

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 98-208

A RESOLUTION CONSENTING TO A CHANGE IN CONTROL OF THE TCI
CABLE FRANCHISES (WEST MULTNOMAH COUNTY, HAYDEN
ISLAND) TO AT&T WITH CONDITIONS

The Multnomah County Board of Commissioners Finds:

- A. AT&T Corporation ("AT&T") has agreed to acquire Tele-Communications, Inc. ("TCI") pursuant to an Agreement and Plan of Merger, dated June 24, 1998.
- B. TCI presently owns and controls cable franchises originally issued by Multnomah County ("County") to TCI Cablevision of Oregon, Inc. as authorized by Resolution No. 97-124, passed by the Board June 26, 1997 ("TCI/Multnomah franchise"), or transferred to TCI with the County's consent under Ord. No. 838, passed by the Board October 26, 1995, consenting to a change in control of the Hayden Island cable franchise to TCI of Southern Washington ("TCI/Hayden Island franchise").
- C. Section 14.1 and 14.2 of the TCI/Multnomah franchise, and Section 3.5 and 3.6 of the TCI/Hayden Island cable franchise, prohibit a franchise transfer or change in control unless and until the County has given prior consent by ordinance or resolution, and further provides that the County may condition a transfer upon such terms and conditions related to the technical, legal, and financial qualifications of the prospective transferee to perform according to the terms of the franchise as the County deems appropriate, including those conditions deemed necessary by the County to ensure the strict performance of the requirements of the franchise.
- D. Transfers of cable franchises are subject to the requirements of the Cable Communications Policy Act of 1992, and regulations promulgated by the Federal Communications Commission ("FCC"). AT&T and TCI filed an FCC Form 394, which was received by the Mt. Hood Cable Regulatory Commission, ("MHCRC") on September 2, 1998.
- E. The MHCRC generally represents Multnomah County in cable regulatory matters. The MHCRC was created by an Intergovernmental Agreement ("IGA") dated December 24, 1992 between and among Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale, and Wood Village ("Jurisdictions"). The IGA states that "(a)ny decision concerning a change of 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. *IGA*, § 4.B.2. However, each Jurisdiction has agreed "to take no action in these areas until the Commission has had a prior opportunity to consider the matter." *IGA*, § 4.B. Thus, the Commission acts in an advisory capacity to the County in connection with TCI and AT&T's proposed merger and transfer of system.

- F. After receiving the initial FCC Form 394 filing with exhibits on September 2, 1998, the MHCRC established a process for considering the proposed merger. *MHCRC Res. No. 98-9* (Passed September 21, 1998). MHCRC staff, with the assistance of financial consultant KFA Services and the Commission's legal counsel, requested additional information from AT&T and TCI. *MHCRC staff letter to AT&T and TCI* (September 30, 1998). AT&T submitted a partial reply to this request on October 12, 1998. The MHCRC conducted a public hearing on the transfer application on October 19, 1998. Following the hearing, the MHCRC sought certain additional information and responses. *MHCRC staff letter to AT&T and TCI* (October 30, 1998). The MHCRC received a further reply from AT&T on November 9, 1998. Among other things, the information provided by AT&T and TCI showed that certain franchise fee arrearages may exist. The MHCRC held a work session on November 16, 1998 to review this material and make a recommendation to the County.
- G. The MHCRC identified specific concerns regarding AT&T's application for the change in control of the TCI franchises, including: (a) acceptance of all existing TCI franchise requirements; (b) AT&T's and TCI's corporate reorganization and financial conditions after the merger is completed; (c) completion of TCI/Multnomah upgrade; (d) construction and completion of TCI's institutional network commitments; (e) possible franchise and PEG fee arrearages arising from the exclusion of certain advertising revenue or programmer payments; (f) TCI's proposed cable modem Internet platform and services, and compliance with applicable cable commercial requirements; and (g) compliance with all other applicable legal requirements, including carriage of broadcast digital and high definition television signals, and interconnection of cable system with potential competitors for purposes of sharing cable PEG channels, to the extent required by the TCI/Multnomah and TCI/Hayden Island franchise agreements. The MHCRC's recommendation to the County contained conditions intended to address these concerns.
- H. AT&T's application for the transfer of control of the TCI/ Multnomah and TCI/ Hayden Island franchises to AT&T should be approved with conditions. If AT&T does not accept these conditions, the application should be denied.

