

RESOLUTION NO. 2002-65

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE TOWN AND COMMUNITY CABLE TELEVISION CORP. TO PROVIDE FOR THE CONTINUED OPERATION OF THE AT&T CABLE SYSTEM AND THE PROVISION OF CABLE SERVICES IN THE TOWN WHILE THE TOWN AND COMMUNITY CABLE TELEVISION CORP. NEGOTIATE A CABLE TELEVISION FRANCHISE AGREEMENT; TO PROVIDE FOR THE WITHDRAWAL OF AT&T BROADBAND CORP.'S FCC FORM 394 PREVIOUSLY SUBMITTED TO THE TOWN; TO PROVIDE FOR CERTAIN TERMS AND CONDITIONS WHILE THE TOWN AND COMMUNITY CABLE TELEVISION CORP. NEGOTIATE A CABLE TELEVISION FRANCHISE AGREEMENT; TO PROVIDE FOR CERTAIN TERMS AND CONDITIONS THAT MUST BE INCLUDED IN THE CABLE TELEVISION FRANCHISE AGREEMENT; TO PROVIDE FOR DISPUTE RESOLUTION AND OTHER CONDITIONS IN THE CASE THAT A FRANCHISE AGREEMENT CANNOT BE FINALIZED; TO PROVIDE FOR NO WAIVER BY BOTH PARTIES OF CERTAIN RIGHTS TO PURSUE CERTAIN REMEDIES RELATED TO THE PROVISION OF CABLE SERVICES IN THE TOWN; AND TO PROVIDE FOR CERTAIN OTHER RELATED MATTERS; TO PROVIDE THAT FAILURE OF COMMUNITY CABLE TELEVISION TO SUBMIT THE EXECUTED AGREEMENT BY JULY 18, 2002 SHALL RESULT IN AN AUTOMATIC DENIAL OF THE FCC FORM 394 BASED ON THE LEGAL QUALIFICATIONS OF THE PROPOSED FRANCHISEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town desires to enter into an agreement with Community Cable Television Corp. concerning the provision of cable services in the Town by Community Cable Television Corp. and concerning the negotiation of a cable television franchise agreement.

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Southwest Ranches, Florida:

Section 1. Authorization of Agreement. The cable services agreement, substantially in the form attached hereto as Exhibit A, is hereby approved, with

any such future changes, deletions, modifications and insertions as may be approved by the Town Administrator in consultation with the Town Attorney in order to capture the proper intent of the Town and Community Cable Television Corp. The Mayor, the Town Administrator and the Town Attorney are hereby authorized and directed to execute, and the Town Clerk is hereby authorized to attest to, the Agreement. Execution of the Agreement by such officials shall constitute conclusive evidence of the approval thereof by the Town.

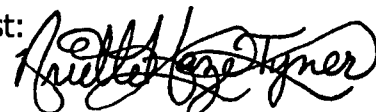
Section 2. Further Authorizations. The Mayor, Town Administrator, and Town Attorney are each authorized and directed to execute any and all certifications or other agreements or any other documents required by the Town Council as a prerequisite or precondition to the Agreement, and any such representation made therein shall be deemed to be made on behalf of the Town. All action taken to date by the officers and representatives of the Town in furtherance of the Agreement are hereby ratified, approved and confirmed.

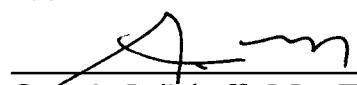
Section 3. Failure to Submit Executed Agreement. If the executed Agreement is not submitted to the Town by Community Cable Television by July 18, 2002, then the Town Council hereby denies the FCC Form 394 submitted by AT&T Broadband Corp. based on the legal qualifications of the proposed franchisee.

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

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida this 11th day of July 2002.


