



Legislation Text

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Clerk 06/24/2002

AN ORDINANCE denying the transfer of control of the parent corporations of TCI Cablevision of Washington, Inc., with TCI West, Inc., as guarantor under Franchise 121332 and Tele-Vue Systems, Inc., with TCI Pacific Communications, Inc., as guarantor under Franchise 11680 from AT&T Corp. to AT&T Comcast Corporation; and declaring an emergency.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. King County is granted authority under federal, state and county law and the terms of existing cable television franchises to deny or approve a transfer of Franchises 12132 and 11680.

SECTION 2. For the reasons set forth in this ordinance the proposed transfer is not in the public interest and is denied.

SECTION 3. Findings of fact. The council hereby finds the following facts:

A. TCI Cablevision of Washington, Inc., and Tele-Vue Systems, Inc. and TCI Pacific, Inc. (together, for the purposes of this ordinance, "franchisees"), subsidiary corporations of Tele-Communications, Inc. (for the purposes of this ordinance, "TCI"), 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 under Ordinance

13409 on February 16, 1999, and Ordinance 13855 on May 15, 2000.

D. On February 18, 2000, Tele-Communications, Inc. changed its name and corporate structure to AT&T Broadband, LLC (for the purposes of this ordinance "ATTB"). This action was taken without notice to King County.

E. AT&T, 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 to create a new company to be known as AT&T Comcast Corporation (for purposes of this ordinance, "AT&T 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, AT&T Comcast in accordance with the franchise agreements and with the approval of franchisees, ATTB, AT&T Broadband, AT&T and Comcast.

G. The proposed change of control of franchisee's parent corporation is a transfer of the franchises 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, and K.C.C. 6.27A.030 and 6.27A.050.

H. Franchisees, ATTB, AT&T Broadband, AT&T, Comcast and AT&T Comcast have asserted that King County must act on or before July 4, 2002, on the proposed transfer action or face an automatic approval of the transfer under federal law. King County does not concede that it is required to act by such date because franchisees, ATTB, AT&T Broadband, AT&T, Comcast and AT&T Comcast have 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 franchisees, ATTB, AT&T Broadband, AT&T, Comcast and AT&T Comcast. King County does not concede that it is required to act by that date but takes action in this ordinance to remove any ambiguity that a final decision has been rendered under 42 U.S.C. Sec. 537. The county has requested from the franchisees, ATTB, AT&T Broadband, AT&T, Comcast and AT&T 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, AT&T Broadband, 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. Permission to review the requested documents pursuant to a nondisclosure agreement was tentatively granted on June 11, 2002. 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.

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

J. The county has considered a financial analysis conducted by Ashpaugh & Sculco of the proposed merger of AT&T and Comcast. This financial analysis concludes that "(f)ranchises currently served by AT&T Broadband will go from a company with significant debt and shortages in cash flow to [a] company with even more debt and greater shortages in cash flow." Testimony and documentation from other organizations opposed to the transfer have supported this conclusion.

SECTION 4. King County hereby denies the proposed transfer of parental control of ATTB to AT&T Broadband and then from AT&T Broadband to AT&T, which will then transfer control to the new entity, AT&T Comcast and indirectly, franchisees from ATTB to AT&T Broadband and then from AT&T Broadband to AT&T to the new parent corporate entity AT&T Comcast on the following grounds:

A. The FCC Form 394 provided by the franchisees is incomplete. Further, AT&T, AT&T Comcast, AT&T Broadband, ATTB and the franchisees have not replied to county's written requests for additional information to properly evaluate the application;

B. It is not evident that the newly formed parent cable service provider, AT&T Comcast can meet its financial requirements without seriously eroding its ability to implement or complete outstanding construction requirements. At this time, franchisees have two outstanding construction completion requirements, the completion of the King County Institutional Network, which includes the Vashon fiber crossing and the sites

located in or near the city of Bellevue, Washington;

C. It is not evident that the newly formed parent cable operator, AT&T Comcast, will have the financial resources to operate the cable franchises at the existing level of services;

D. It is not evident that the newly formed parent cable operator, AT&T Comcast, will be able to meet its financial obligations without raising cable rates. Expanded basic cable rates in unincorporated King County increased seventeen percent, from eighteen dollars in 2000 to twenty-one dollars sixty-five cents in 2002;

E. AT&T Comcast may not be able to initiate and offer new and additional services in the county because of the approximate thirty-two billion seven hundred million dollars of debt, as noted in the Ashpaugh & Sculco report, that will be transferred from both AT&T and Comcast individually to the merged company, AT&T Comcast;

F. Failure of AT&T to timely inform the county of changes in the franchisee corporate structure and names; and

G. Failure to timely allow King County to review the documents, which were not specifically described in the FCC Form 394 and categorized as "not necessary in order to understand the terms of the Agreement."

SECTION 5. If the merger between AT&T, Comcast, AT&T Broadband, ATTB and franchisees, indirectly, is upon terms that are substantially and materially different from the terms describe in the FCC Form 394 including subsequent information provided by AT&T, AT&T Comcast, AT&T Broadband, ATTB and franchisees, then AT&T, AT&T Comcast, AT&T Broadband, ATTB and franchisees shall be allowed to resubmit a request for a change in control in order to comply with Franchise 12132 and Franchise 11680.

SECTION 6. The limited time provided under federal law for review of a proposed transfer of a cable franchise, may require final action by the county on or before July 1, 2002. As more fully set forth in the findings section of this ordinance, Section 3, King County does not concede that it is required to act by such date. However, failure to take final action by that date could be deemed approval of the transfer under federal law. The council does not plan to meet during the week of July 1, 2002 and therefore would be unable to take

action prior to July 1 with a regularly enacted ordinance. To ensure that the county's decision in the public interest on the proposed transfer is effective it is necessary to adopt this ordinance as an emergency ordinance. The council finds as a fact and declares that an emergency exists and that the enactment of this ordinance as an emergency ordinance is necessary for the immediate preservation of public peace, health or safety or for the support of county government and its existing public institutions.