



Legislation Text

File #: 2002-0265, **Version:** 2

Clerk 07/30/2002

AN ORDINANCE approving, subject to conditions, the transfer of control of the cable television franchises and commitments held by TCI Cablevision of Washington, Inc. under Franchise 12132 and Tele-vue Systems, Inc. d/b/a TCI of Washington and TCI Pacific, Inc. under Franchise 11680 from AT&T Corporation to AT&T Comcast Corporation; and repealing Ordinance 14401.

PREAMBLE:

King County is granted authority under federal, state and county law and the terms of existing cable television franchises to grant permission for a transfer of control of the parent corporations of TCI Cablevision of Washington, Inc., holder of Franchise 12132 with TCI West, Inc., as guarantor and Tele-Vue Systems, Inc., holder of Franchise 11680 with TCI Pacific, Inc., as guarantor.

For the reasons set forth in this ordinance the proposed transfer is in the public interest if the conditions set forth in this ordinance are fully satisfied.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings of fact. The council hereby finds the following facts:

A. TCI Cablevision of Washington, Inc., and Tele-Vue Systems, Inc., (together, for the purposes of this ordinance, "franchisees") subsidiary corporations of Tele-Communications, Inc., (for the purposes of this ordinance, "TCI") which is now known as AT&T Broadband, LLC (for the purposes of this ordinance, "ATTB"), provide cable television service in unincorporated King County pursuant to cable television

franchises 12132 and 11680, as amended (for the purposes of this ordinance, "franchise agreements").

B. TCI entered into a merger agreement with AT&T Corp. (for the purposes of this ordinance, "AT&T"), that resulted in a change of control of TCI and, indirectly, of franchisees.

C. The TCI and AT&T change of control was conditionally approved by the council pursuant to Ordinance 13409 on February 16, 1999, and Ordinance 13855 on May 15, 2000.

D. On March 10, 2000, Tele-Communications, Inc., changed its name and corporate structure to AT&T Broadband, LLC.

E. AT&T, Comcast Corporation (for purposes of this ordinance, "Comcast"), AT&T Broadband Corp. (for purposes of this ordinance, "AT&T Broadband") and certain of their respective affiliates have entered into an Agreement and Plan of Merger in order to create a new company to be known as ATT Comcast Corporation (for purposes of this ordinance, "ATT Comcast").

F. FCC Form 394 was filed with the clerk of the county council on March 4, 2002, giving notice of the proposed change of parental control of franchisees from ATTB to AT&T Broadband and then from AT&T Broadband to AT&T which will then transfer control to the new entity, ATT Comcast pursuant to the franchise agreements and with the approval of franchisees, ATTB, AT&T Broadband, AT&T and Comcast.

G. ATT Comcast, AT&T Broadband, ATTB and franchisees acknowledge that neither the transfer nor the county's approval of the transfer shall diminish or affect the franchisees' past or present commitments, duties and obligations embodied in all franchise agreement provisions and other contractual obligations with the county, including without limitation the lease agreement between the county and the franchisees, as amended, the construction and performance bonds and the payment bond related thereto and all applicable laws.

H. The proposed change of control of franchisees' parent corporation is a transfer under the terms and conditions of both franchises and is subject to the county's permission pursuant to Franchise 12132, paragraph 4, Franchise 11680, paragraph 4, K.C.C. 6.27A.030 and K.C.C. 6.27A.050.

I. Franchisees, ATTB, AT&T, Comcast and ATT Comcast, asserted that King County had to act on or before July 1, 2002, on the proposed transfer or face an automatic approval of the transfer under federal law. King County does not agree that it was required to act by such date because until July 18, 2002, representatives of franchisees, ATTB, AT&T, Comcast and ATT Comcast failed to provide responses to county's requests for further information which would assist the county in determining the completeness and accuracy of the FCC Form 394 filed by ATTB, AT&T Broadband, AT&T and Comcast.

