

RESOLUTION NUMBER 18 - 02

RESOLUTION CONDITIONALLY AUTHORIZING THE PROPOSED TRANSFER OF A CABLE TELEVISION SYSTEM FROM A SUBSIDIARY OF AT&T CORPORATION TO A SUBSIDIARY OF AT&T COMCAST

WHEREAS, the Village of East Dundee, an Illinois municipal corporation, located in Kane County, Illinois, (the "Village"), previously granted a cable television franchise to United Cable Television Corporation of Northern Illinois, Inc., (the "Cable Operator"), which currently operates a cable television system (the "System") within the Village; and

WHEREAS, the Village has been advised by AT&T Corporation ("AT&T") of which the Cable Operator is a subsidiary, that AT&T intends to merge with Comcast Corporation, with the resulting entity being called "AT&T Comcast"; and

WHEREAS, the Village has been advised by AT&T that the stock or ownership of the Cable Operator may be transferred through one or more internal transfers or mergers to a direct or indirect subsidiary of AT&T Comcast (the "Transfer"); and

WHEREAS, the Village has been advised by AT&T that whatever form of entity that the Cable Operator may assume, the Cable Operator will be controlled by AT&T Comcast, but that the Cable Operator will continue to operate the System and continue to hold and be responsible for performance of the cable television franchise issued by the Village; and

WHEREAS, it is the Cable Operator which is responsible and liable for the performance of the cable television franchise issued by the Village; and

WHEREAS, the Village has not been advised by AT&T or any other party or as to what corporate form it may assume in the future after the Transfer; and

WHEREAS, nonetheless, AT&T has requested that the Village consent to the Transfer and, to that end, has filed an FCC Form 394 with the Village in connection with the proposed Transfer; and

WHEREAS, despite the Village of Lake in the Hills being a member of the Fox Valley Regional Cable Commission (the "Commission") and AT&T's entering into a model agreement with every other member of the Commission, specifically the Village itself and the Villages of Fox River Grove, West Dundee, Cary, Sleepy Hollow, Algonquin, and Carpentersville, which the parties negotiated in good faith, AT&T has refused to execute the same agreement with the Village of Lake in the Hills; and

WHEREAS, the Village is willing to consent to the Transfer of the System only upon the terms and conditions set forth herein and receipt of a certificate from AT&T Comcast expressly accepting said terms and conditions; and

WHEREAS, Section 2 of the Village's Cable Television Agreement with the Cable Operator dated January 1, 2001, (the "Agreement") entitled **Transfer of Ownership or Control** provides, in part, as follows:

The Grantee hereby agrees that any Franchise granted under the Ordinance and this Agreement shall be a

privilege to be held for the benefit of the public. Any Franchise so granted cannot, in any event, be sold, transferred, leased, assigned, or disposed of, including but not limited to by forced or voluntary sale, merger, consolidation or other means, without the prior written consent of the Grantor, and then *only such reasonable conditions as the Grantor may establish* (emphasis added).

NOW THEREFORE BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS, AS FOLLOWS:

Section One. That the Village of East Dundee agrees to consent to the Transfer of the System subject to and contingent upon each and every of the following conditions being performed, which shall constitute conditions precedent to the effectiveness of the Village's consent to such Transfer:

- (i) AT&T Comcast's guaranty of performance of each obligation of the Cable Operator as required in Section 2(C) of the Agreement, including but not limited to Section 6, **Consumer Service Standards**; Section 7, **Proof of Compliance**; Section 8, **Complaint Procedures**; Section 12, **Remedies for Franchise Violations**; Section 13, **Procedure for Remedying Franchise Violations**; and Section 26, **Performance Letter of Credit** of that Agreement with respect to which AT&T has previously claimed that it cannot comply without altering its current operating structure and increasing rates dramatically; and
- (ii) In the event that such a guaranty is not submitted to the Village, the submission of financial statements demonstrating that the Cable Operator itself has the financial means and reserves to fulfill its obligations and responsibilities under the Agreement and certification from the Cable Operator that it will comply with the obligations set forth in the Agreement, including but not limited to those provisions set forth above in paragraph (i); and
- (Iii) That the Cable Operator reimburse the Village for any and all expenses and fees charged to the Village by attorneys and technical

or professional experts in evaluating the Transfer as required by Section 2(C) of the Agreement; and

- (iv) The filing of a certificate expressly agreeing to each and every of the conditions set forth above and the filing of all necessary bonds, letters of credit, proof of insurance, and certificates as required by Section 2(C) of the Agreement.

Section Two. In the event that any or all of the conditions precedent set forth in Section 1 of this Resolution are not fulfilled, no consent to or approval whatsoever of the Transfer is hereby granted by the Village.

Section Three. Severability. If any section, paragraph or provision of this resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this resolution.

Section Four. Repeal. All ordinances, resolutions, motions or parts thereof in conflict herewith shall be and the same are hereby repealed.

Section Five. Publication. This resolution shall be in full force and effect forthwith upon its adoption, approval and publication in pamphlet form as provided by law.

Adopted this 17th day of June, 2002, pursuant to a roll call vote as follows:

AYES: Scalla, Zaeske, Arnone, Ruffalo, Bartels, Schock.

NAYES: None.

ABSENT: None.

Approved by me this 17th day of June, 2002.

Roger W Ahrens
ROGER AHRENS, President

Published in pamphlet form this 19th day of June, 2002, under the authority of the President and Board of Trustees.

ATTEST:

Jane E. Theis
JANE THEIS, Village Clerk

Recorded in the Village Records on June 19th, 2002.

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