The Multnomah County Board of Commissioners Resolves:

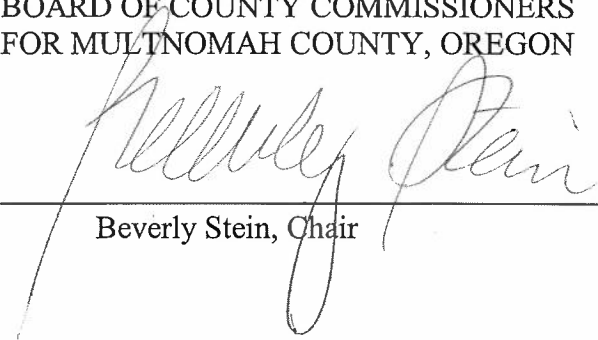
1. Subject to the conditions set out in the acceptance form attached as Exhibit A to this resolution, Multnomah County approves AT&T's request for a change in control of the following cable franchises:
 - TCI Cablevision of Oregon, Inc. as authorized by Resolution No. 97-124, passed by the Board June 26, 1997; and
 - TCI of Southern Washington (Hayden Island) as originally entered into by Multnomah County on October 6, 1986 with American Earthstations, Inc., as subsequently transferred to Columbia Cable of Washington with the approval of Multnomah County on December 18, 1986, and as ultimately transferred to TCI with the County's consent (Ord. No. 838, passed by the Board October 26, 1995, consenting to a change in control of the Hayden Island cable franchise to TCI of Southern Washington) ("TCI/Multnomah franchises")
2. Written acceptance.
 - (a) Within twelve days after passage of this resolution by the Board, AT&T shall file its written acceptance of this resolution meeting the approval of the County Counsel. The acceptance shall be in the form attached as Exhibit A. AT&T shall file such written acceptance in the Office of the County Counsel.
 - (b) AT&T's acceptance shall be contingent upon final closing of the merger transaction, as provided in Section 4 below. Such acceptance shall be otherwise be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this resolution.
 - (c) AT&T's failure, refusal or neglect to file such written acceptance within such time shall constitute an abandonment and rejection of the rights and privileges conferred.
3. Denial of transfer application. If for any reason AT&T fails, refuses or neglects to file the written acceptance as provided in Section 2, Multnomah County denies AT&T's request for a change in control of the TCI/Multnomah franchises.
4. Automatic nullification in event of failure to close or closure on materially different terms. In the event the transaction which is the subject of this resolution is not 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 AT&T and relied upon by the MHCRC, then this resolution, together with the

written acceptance provided, shall be null and void. If the closure is upon terms which are substantially and materially different, AT&T shall resubmit its request for a change in control in order to be in compliance with the TCI/Multnomah franchises.

Adopted this 17th day of December, 1998.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

REVIEWED:

THOMAS SPONSLER, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

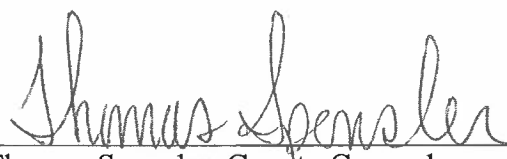

Thomas Sponsler, County Counsel

EXHIBIT A
ACCEPTANCE

Board of Commissioners
Multnomah County
15th Floor, The Portland Building
1120 SW Fifth Avenue
Portland, OR 97204

This is to advise the Multnomah County, Oregon that AT&T Corporation ("Transferee") unqualifiedly accepts Resolution No. 98-_____, passed by the Board of Commissioners on December 17, 1998, regarding the change in control to the Transferee of the following cable franchises under the following terms and conditions:

- TCI Cablevision of Oregon, Inc. ("Franchisee") (Resolution No. 97-124, passed by the Board June 26, 1997); and
- TCI of Southern Washington, Inc. ("Franchisee") (Hayden Island) as originally entered into by Multnomah County on October 6, 1986 with American Earthstations, Inc., as subsequently transferred to Columbia Cable of Washington with the approval of Multnomah County on December 18, 1986, and as ultimately transferred to TCI with the County's consent (Ord. No. 838, passed by the Board October 26, 1995, consenting to a change in control of the Hayden Island cable franchise to TCI of Southern Washington)

(hereafter collectively "TCI/Multnomah franchises")

1. Compliance with franchise. In all respects and without exception, Transferee shall cause the Franchisees to comply, and the Franchisees shall comply, with the requirements of the TCI/Multnomah franchises, including all applicable ordinances, resolutions, orders, contracts, agreements, commitments, side letters, and regulatory actions taken pursuant thereto, including but not limited to system upgrade commitments, support for Public, Educational, and Governmental ("PEG") cable access, and institutional network construction and extension requirements.
2. Schedule for Upgrade or Rebuild of Multnomah cable system. In accordance with the TCI Multnomah franchise, Section 5.2, AT&T shall provide or shall cause TCI to provide to the MHCRC by July 1, 1999 a schedule for the Upgrade or Rebuild of its Multnomah Cable system to the same or greater levels and types of services and capacity as will be provided under TCI's upgraded contiguous cable system serving the City of Portland.
3. Organization and proxy statements. Transferee shall submit to the County (a) updated Transferee and TCI corporate organization charts identifying the roles, specifically, of AT&T Consumer Services and AT&T Business or Network Services; and (b) all publicly available proxy statements issued in connection with

the merger. This information shall be submitted to the County within thirty (30) days of the earlier of either the closure of the merger transaction or the public release of this information.