J. King County does not agree that it was required to act by such date July 1, 2002, but took action on June 24, 2002, in Ordinance 14401 to remove any ambiguity that a final decision had not been rendered under 42 U.S.C. section 537. The actions taken in this ordinance repeal the transfer denial in Ordinance 14401.

K. The county requested from representatives of the franchisees, ATTB and ATT Comcast, both orally and in writing copies of certain documents and agreements relating to the Agreement and Plan of Merger dated December 19, 2001, by and among AT&T, ATTB, Comcast and certain of their respective affiliates, and a Separation and Distribution Agreement dated December 19, 2001, by and between AT&T and AT&T Broadband. Some of the requested documents were provided for review by the county on July 11, 2002. The document review was completed on July 18, 2002, when all requested documents were provided. The county is not required to render a final decision until one hundred twenty days from the date of receipt of a complete FCC Form 394.

L. The county has received public comment and public testimony from representatives of franchisees, ATTB, AT&T Broadband, AT&T, Comcast, ATT Comcast and members of the public regarding the legal, technical, financial and public policy issues raised by the proposed transfer.

SECTION 2. King County hereby approves the transfer of control of franchisees parent corporation from ATTB to AT&T Broadband and then from AT&T Broadband to AT&T, which will then transfer control to the new entity, ATT Comcast, and indirectly, franchisees from ATTB to AT&T Broadband and then from AT&T Broadband to AT&T, which will then transfer control to the new entity ATT Comcast, subject to the following

conditions:

A. ATT Comcast, AT&T Broadband and ATTB shall confirm in writing their acknowledgment that neither the transfer nor the county's approval of the transfer shall diminish or affect the franchisees' past or current commitments, duties and obligations and franchisees shall agree to abide by and accept all of the franchisees' franchise agreement provisions and other contractual obligations with the county including, without limitation, the lease agreement between the county and the franchisees, as amended, the construction and performance bonds and the payment bond related thereto and all other applicable laws.

B. ATT Comcast, AT&T Broadband, ATTB and franchisees shall confirm in writing that the franchisees shall remain responsible for the obligations and liabilities of the franchisees, known or unknown, under their respective franchise agreements and contracts with the county and under applicable law, before and after the effective date of the change of control authorized by this transfer.

C. ATTB and franchisees shall confirm in writing that TCI West, Inc., TCI Pacific, Inc., franchisees and the applicable bonding company shall confirm in writing that the construction and performance bonds and the payment bond presently filed with the county in connection with the franchisees' franchise agreements and contractual obligations shall remain in full force and effect before and after the effective date of the change of control authorized by this transfer.

D. ATT Comcast, AT&T Broadband, ATTB and franchisees shall confirm in writing that approval by the county of the transfer shall not constitute a waiver or release of any rights of the county under the franchise agreements, prior transfer ordinances or applicable law, before or after the effective date of the change of control authorized by this transfer.

E. ATT Comcast, AT&T Broadband, ATTB or franchisees shall confirm in writing that the merger of AT&T and Comcast shall be in substantially and materially the same terms as stated in the FCC Form 394 transmitted to King County on March 4, 2002, including subsequent information provided by AT&T, ATT Comcast, AT&T Broadband, ATTB or franchisees.

F. ATT Comcast, AT&T Broadband, ATTB or franchisees shall notify the county that the merger has been completed within thirty calendar days of the date that ATTB becomes a subsidiary of ATT Comcast and franchisees become an indirect subsidiary of ATT Comcast.

G. ATTB and franchisees shall confirm in writing that franchisees will meet with the executive regarding outstanding compliance issues, including but not limited to the completion of the fiber crossing to Vashon Island and providing two-way services as described in the franchise agreements to Vashon Island customers and the completion of all Institutional Network (I-NET) sites in or around Bellevue, Washington.

H. ATT Comcast, ATTB and franchisees shall confirm in writing that the county reserves any right it may have to regulate cable television and cable modem service under applicable law, including, without limitation, the right to adopt rules related to subscriber privacy and customer service.