Mecca Fink, Mayor

Attest: 
Arielle Haze Tyner, Town Clerk

Approved as to Form and Correctness:

Gary A. Poliakoff, J.D., Town Attorney

AGREEMENT

This is an agreement (the "Agreement") by and between the Town of Southwest Ranches, Florida (the "Town"), a Florida municipal corporation, and Community Cable Television, marketing services as AT&T Broadband, a Wyoming general partnership (hereinafter "CCT"), (collectively, the "Parties").

RECITALS

A. AT&T Corp. is the ultimate parent corporation of CCT.

B. AT&T Corp. has entered into an agreement and plan of merger with AT&T Comcast Corporation, and certain of their respective affiliates, and also entered into a Separation and Distribution Agreement dated December 19, 2001.

C. Pursuant to those agreements, AT&T Corp. submitted an FCC Form 394 to the Town to obtain the Town's consent to transfer control from AT&T Corp. to AT&T Comcast Corp., who will become the ultimate parent of CCT.

D. The Parties have, for the purposes of this Agreement, agreed that CCT does not have a valid and enforceable cable television franchise to operate within the Town.

E. CCT acknowledges that Federal law requires any entity offering cable services to the Town to obtain a cable television franchise agreement with the Town prior to offering cable services.

F. The Parties will commence negotiations in order for CCT to obtain a cable television franchise agreement in order to lawfully operate its cable television system within the Town within ten (10) days from the execution of this Agreement.

G. CCT has indicated that it would like to continue to operate its cable system and offer cable services in the Town while negotiating a cable television franchise agreement with the Town.

H. The Town has indicated that it will allow CCT to continue to operate its cable system and offer cable services in the Town until September 30, 2002 subject to CCT negotiating a cable television franchise agreement with the Town and submitting a final cable television franchise agreement with the Town executed by CCT to the Town

Council and Town Attorney for their consideration no later than September 30, 2002, and subject to CCT fulfilling its duties and obligations set forth below.

I. CCT acknowledges that failure of the AT&T Comcast merger for any reason whatsoever shall not affect this Agreement and the Parties contemplate that should the AT&T Comcast merger fail for any reason whatsoever, CCT and the Town shall fulfill all duties and obligations and enjoy all rights and benefits of this Agreement.

NOW, THEREFORE, for the mutual consideration set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as set forth below.

TERMS AND CONDITIONS

1. Recitals. The recitals set forth above shall be deemed true and correct and shall be deemed a part of this Agreement as if those recitals had been set forth in full in the "TERMS AND CONDITIONS" portion of this Agreement.

2. No Franchise. For purposes of this Agreement only, the Parties agree that no valid and enforceable cable television franchise agreement is in existence between CCT and the Town.

3. FCC Form 394. CCT hereby withdraws the FCC Form 394 that it submitted to the Town on March 21, 2002.

4. Franchise Negotiations and Proposed Terms.

4.1. The Parties shall within ten (10) days from the execution of this Agreement commence negotiations of a cable television franchise allowing CCT to provide such services to the residents of the Town.

4.2. The Parties shall submit a final cable television franchise agreement executed by CCT to the Town Council and Town Attorney for their consideration no later than September 30, 2002. The Parties acknowledge that the cable television franchise agreement must be approved by the Town Council and Town Attorney prior to the effective date of the cable television franchise agreement.

4.3. The cable television franchise shall contain terms including, but not limited to, the following:

4.3.1. The franchisee shall complete the upgrade of its cable system serving the Town no later than March 31, 2004. Such upgrade shall cause that portion of the cable system serving the entire Town to pass frequencies of at least 750 MHZ and be fully operational with a minimum channel capacity of at least seventy-eight (78) analog video channels and will have the capacity to two-way communications. The cable system will be fiber optic rich and will use fiber-to-the-node technology.

4.3.2. The completion of the upgrade shall be certified by an officer of the franchisee. The franchisee shall be solely responsible for the cost of such certification. Additionally, franchisee shall cooperate with the Town in order to allow an independent engineer chosen by the Town to certify completion of the upgrade.