4. Non-discriminatory access to cable modem platform. Transferee shall provide, and cause Franchisees to provide, nondiscriminatory access to Franchisees' cable modem platform for providers of internet and on-line services, whether or not such providers are affiliated with Transferee or Franchisees, unless otherwise required by applicable law. So long as cable modem services are deemed by law to be "cable services", as provided under Title VI of the Communications Act of 1934, as amended, Transferee and Franchisees shall comply with all requirements regarding such services, including, but not limited to, the inclusion of revenues from cable modem services and access within the gross revenues of Franchisees' cable franchises, and commercial leased access requirements.
5. Compliance with legal requirements.
 - (a) Transferee shall cause the Franchisees to comply, and the Franchisees shall comply, with each and every provision of the franchise agreements, including all applicable ordinances, resolutions, orders, contracts, agreements, side letters, commitments, and regulatory actions taken pursuant thereto, as applicable, and without exception.
 - (b) Transferee shall cause the Franchisees to comply, and the Franchisees shall comply, with all other applicable requirements that are now or may later apply to the TCI/Multnomah franchise operations, including, but not limited to, carriage of broadcast digital and high definition television signals, interconnection of cable system with potential franchised cable competitors for purposes of sharing cable PEG channels, and adherence to applicable federal and state emergency notification provisions.
6. Transferee responsible for any non-compliance by franchisee. The Cable Communications Policy Act of 1992 contemplates that deficiencies in cable service, including non-compliance, should be addressed at the time of a franchise transfer. In its application and supplementary materials, Transferee has assured the County that the merger involved only a change in control at the parent level of TCI. Accordingly, Transferee agrees that the County does not waive and expressly reserves all legal rights and authority in regard to any and all non-compliance under the TCI/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 closing of this transaction. Such non-compliance may include, but is not limited to, the following:
 - (a) Cooperation in franchise fee review. Transferee shall cause the Franchisees to cooperate, and the Franchisees shall cooperate, with MHCRC staff, and the Franchisees will adhere to such deadlines as may be established by the MHCRC,

for the submittal of information to enable the MHCRC to conclude a franchise compliance inquiry in connection with possible TCI franchise fee arrearages that may have arisen through exclusion of certain advertising revenue or programmer payments. Transferee agrees that by consenting to the change in control, the County does not waive and expressly reserves the right to enforce full compliance with applicable franchise fee requirements, whether or not any noncompliance that may be determined arose before or after the consummation of the Transferee/TCI merger.

(b) Transferee and the Franchisees specifically accept the County's reservation of rights as set forth above.

7. In the event the merger between Transferee and TCI which is the subject of this Acceptance is not 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 County's resolution, together with the written acceptance provided, shall be automatically null and void without further action by either party. If the closure is upon terms which are substantially and materially different, Transferee shall resubmit its request for a change in control in order to be in compliance with the TCI/Multnomah franchises.

AT&T Corporation

BY _____
NAME _____
TITLE _____

State of _____)
) ss.
County of _____)

This Acceptance was acknowledged before me on the _____ day of _____, 199____,
by _____ as _____, a duly authorized
officer of AT&T Corporation.

Notary Public for _____
My Commission Expires _____

TCI Cablevision of Oregon, Inc.

BY _____
NAME _____
TITLE _____

State of _____)
) ss.
County of _____)

This Acceptance was acknowledged before me on the _____ day of _____,
199____, by _____ as _____, a
duly authorized officer of TCI Cablevision of Oregon, Inc.

Notary Public for _____
My Commission Expires _____

TCI of Southern Washington, Inc.

BY _____
NAME _____
TITLE _____

State of _____)
) ss.
County of _____)

This Acceptance was acknowledged before me on the _____ day of _____,
199____, by _____ as _____, a
duly authorized officer of TCI of Southern Washington, Inc.

Notary Public for _____
My Commission Expires _____

Approved as to form:

Thomas Sponsler, County Counsel
For Multnomah County, Oregon

Thomas Sponsler, County Counsel