I. ATTB and franchisees shall confirm in writing that franchisees will organize an AT&T Cares Day at two schools serving citizens of unincorporated King County as designated by the county and shall be substantially in the same form as described in the May 19, 2000, AT&T letter of agreement with King County. Both schools shall have their computer labs built as set forth in the letter of agreement dated May 19, 2000, by October 1, 2002, or by a date that accommodates the schedule of the school. If franchisees do not complete the two school computer labs by October 1, 2002, or by a date that accommodates the schedule of the school it shall be considered a material violation of the franchises.

J. ATTB and franchisees shall confirm in writing that franchisees will conduct a statistically valid survey on an annual basis assessing customer satisfaction with all cable services provided by franchisees to customers in unincorporated King County. The survey shall be substantially in the same form as the King County Customer Satisfaction Survey dated April 2002. Additional questions may be added if franchisees and the county agree. Final results of the annual survey shall be reported by May 1 of the reporting year. If franchisees do not complete an annual survey by May 1 of the reporting year, it shall be considered a material violation of the franchises. Results shall be provided to the labor, operations and technology committee, or its

successor, of the King County council, and the office of cable communications.

K. ATTB and franchisees shall confirm in writing that franchisees shall exercise all due diligence in obtaining all necessary permits and easements for and complete construction of a two-way return fiber crossing from Vashon Island to the headend as described in the franchise agreements. If franchisees do not exercise all due diligence in obtaining all necessary permits and easements for the fiber crossing, or complete the fiber crossing, it shall be considered a violation for failure to complete construction in accordance with the terms of the cable franchises.

L. ATTB and franchisees shall confirm in writing that franchisees shall comply, and that franchisees agree to comply fully with the franchise requirements to pay all applicable franchise fees and charges, including but not limited to costs for public notification of this transfer.

SECTION 3. Where this ordinance requires submittal of written confirmations by ATT Comcast, AT&T, AT&T Broadband, ATTB or franchisees, the confirmation shall be filed with the clerk of the council within thirty calendar days of the effective date of this ordinance, except for the information required in section 2F of this ordinance. If these or any other conditions for approval are not satisfied, approval shall be deemed to have been denied as of the enactment date of this ordinance.

SECTION 4. Notwithstanding any other provision of this ordinance, if the clerk of the metropolitan King County council has not received the written confirmations required by section 2 of this ordinance within thirty calendar days of the effective date of this ordinance, then the approval granted by this ordinance expires, and the request for approval of the transaction shall be deemed to have been denied as of the date of enactment of this ordinance.

SECTION 5. If the transaction that is the subject of this ordinance is not completed or does not reach final closure for any reason, or if the closure is reached on terms not substantially and materially the same from the terms described in the FCC Form 394 including subsequent information provided by AT&T, ATT Comcast, AT&T Broadband, ATTB or franchisees, then the approval granted in this ordinance is null and void and the

approval of the transaction shall be deemed to have been denied as of the enactment date of this ordinance.

SECTION 6. The executive is hereby authorized to execute written amendments to the franchise agreements incorporating in substantial form the conditions set forth in this ordinance.

SECTION 7. If any provision of this ordinance, or its application to any person or circumstance is held invalid, the remainder of the ordinance, or its application to other persons is not affected.

SECTION 8. This ordinance repeals Ordinance 14401 that denied the transfer of control of the parent corporations of TCI Cablevision of Washington, Inc., and

Tele-Vue Systems, Inc., from AT&T Corp. to AT&T Comcast Corporation passed on June 24, 2002.

Newspaper. Official Paper. Post 3 Places in Courthouse. Publish 15 Days Prior. Last Publication 5 Days Prior to Hearing.

Newspaper: Seattle Times

Publishing: Tuesday/Wednesday, June 25-26, 2002

Hearing: July 1, 2002

Rescheduled hearing: July 8, 2002

Republished: Seattle Times - June 26, 27