



Text File

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Committee: Committee on General Services,
Technology & the Arts

Status: Passed Finally

Presented by Mr. Peduto

AS AMENDED

Resolution approving the request for an extension of time for the completion of the cable system rebuild pursuant to the Franchise Agreement between the City of Pittsburgh and TCI of Pennsylvania, Inc. a subsidiary of AT&T Corp.

WHEREAS, TCI of Pennsylvania, Inc., a subsidiary of AT&T Corp. ("Franchisee"), is the holder of a franchise to operate a cable system franchise in the City of Pittsburgh;

WHEREAS, pursuant to section 4.3 of the Franchise Agreement between City and Franchisee, effective December 30, 1999 (the "Franchise Agreement"), Franchisee agreed to upgrade its cable system in the City not later than June 30, 2002;

WHEREAS, Franchisee notified the City in a letter dated on or about May 13, 2002 that it would be unable to complete the cable system upgrade in accordance with section 4.3 of the Franchise Agreement;

WHEREAS, the City finds that AT&T's explanation satisfies the prescripts set forth at section 4.10(B) (2) of the Franchise Agreement;

WHEREAS, AT&T has announced its intention to merge with Comcast Corporation ("Comcast") to create a new company to be known as AT&T Comcast Corporation ("AT&T Comcast"), pursuant to the terms of an Agreement and Plan of Merger dated on or about December 19, 2001 by and among AT&T, AT&T Broadband Corp. ("AT&T Broadband"), Comcast, and certain of their respective affiliates, and a Separation & Distribution Agreement dated on or about December 19, 2001 by and between AT&T and AT&T Broadband (the "Merger");

WHEREAS, Franchisee has provided information to the City regarding the status of the cable system rebuild as required under the current cable system franchise and has committed to complete that upgrade;

WHEREAS, the City has requested and has received from Comcast certain assurances related to completion of the cable system rebuild pursuant to a letter dated on or about May 9, 2002 (the "Assurance Letter," a copy of which shall be incorporated into and made a part of this Resolution thereto);

WHEREAS, based upon the information provided by the Franchisee, AT&T and Comcast, including,

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but not limited to the Assurance Letter, the City is willing to consent to the request for extension of time as set forth above;

NOW, THEREFORE BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF PITTSBURGH
HEREBY ENACTS AS FOLLOWS:

Section 1 - Extension

- a. AT&T is granted a fifteen month extension to the rebuild deadline set forth in Section 4.3 of the Franchise. AT&T's new deadline for completing the upgrade of its cable system is September 30, 2003.
- b. During the above-mentioned period, no liquidated damages shall be enforced due to Franchisee's failure to complete the rebuild by June 30, 2002. Should the rebuild not be completed by the time set forth above, a penalty of seventy-five thousand (\$75,000) dollars shall be immediately due and payable to the City of Pittsburgh effective October 1, 2003. All other liquidated damage provisions in the Franchise Agreement remain in force.
- c. Franchisee agrees to work with the Council of the City of Pittsburgh to refine the current set of proposed "nodes" (i.e., the fiber build-out to various identified locations in Pittsburgh neighborhoods) identified at section 5.4(A)(1) of the Franchise Agreement between the City and Franchisee to up to 45 sites, i.e., five sites in each of the nine (9) Council Districts, in accordance with the Community Institutional Network Fiber/Wireless Concept, a copy of which is attached hereto and made a part of this Resolution.

Section 2 - Continuing Obligation In all respects and without exception, Franchisee agrees to comply with the reporting, notification, and activation requirements of the current Franchise Agreement between the City and Franchisee, including, but not necessarily limited to those at sections 4 and 8 of the Franchise Agreement.

Section 3 - Audit The City reserves the right to conduct at least two audits of AT&T's compliance with the construction, activation and certification requirements set forth above, during 2002 and 2003. AT&T will make available records and personnel that the City requests in order to complete the audit, within fifteen (15) days of the City's request.

Section 4 - Preservation of Remedies

- a. Nothing in this Resolution shall be construed to preclude the City's initiation of remedies under the Franchise Agreement should AT&T fail to complete, in a timely fashion, any term, condition, or

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requirement of this Resolution.

b. Franchisee also agrees that the City does not waive and expressly reserves all legal rights and authority pertaining to any and all non-compliance under the Franchise Agreement that now exists, or may later be discovered to have existed during the term of such Franchise.

c. In all respects and without exception, Franchisee agrees to comply with the requirements of the current Franchise Agreement between the City and Franchisee including all applicable laws, ordinances, orders, contracts, agreements, commitments, and regulatory actions taken pursuant thereto.

Section 5 - Acceptance By Franchisee This franchise extension and associated terms and conditions shall not become effective for any purpose unless and until AT&T accepts the conditions of this Resolution and such acceptance is filed with the Department of General Services. Such acceptance shall be in writing, shall be in a form and substance approved by the City Solicitor, and shall be and operate as an acceptance of each and every term and condition and limitation contained in this Resolution, Chapter 425 of the Pittsburgh Code of Ordinances, and the Franchise Agreements. All other terms, conditions, and limitations of the Franchise Agreement not specifically amended by this Resolution shall remain in full force and effect and shall apply to the obligations created by this Resolution. Any acts consistent with and prior to the effective date of this Resolution are hereby ratified and confirmed.