

Ordinance No. 2001-52

An ordinance of the City of Bainbridge Island, Washington, amending the cable television franchise of Northland Cable Television, Inc, and by approving the transfer of the franchise to TCI Cable Partners of St. Louis, L.P., also known as AT&T Broadband.

Whereas, pursuant to Ordinance No. 70-14, the City of Winslow, Washington, now known as the City of Bainbridge Island (the "City") issued a cable television franchise (the "Franchise") to George O. Gregg; and

Whereas, with the consent of the City duly given (1) as of July 29, 1971, George O. Gregg assigned the Franchise to Kenneth T. Youngren, (2) as of September 12, 1977, Kenneth T. Youngren assigned the Franchise to Richard J. Dyste, and (3) as of June 28, 1985, Richard J. Dyste assigned the Franchise to Bainbridge Island Cable TV limited Partnership ("BICTVLP"); and

Whereas, in February 1991 the City annexed certain portions of Kitsap County which previously had been served by BICTVLP and its managing general partner Northland Cable Television, Inc. pursuant to franchises issued by Kitsap County on terms and conditions substantially the same as those set forth in the Franchise; and

Whereas, BICTVLP, by written notice dated July 10, 1992, exercised its option to extend the term of the Franchise for an additional period of 25 years beyond the original 25 year term of the Franchise; and

Whereas, with the consent of the City duly given, as of December 29, 1993, BICTVLP assigned the Franchise to its managing general partner, Northland Cable Television, Inc ("Northland"); and

Whereas, by Ordinance No. 96-22, the City amended the Franchise to increase the license fee from four percent to five percent; and

Whereas, the City and Northland, subsequent to the annexation, began and continued discussions regarding whether the annexation required a new franchise or an amendment to the existing franchise; and

Whereas, the City and Northland concluded negotiations in 1996 for an amendment to the Franchise to address issues that had not been included in the Franchise originally; and

Whereas, that amendment ordinance was not finally adopted; and

Whereas, Northland has received an unsolicited offer to purchase its assets from TCI Cable Partners of St. Louis, L.P., also known as AT&T Broadband ("AT&T"); and

Whereas, completion of this purchase requires the City to consent to the transfer of the Franchise from Northland to AT&T; now, therefore

The City Council of the City of Bainbridge Island do ordain as follows:

Section 1. The Franchise is amended to expire on January 31, 2008, and sections 7 and 19 of the Franchise, and the option to renew exercised by the Licensee pursuant to those sections in 1992, is superceded accordingly.

The Franchise is further amended such that the Licensee (franchisee) shall pay all franchise fees and taxes based upon gross revenues including City utility taxes in accordance with the Franchise and state, federal and local law. "Gross Revenues" shall mean any revenue received by the franchisee from the operation of the Cable System to provide cable services in the service area, provided, however, that such phrase shall not include: (1) unrecovered bad debt; (2) any PEG capital support recovered from subscribers; (3) franchise fees; and (4) any tax, fee or assessment of general applicability collected by the franchisee from subscribers for pass-through to a government agency. Gross Revenues shall include, by way of illustration and not limitation, monthly fees charged subscribers for basic service; any expanded tiers of cable service; optional premium services; installation, disconnection, reconnection and change-in-service fees; leased channel access fees; advertising sales; home shopping revenue; all cable service lease payments from the cable system; fees, payments or other consideration received by the franchisee from programmers for carriage of programming on the cable system and accounted for as revenue under GAAP; revenues from rentals of converters or other cable system equipment; revenues from program guides; additional outlet fees; and revenue from the sale or carriage of other cable services.

All provisions of the Franchise inconsistent with this definition are superceded.

Section 2. The City, Northland Cable Television, Inc., and TCI Cable Partners of St. Louis, L.P., also known as AT&T Broadband, agree that the Winslow Franchise (Ord. 70-14) will be extended to include all territory within the incorporated boundaries of the City of Bainbridge Island.

Section 3. The City Council consents to the transfer of the Franchise from Northland Cable Television, Inc., to TCI Cable Partners of St. Louis, L.P., also known as AT&T Broadband, subject to the following terms and conditions:

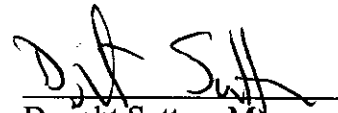
- A. The City and AT&T shall each commit to entering into good faith negotiations in January 2002 regarding further amendments of the Franchise with the intent to successfully conclude agreement on the amendments no later than June 30, 2003.
- B. AT&T will continue to honor the existing Channel Use Agreement dated as of November 6, 2001 between Northland Cable Television, Inc. and Bainbridge Island Broadcasting, Inc. and will not alter the cable system in any way to restrict, reduce or

eliminate the capability of delivering local access programming by the City or its designated local access provider.

- C. AT&T will develop a transition plan to phase out existing commercial contracts for programming time space on the local access channel with the objective that the City or its designated local access provider shall have exclusive use of the local access channel free of charge for 24 hours per day, seven days per week as a PEG channel, and shall maintain programming control.
- D. AT&T agrees that the live cablecasting capability provided to the City by Northland via a fiber feed from City Hall will remain in place after the transfer.
- E. AT&T will begin an engineering study within six months of this assignment to determine the feasibility of an institutional network in the City.

Section 4.. In the event the sale of the cable television system serving the City does not close on or before December 27, 2001, this Ordinance shall become null and void.

Section 5. This Ordinance shall take effect and be in force five days from and after its passage, approval and publication.


Dwight Sutton, Mayor

Attest/ Authenticate:


Sue Kasper, City Clerk

Approved as to Form:

Rod Kaseguma, City Attorney

Filed with the City Clerk:

Passed by the City Council:

Published:

Effective:

Ordinance No.

December 7, 2001

December 12, 2001

December 19, 2001

December 24, 2001

2001-52