Inc.

1565 Chenault Street
Dallas, Texas 75228-5499
(214) 328-2882
FAX (214) 320-7336

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6. TCI-Dallas agrees that the City's consent to the Merger will not alter or waive the City's position or rights with regards to telecommunications and right-of-way regulation and authority.

Sincerely,

TCI Cablevision of Dallas Inc.



Teri Scott
Vice President, Franchising
TCI Central, Inc.