

ORDINANCE NO. 11

Series 2002

June 4, 2002: Introduced as Council Bill 04 Series of 2002 by Doug Tisdale, seconded by Bonnie Blum, and considered by the title only on first reading. Passed unanimously.

June 18, 2002: Considered in full text on second reading. Passed unanimously. Designated as Ordinance No. 11, Series 2002.

**A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE
CONSENTING TO THE TRANSFER OF CONTROL OF THE CITY'S CABLE
TELEVISION SYSTEM FRANCHISE TO AT&T COMCAST CORPORATION**

WHEREAS, on February 19, 2002, the City of Cherry Hills Village, Colorado (the "City") granted to Mountain States Video Communications Co., Inc. ("Franchisee"), a franchise to own and operate a cable television system in the City as set forth in Ordinance 6, Series 2002 (the "Ordinance"), and entered into a Franchise Agreement with Franchisee dated as of February 23, 2002 (the "Franchise"), pursuant to the Ordinance; and

WHEREAS, Franchisee is a subsidiary of, and controlled by AT&T Corp., a New York corporation ("AT&T"); and

WHEREAS, Section 14.2 of the Franchise requires the City's consent to any transfer of ownership or control thereof; and

WHEREAS, AT&T and Comcast Corporation, a Pennsylvania corporation ("Comcast"), together with AT&T Broadband Corp. and certain of their respective affiliates have entered into an Agreement and Plan of Merger, and AT&T and AT&T Broadband Corp. have entered into a Separation and Distribution Agreement, both dated December 19, 2001 (the "Merger Agreement"), to create a new company to be known as AT&T Comcast Corporation ("AT&T Comcast"); and

WHEREAS, prior to the Merger, pursuant to an internal corporate restructuring, Franchisee may elect as permitted by law to convert or reorganize its legal form to a limited liability company (together with the Merger, the "Transactions"); and,

WHEREAS, this merger will effect a change of control of AT&T and Franchisee pursuant to the Franchise; and

WHEREAS, pursuant to Section 14.2 of the Franchise, and 47 U.S.C. Sec. 537, as amended, AT&T and Comcast have requested that the City approve of the transfer of control of the Franchisee from AT&T to AT&T Comcast; and

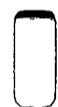
WHEREAS, the City has investigated both the status of the Franchise, the Franchisee's compliance therewith, and the technical, legal and financial ability of AT&T Comcast to control the Franchisee's compliance with the Franchise; and

WHEREAS, through the Greater Metro Telecommunications Consortium ("GMTCC"), the City has negotiated this form of resolution to approve the transfer of control in a manner consistent with the approvals being granted by most GMTCC jurisdictions; and

WHEREAS, based upon the City's investigation, and representations made to the City by AT&T and Comcast, upon which the City is relying, the City is prepared to approve the transfer of control of the Franchisee from AT&T to AT&T Comcast, pursuant to the conditions described herein.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

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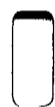
1. The City hereby consents to and approves the transfer of control of the Franchise from AT&T to AT&T Comcast.

2. The City confirms that the Franchise is currently in full force and effect and expires on February 22, 2012.

3. This Resolution approving the transfer of control is based in part upon the following representations and acknowledgments made by Franchisee, AT&T and AT&T Comcast to the City, all of which are considered material and have been relied upon by the City:

- (a) That the Merger Agreement, and all of the attachments to that document, provided to the City with FCC Form 394 (except for those materials which have been redacted pursuant to law, and are identified by title or topic in the Merger Agreement and its attachments) constitutes the entire agreement regarding the merger between AT&T, AT&T Broadband and Comcast;
- (b) That all customer service standards adopted by the City remain in full force and effect, and Franchisee will maintain staffing levels necessary to meet those standards, and all federal regulations regarding technical standards of cable systems;
- (c) That Franchisee remains obligated to comply with all lawful terms, conditions and obligations of the existing franchise agreement and any other existing contractual agreements between the Franchisee and the City.
- (d) That AT&T Comcast will take no actions that will negatively impact Franchisee's ability to comply with its obligations under the Franchise;
- (e) That no future intra-corporate transfers, mergers, or other changes of ownership or control, affecting Franchisee, will change the obligations or liability of Franchisee to the City with respect to any of the terms, conditions and obligations of the Franchise, unless prior approval is granted by the City in writing;
- (f) That Franchisee will comply with all applicable laws regarding rates for cable services within the Franchise area and all applicable laws covering issues of cross subsidization;
- (g) That during the term of the Franchise, and any extension thereto, Franchisee will continue to pay franchise fees on gross revenues generated by sale of cable services, regardless of how cable services and non-cable services may be bundled together and sold to subscribers. Franchisee shall not take any action to evade or avoid payment of franchise fees based upon the reasonable value of the revenues received for cable services from paying subscribers. The City and Franchisee continue to reserve all rights, claims, defenses and remedies regarding the City's authority to impose and/or enforce requirements related to the revenue allocation methodology to be used when cable services and non-cable services are bundled together for the purpose of calculating franchise fees;
- (h) That in the event of any failure to comply with the terms, conditions, representations and/or acknowledgments contained in this Resolution, or any material misrepresentations concerning the same, the City may enforce any damages or penalty provisions pursuant to the Franchise and exercise any other remedy available to it by law.

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4. By passage of this Resolution, the City makes no representations concerning whether any violations or non-compliance issues exist with respect to the Franchise. Nothing in this Resolution shall be construed by the Franchisee, AT&T, or AT&T Comcast as precluding the City from addressing any prior acts of noncompliance by Franchisee, pursuant to the terms of the Franchise.

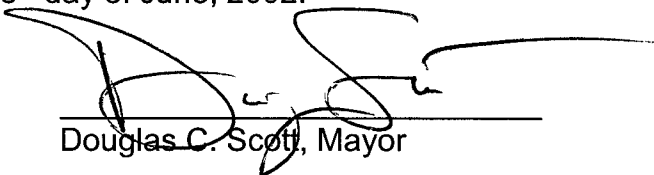
5. This Resolution shall take effect upon the closing of the Merger Agreement.

6. This Resolution is conditioned upon approval of the transaction between AT&T, Comcast and AT&T Comcast, by their respective shareholders, and all required federal government agencies, in substantially the same form as the transaction described in the Merger Agreement, and related documents delivered to the City with AT&T's and Comcast's Form 394 filing, and in documents delivered in response to the City's/County's requests for supplemental information. Should the transaction as approved by the shareholders and federal government agencies differ in any material respect from that represented in the documents described herein, this Resolution shall be voidable, at the sole option of the City.

7. Within thirty (30) days following the adoption of this Resolution, Franchisee and AT&T Comcast shall give written notice to the City that it unconditionally agrees with and shall be bound by all terms contained in this Resolution.

8. Within thirty (30) days following the closing of the Merger Agreement, Franchisee shall file with the City a written representation that the above conditions have been met.

Adopted as Ordinance No. 11, Series 2002, by the City Council of the City of Cherry Hills Village, Colorado, the 18th day of June, 2002.




Douglas C. Scott, Mayor

ATTEST:



Jennifer Pettinger, City Clerk



Robert Widner, City Attorney

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