4.3.3. Upon execution of the franchise agreement, the franchisee shall post a construction bond with the Town in an amount to be determined by the Parties during the franchise negotiations. If the upgrade is not completed by March 31, 2004, then the Town will have the right to draw on the bond for liquidated damages in the amount of \$2,100 per day for each day that the upgrade is not complete beginning on March 31, 2004. If accrued liquidated damages exceed the amount of the posted construction, the franchisee shall pay the balance upon demand.

4.3.4. The franchisee shall submit to the Town Manager quarterly reports detailing the progress of the system upgrade.

5. Failure of Franchise Negotiations. If CCT fails to submit a final franchise agreement executed by it to the Town Council and Town Attorney by September 30, 2002, then the Parties shall in good faith follow the following "escalation procedures" to resolve all outstanding issues:

6. Each Party must deliver written notice to the other party setting forth its position on the particular outstanding prohibiting it from completing the agreement. Such written notice must include the following: With specificity the details of the issue and what the party needs to have the issue resolved. Upon the other party's receipt of such written notice, the other party will consider it and the parties will attempt to reach agreement within five (5) business days. If there is agreement between the Parties, then the party initially submitting the written notice shall draft the appropriate language, submit it to the other party for review, and the issue shall be considered resolved. If the

Parties cannot agree within five (5) business days, then senior management of both parties shall be notified immediately and senior management shall discuss and attempt to resolve the situation within five (5) business days after they are notified.

7. Insurance; Policy Limits. AT&T Broadband Corp. shall:

7.1. Within ten (10) days after the effective date of this Agreement, submit to the Town Manager a certificate indicating proof of the insurance required below to the Town. CCT shall maintain the insurance required below until such time as the parties enter into a franchise agreement and shall thereafter maintain insurance as set forth in such franchise agreement. CCT shall maintain the following types of insurance in amounts not less than shown:

7.1.1. Workers' Compensation: Coverage shall apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include employers' liability with a minimum limit of One Hundred Thousand Dollars (\$100,000.00) for each accident.

7.1.2. Comprehensive General Liability: Minimum limits of One Million Dollars (\$1,000,000.00) per occurrence shall apply with combined single limit of no less than Three Million Dollars (\$3,000,000.00) for bodily injury liability and property damage liability. This coverage shall include premises and/or operations, independent contractors, and subcontractors and/or completed operations, broad form property damage, explosion, collapse, and underground coverage, and a contractual liability endorsement.

7.1.3. Business Auto Policy: Minimum limits of Five Hundred Thousand Dollars (\$500,000.00) per occurrence shall apply with combined single limit of no less than One Million Dollars (\$1,000,000.00) for bodily injury liability and property damage liability. This shall include owned, non-owned, and hired vehicles.

7.2. The insurance certificate obtained by CCT in compliance with this section shall be approved in writing, filed and maintained with the Town Manager. The certificate of insurance will provide thirty (30) days' prior written notice to the Town of change, cancellation, and/or nonrenewal of insurance set forth in the certificate.

7.3.Nothing herein is intended as a limitation to the extent of any legal liability of CCT. Nothing herein is intended to excuse performance or limit the liability of CCT for damages.

7.4.All insurance policies, letters of credit and bonds as are required shall be written by a company authorized and qualified to do business in the State of Florida and have a rating of A- in Best's Rating Guide.

7.5.The Town, the Town Council, and the Town's officers, agents, and employees shall be included as additional insureds on the comprehensive general liability.

8. Indemnification. CCT shall:

8.1.Release the Town, its officers, agents, and employees from and against any and all liability and responsibility in or arising out of CCT's use of the public rights-of-way for construction and operation of a cable television system. CCT shall not sue the Town or seek any monetary damages or such other relief from the Town in connection with its use of the public rights- of-way.

8.2.Indemnify, hold harmless, and at the Town Attorney's option, defend or pay for an attorney selected by the Town Attorney to defend the Town, its officers, agents, and employees, against any and all claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, accruing or resulting from any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damage sustained by any person or property by virtue of CCT's use of the public rights-of-way for construction and operation of a cable television system; and

8.3.Upon demand of the Town, at CCT's sole cost and expense, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the Town, its officers, agents or employees, and arising out of or pertaining to any conduct, policy, or practice which is within the scope of this indemnity.

9. Termination.

9.1.Should the Town believe that CCT failed to comply with any of the material terms or conditions of this Agreement, it shall provide CCT with written notice

of said failure to comply. CCT shall then have ten (10) business days from the date of the notice to cure said failure or to commence to cure said failure, and provide a written response to the Town. Should CCT not cure or commence to cure the alleged failure, the Town may terminate this Agreement upon ten (10) days written notice effective immediately.

9.2.If CCT fails to submit a final franchise agreement executed by it to the Town Council and Town Attorney by September 30, 2002, and the remaining issues are not cured, as set forth in Section 5 above, or should the town terminate this Agreement "for cause", after providing CCT with notice and an opportunity to cure as set forth in Subsection 9.1, immediately above, CCT shall, within fifteen (15) days after receipt of a written demand from the Town Attorney, make a capital grant to the Town in the amount of Twenty Five Thousand Dollars (\$25,000.00). Such capital grant shall not be "passed through" to subscribers' rates.

10. No Waiver. Nothing contained in this Agreement or otherwise shall cause the failure of the Town to insist upon strict compliance with any covenant, obligation, condition, agreement, or Federal, State or local law to operate as a waiver of, or estoppel with respect to, any such covenant, obligation, condition, agreement or Federal, State or local law. It is specifically and explicitly agreed to by the parties that the Town does not waive its rights to seek remedies for CCT's operating without a valid cable television franchise in the Town. CCT does not hereby waive its rights to assert all available defenses to such a claim, including that it possesses a valid and enforceable cable television franchise with the Town. Neither party is waiving its rights under 47 U.S.C. § 626.

11. Failure of the AT&T Comcast Merger. Should the AT&T Comcast merger fail for any reason whatsoever, CCT shall fulfill all duties and responsibilities under this Agreement.

12. Entire Agreement. This Agreement contains the sole and entire agreement between the Parties with respect to the subject matter of this Agreement and supercedes any and all other prior or contemporaneous written or oral agreements or understandings between them with respect to the subject matter contained in this Agreement.

13. Cumulation of Remedies. The remedies contained in this Agreement are cumulative and do not preclude the existence of any other remedies whether specifically provided for in this Agreement or which are provided for by law or equity in the event of a breach of this Agreement.

14. Time is of the Essence. Time is of the essence in this Agreement, and each and all of its provisions.

15. No Assignment. No Party shall assign rights or interests nor delegate duties under this Agreement without the prior written consent of the other Party.

16. Governing Law. This Agreement and the interpretation of its terms shall be governed by and construed in accordance with the laws of the State of Florida, without regard to its conflicts of laws rules.

17. Jurisdiction and Venue. The parties irrevocably submit and consent to the exclusive jurisdiction and venue of the Florida state courts in and for Broward County, Florida.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

ATTEST:


Ariselle Haze Tyner, Town Clerk

COMMUNITY CABLE TELEVISION

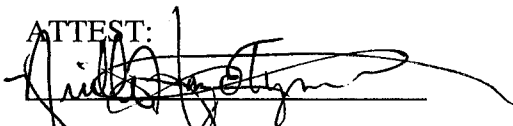
By Ellen Filipiak

As Senior Vice President

Signature Ellen Filipiak

1st day of August, 2002.

ATTEST:


Ariselle Haze Tyner, Town Clerk

TOWN OF SOUTHWEST RANCHES

Mecca Fink

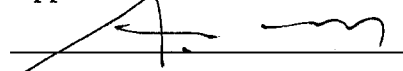
Mecca Fink, Mayor

14 day of August, 2002

John Canada, Town Administrator

14 day of August, 2002

Approved as to Form and Correctness:


Gary A. Poliakoff, J.D., Town Attorney